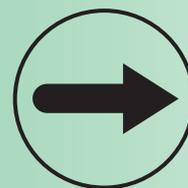


# School Governing Bodies Complaints Procedures

National Assembly for Wales  
Circular No: 03/2004  
Date of Issue: 21 May 2004

Guidance  
Circular



School  
Governance and  
Management



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Adran Hyfforddiant ac Addysg  
Department for Training and Education



Llywodraeth Cynulliad Cymru  
Welsh Assembly Government

- Title of Document:** School Governing Body Complaints Procedures.
- Audience:** Governing Bodies and Headteachers of Maintained Schools in Wales, Local Education Authorities and Diocesan Authorities.
- Overview:** This document contains guidance for headteachers and school governing bodies, on the establishment and publication of procedures for dealing with complaints from parents, members of staff, members of the local community, governors, pupils and others.
- Action Required:** To have regard to the guidance in School Governing Body Complaints Procedures.
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# SCHOOL GOVERNING BODY COMPLAINTS PROCEDURES

## SCHOOL GOVERNANCE AND MANAGEMENT

### SUMMARY

Section 29 of the Education Act 2002 requires the governing bodies of all maintained schools in Wales, including nursery schools, to establish procedures for dealing with complaints from parents, pupils, members of staff, governors, members of the local community and others. This includes complaints about the school and any community facilities or services that the school provides<sup>1</sup>. The law also requires governing bodies to publish their complaints procedures. The provisions of section 29 came into force on 1 September 2003.

This circular sets out:

- The legal framework
- General principles for handling complaints
- Stages of a complaints procedure.

The circular suggests possible 'routes' for dealing with complaints. Supplementary guidance will be issued separately on specific arrangements for dealing with complaints involving pupils.

Section 29(2) requires governing bodies to have regard to guidance from the National Assembly in establishing and publicising their complaint procedures. The elements of this circular that are statutory guidance concern:

- The content of complaints procedures
- The publication of complaints procedures.

In the event of any challenge to these elements, a governing body will need to be able to demonstrate that it has had regard to the guidance on the content and publication of the complaints procedure and has either followed it or has a sound justification for not doing so.

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<sup>1</sup> Section 27 of the Education Act 2002 provides a power for governing bodies to provide community facilities

## SECTION 1

### THE LEGAL FRAMEWORK AND ROLE OF A COMPLAINTS PROCEDURE

#### Schools Standards and Framework Act 1998

1. Section 39 of the School Standards and Framework Act 1998 provided for regulations to be made covering the establishment of complaints procedures in all maintained schools in Wales. This section was commenced but regulations necessary to bring it into effect were never made. However, many schools put in place complaints procedures on a non-statutory basis.

#### Education Act 2002

2. Section 29(1) of the Education Act 2002 ("the Act") which came into force on 1st September 2003 requires governing bodies of all maintained schools to establish procedures for dealing with complaints relating to the school or to the provision of facilities or services under section 27 of the Act<sup>2</sup>, other than complaints falling to be dealt with in accordance with other statutory provisions. Governing bodies must also publicise those procedures. Schools must draw up complaint procedures, if they have not already done so, or review any existing procedures in the light of this guidance.

3. There are other statutory processes for complaints and appeals relating to the curriculum, Special Educational Needs (SEN), religious worship, admissions, exclusions, staff grievance, teacher capability and staff disciplinary. Guidance on these topics is available from [www.learning.wales.gov.uk](http://www.learning.wales.gov.uk). The complaints procedures governing bodies are required to establish by section 29 of the Act do not replace these procedures.

4. Section 29(2) requires a governing body to have regard to guidance issued by the National Assembly for Wales in establishing and publishing procedures. The elements of this circular that are statutory guidance concern:

- The content of complaints procedures (paragraph 12)
- The publication of complaints procedures (paragraph 24).

5. The Welsh Assembly Government expects governing bodies to have regard to the statutory guidance and to follow it unless the governing body has compelling reasons for concluding that in the particular circumstances of their school the guidance is not relevant or is outweighed by other considerations. The remainder of this guidance is non-statutory. The Welsh Assembly Government expects governing bodies to take account of its recommendations, but governing bodies will need to develop complaints procedures to suit the circumstances of the school. Schools may wish to make use of any model developed by its LEA or diocesan authority in light of this guidance.

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2 Section 27 provides the governing body of a maintained school with the power to provide any facilities or services whose provision furthers any charitable purpose for the benefit of pupils at the school, their families and people who live and work in the locality of the school.

## The Role of a Complaints Procedure

6. A complaints procedure:

*is a way of ensuring that anyone with an interest in the school can raise a concern, with confidence that it will be heard and if well founded, addressed in an appropriate and timely fashion.*

7. It is important for governing bodies to have a comprehensive policy on how complaints will be dealt with, so that everyone understands the process from the outset. Clear information and straightforward procedures are essential. Treating all complaints seriously and responding to them quickly often means they can be resolved at an early stage and without recourse to additional procedures.

8. An essential element of a complaint procedure is record keeping. This is important in terms of tracking how a complaint has been handled and resolved and can assist the school in defending its actions if the complainant has recourse to external bodies or is dissatisfied with the outcome. Beyond this, effective recording enables a school to learn from issues raised and is a tool in evaluating and improving performance.

9. In summary a complaints procedure provides a framework so that:

- Anyone with an interest in the school (parents, members of staff, governors, pupils, members of the local community and others) is clear how they can express complaints, and how they will be responded to at each stage.
- School staff and governors are clear about their roles and responsibilities in responding to complaints.
- Schools can learn lessons and improve procedures as a result of individual cases and monitor long-term trends.
- All parties are assured of a consistent, documented approach.

## SECTION 2

### FULFILLING THE REQUIREMENT TO HAVE COMPLAINTS PROCEDURES

#### Introduction

10. The fact that the requirement to have complaint procedures is statutory, does not mean that it need be overly formal or bureaucratic. In most cases complaints can be dealt with, at stage 1 of the process as outlined in paragraphs 59-64.

## Developing or Amending School Complaints Procedures

- 11.** Governing bodies need to:
- draft procedures having regard to this guidance (or consider and as necessary amend existing procedures in the light of this guidance)
  - consult staff, parents and pupils on the procedures
  - implement any new procedures
  - ensure staff and/or governors receive appropriate training
  - formally adopt and publish the procedures.

### Content of a Complaints Procedure

#### *Paragraph 12 is a Statutory Requirement*

- 12.** This should include:
- the principles underpinning the complaints procedure
  - roles and responsibilities of all those involved
  - procedures for dealing with complaints of various types
  - timescales for dealing with complaints
  - procedures for recording and monitoring complaints
  - procedures for implementing any actions arising from the resolution of complaints or from monitoring trends.

**13.** Complaints can arise from a variety of sources i.e. parents, members of staff, pupils, members of the local community, governors and others; and can concern a range of issues. The arrangements need to include procedures for dealing with complaints relating to any activities, facilities and services provided to meet the needs of the wider community. It is important that the complaints procedure adopted by the governing body is appropriate for a range of complaints and complainants.

**14.** The governing body also needs to ensure that any third party providers offering activities and services on the school premises, or using school facilities have their own complaints procedures.

**15.** The school's procedures cannot cover every eventuality. One approach might be to develop a generic approach for dealing with complaints with adaptations for less usual forms of complaint e.g. complaints about the headteacher, chair of governing body or the governing body as a whole.

**16.** Whatever approach is chosen governing bodies need to have procedures set up which can be applied (or adapted to deal with a particular circumstance) when a complaint arises. Developing procedures from scratch in response to a complaint is not appropriate. For complaints to be dealt with in a timely fashion, procedures need to be in place.

## Implementation of the School Complaints Procedure

- 17.** Once the procedure has been adopted action needed may include:
- setting up the governing body complaints committee (and any appeal committee),
  - putting in place and documenting procedures,
  - putting in place reporting and monitoring arrangements,
  - ensuring staff and governors are aware of their roles and responsibilities,
  - publishing the procedure to all interested parties.

## Establishment of Governing Body Complaints Committee

**18.** The Welsh Assembly Government recommends the establishment of a complaints committee. The governing body could use the same members who sit on the staff grievance or staff disciplinary committees or nominate a separate group of governors. An effective committee will usually be made up of at least three governors with the membership of the committee reviewed annually. The involvement of the headteacher as a member of the committee would compromise the impartiality of any committee proceeding given his or her recommended role in handling complaints as set out in Section 4 of this guidance. The headteacher should not therefore be a member of the complaints committee or any appeals committee.

**19.** In accordance with Regulation 46 of the Education (School Governance) (Wales) Regulations 1999 (as amended), governing bodies may appoint a person who is not a member of the governing body to a complaints committee providing that the majority of members are governors. The governing body may also determine whether non-governor members have voting rights, but no vote can be taken at a committee meeting unless the majority of members present are members of the governing body.

## Establishment of Governing Body Complaint Appeals Committee

**20.** The purpose of an appeals committee is to rehear the complaint. The appeal committee can overturn the decision of the first committee.

**21.** The question of whether to have a complaint appeal committee is a matter for the governing body. It would be reasonable for a governing body to decide not to have an appeals committee on the grounds that such an arrangement would prolong resolution of complaints without any real benefit to the parties.

**22.** The Welsh Assembly Government recommends that an appeals committee does not include a person from the first committee or anyone previously connected with the complaint.

## Publication of the New/Revised Complaints Procedure

**23.** The Education Act 2002 requires governing bodies to publish their complaints procedure.

### *Paragraph 24 is a Statutory Requirement*

**24.** A summary should be published in the school prospectus; and following its adoption, the full document should be made available to all parents, pupils, governors, the LEA, diocesan authority (where appropriate) and all those who request a copy. All staff should be given a copy of the complaints' procedure and made aware of their role in relation to the procedure. Subsequently the full document should be provided to parents, pupils, staff and governors new to the school and on receipt of a request from any individual. It should be in a format that is accessible to the recipients.

**25.** Although not stipulated in the home school agreement regulations, schools may also wish to refer to or include the procedure in home school agreements, as well as the following:

- The governors report to parents
- Information given to new parents when their child joins the school
- Information given to pupils themselves
- Home school bulletins or newsletters
- A specific complaints leaflet which could include a form on which a complaint could be made
- Posters displayed in areas in the school that will be used by the public such as reception and the main entrance
- The school website.

## SECTION 3

### PRINCIPLES OF A COMPLAINTS PROCEDURE

#### **Impartiality and Fairness**

**26.** Complaints' procedures should be fair to all parties and applied consistently.

**27.** To enable fast and effective complaint resolution at stage 1, the governing body may allow those involved in dealing with the complaint to make decisions, even though they have an interest in or a prior involvement with the matter. Alternatively, or additionally, the governing body may decide that at stage 1, a complaints officer or other impartial person should consider complaints.

**28.** However, the Welsh Assembly Government recommends that complaints officers and all those involved in dealing with complaints at stages 2 and 3, whether members of staff or governors, must be impartial and not compromised by having an interest in or a prior involvement with the matter he or she is making a decision on.

### Investigating Complaints

**29.** The Welsh Assembly Government recommends that at each stage the person dealing with the complaint makes sure that they:

- establish what has happened so far, and who has been involved;
- clarify the nature of the complaint and what remains unresolved;
- meet with the complainant or contact them if unsure or further information is necessary;
- clarify what the complainant feels would put things right;
- talk to those involved in the matter and/or those complained of, allowing them to be accompanied if they wish;
- approach matters with an open mind and;
- keep records.

### Handling Information

**30.** The Welsh Assembly Government recommends that complaints are kept confidential and only those involved in investigating and making a decision be made aware of the nature of the complaint.

**31.** A general principle is that an accused person is entitled to know the substance of the accusation. However, there are cases where the governing body may decide to withhold information e.g. where there is a need to protect the source (or there is a legal reason why the information should not be released) or to meet data protection requirements.

### Complaints Involving Pupils

**32.** Particular consideration ought to be given to arrangements for handling complaints involving pupils. Pupils may be involved as complainants, as the subject of a complaint or as witnesses. At each stage a pupil may be accompanied by his or her parent/guardian or an adult of the pupil's choice.

**33.** Pupils may provide evidence to committees but this would need to be done voluntarily and with their parents' consent in the case of pupils under the age of 16. The Welsh Assembly Government recommends that committees should be sensitive to the fact that appropriate techniques are needed when hearing evidence from child witnesses to ensure that the child's view is properly heard. Separate guidance will be issued on the specific arrangements for dealing with complaints involving pupils, including the support that should be given to pupils and advocacy arrangements.

## Timing

**34.** Every effort ought to be made to investigate complaints quickly. Complaints procedures can be stressful and delay can cause further unnecessary stress. During a protracted process memories may fade or positions become entrenched.

**35.** In all cases, it is recommended that all parties (the complainant and the person(s) complained against) are kept informed throughout the process. It is good practice to set out a timetable of events to ensure all parties are clear as to what will happen and when.

**36.** In later sections of this guidance, with respect to timings, the word 'usually' is used alongside the number of school days that would be reasonable for each stage. This recognises both that the timeframe might be changed with the agreement of the parties; and that some cases may take longer because of their complexity or the absence of key parties for reasons of ill health etc.

**37.** The Welsh Assembly Government recommends that where investigation and decision is likely to take longer than indicated in this circular, and the governing body is satisfied that this is justified, the governing body should notify each party (the complainant and the subject of the complaint) in writing of the departure from the timetable and the reasons for it.

**38.** Where complaints are made shortly before a school holiday and the holiday is other than a half-term holiday, efforts ought to be made to resolve them before the school closes.

## Anonymous Complaints

**39.** If an anonymous complaint includes an allegation of criminal conduct or if it concerns a child protection matter it is recommended that it should be treated in the same way as any other complaint of this kind (see paragraphs 57 and 58 below).

**40.** In other cases, any person receiving an anonymous complaint needs to make a judgement as to whether it should be investigated.

**41.** All anonymous complaints may be recorded as detailed in paragraph 49 and reviewed periodically as set out in paragraph 52.

## Withdrawal of Complaints

**42.** It is recommended that the complaints procedure requires withdrawn complaints to be recorded and acknowledged by letter.

## Roles and Responsibilities

**43.** It is recommended that all parties behave reasonably and treat the process and the parties involved with respect. For example all parties need to be informed of meetings. The complainant or any other party may request adjournment of a meeting or hearing if the timing is inconvenient but it is not reasonable for any party to seek last minute cancellation or to thwart the process by repeatedly failing to agree dates.

**44.** It is recommended that complainants allow the school to try to resolve the complaint at each stage and not try to circumvent stages; and to co-operate with the school in providing information so that a complaint can be investigated and heard. Suggested roles and responsibilities are given at Annex A.

**45.** The Welsh Assembly Government recommends that the procedure allows for the complainant and the person(s) against whom a complaint is made, to be accompanied by a friend, advocate, union representative, colleague, parent or other person at each stage.

## Recording Complaints

**46.** The Welsh Assembly Government recommends that the school should consider keeping an appropriate record of complaints including anonymous and withdrawn complaints, irrespective of the stage complaints reach or the outcome.

**47.** A record of complaints is important:

- to monitor the progress of a complaint
- to provide evidence that the complaint was considered and of the outcome
- for reference, if further complaints arise relating to the original issue
- to identify trends or recurring themes in complaints cases
- to compile reports to governors (and others) on complaints.

**48.** For complaints where the process is reviewed by the LEA and/or diocesan authority, and/or the Welsh Assembly Government, the record should include documentation relating to those reviews.

**49.** Section 4 of this circular indicates the records that may be kept at each stage. For anonymous or withdrawn complaints, or complaints regarded as vexatious, frivolous or malicious the record may show:

- a description of the complaint
- whether the complaint was investigated or just recorded
- the outcome of any investigation
- any issues for action by the school and the lead member of staff.

**50.** Subject to compliance with the Data Protection Act 1998, the record of complaints may be made available for inspection by the LEA, the diocesan authority (in the case of voluntary aided or foundation schools) and in the course of an inspection of the school carried out under section 10 of the School Inspections Act 1996.

**51.** The Welsh Assembly Government suggests that the school retain the record of a complaint for three school years including the year in which the complaint was finalised.

### **Reporting and Monitoring Complaints**

**52.** The Welsh Assembly Government recommends that reports summarising key trends and issues on complaints are made to the governing body at least twice a year. The school complaints' procedures might set out who will compile and table the report. Such reports allow the governing body to consider the number and subject of complaints, identify any trends or areas for concern and make recommendations for action. The reports or a summary of them may also be presented to the school council and to parents.

**53.** The school may wish to consider including a summary in its annual report to demonstrate that complaints are taken seriously and lessons drawn from them. The report might also highlight any resultant changes to school procedures or policies.

## **SECTION 4**

### **THE 3 STAGE APPROACH TO COMPLAINT RESOLUTION**

#### **Introduction**

**54.** The Welsh Assembly Government recommends that governing bodies establish a three stage procedure which is set out in diagram 1 following Annex A;

- Stage 1 – complaint raised with (and resolved) by first recipient within the school.
- Stage 2 – matter referred to headteacher for investigation, decision and resolution.
- Stage 3 – matter referred to the governing body for investigation, decision and resolution.

**55.** At all stages of the complaints process, those responsible for investigating complaints (if appropriate, in conjunction with a colleague or the complaints officer if the school has one) will wish to be sure that the substance of the complaint is not one that may be dealt with under any other procedure. e.g. staff capability, staff grievance, staff discipline or child protection. If at any time the issues raised require action under those procedures, then those procedures take precedence and should be implemented. Once completed, the complainant ought to be advised of the outcome of the procedure.

**56.** If a complaint concerns the head teacher, complaints officer, the chair or vice chair of governors, a governor or a group of governors, the procedures described at paragraphs 94 - 111 and diagrams 2 -5 following Annex A, are suggested as being suitable to deal with such a complaint.

**57.** If a complaint relates, or appears to relate to alleged criminal activity, the Welsh Assembly Government's view is that the recipient of the complaint should immediately refer the matter to the headteacher, if it does not involve the headteacher. If the headteacher is the subject of the allegation the complaint should be referred to the chair of governors who should inform the relevant authorities ie the Police and/or District Audit, the LEA and if applicable the diocese. If the complaint of alleged criminal activity involves the headteacher and the chair of governors, the complaint should be referred to the vice chair. If the complaint of alleged criminal activity against the headteacher and chair of governors concerns financial issues, the complaint should be referred to the vice chair and/or the chair of the Finance Committee (provided they are not the subject of the allegation), who should contact the LEA, the relevant authorities, and if applicable the diocese. If any of the officers listed in this paragraph are collectively included in an allegation and there is no available officer of the governing body to accept the complaint, the complainant should be advised to send his or her complaint to the clerk of the governing body who should refer the matter to the LEA and if appropriate the diocesan authority.

**58.** If a complaint involves (or appears to involve) a child protection issue, the recipient of the complaint ought to refer it to the designated child protection teacher. If the designated child protection teacher is the subject of the allegation the matter should be referred to the headteacher. If the headteacher is the designated child protection teacher and is the subject of the allegation the matter should be referred to the chair of governors who should immediately inform the LEA. Current guidance is set out in 'Protecting Children from Abuse: The Role of Education Service' available at [www.learning.wales.gov.uk](http://www.learning.wales.gov.uk)

### **Stage 1 - Complaint Raised with and Resolved by First Recipient Within the School**

**59.** At this stage a complaint may be made orally or in writing. The complaint may be made to a member of staff, head of year, other staff member or headteacher. The school's procedure may provide for complaints to be referred at this stage to a designated complaints officer.

**60.** The Welsh Assembly Government strongly advises that the first recipient (or the complaints officer) and the complainant make every effort to resolve complaints at this stage. In many cases this will be possible.

**61.** The complainant should be given the opportunity to meet the member of staff with whom they have raised the matter (or the complaints officer) so that a decision is reached, usually within 10 school days, and conveyed to the complainant. The record of the complaint may include any discussions and interviews.

**62.** If the complaint cannot be resolved to the satisfaction of the complainant, the member of staff should inform the complainant, orally or in writing, that they are entitled to take the complaint to the headteacher. The complainant should be provided with a copy of the school's complaints procedure if they have not already been given a copy in the course of stage 1 consideration.

**63.** If the headteacher is the first recipient of a complainant, he or she can decide whether to delegate consideration to another member of staff under stage 1 or whether to proceed to stage 2.

### **Record**

**64.** For complaints considered at stage 1, it is recommended that the record of the following be kept:

- the name of the complainant
- date of receipt of the complaint
- a brief description of the complaint
- action taken to resolve the complaint and outcome
- issues for action by the school and lead member of staff.

### **Stage 2 – Consideration by the Headteacher**

**65.** The complaint will not usually move to stage 2 until it has first been considered under stage 1. The matter might proceed immediately to stage 2 when the headteacher thinks it appropriate.

**66.** At this stage it is good practice that the complaint is in writing so that the substance of it is clear. If it is not possible for the complainant to put the matter in writing the school might consider making arrangements for the complainant to convey their complaint by another method e.g. by arranging for it to be dictated and signed.

**67.** On receipt the headteacher should acknowledge the complaint in writing, enclosing a copy of the complaints procedure and giving a target date for providing a response to the complaint. It is recommended that this is usually within 10 school days. If it is not possible to deal with the matter within this time the complainant ought to be informed and given a date when consideration is expected to be concluded.

**68.** It would assist the investigation and resolution of the complaint if the complainant is given the opportunity to meet the headteacher. Interpretation facilities or assistance if there is a disability issue can be made available as required. The complainant may wish to be accompanied by a friend or relative either for support or to speak on their behalf as necessary. The headteacher may wish to have another person present to witness the discussion. It would also be useful for a written note to be kept of interviews, telephone conversations and any other action.

**69.** It is good practice for the headteacher to convey his or her decision in writing to the complainant.

## **Record**

**70.** For complaints considered at stage 2 a record should include:

- the name and address of the complainant
- date and details of the complaint
- action taken to resolve the complaint and a written record of discussions, interviews and evidence collated
- outcome
- date of notification to complainant
- issues for action by the school and lead member of staff.

## **Stage 3 – Consideration by the Governing Body**

**71.** If a complainant is not satisfied with the outcome of the consideration by the headteacher the governing body may consider the matter. This should be rare but governing bodies ought to be prepared to deal with complaints when they arise. Governing bodies will wish to satisfy themselves that stages 1 and 2 have been exhausted before considering the matter, or that there are special reasons for not following stages 1 and 2.

**72.** It is recommended that the complaint is heard by the complaints committee.

## **Calling a Governing Body Complaints Committee Hearing**

**73.** It is advised that the membership of the committee is checked before each hearing. If the committee includes any governor who has had any prior involvement with the complaint the actual or perceived fairness of the proceedings may be called into question. In order to avoid any accusation of bias, care ought to be taken to ensure that no committee member has any personal links with the complainant or the person against whom the complaint is being made. If there is any doubt about a person's ability to act impartially or fairly or there may be a conflict or potential conflict of interest, in accordance with Part VII, Regulation 57 of the Education (School Government) (Wales) Regulations 1999, the governing body can decide whether that person should be a member of the complaints committee or any appeal committee. Substitute members can be appointed as necessary.

**74.** The chair of governors should ask the clerk to the governing body to acknowledge receipt of a complaint, usually within 5 school days. The clerk should make arrangements for the governing body complaints committee to meet to hear the complaint, usually within 15 school days of the date of receipt of the complaint. The clerk to the governing body should take steps to find out when the complainant and others entitled to attend the hearing would be available in order to ensure that all parties are able to attend. The clerk should also arrange a suitable venue for hearing the appeal.

**75.** The letter of acknowledgement should set out a timetable and may make clear:

- all parties involved in the complaint are entitled to provide evidence/written documentation that they wish the committee to consider
- the date by which parties must provide such written evidence
- the date by which documents will be forwarded to the person complained about
- the date by which the person complained about must return their response
- the date that response will be made available to the complainant
- the date of the hearing (if available at this point).

**76.** It is important that a person against whom a complaint is made is given sufficient time, usually 10 school days, to consider all the evidence and take advice before providing a response and before any hearing takes place.

**77.** The chair of the committee should ensure that the complainant and members of the committee are usually given at least 5 school days notice of the date of the hearing in writing. It may be in the letter identified in paragraph 75, or a separate letter. The letter should inform the parties of:

- the time and place of the committee hearing
- the grounds of the complaint, with copies of all relevant documents
- the right of all parties to be accompanied or represented by a person of their choice
- details of those attending and their role
- the committee's right to proceed with an oral hearing in the absence of either or both parties if no good reason is given why they should not do so
- the entitlement of the parties to seek an adjournment of the hearing if there is good reason why they cannot attend.

### **Role of the Chair of the Complaints Committee**

**78.** The purpose of the hearing is to enable members of the governing body committee to clarify facts and ascertain whether there are grounds for upholding the complaint. The chair of the complaints committee plays a central part. He or she should introduce all the committee members and key players and explain that the committee is impartial. The chair also has a key role in ensuring that :

- The issues are addressed
- Key findings of fact are made
- Those attending the hearing who may not be used to speaking in such circumstances are put at ease

- The hearing is conducted in an informal manner with each party treating the other with respect and courtesy
- Each party has the opportunity to put his/her case without undue interruption
- There is no cross examination of individuals and the hearing does not become confrontational.

### **Suggested Proceedings for a Complaints Committee Hearing**

**79.** It is suggested that:

- witnesses should only be required to attend to give their evidence, but may stay throughout if the committee and the complainant agree
- the committee members may ask questions of any person
- after introductions, the complainant or their representative is invited by the chair to explain their complaint and be followed by their witnesses
- the complainant should sum up their complaint
- the headteacher or other appropriate witness should then explain the school's actions followed by any witnesses for the school
- the headteacher should sum up the school's actions and response to the complaint
- the chair informs both parties that they will hear from the committee in writing, usually within 5 school days
- both parties and all witnesses leave whilst the committee discusses and decides on the matter.

**80.** If any party appears to be having difficulty in presenting their case, (e.g. complainants for whom English or Welsh is an additional language or who have literacy problems and may not have understood all the paperwork) the chair can intervene to assist them.

**81.** At the conclusion of the hearing all parties should:

- have understood the nature of the proceedings
- have been given proper opportunity to speak, put evidence forward and to take questions
- feel that they have said everything they wished
- feel the complaints committee has listened to and understood all the points made
- be clear as to when they will be informed of the committee's decision.

## The Decision

**82.** Once all the evidence has been presented the complaints committee should consider its decision in private. Before doing so it can take advice if it wishes from advisers ie representatives of the LEA, diocesan authority or other relevant body. Such advisors should leave once their advice has been given. The Welsh Assembly Government recommends where the LEA or diocesan authority is involved both in giving evidence and providing advice, each of these functions is performed by different individuals.

**83.** The committee needs to consider:

- the evidence
- whether the headteacher or others have complied with the school's complaints procedure
- whether there is substance to the complaint.

**84.** It would be usual for the decision to be based on a majority agreement with a second or casting vote from the chair as necessary. The decision needs to cover:

- whether or not the complaint is upheld
- any action to be taken by the governing body, headteacher and/or members of staff in light of the decision
- any recommendations for changes to school policies or procedures to ensure similar problems do not arise in future.

**85.** The committee's decision should be sent in writing to the complainant usually within 5 school days of the hearing, setting out the reasons for the decision and any remedial action to be taken by the school.

**86.** When the decision of the complaints committee is made known, all parties should :

- have understood the reasons for the decision, which should be expressed clearly and concisely in writing
- be satisfied that even if they have not been successful, the hearing was a fair one.

**87.** If the school complaints procedures provide for an appeal stage then the letter should also cover:

- the right to an appeal, together the address of the person to whom any notice of appeal should be sent (normally the clerk to the governing body)
- the date by which any notice of appeal needs to be lodged (usually 15 school days after the day on which notice in writing was given of the committee's decision)
- that any appeal must set out the grounds on which it is made.

**88.** If there is no appeal stage the decision letter may also explain that the LEA, if applicable the diocesan authority and the Welsh Assembly Government can review the procedures used by the governing body but not their decision.

### **Appeals Committee Consideration**

**89.** An appeals committee may meet to consider an appeal, usually no later than the 15th school day after the day on which the appeal was lodged. The Welsh Assembly Government recommends that membership of the appeals committee should be different from the membership of the complaints committee.

**90.** The governing body should conduct any appeals committee following the same steps as set out at paragraphs 79 - 88. The chair of the appeals committee should circulate all written evidence to all parties usually 5 school days before the hearing and this should include:

- the statement of decision by the complaints committee
- the notice of appeal, which gives the grounds for the appeal
- any written representations from any party.

### **Record**

**91.** For complaints dealt with at stage 3 the record should include:

- a full account of the proceedings of the complaints committee and any appeal committee, evidence presented and all other relevant documentation
- decision reached and any action to be taken by the school, headteacher, governing body or member of staff
- date of the decision and the date the decision letter was sent to the complainant.

### **Finalisation of a Complaint**

**92.** Once a governing body has exhausted its own procedures it should attempt to secure closure of the complaint. If at the end of stage 3 ie consideration by the governing body at either the complaints committee or any appeal committee hearing, the complaint is not upheld, the decision letter should make clear:

- that the complaint has been thoroughly investigated
- the governing body and the headteacher will not re-open the matter
- any new issues will not mean re-opening an already determined complaint
- if new issues arise these will be treated as a new complaint but only if they are demonstrably different from matters raised under a previous complaint.

## SECTION 5

### ADAPTATIONS TO THE 3 STAGE APPROACH

#### Introduction

**93.** There are a number of cases where the principles outlined in section 4 apply, but the complaint does not lend itself to the three-stage approach and adaptations will have to be made. These are set out below in respect of complaints which concern the whole governing body, an individual governor or governors including the chair and vice chair, the headteacher or the complaints officer.

#### Complaint Against the Headteacher – Diagram 2

**94.** If the complaint is against the headteacher, the first recipient should refer it to the chair of governors. The governing body's complaints procedure may set out an arrangement for the chair to delegate investigation of the complaint to the vice chair or to a designated governor. On receipt of a complaint about the headteacher the chair should:

- consider paragraph 55 to check whether the matter is properly for consideration under the complaints procedure
- check whether the matter needs to be referred to other authorities such as the police and or social services (paragraphs 57 – 58)
- consider whether he or she needs to delegate consideration to another member of the governing body in light of any prior involvement by the chair in the matter or the relationship the chair has with the headteacher.

**95.** Consideration of the complaint by the chair, vice chair or designated governor would constitute investigation under stage 2 of the procedure and the investigating governor should proceed in accordance with the process in paragraphs 65 -70 . Whichever governor carries out the investigation should not then be a member of the complaints or complaints appeal committee. The investigating governor should declare any potential conflicts of interest.

**96.** Following this process if the complainant is not happy he/she should be advised to write to:

- the vice chair – if the chair has investigated under stage 2, or
- the chair – if the vice chair or another delegated governor has investigated under stage 2

who should refer the matter to the chair of the complaints committee for consideration in accordance with stage 3 of the process at paragraphs 71 – 92.

### Complaints Concerning the Complaints Officer – Diagram 3

**97.** If the headteacher has assigned a member of staff as a Complaints Officer to deal with complaints at the first stage of the procedure and the complaint concerns the Complaints Officer, the complaint should be passed to the headteacher.

**98.** The headteacher can decide to delegate investigation to another senior member of staff under stage 1 of the procedure or to investigate it him or herself under stage 2.

**99.** If the complainant is not happy with the outcome he/she should be advised to write formally to the chair of governors in accordance with stage 3 of the process at paragraphs 71 – 92.

### Complaint against the Chair of Governors – Diagram 4

**100.** Any complaints about the chair of governors should be sent to the vice chair who should immediately inform the headteacher, the LEA and where appropriate the diocesan authority. The vice chair should:

- check whether the matter needs to be referred to another authority such as the police or social services (paragraphs 57 – 58)
- consider whether to obtain advice from the LEA or diocesan authority.

**101.** The vice chair may consider investigating the complaint or delegating this task to another designated governor. This would constitute an investigation under stage 2 of the procedure. Alternatively the vice chair could refer the matter directly to the governing body complaints committee for investigation and consideration. The chair to the complaints committee should then proceed in accordance with the process for stage 3 consideration set out in paragraphs 71 – 92.

**102.** It is recommended that the matter is not brought to the governing body's attention until it has been determined by the complaints committee and any appeal committee.

### Complaint against the Headteacher and the Chair of Governors – Diagram 4

**103.** Complaints against the headteacher and chair of governors should be sent to the vice chair of governors who should inform the LEA and if applicable the diocesan authority. The vice chair should:

- check whether the matter needs to be referred to another authority such as the police or social services (paragraphs 57 – 58)
- consider whether to obtain advice from the LEA or diocesan authority.

**104.** The vice chair may consider investigating the complaint or delegating this task to another designated governor. This would constitute an investigation under stage 2 of the procedure. Alternatively the vice chair could refer the matter directly to the governing body complaints committee for investigation and consideration. The chair to the complaints committee should then proceed in accordance with the process for stage 3 consideration set out in paragraphs 71 - 92.

**105.** The vice chair or delegated governor must declare any potential conflicts of interest before consideration of the matter under stage 2 and if necessary delegate the matter to another governor.

### **Complaint against the Chair and Vice Chair – Diagram 5**

**106.** Any complaint about the actions of the chair and vice chair of governors should be referred to the clerk of the governing body who should refer the matter to the chair of the complaints committee. The chair of the complaints committee should seek advice from the LEA and if appropriate the diocesan authority, and arrange for a complaints committee hearing to be arranged in accordance with stage 3 of the process at paragraph 71 – 92.

**107.** If the chair of the complaints committee is the chair or vice chair of governors, the complaint should be referred to the chair of the complaints appeal committee who should become the chair of the complaints committee in respect of that particular case. In these instances the complaints appeal committee would need to have a separate chair. If the posts of chair of the complaints committee and chair of the complaints appeal committee are held by the chair and vice chair of governors, both these committees will need to appoint a new chair to hear the complaint.

### **Complaint against a Governor (Including the Vice Chair) or Group of Governors – Diagram 6**

**108.** Any complaint about the actions of a governor or group of governors should be referred to the chair of governors provided that the chair is not one of the group of governors being complained about. If the chair is involved and is part of the group being complained about, the complaint should be sent to the vice chair, providing they also are not part of the group of governors. The chair or vice chair should then deal with the complaint in the same way as a complaint against the headteacher as set out in paragraphs 94-96.

**109.** If the chair and vice chair are part of the group of governors, the complaint should be referred to the clerk to the governing body who should refer the matter to the chair of the complaints committee for action under stage 3 of the process set out in paragraphs 71 - 92. If the chair of the complaints committee is the chair or vice chair of governors, the complaint should be referred to the chair of the complaints appeal committee who should become the chair of the complaints committee in respect of that particular case. In these instances the complaints appeal committee would need to have a separate chair.

**110.** If the matter proceeds to consideration by the governing body at stage 3 particular care will need to be taken to ensure that the members of the complaints committee can be regarded as impartial.

**111.** If a number of governors are the subject of a complaint, and as a result too few governors remain to fulfil the requirements of the complaints procedures in terms of constituting a complaints committee, then the 'whole governing body' procedures in paragraphs 112 - 116 below should be used.

### **Complaints Concerning the Whole Governing Body**

**112.** Any complaint about the actions of the whole governing body should be sent to the clerk of the governing body who should immediately inform the headteacher, chair of governors, the LEA and as appropriate the diocesan authority.

**113.** On receipt of a complaint about the actions of a governing body, the LEA should consider whether the matter is one to be considered in accordance with Section 15 of the School Standards and Framework Act 1998 as amended by section 55 of the Education Act 2002. This provides that where a school is causing concern the LEA can issue a warning notice to the governing body in accordance with its powers of intervention.

**114.** If no action is appropriate under these provisions the LEA, and/or if appropriate the diocesan authority, may wish to secure the agreement of the governing body that the complaint be heard by a committee independent of the governing body and specially constituted for that purpose.

**115.** If the LEA or, if appropriate, the diocesan authority decides not to pursue any action, the clerk to the governing body may inform the complainant that the matter will be raised at the next governing body meeting. If the next planned governing body meeting is some time away, the chair of governors and the clerk may consider arranging a separate meeting to consider the complaint. The complainant may be informed of the proposed action and timing of the governing body meeting. The complainant may be afforded the same opportunity to give written and oral evidence as he or she would have been given if the matter were being dealt with by the governing body complaints committee.

**116.** The governing body may look at the evidence and arrive at a decision in the same way that its complaints committee would. The complainant may be sent by the clerk to the governing body:

- the decision and an explanation of the reasons for the decision
- an explanation that if the complainant is dissatisfied he or she can ask the LEA, (diocese, if appropriate) or the Welsh Assembly Government to review the procedure used by the governing body but not the decision itself.

### Roles and responsibilities

#### Role of the Governing Body

1. This guidance suggests that both the headteacher and the governing body have a role in hearing complaints, adjudicating and deciding on action to be taken. However, the ultimate responsibility lies with the governing body who can overrule the action of the headteacher.
2. In cases to be dealt with in the procedures outlined in this guidance no individual or organisation has the authority to overrule the decision of the governing body. However a governing body decision could be overruled where there are other statutory processes for complaints not administered by the governing body e.g. curriculum, SEN, religious worship, admissions, exclusions. The Courts may uphold a challenge to a governing body decision making process. The Assembly may also issue a direction to the governing body if it has acted unreasonably or failed to comply with its duty.

#### Role of the Local Education Authority/Diocesan Authority

3. LEAs and diocesan authorities do not have a statutory role in resolving complaints about schools – the statutory responsibility rests with the governing body.
4. The governing body can also ask the LEA (and in the case of voluntary aided schools the diocesan authority) for assistance to investigate a complaint; advice on handling; or advice on the response.
5. The procedures may allow for an additional stage for the LEA or diocesan authority. The Welsh Assembly Government's view is that the involvement of the LEA or diocese in a further stage would be for the purpose of reviewing the procedure used to reach a decision, not to review the decision itself or to act as an appeal mechanism.
6. If the authority or diocese if appropriate concluded that the process followed in a particular case was deficient, it could ask the governing body to reconsider the matter with a committee with different membership from the complaints and complaints appeal committee.
7. The Welsh Assembly Government expects the LEA and/or diocesan authority to keep the school informed of progress of any review. It is recommended that at the end of the process the LEA and/or diocesan authority considers providing copies of documentation, including their decision and documents relating to any actions taken, to the school for the school's records.
8. The governing body may wish to build into its complaints procedure an explanation of the role of the LEA or diocesan body.

## Role of the Welsh Assembly Government

**9.** If the Welsh Assembly Government is the first recipient of a complaint about a school and it is not a matter for the statutory authorities, the Assembly Government will advise the complainant to raise the matter with the school under the school's complaints procedure. The Assembly Government will not normally investigate an issue until the complainant has first pursued it under that procedure.

**10.** If a complainant is dissatisfied about the procedures used by a governing body to address a complaint, he or she can ask the Assembly Government to consider its actions under sections 496 and 497 of the Education Act 1996. If the Minister concludes that a governing body has acted unreasonably or has failed to carry out a statutory duty under education law (which would include failure to deal with a complaint) the Assembly Government can issue a direction to the governing body. A direction does not normally overturn a governing body decision but can require a governing body to reconsider a matter or consider it for the first time if it has failed to do so, or to amend its process to ensure it does not happen again.

**11.** The Courts have defined 'unreasonable' as action which no sensible authority acting with due appreciation of its responsibilities would have decided to adopt.

## Role of Children's Commissioner

**12.** The Children's Commissioner for Wales has a wide-ranging statutory remit covering all children in Wales. It embraces the actions of the Welsh Assembly Government, local authorities and schools.

**13.** The Commissioner may:

- provide advice, assistance, information and support to children in making a complaint or representation
- review and monitor arrangements made for dealing with complaints, whistleblowing and advocacy, or the absence of such arrangements
- investigate individual cases submitted to him.

**14.** In reviewing complaints processes the Commissioner's role is to make sure that they are working effectively and enable children and young people to exercise their rights. The Commissioner may serve notice on the body or person to be reviewed and has a statutory power to require information from teachers, school governors, local authority officers and members. The Commissioner may produce review reports, which contain recommendations. He has no statutory power to require their implementation but he can publicise any failure to do so.

**15.** In individual cases, the Commissioner has a statutory right to require information, explanations and assistance in relation to action taken in response to a complaint. The Commissioner does not take the place of existing complaints procedures nor act as an avenue of appeal.

## Role of Commissioner for Local Administration in Wales

**16.** Most of the responsibilities of school governing bodies fall outside the remit of the Commissioner for Local Administration in Wales (CLAW) (also known as Local Government Ombudsman). The only exceptions being schools admissions appeals. However this may change. The CLAW is one of three Ombudsman offices in Wales which are to be unified into a Public Services Ombudsman for Wales.

## Role of the General Teaching Council for Wales

**17.** The General Teaching Council for Wales (GTCW) is the statutory, self-regulating professional body for teachers in Wales. It seeks to raise the status of teaching by maintaining and promoting the highest standards of professional practice and conduct in the interests of teachers, pupils and the general public.

**18.** Under the terms of the Teaching and Higher Education Act 1998, as amended by the Education Act 2002, the GTCW has a responsibility for investigating and hearing cases of unacceptable professional conduct or serious professional incompetence concerning a registered teacher or cases where a registered teacher has been convicted (at any time) of a relevant offence.

**19.** Under Assembly Regulations, school governing bodies and LEAs are required to report cases to the Assembly or the GTCW where they "cease to use" or "might have ceased to use" a registered teacher's services had he or she not resigned. The GTCW's Disciplinary Procedures and Rules set out the procedures for dealing with any cases received.

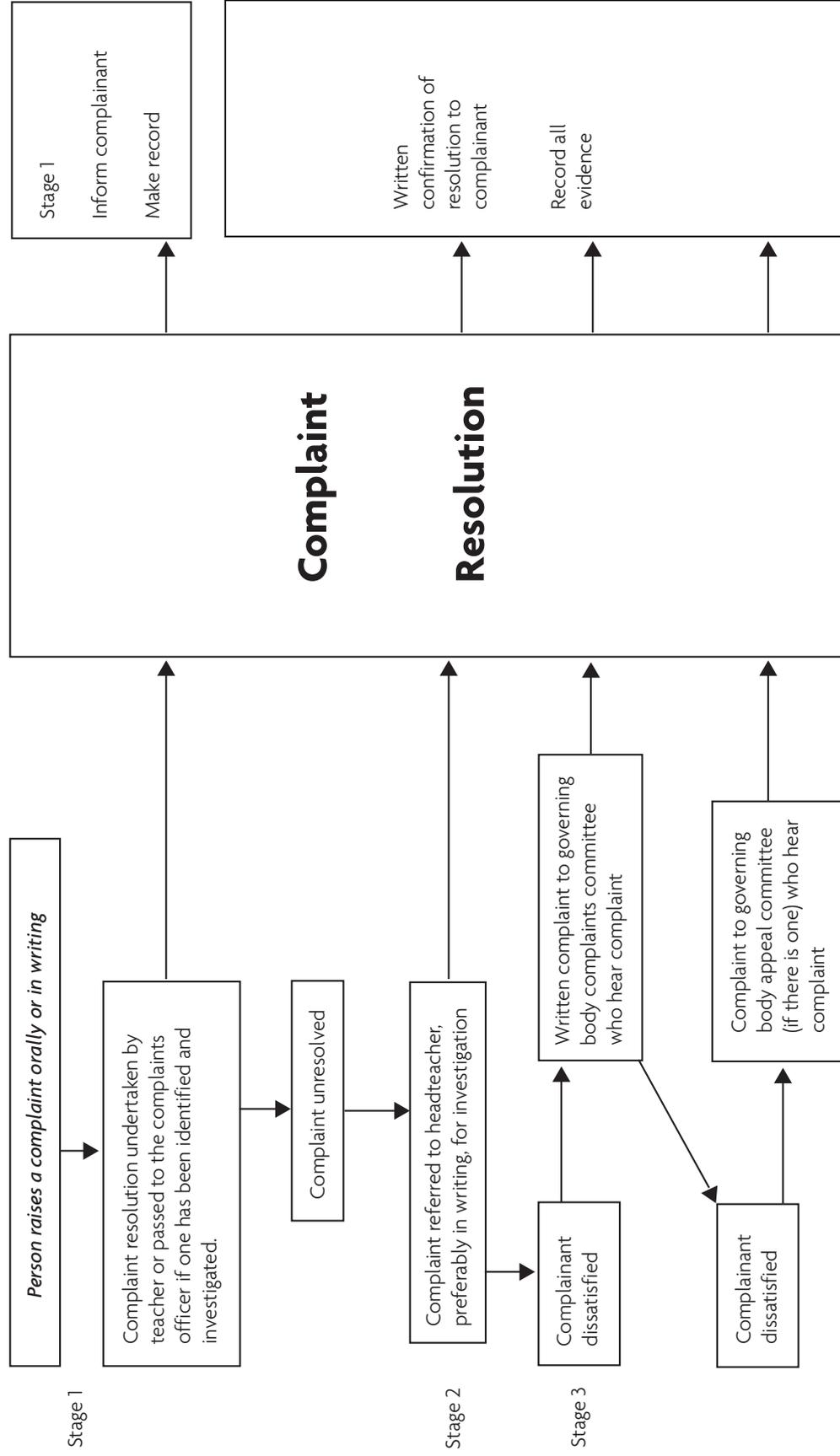
**20.** The GTCW may also consider referrals about a registered teacher from a person other than a governing body or LEA, for example a pupil, parent or fellow teacher. In such circumstances, the GTCW will ask whether the complainant has reported the allegation to the school governing body or LEA and, if so, what the outcome was. If the complainant has not reported the allegations to the school governing body or the LEA, the GTCW will ask for reasons why this has not been reported. The GTCW will not normally investigate an allegation which has not been referred to a school governing body.

## Complaints Made to Other Parties Outside the School

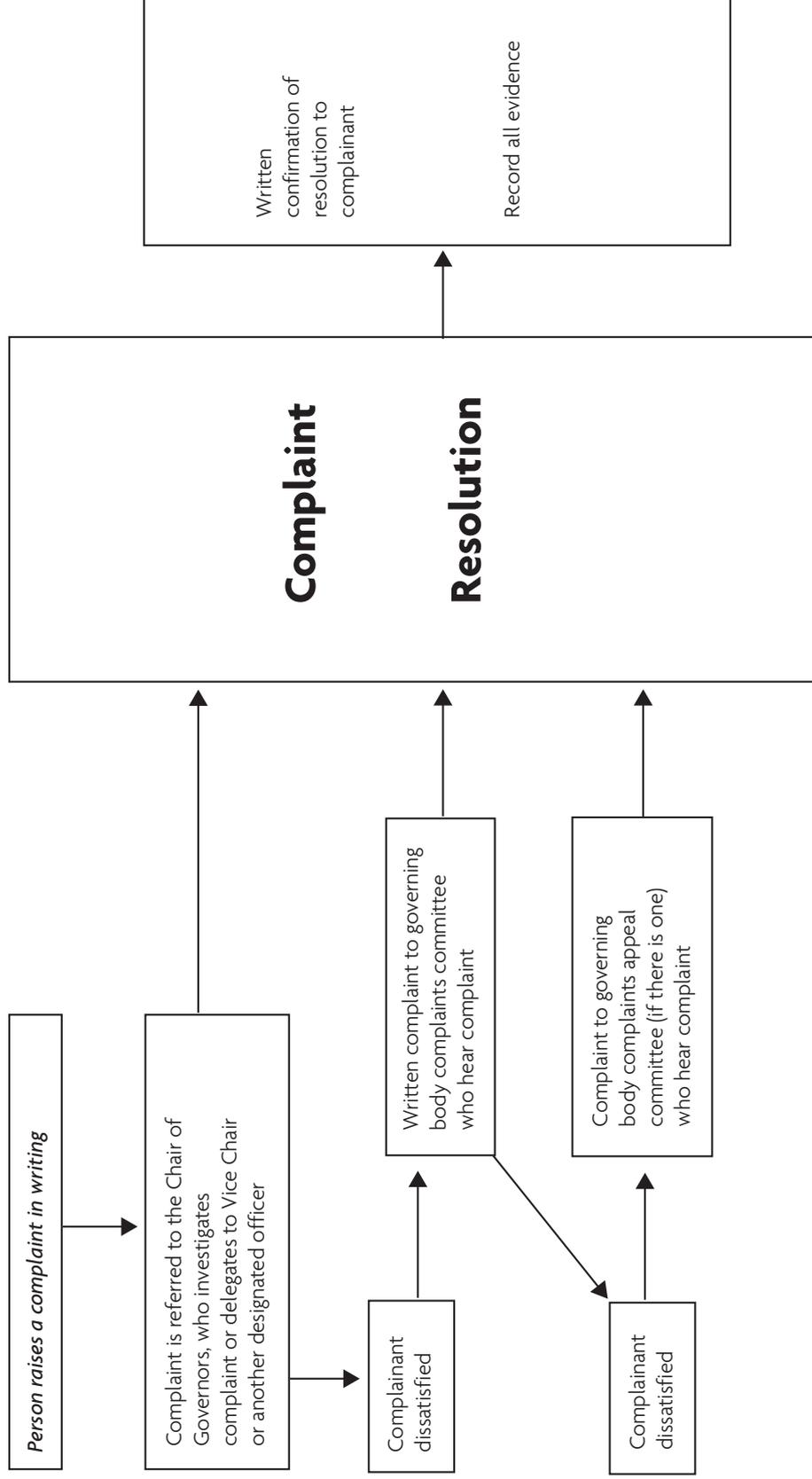
**21.** Complainants may make their first approach to the police, another statutory body, the LEA, a local or national elected representative or a voluntary organisation. The governing body may wish to consider providing such organisations with their complaints policy and encouraging them to contact the school if a complainant contacts them.

**22.** If such parties receive complaints about a school they will wish to take account of the statutory responsibility of the governing body for the resolution of complaints.

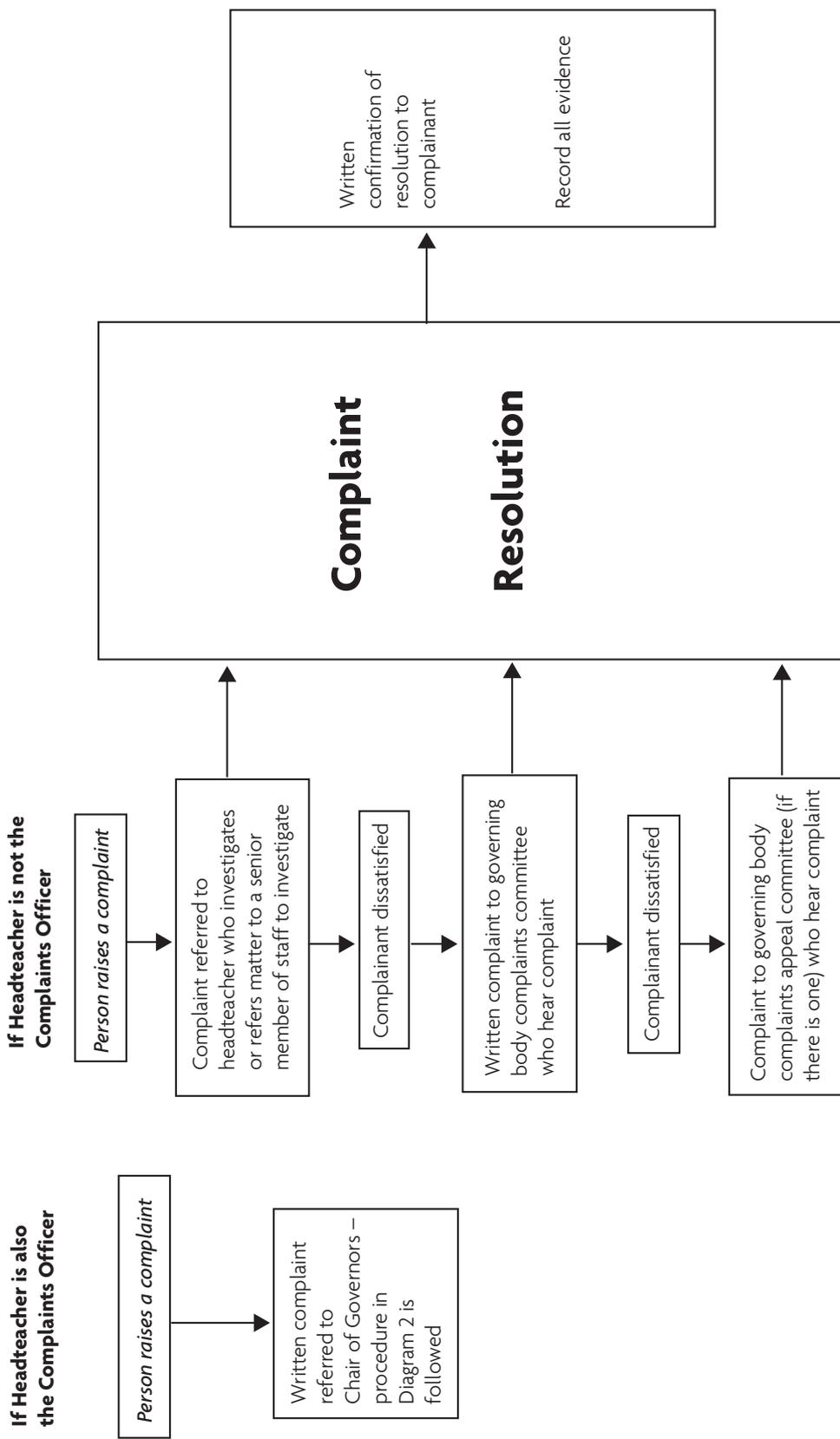
**Diagram 1 – General complaints about the School**



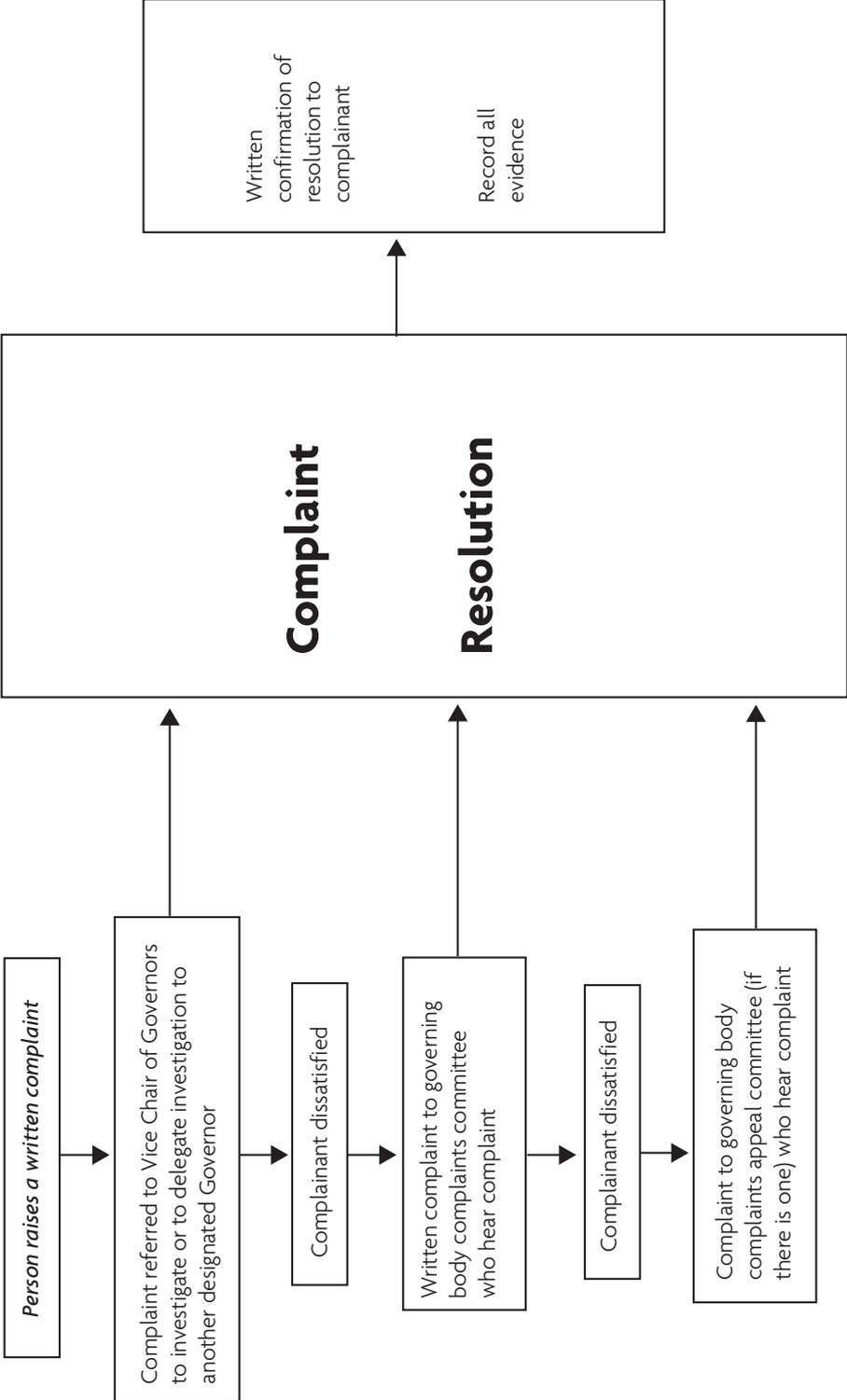
**Diagram 2 – Complaint about the Headteacher**



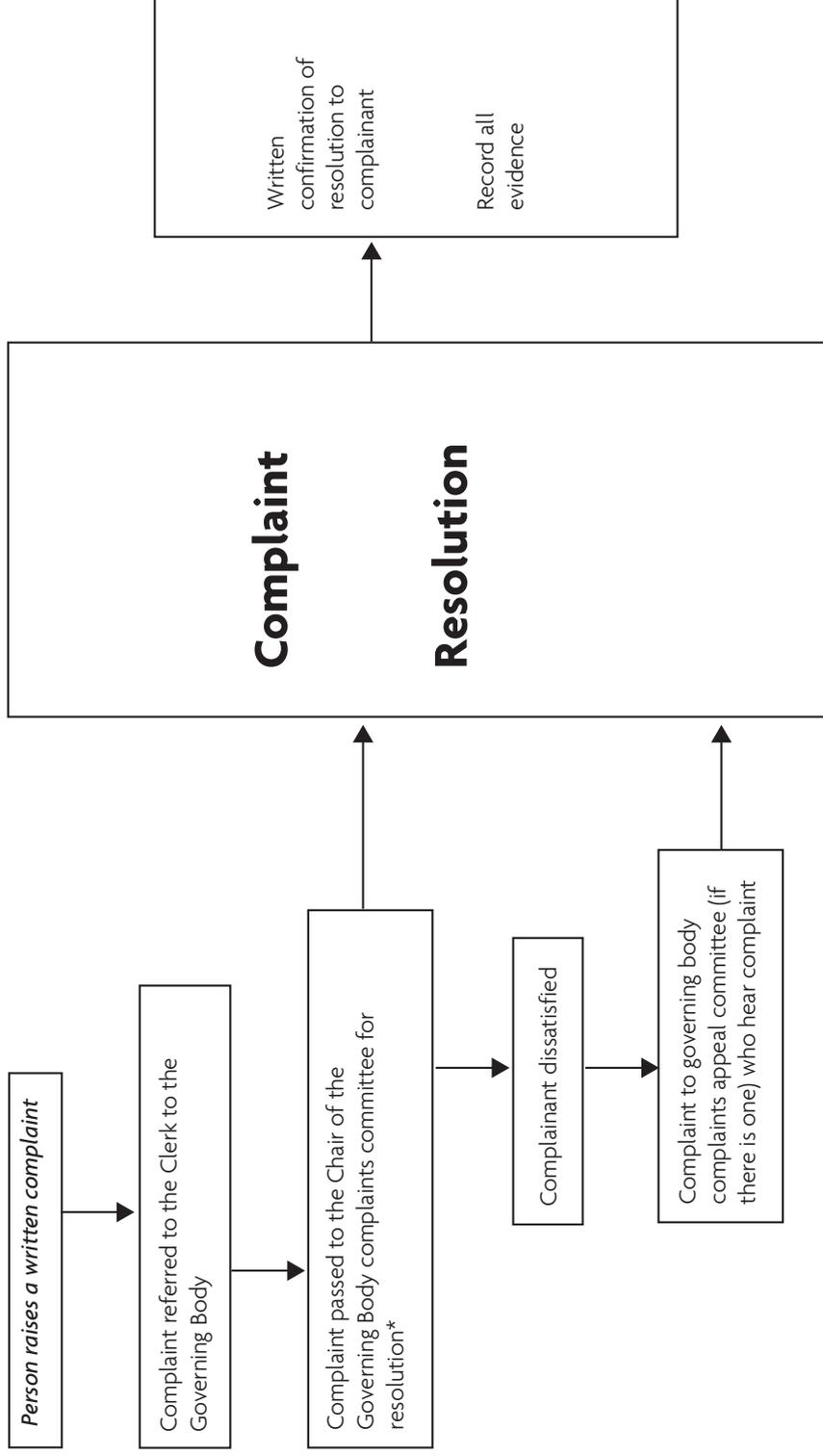
**Diagram 3 – Complaint against the Complainants Officer (if there is one)**



**Diagram 4 – Complaint against the Chair of Governors and Complaint against the Chair of Governors and Headteacher**



**Diagram 5 – Complaint against the Chair and Vice Chair of Governors together**



\* If the Chair of the complaints committee is also the Chair or Vice Chair of Governors, the complaint should be referred to the Chair of the Governing Body complaints appeal committee, who should become the Chair of the complaints committee for this particular complaint. In these circumstances, the complaints appeal committee would need to appoint another Chair. If the posts of the Chair of the complaints committee and Chair of the complaints appeal committee are held by the Chair and Vice Chair of Governors, both committees must appoint new chairs to hear the complaint.

