



# CAFCASS CONCERNS AND COMPLAINTS PROCEDURE

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## Introduction

1. Cafcass is responsible for setting up and running a scheme for dealing with concerns and complaints about its staff's performance in carrying out their statutory functions. The Cafcass complaints procedure has three parts. It is there to quickly and fairly settle concerns and complaints raised by service users about what has been done by Cafcass in their case. This scheme is important as a way of putting things right for service users who are worried about the quality of Cafcass services. This procedure sets out the way Cafcass will deal with concerns and complaints that are raised by children, young people and adults who are involved in family court proceedings where Cafcass have been asked by the court to get involved. The term 'service user' in this procedure describes children and young people who are the subject of family proceedings, whether or not they have the status of being parties to those proceedings. It also includes adults who are parties in family court proceedings. Cafcass calls these children, young people, and adults 'service users'.
2. Cafcass staff and their service managers can deal with most concerns and complaints without service users needing to use the formal parts (steps 2 and 3) of the concerns and complaints procedure. When Cafcass deal with issues raised by service users, staff and managers should always respond in a way that is most likely to safeguard and promote the welfare of the child or children (or young person or people) involved in the family court proceedings. Cafcass must be open to concerns that are raised and respond in a way that prioritises the safeguarding and promotion of children's and young people's welfare.
3. This procedure should provide:
  - a clear and easy way of dealing with concerns and complaints;
  - a system that makes sure concerns and complaints are dealt with fairly, properly and quickly;
  - the right amount of support to those involved in complaints.

## Concerns and complaints

4. In this procedure, a concern is one or more issues raised about what the service user feels to be a poor level of service they have received from Cafcass. After looking into the issues raised, the Cafcass manager will decide whether the issues can only be dealt with during ongoing family court proceedings, and inform the service user. Concerns that can only be considered in court are:
  - disagreements about matters of fact; and
  - disagreements with Cafcass professional opinion.
5. A 'complaint' is a concern that reaches step 2 or step 3 of this procedure. Many of the concerns raised by service users will relate to issues that are court matters (in particular concerns about what is written in court reports). If, after the relevant manager has considered the concerns, it is clear that some or all of them are not matters that can be addressed by the court proceedings, then the issues that cannot be dealt with in court are able to be addressed by Cafcass as a complaint under steps 2 and 3 of this procedure. Under this procedure, 'complaints' must relate to the parts of Cafcass performance and behaviour that cannot properly be dealt with by the court. However, efforts should always be made to take any reasonable corrective action requested by a service user, especially where to do so will assist in safeguarding and promoting the welfare of the child in the case. For example, if the service user's concerns relate to factual mistakes in a Cafcass court report or other records, these should be corrected straightaway and, where relevant, the right information given to the court.

6. In addition, there may be parts of such concerns that may need to be dealt with by Cafcass, even though other parts of the concern may be dealt with by the court or by someone else. For example, issues relating to allegations of inappropriate behaviour or misconduct by a member of Cafcass staff, will need to be considered by Cafcass, whether through this procedure and/or through other means, as family courts are not responsible for dealing with such concerns.
7. If part of the concerns cannot appropriately be dealt with through family court proceedings and their concerns have not been fully upheld and responded to, then the service user may take their concern further as a complaint under steps 2 and 3 of the concerns and complaints procedure. Such concerns must relate to the fulfilment of Cafcass' statutory functions of safeguarding and promoting children's and young people's welfare, of representing children and young people and/or of providing advice to the courts.

## **Who can complain and when can concerns and complaints be raised?**

8. Service users may use the Cafcass concerns and complaints procedure if Cafcass have become involved in a case because the court has asked for this to happen. If someone else, such as a service user's relative or friend, or another professional (for example, lawyers and court service staff) has a concern or complaint, the person they talk to within Cafcass should listen to them and respond quickly and politely. However, the issues that are raised by such people will not be dealt with as part of this procedure.
9. Even though service users would usually raise concerns and complaints while proceedings are ongoing in court, there may be times when service users are only able to raise them once court proceedings are finished. For example, this may happen if there is a Family Assistance Order and a service user is not happy with Cafcass' work after the court proceedings have finished. Or, this may happen if the service user has not seen the court report in a timely way before the final hearing or in line with the court's directions. To have their concerns considered within this procedure, service users should generally be expected to raise them by a date no more than one month after the end of court proceedings or the end of Cafcass work with the service users, whichever is later. The use of the term 'generally' is intended to provide for those situations in which circumstances have prevented a service user from raising concerns at an earlier date.

## **Links between the Cafcass concerns and complaints procedure and other procedures**

10. Where serious concerns about staff behaviour are raised by service users, or come to light as a result of following the steps in this Procedure, use should be made by the relevant Cafcass manager of the formal performance and conduct procedure. In relevant cases, it may be necessary for Cafcass to take steps set out in the Cafcass Safeguarding Framework if it is suspected or known that a child or young person has suffered significant harm linked to the issues raised by a service user. In the most serious cases, Cafcass may need to contact the police and/or the General Social Care Council. In all such situations, the paramount consideration for Cafcass is the safeguarding and promotion of children's and young people's welfare.

## **The three steps of the Cafcass concerns and complaints procedure**

### **Step 1 – the informal resolution stage**

11. Service users can choose whether to raise their concerns in person, by phone, by letter or by email. Service users may raise a concern with a practitioner who is directly responsible for their case, that person's manager or another member of Cafcass staff. All concerns, wherever within Cafcass they

are received, should be passed to the line manager of the staff involved within one working day of being received within Cafcass. Although a concern may be about any member of staff, most concerns are likely to be about the work of Family Court Advisers, which means that the responsible line manager is usually the relevant Service Manager.

12. Where the relevant manager of the staff member is contacted directly by the service user, the manager is then responsible for getting full details of the concerns and finding out what the service user wants done about them. Where the response sought is consistent with the fulfilment of Cafcass function of safeguarding and promoting children's welfare, the manager should respond in a way that is intended to redress the concerns that have been raised.

13. Where the concerns are initially received elsewhere within Cafcass, the manager should, within five working days of Cafcass' receipt of notification of the concerns, directly contact the service user, whether by phone or face-to-face. In the case of children or young people who raise concerns, the manager should always offer to meet face-to-face with the child or young person, rather than only dealing with them by phone. If the child or young person would like to have a meeting they should be offered the opportunity to be supported by someone of their choice. Generally, this person should not be a party in the court case which involves the child or young person.

There are two reasons for contacting the service user.

- To get full details of the service user's concerns and the response they want.
- To respond positively to the service user's concerns, provided that this is in the child's or young person's interests.

14. The manager should, wherever possible, also have direct contact with any member of staff the concern is about, in order to obtain a clear understanding of their information and points of view. The manager should also consider, as relevant, the written records relating to the case.

15. However the manager receives the expression of concern they must, no more than 10 working days after Cafcass first heard about the concerns, write (by letter or email) to the service user:

- to confirm Cafcass' understanding of the service user's concerns
- to identify Cafcass' understanding of the response sought by the service user; and
- to set out Cafcass' response to those concerns.

16. If some or all of the concerns raised by the service user are not eligible to be considered as complaints under step 2 or 3 of this procedure, this must be made clear, in writing, to the service user at this point. This will apply to concerns that can only be properly considered within the court proceedings (such as disputes about facts and disagreements about Cafcass' professional judgement) and will also apply to concerns which do not relate to the statutory functions of Cafcass.

17. The manager must consider whether to uphold none, some or all of the concerns, and if so, what steps should be taken. In considering the appropriate steps, the manager must take account of:

- the response requested by the service user, and
- the principles of good practice with regard to remedies, as recommended by the Parliamentary and Health Service Ombudsman and set out at the end of this procedure.

To look at these guidelines online, go to the Ombudsman's website at [www.ombudsman.org.uk/improving\\_services/principles/remedy/index.html](http://www.ombudsman.org.uk/improving_services/principles/remedy/index.html)

18. If the manager's response to the service user upholds all of the concerns in full and the response requested by the service user has been provided, the service user will not be eligible to go to step 2 or step 3 of the procedure. However, where some or all of the concerns are not upheld and are eligible for consideration within steps 2 and 3 of this procedure, this must be set out clearly in the manager's letter/email to the service user.
19. This letter/email must also explain that the next step is for the service user to send to the relevant Operational Director a request for a Step 2 investigation of some or all of the eligible complaints, and that such a request must be received within 20 working days of the date of the manager's email/letter. The name and address of the Operational Director are to be provided by the manager in the email/letter to the service user.
20. All written responses from Cafcass managers to service users at step 1 of this procedure must be approved by a second line manager before they are sent to the service user. In practice, this will usually mean that a draft reply prepared by a Service Manager will need to be approved by the relevant Head of Service before it is sent.

## Step 2 – the investigation of the complaint

21. Where an eligible service user chooses to request a step 2 investigation, the relevant Operational Director must decide what the investigation will cover and which manager will carry it out. The manager chosen to carry out the investigation is not to be drawn from the Head of Service area in which the complaint has arisen. The Operational Director will confirm what the investigation will cover based on the step 1 response and the contents of subsequent request from the service user for a step 2 investigation. The investigation must seek to identify the extent to which relevant Cafcass policies, procedures and guidance have been followed in the individual case. The investigating manager must always offer to meet with the complainant in person and must, if possible, also meet any members of staff the complaint is about. The level of seniority of the investigating manager should be higher than that of the members of staff about whose work the service user has complained.
22. The investigating manager must prepare the complaint investigation report and give it to the Operational Director within 25 working days from the date of receipt of the request for a step 2 investigation. If the investigating manager finds issues of concern that are not covered by the investigation, these must be recorded and reported to the Operational Director separately to the complaints investigation report.
23. It is the responsibility of the Operational Director, having considered the investigation report, to provide the step 2 response to the complainant. The Operational Director's response must set out:
  - a. the extent to which the complaint(s) is/are upheld; and
  - b. any actions that Cafcass intends to take in respect of any complaints that are partially or fully upheld.

In reaching a decision about this issue, the Operational Director must take account of the principles of good practice with regard to the Parliamentary and Health Service Ombudsman remedies (see Appendix 1).

24. Within five working days of getting the investigating manager's report, the Operational Director must:
  - a. send an email or letter to the complainant containing the step 2 response and a copy of the investigating manager's report; and
  - b. inform the complainant of their right to ask, within 20 working days of the date of the Operational Director's email or letter, for a review of their complaint.

The complainant will only be able to do this if any, some or all of the complaints raised at Step 2 have not been upheld by the Operational Director. If this option is not available, the service user must be notified by the Operational Director that no further use may be made of the procedure for the concerns they have raised.

25. If a child or young person (including those who are involved in cases because they are young parents) makes a complaint under step 2, the Operational Director must make sure that the investigating manager offers them the support of an independent advocate, which Cafcass will pay for. Contact should be made with the Commissioning and Partnerships team if an advocate is needed for a child or young person. Similarly, the provision of a Cafcass funded advocate should also be made available in the case of vulnerable adults where, for example, complaints arise from people with learning difficulties or mental health problems. The role of advocate can also be carried out by someone already known to the service user, such as a friend or relative, as long as they are not involved in the court case that the complaint is about. Cafcass will not pay for this type of advocate. In addition, reasonable adjustments to the operation of the procedure should be made where necessary, to accommodate service user's disabilities, including communication difficulties.

### Step 3 – the review

26. The purpose of the review stage is to review the process and to consider whether the procedure has been followed properly. The review process is not a re-investigation of the complaints.

27. On receipt of a request for a review from a complainant who is entitled to make the request, a Review is to be commissioned by the Operational Director from an independent person (the 'reviewer'), obtained through the contract held by the Commissioning and Partnerships Team. The reviewer must consider all the records from steps 1 and 2 before the review meeting. They must also chair the review meeting.

28. The reviewer must:

- be an independent person;
- not be employed by Cafcass;
- not have worked for Cafcass in the last five years; and
- not be directly related to any Cafcass employees or to anyone who has worked for Cafcass in the last five years.

Before and during the review meeting a senior Cafcass manager, from another operational area, who will not have dealt with the complaint at any stage, will assist the reviewer.

29. The reviewer must, with help from the senior manager, arrange a formal meeting where the complainant, the investigating manager, the Operational Director (who made the step 2 response) and any affected members of staff will all be given the chance to make spoken and/or written representations. At the meeting the reviewer will consider all the information that has been provided in writing, or is received on the day. The reviewer may decide to put questions to any of those who make representations in person. If a child, young person or vulnerable adult has asked for a review, Cafcass must continue to support the provision of an independent advocate, who can also come to the formal review meeting, if the child, young person or vulnerable adult wants that to happen.

30. The reviewer must decide whether they are satisfied with the way Cafcass have followed the procedure, and that any promised actions have been taken by Cafcass. If the reviewer is not satisfied, they may recommend to the Cafcass Chief Executive that Cafcass needs to re-investigate one or more aspects of the complaint and/or to undertake any promised actions that remain outstanding. They need to make this recommendation within five working days of the review meeting.

31. Within five days of the review meeting, the reviewer must send a copy of their conclusions (and, where relevant, any further recommendations they have made to the Chief Executive) to:
- a. the complainant;
  - b. any advocate, if a child, young person or vulnerable adult made the complaint;
  - c. the investigating manager;
  - d. the relevant Operational Director; and
  - e. all affected members of staff.

The reviewer must do this in all step 3 cases, even if they decide there is no need to make any recommendations to the Chief Executive,

32. The Chief Executive must consider the reviewer's conclusions and any recommendations they have made and must provide a final response, within 10 working days of the date of the reviewer's letter, to the complainant in response to any further recommendations that have been made. That response must be copied to the reviewer and to everyone named in paragraph 30.
33. The communication to the complainant which provides the result of step 3, whether by the Reviewer alone or also by the Chief Executive, constitutes the end of the Cafcass concerns and complaints procedure. In this final communication, the complainant service user should be informed that he or she has the right, through an MP, to refer the matter to the Parliamentary and Health Service Ombudsman.

## **Vexatious Concerns and Complaints**

34. Sometimes, service users may repeatedly raise concerns about the quality of Cafcass' services. Heads of Service have the authority to decide, when approving draft step 1 letters, that concerns from service users will not be dealt with as complaints in accordance with Steps 2 or 3 of this Procedure. It is expected that the action of determining that concerns and complaints are vexatious is something that Operational Directors will do exceptionally and that an overarching consideration in taking such a step will be the safeguarding and promotion of the welfare of any affected children or young people.
35. In deciding whether to treat a service user's concerns as being vexatious, the following matters should be considered by the Operational Director:
- How far apart have the complaints been?
  - Have the complaints been on similar topics each time? Or are they about the same thing or same areas?
  - If the complaints are about different topics, do they appear to be raising genuine concerns about practice, or are there grounds for believing that the complaints are spurious and merely devices for another purpose?
  - Generally, does it appear that the complainant is genuinely concerned about the service that has been provided, or does it appear that s/he has some other purpose in making a complaint?
36. If complaints have in the past been partly upheld, it may be a reason for a service user to feel anxious about the service that is being provided and that may mean that the complaints are genuine rather than vexatious. If complaints have been dismissed as groundless in the past, repeated complaints may be more likely to be an indication of a vexatious complainant. However, if previous complaints have been partly or fully upheld, it is more likely that repeated complaints are not vexatious.
37. If it is decided that concerns and complaints are vexatious, a note of the basis for the decision should be made on the Requests and Feedback Log (RFL) by the relevant Operational Director, who must

also, either by email or letter, within 10 working days of Cafcass receiving the concerns or complaints, notify the service user of the decision.

## **Recording concerns and complaints**

38. At step 1 of the concerns and complaints procedure, the initial responsibility for recording the receipt of an expression of concern, within the 'Requests and Feedback Log' (RFL) part of the Case Management System (CMS), rests with the manager who receives (either directly from the service user or from someone else in Cafcass) the expression of concern. The RFL should also be used by the second line manager to record his or her approval of the contents of the proposed step 1 response, before it is sent to the service user.
39. For step 2 cases, the Operational Director is responsible for recording, within the RFL, the actions taken by him/her in deciding what the investigation covers and who the investigating manager should be. It is the responsibility of this manager to record within the RFL their work and their investigation report. It is then the responsibility of the Operational Director to record, within the RFL, the step 2 response to the complainant.
40. For cases that proceed to step 3, the Operational Director must then record the request for the review. The 'out of area' senior Cafcass manager who assists the reviewer is responsible for recording, within the RFL, the work and outcome of the review. In those cases where the reviewer makes further recommendations to the Chief Executive, the Operational Director is also responsible for recording, within the RFL, the final response that is sent to the complainant and for giving a copy of that response to other relevant people as set out in paragraph 30.
41. Learning points should also be added to the RFL at the point of response to the concern or complaint.

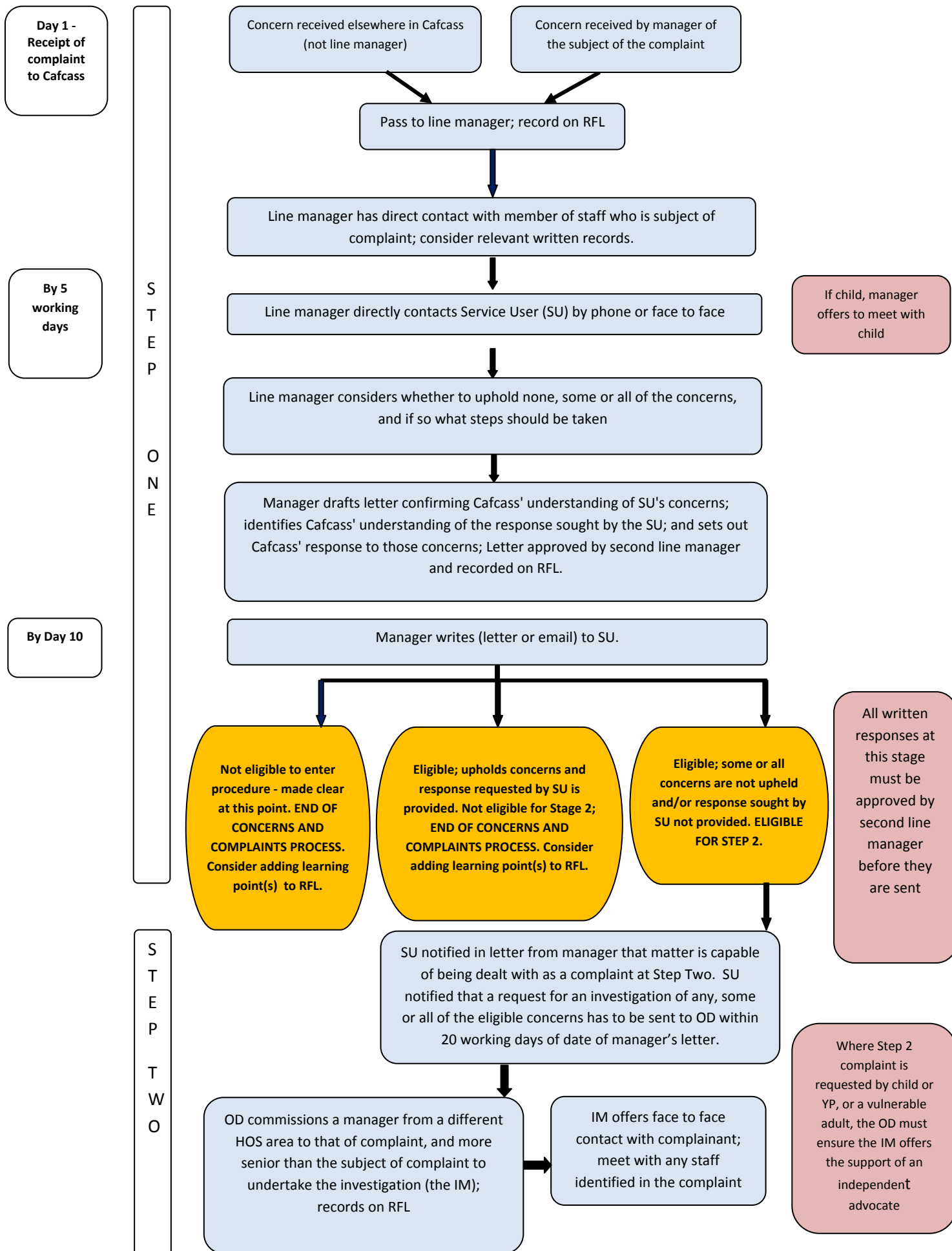
## Appendix 1: Principles for Remedy

42. The Parliamentary and Health Service Ombudsman first published the Principles for Remedy on 11 October 2007. They were updated on 10 February 2009 and can be accessed in full online at: [www.ombudsman.org.uk/improving\\_services/principles/remedy/index.html](http://www.ombudsman.org.uk/improving_services/principles/remedy/index.html)

The Principles for Remedy include the following:

1. Getting it right.
2. Being customer focused
3. Being open and accountable
4. Acting fairly and proportionately
5. Putting things right
6. Seeking continuous improvement

## Appendix Two: Cafcass Concerns and Complaints Procedure Flowchart



# Cafcass Concerns and Complaints Procedure - May 2010

