



Connecting Foster Carers – SA Inc

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26 June 2015

Consultation Feedback Form

Complaints Management and Resolution Policy (“Policy”) and Procedures (“Procedures”)

Submitted by Connecting Foster Carers SA Inc. (“CFC”)

Executive Summary

- CFC held a forum with members seeking feedback on the proposed Policy and Procedure.
- All Stakeholders voiced grave concerns about the Policy.
- CFC is of the view that the Policy:
 - o Is poorly conceived;
 - o Lacks appropriate detail and prescription;
 - o Is tokenistic;
 - o Lacks genuine, informed insight into the existing management and resolution of complaints within Families SA;
 - o Absolutely fails to ensure the adherence to the principles of procedural fairness/natural justice; and in fact demonstrates a fundamental lack of understanding of the principles of procedural fairness/natural justice;
 - o Provides inadequate oversight of the administrative functions of Families SA;
 - o Provides no basis for genuine oversight and accountability of Staff and Site Managers; and
 - o Allows and enables the potential abuse of power by Staff and Site Managers.

The principal concerns with the Policy are:

1. The power and discretion afforded to inadequately trained and educated Staff and Site Managers.
2. The lack of appropriate measures to ensure transparency, objectivity and the right to procedural fairness.
3. The lack of protection afforded to complainants.
4. The lack of autonomous, independent, binding oversight of:
 - Complaints management; and
 - Complaints resolution.

Nature of Complaints

This feedback relates only to complaints made by CFC's members to Families SA.

CFC can submit that the general nature of complaints made by members to Families SA, are as follows:

- The treatment of members by Staff and Site Managers;
- Not being listened to and/or heard;
- Not being taken seriously;
- Not having their concerns about decisions that affect the children in their care addressed; of particular concern to members is decisions around schooling, case management and access;
- Not understanding or acknowledging children's behaviours and appropriate behaviour management;
- The lack of provision of resources and support;
- Issues concerning respite;
- Not complying with *The Foster Carers Charter of Rights*;
- Not being treated with procedural fairness;
- Things not being attended to in a timely manner.

Please note this list is in no way exhaustive.

Health and Child Protection - An Observation

CFC would like to make the observation that the policies developed by SA Health and the Department for Education and Child Development, in relation to the management of complaints, speaks volumes as to how each Department values its "consumers", those being patients and Carers respectively.

CFC is of the strong view that the rights afforded to consumers of SA Health, who are *receivers* of a service, compared to Carers, who are the *providers of fundamental voluntary services* to Government, are in stark contrast; and this of itself is very telling about the culture of Families SA towards Carers.

Policy

CFC will now provide feedback on the Policy.

Scope

- CFC considers the Policy is too broad. The Policy provides that:

"The Complaints Management and Resolution Policy applies to complaints about decisions and actions undertaken in the provision of education, early childhood services, family support, and care services by DECD"

CFC considers that the scope of the Policy demonstrates a fundamental failure to acknowledge and address the differences that exist between complaints that may arise in the education sector compared with the child protection sector.

This failure demonstrates a lack of understanding of the complexities of each sector, and accordingly CFC believes a separate and appropriate policy should be drafted and implemented for the child protection sector.

Principles

CFC is of the view that the Principles of the Policy that DECD:

- *“... is committed to fair, effective and efficient complaint management, and [that] DECD staff will demonstrate this commitment through their service delivery to children, families and community members...”*
- *...will enable complaints by ensuring:*
 - o *Information about how and where a complaint may be made is accessible and transparent.*
 - o *Vulnerable populations ... are assisted to make complaints*
 - o *The right for individuals to raise complaints is acknowledged, and complainants are treated with respect.*
 - o *Complainants are not adversely affected because they have made a complaint.”*
- *Complaints are promptly acknowledged, assessed and prioritised in accordance with the urgency of the issues raised...”*
- *Complainants are advised if their matter is out of the scope of the Policy and are redirected to appropriate authorities where possible.*
- *Complainants are advised of the complaint process, expected timeframes, how they are able to contribute to the complaints management process, the possible outcomes, and avenues of review and appeal.*
- *Procedural fairness, objectivity and fairness requirements are adhered to.*
- *Unless resolved at the first point of contact, complaints will be documented (including information about the issues raised, any supporting documentation provided, the enquiries undertaken, and outcomes achieved).*
- *Personal information is treated confidentially ...*
- *The legal, policy, procedural and factual basis for decisions are provided in communications with complainants, staff and others.”*

Are not adequately supported by appropriately prescriptive procedures to ensure such principles are complied with.

It is not enough to proclaim a policy; a policy must be appropriately prescriptive to ensure compliance with such. CFC is of the view that the Procedure that has been drafted to enable adherence to the Policy is insufficiently prescriptive to ensure departmental compliance.

Procedure

CFC will now provide feedback on the Procedure.

CFC is of the view that the Procedure should be scrapped and that an alternative procedure that reflects that set out below under the heading "Alternate Procedure" should be adopted.

However, CFC makes the following observations about DECD's proposed Procedure:

Purpose

- The purpose of the Procedures is to "...ensure that DECD manages complaints in a fair, efficient and effective manner."
- CFC submits that the Procedure is inadequate to ensure such purpose.

Scope

- The proposed scope is too broad.
- The statement that:
"These procedures provide a basis for policies that may be developed at DECD sites to meet local needs and reflect local services." is ill conceived.
- CFC submits that the Procedure should be uniform and highly prescriptive to ensure consistency and uniformity of complaints management and resolution across all Families SA's sites.
- Files often move sites, Staff often change and the management and resolution of complaints should remain consistent, uniform and prescriptive.

Frontline Resolution Procedures

- CFC is of the firm view that, generally speaking, Staff and Site Managers do not possess the requisite education, training or skills to undertake the investigative and "follow up" processes outlined in the Procedure.
- The investigative and "follow up" processes outlined in the procedure require an understanding of complex matters and a requirement to undertake a process which is almost judicial in nature. Further, the requirement of objectivity is unrealistic and naïve in the circumstances. The Staff member, Site Manager or Site, about which the complaint has been made, should absolutely not undertake any investigation and "follow up" of any complaint that is anything other than minor. There is no manner in which a complainant can be afforded natural justice in these circumstances.
- The inclusion of the paragraph:
"This information will be provided to the complainant to the maximum extent possible, within the requirements of legislative and other requirements regarding privacy and confidentiality", is concerning. The paragraph entitles Staff, who may be the subject of the complaint, to have discretion as to whether information may or may not be provided to the complainant. Again, this does not conform with the principles of Open Disclosure nor Procedural Fairness.

- Timeframes should be absolute and prescribed. The use of the word “... *should* ...” enables discretion around time periods and the requirement to update complainants about the progress of complaints.
CFC can report many instances where members have waited months for the resolution of disputes, with no notification of when such complaint may be resolved, the stage of the investigation or reasons for the delay. In accord with the principles of procedural fairness, complaints should be determined in a timely manner and if not the complainant should be given written reasons why such complaint is not resolved.
CFC can advise of at least one complaint that has remained unresolved for over 18 months and the complainant has been provided with no reasons for the delay or an expected timeframe for investigation or resolution.
- The use of the terms “*complex*” and “*contentious*” are unhelpful, broad and open to misinterpretation and abuse. If the DECD wants to use these terms as a basis to extend timeframes or for any other reason, they should be expressly defined.
- All complaints should be documented, but not at the Site of the complaint, or on a file that pertains to the complainant.
- CFC does not support the retention of complaints on file as this may lead Staff to form misconceptions about Carers. CFC discusses this issue in greater detail below under the heading “Confidentiality of Complaint”.
- CFC is concerned that the power of the Site Manager regarding documentation is too broad. The requirements for documentation, storage of documents and access to documents are a potentially highly problematic area and should be carefully prescribed, supervised and audited. Further, the Procedure states “*[a]ny systemic issues that arise as a result of a complaint should be considered and acted upon*”. CFC fails to see how systemic issues can be identified if there is no prescribed manner in which to store documents and access issues, and consequently review complaints data. As CFC sets out below, all complaints data should be stored in a central, confidential database and reviewed regularly to inform best practice.
- Further, CFC can submit that its members consistently report that:
 - Complaints are not investigated in the manner that the proposed Policy outlines;
 - The principle of Open Disclosure is not followed;
 - The principles of procedural fairness are neither understood nor followed;
 - Members are not informed about how their complaints are investigated, followed up or what outcomes were achieved;
 - Members are not informed about how to escalate a complaint if they are dissatisfied with the outcome.

Centralised Resolution Procedures

DECD Complaints Unit (“Unit”)

- CFC supports the concept of the Unit.
- CFC believes that the Unit should be independent and objective.
- All complaints should be documented in a central, confidential database managed and maintained by the Unit.
- All complaints, other than minor complaints, should be investigated by the Unit.
- Investigators that work within the Unit must have the requisite education, knowledge and skills to determine, inter alia:
 - o *What are the substantive issues of concern?*
 - o *What are the relevant requirements about these issues (legal, policy or procedural requirements)?*
 - o *Where are the available sources of information about these issues (parties directly involved, witnesses, documentation ... and how these can be obtained?*
 - o *What are the facts to be determined?*
 - o *What issues remain in dispute?*
 - o *What conclusions can [should] be drawn based on the application of the legislation/policy /procedures to the facts?*
 - o *What options are available to resolve the issue?”*
 - o *What weight should be given to what evidence?*
- CFC is of the view that if a complainant is dissatisfied with the outcome of a complaint, the complainant must be advised in writing that the complainant can escalate the complaint to each and all of the following:
 - o The Executive Director;
 - o The Ombudsman;
 - o The Health and Community Services Complaints Commissioner (“HCSCC”); and
 - o Subject to certain limitations, independent review by an external, autonomous, binding authority.

Internal Formal Review

- CFC believes that if the Executive Director determines not to review a complaint, written reasons must be given setting out the grounds as to why the request for review has been denied.
- Any formal review must occur within a prescribed timeframe, and any delay must be set out in writing with a date for the expected completion to occur.
- The inclusion of this paragraph is of concern:
“The Chief Education Officer of Executive Director may determine how they wish to use the report to respond to the complainant...”
Subject to legal constraints, the discretion as to how the Executive Director *“may determine how to use the report to respond”* should be removed. The complainant should, subject to legal (not executive or administrative constraints) be provided with a copy of the report.
- As CFC sets out below, CFC does not support the maintenance of complaints on files.

Appendix A – Individual Rights and Mutual Responsibilities of the Parties to a Complaint

- CFC is concerned that the rights and responsibilities of parties to a complaint are weighted far too heavily in favour of Staff and Site Managers to the detriment of the complainant.
- As demonstrated by the experience of our members, the rights of Staff are:
 - o Far too broad;
 - o Encourage a lack of honesty and transparency; and
 - o Lead to abuse of power.
- The dichotomy between the rights and responsibilities of Staff and Carer complainants, as set out in Appendix A, supports CFC's view of the culture of Families SA towards Carers.

CFC can report that under the present policy:

- Members are not informed about how or where to complain, the complaint process or expected timeframes. Members report seeking such advice from CFC more often than Families SA.
- Members have reported asking Families SA for a copy of the present Complaints Management and Resolution Procedures and Policies, and having such requests ignored.
- Members are consistently disrespected.
- Members' Complaints are ignored, dismissed or diminished, and complainants are treated with contempt.
- Members consistently report that not only are they "*adversely affected*" after making a complaint, but are punished. For example CFC can report:
 - o Members being threatened with removal of children;
 - o Members being threatened with reversal of OPG orders;
 - o Members being told to quit work/other commitments because they are not coping;
 - o Members being threatened with removal of approved foster care status; and
 - o Removal of support and resources;All of which have occurred after the raising of complaint against Families SA.
- Complaints are not dealt with transparently. Our members consistently report a culture of secrecy and "butt covering" surrounding complaints.
- Members are not directed to escalate a complaint if it is outside the power of the relevant Staff member or Site Manager, or if the complaint has not been resolved to the satisfaction of the complainant.
- Members are not provided with the legal, policy, procedural and/or factual basis for decisions that are made.
- Members are not provided with written reasons for decisions being made, even when Members ask for such repeatedly and in writing.
- Members do not escalate concerns and complaints because of threats and repercussions and an absolute lack of transparency and accountability by Staff and Site Managers.

CFC can report that its Members consistently and regularly report being subject to the following when making complaints to and/or about Families SA:

- Bullying;
- Threatening and intimidating behaviour;
- Personal criticism and attack;
- Dismissal;
- Ignorance; and
- Little or no resolution of complaints.

This list is not exhaustive.

Of grave concern is the numerous and consistent reports of “having the tables turned” on Members after they have made a complaint. CFC can report an alarming number of instances where Members have raised a complaint against Families SA, Staff and/or Site Managers and have then been called into a meeting with Families SA. At such meetings:

- Members believe they are attending to discuss their complaint and/or concerns.
- Members are given no agenda setting out the:
 - o Reasons for the meeting;
 - o Who will be in attendance;
 - o What the meeting is seeking to clarify and/or resolve.
- Members are not told to bring a support person, and CFC can report that at least one Member was expressly directed not to bring a support person.
- DECD staff will “railroad” the meeting and the Member’s concerns are dismissed and ignored.
- Typically Families SA Staff will then commence criticising the Members, and making the meeting about complaints and/or concerns Families SA has about the member. The member is thereafter given no opportunity to address their complaint.
- CFC has been informed that at some of these meetings the tables are firmly stacked with Families SA staff. For example there are occasions where members have attended and there are psychologists, social workers, site managers, aboriginal support workers and supervisors present at the same meeting, with no notification to members as to who is going to be in attendance. As you can imagine this leads to feelings of belittlement, intimidation and fear.

Alternative Procedure

As set out above, CFC does not support the Procedure because it fails to provide adequate rights and protections for complainants, and leaves them vulnerable to repercussions and abuse of power.

CFC would like to see the adoption of a procedure that reflects the *Policy Guideline – Consumer Feedback Management Policy Guideline and Toolkit as issued by SA Health (“Health Policy”)*.¹

Informal Consumer Feedback

In particular:

- CFC would like to see the Level 1 – Frontline Complaint Resolution process scrapped and replaced with a process that reflects the Informal Consumer Feedback of the Health Policy.
- CFC acknowledges that some complaints that arise in the day-to-day activities of Families SA maybe trivial, vexatious or misconceived, and can therefore be dealt with in an informal manner. However, CFC also believes that these minor complaints should be acknowledged, addressed and recorded by Families SA so as to, inter alia:
 - o Inform best practice;
 - o Be utilised for education and training purposes;
 - o Inform patterns of repetitive behaviours by Staff, Site Managers and Sites; and
 - o Adequately record and determine whether complaints are being correctly identified as “minor”.

Centralised Complaint Resolution

CFC believes that all complaints that are not identified as “minor” should be dealt with in the same manner, as reflected in the Health Policy.

CFC supports the following Complaints Procedure:

1. Receipt of Complaint

- All staff may receive complaints, and therefore must know what action to take when any complaint is received so as to ensure the complaint is dealt with in accord with Policy and Procedure.
- Staff must make a written record of any complaint, including relevant names and facts, a copy of which will be provided to the complainant so that they may correct any inconsistencies and/or inaccuracies.
- The complaint should be recorded in a central, confidential database that is managed by the Unit.
- Complaints should be able to be received anonymously.

2. Registration and Acknowledgment of Complaint

- Families SA should have a central (albeit confidential) system in which all complaints are logged.
- All complaints should be acknowledged in writing within a mandated time frame and the complainant should thereafter receive:
 - o A summary of the complaint;
 - o An explanation of the complaint resolution process and relevant timelines;

¹¹Policy Guideline – Consumer Feedback Management Policy Guideline and Toolkit, 1 December 2011, SA Health Government of South Australia.

- The details of the relevant Unit contact, who is not a party to the complaint; and
- The process if the complaint is not resolved to the satisfaction of the Stakeholder.

3. Assessment

- The seriousness and urgency of a complaint should be determined by an independent person from the Unit, thereafter it will be determined:
 - Who will review the complaint;
 - The best method of resolving the complaint;
 - Any evidence that needs to be obtained; and
 - The investigation that should be undertaken.
- All relevant parties to the complaint should be identified and, as far as safety and confidentiality allow, notified of the complaint. The relevant parties may be those who are able to provide any relevant evidence and/or information in relation to the complaint.
- If the complainant's personal information is to be shared for the purpose of the management and/or resolution of the complaint, the complainant's consent must be obtained to share such information.

4. Investigation

- The complainant should be given the right to be heard, by an objective party, independent of the party being complained of, preferably a member of the Unit.
- The complainant should have the right to have a support person present, including but not limited to a legal representative.

5. Response

- The investigator will determine the best resolution.
- Possible resolutions may be:
 - Mediation;
 - A written apology and written acknowledgement of the issues that caused the complaint;
 - Change of Staff with whom the complainant works;
 - Changes to policy/procedures;
 - Ongoing monitoring of the issue; and
 - No action.

6. Resolution

- The resolution must occur within a mandated time period of receipt of the complaint, and if such resolution cannot be reached within such time then the investigator must give reasons for such.
- The response must be recorded in writing and a copy must be provided to the complainant and stored in the central database.
- The response must:
 - Be factually correct;
 - Address each issue raised by the complainant;

- Provide a full explanation of what was discovered during the investigation and what actions have been taken as a result of such discoveries;
- Provide any reasons for conclusions reached;
- If such explanation cannot be given, then the investigator must give sound reasons why such explanation cannot be given; and
- Contain an acknowledgement of the complainant's experience.

7. Follow Up

- The complainant must be contacted at least twice within a 6 month period by the Unit to:
 - Ensure the issue is fully resolved; and
 - That the complainant has not been adversely affected because of the complaint.

8. Unresolved Complaints

- If,
 - The complaint is unresolved; and/or
 - During follow up the complainant is still dissatisfied with the outcome of the management of the complaint;
 The complainant must be advised, in writing, that:
 - The complaint can be escalated to the Executive Director; and/or
 - The complaint can be referred to the Ombudsman and or HCSCC for review.
- CFC is also strongly of the view that all complainants should, subject to the nature of the complaint, be entitled to have the complaint reviewed by an independent, autonomous, binding third party also.

9. Confidentiality of Complaints

- CFC can report that complaints are kept on file and appear to have been used to vilify members.
For example:
 - One member raised a concern about the impact of DECD prescribed pseudo-psychological treatments and the negative impact those treatments were having on a child in their care. Since then, that carer has consistently been labelled as "anti-therapy" and constantly had to defend their position;
 - Other members have reported that after they have made a complaint subsequent Staff and offices have raised historical complaints as a means of dismissing future concerns and vilifying members.

Unfortunately reports of this nature are alarmingly common.

10. Central Database

- CFC is of the view that all complaints should be kept on a separate, central, confidential database, managed by the Unit.
- The maintenance of a separate, central, confidential database will:
 - Maintain the confidentiality of complaints, including the parties to the complaint;
 - Maintain the confidentiality of the nature of the complaint;

- Enable the development of a database of complaints that can be used to educate and inform Families SA, and inform best practice; and
- Be used to demonstrate any patterns of minor, recurrent complaints pertaining to certain practices and/or Staff, Site Managers and Sites.

Conclusion

- Given:
 - The concerns and experiences of members with respect to the present management and resolution of complaints;
 - The rate at which Carers are leaving the child protection system;
 - The risk to vulnerable children in care if primary carers are not able to have complaints heard and resolved satisfactorily;

CFC believes that the proposed Policy and Procedure should be reviewed and redrafted.
- CFC believes that if SA Health is able to develop a robust consumer centric complaints policy, there is no reason that:
 - Families SA can not do the same;
 - Families SA can not use the Health Policy and SA Health's experience to better inform its own policy and procedure.
- Further, CFC concludes that fundamental to the failings of the proposed Policy and Procedure is a culture that undermines and undervalues Carers.