

# **Adult Social Care Complaints Policy**

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## 1. Introduction

Complaints, comments and compliments offer an invaluable insight into the experiences of service users and those connected with their care but perhaps more significantly, they can act as an early indicator of potential issues which require review. Trend analysis of complaints helps to ensure that improvements and recommendations can be made at an early stage and thus improve the experience of service users and their families.

Some services within the Local Authority are subject to specific legislation, which defines the Local Authority's obligations to service users. For this reason it is not possible to have a single complaints policy to cover all services. This guidance is intended to detail the policy and procedures for complaints concerning Adult Social Care Services function within the Local Authority and provide guidance to staff on how to respond when they receive a complaint.

There are separate procedures for

- Children's Social Care
- Schools and Children's Centres
- Public Health Complaints
- Other services (Corporate Complaints)

It is important that all members of staff are aware of procedures for different services as they may be asked for this information by the people they have contact with. It is important that their requests for advice are dealt with quickly and supportively.

It is intended that this guidance meets the requirements of:

- The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009
- NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012/3094
- Data Protection Act 1998
- Equalities Act 2010

The Adult Social Care Complaints Policy has been drawn up in line with ***The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009*** and ***NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012/3094***.

These procedures are not intended to cover employment or contractual issues pertinent to Local Authority employees. In such cases, concerns should be raised through grievance and / or Whistle-blowing procedures.

Legal, safeguarding or disciplinary proceedings may take precedence over complaints procedures and timescales.

For clarity, the responsible person for complaints relating to Adult Social Care matters is the Head of Adult Social Care.

Contact details for all individuals and organisations named in the document are given in the **Useful Contacts** section on Page 17.

Copies of complaints leaflets and this procedure can be provided in other languages or formats on request from the Customer Contact Centre. Details are given in the **Useful Contacts** section on Page 17.

## **2. Duties and Responsibilities**

The Local Authority has a responsibility in line with *The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009* and the *NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012/3094* to designate a “responsible person” to ensure compliance with these regulations and to ensure there is an effective system for the management, investigation and resolution of complaints and concerns.

Furthermore, the responsible person must ensure that once a complaint investigation has been concluded, actions are identified and implemented where necessary. The Local Authority also has a duty to ensure there is a person responsible for managing complaints on a day to day basis in line with these regulations.

### **2.1 Role of the Health and Social Care Complaints Officer**

The role of the Health and Social Care Complaints Officer is to manage all feedback received concerning Adult Social Care functions on a day to day basis. This includes recording and responding to comments and compliments and managing formal complaints in line with this procedure.

## **3. Service User Experience**

It is important that all feedback from service users, their families and members of the public is managed appropriately. This will enable the Local Authority to have a deeper understanding of the experience of people accessing its services and for the Local Authority to identify its strengths and weaknesses and make improvements where necessary.

The Local Authority aims to be as open and transparent as possible towards people who have raised a complaint or concerns. In some cases, in addition to providing a full response to the complaint, the Investigating Officer or another appropriate member of staff will offer a meeting with the complainant to discuss their complaint or any outstanding issues.

### **3.1 Comments and Compliments**

The Local Authority welcomes comments and compliments from service users and colleagues as this feedback helps teams to celebrate good work and success stories which will in turn help the Local Authority to improve its services. When a compliment letter is received, an acknowledgement letter will be issued to the writer to thank them for taking the time to inform the Local Authority of their positive experience.

### **3.2 Anonymous Complaints**

Anonymous complaints must be recorded and referred to the Health and Social Care Complaints Officer in the same way as any other complaints. Anonymous complaints fall outside the scope of the statutory Complaints Procedure. However, the feedback is just as important.

The Health and Social Care Complaints Officer will discuss the details of any anonymous complaints with the relevant Service Manager / Team Manager. If there is sufficient information contained within the complaint, it will be investigated in the same way as any other complaint.

If there is insufficient information to support an investigation, the complaint will be recorded and closed.

### **3.3 Complaints**

A complaint is defined as:

*“An expression of dissatisfaction or disquiet which requires a response”*

The intention of this Policy is to promote opportunities for concerns to be addressed as close to the point of service delivery as possible. Frontline staff are encouraged to take a positive view of representations and complaints and will be trained and resourced to respond quickly and effectively to most concerns. Staff will ensure that all comments and complaints regarding the service are taken seriously and dealt with fairly and consistently. Full details of the Complaints Procedure are detailed below in Item 4.

## **4. Complaints Procedure**

The first stage of the process is for the complaint to be raised and investigated at local level and a full response issued to the complainant. If the complainant remains unhappy with the outcome of the complaint investigation, they have the right to request a review by the Local Government Ombudsman (LGO).

When an individual makes a complaint, they can expect a full investigation into their concerns. If the Local Authority has done something wrong, or failed to do something it should have done, an apology will be offered to the complainant and the Local Authority will try to remedy the situation. A full response will be issued to the complainant explaining the investigation process, the outcome and details of any actions that have been identified to improve the service. The Local Authority will only make a financial payment if there has been a quantifiable financial loss.

In the case of a serious complaint, it may be necessary for disciplinary action to be taken against a member of staff. However, this will be a decision for managers and will be a separate and confidential process. The Complaints Procedure is only concerned

with resolving complaints and not with investigating disciplinary matters. The Local Authority will not inform the complainant of the actual result of any disciplinary action, only that it has been concluded and that the incident has been managed in accordance with the appropriate HR policies. Other actions or changes to practice that have occurred should be included in the complaint response letter.

#### **4.1 Who can complain?**

The regulations state that a complaint may be made by:

1. The service user
2. A person who is affected by or likely to be affected by, the action, omission or decision of the responsible body, which is the subject of the complaint.
3. A representative for a service user who
  - Has died
  - Is a child (in this instance, the Local Authority must be satisfied that there are reasonable grounds for the representative making the complaint instead of the child)
  - Is unable by reason of physical or mental incapacity, (within the meaning of the mental capacity Act 2005), to make the complaint
  - Requested the representative to act on his/her behalf.

If the Health and Social Care Complaints Officer is of the opinion that a representative does not or did not have a sufficient interest in the person's welfare or is unsuitable to act as a representative, the Health and Social Care Complaints Officer must notify that person in writing, explaining the reason for their decision.

#### **4.2 Confidentiality and Consent**

All information received by the Health and Social Care Complaints Officer will be treated in strict confidence and will not be shared with any third party without the express consent of the subject.

The Local Authority is acutely aware of the legislation protecting records and information pertaining to service users. Any relative, carer or friend of a service user is entitled to make a complaint about the care of a particular service user and all complaints accepted for investigation will be thoroughly investigated by the Local Authority. However it can only provide a response to the complaint with the consent of the service user or their next of kin (as appropriate).

This is in line with guidelines laid down by the Data Protection Act of 1998 in the interest of protecting service user confidentiality. The Act states that service user consent is fundamental to the collection and use of personal information and that releasing information without the service user's consent could amount to "unlawful disclosure".

### **4.3 Time limit for making a complaint**

In order for a complaint to be accepted to be dealt with in line with the Regulations, the complaint must be made no later than:

- a) Twelve months after the incident occurred
- b) Twelve months after the complainant realised they had reason to complain

If a complaint is made outside of these time limits, the Health and Social Care Complaints Officer may decide to accept the complaint if the complainant had good reasons for not making the complaint within the stipulated time period, and it is still possible to investigate the complaint effectively and efficiently. Each instance such as this will be considered on its own merit and a decision made at the Health and Social Care Complaints Officer's discretion.



#### **4.4 Complaints not required to be dealt with**

The following complaints are not required to be dealt with in accordance with the regulations:

- a) A complaint by a responsible body, (a Local Authority, NHS body, primary care provider or independent provider).
- b) A complaint by an employee of the Local Authority about a matter relating to their employment.
- c) A verbal complaint that is resolved to the complainant's satisfaction no later than the next working day after the day on which the complaint was made.
- d) Complaints as detailed in (c), cannot be re-investigated a second time.
- e) A complaint containing subject matter that has been previously investigated under:
  - The 2009 complaint regulations
  - The 2004 complaint regulations
  - The 2006 complaint regulations
  - Or a complaint which has been investigated by the Local Government Ombudsman.
- f) A complaint arising out of an alleged failure by the Local Authority to comply with a request for information under the Freedom of Information Act 2000.
- g) A complaint which relates to any scheme established under section 10, (superannuation of persons engaged in health services, etc), or section 24, (compensation for loss of office, etc), of the Superannuation Act 1972, or the administration of those schemes.

If a complaint is received by the Health and Social Care Complaints Officer and would be exempt from the regulations due to one or more of the exemptions listed above, a letter would be issued to the complainant and explain why their complaint cannot be managed under these regulations. This does not apply if the complaint is exempt from the regulations due to (c) above.

#### **4.5 Procedure before investigation**

A complaint may be made in person, by phone, in writing or via e-mail. If a verbal complaint is received, the Health and Social Care Complaints Officer should make a formal record of the complaint and share a copy of this record with the complainant.

Once a complaint is received, the Health and Social Care Complaints Officer must ensure that the complainant is aware of the complaints process and the timeframe in which the Local Authority hopes to complete the investigation and provide a full response. Acknowledgement of the complaint to confirm these details must be made either verbally or in writing within three working days of the complaint being received.

## **4.6 Investigation and Response**

The regulations place great emphasis on Local Authorities resolving complaints as quickly and efficiently as possible. To facilitate this, the Local Authority will ensure that each complaint is investigated appropriately.

Following receipt of the complaint, the Health and Social Care Complaints Officer will acknowledge the complaint as detailed above and will then send the complaint to an Investigating Officer and will indicate the timescale for their response. The Investigating Officer should provide their findings and details of their investigation to the Health and Social Care Complaints Officer. The response should be clear, unambiguous and address each issue raised by the complainant.

Although not a specific requirement of the Regulations, it may be good practice for the Investigating Officer to obtain formal written statements from staff in certain circumstances. This could apply to complaints which could potentially lead to disciplinary action or complaints concerning a serious incident. It should be noted that such statements can be exempt from the Data Protection Act and Freedom of Information Act.

Once the investigation is complete, a response must be issued to the complainant signed by the responsible person. This response must provide an explanation as to how the complaint has been considered, what conclusions have been drawn and whether the Local Authority upholds any aspect of the complaint. Any actions that have been identified must be shared with the complainant. The response must also state that the complainant has a right to refer their complaint to the Local Government Ombudsman for consideration and contact details should be provided.

## **4.7 What if a complainant remains unhappy with the complaint response?**

If a complainant remains unhappy with the response to their complaint, every effort should be made to try to resolve the matter. In the first instance they can contact the Health and Social Care Complaints Officer to discuss why they remain unhappy and to establish what can be done. The Health and Social Care Complaints Officer would consider and discuss with the complainant whether it would be appropriate and beneficial for them to meet with the Investigating Officer or Team Manager to try to resolve the outstanding issues.

If a meeting is not a viable option, it may be appropriate for an independent investigator to be appointed to review the complaint and investigate the issues. An independent investigation may be warranted in circumstances such as insufficient expertise within the organisation, political or media interest in the case where an independent review will provide transparency or a need to eliminate perceived bias or resolve wide differences in opinion.

If the options above are not suitable or not agreeable to the complainant, they have the option to refer the complaint to the Local Government Ombudsman for review.

#### **4.8 Care Standards Complaints**

If a complaint relates wholly or in part to a care standards complaint, the Local Authority in the first instance should determine whether the complainant consents to them sharing the complaint with the registered person. If consent is obtained, a copy of the complaint should be sent to the registered person as soon as practicable. If the complaint wholly relates to the registered person and consent has been obtained from the complainant, the registered person should investigate and provide a full response in line with the regulations. If the complaint is in part related to the registered person, the Local Authority should inform the complainant and explain which aspects of the complaint will be investigated by the Local Authority and which will be investigated by the registered person. The Local Authority should liaise with the registered agency to ensure that the complainant receives a co-ordinated response to their concerns.

#### **4.9 Social care provider complaints**

If a complaint relates wholly or in part to a social care provider, the Local Authority in the first instance should determine whether the complainant consents to them sharing the complaint with the provider. If consent is obtained, a copy of the complaint should be sent to the provider as soon as practicable. If the complaint wholly relates to the provider and consent has been obtained from the complainant, the provider should investigate and provide a full response in line with the regulations. If the complaint is in part related to the provider, the Local Authority should inform the complainant and explain which aspects of the complaint will be investigated by the Local Authority and which will be investigated by the provider. The Local Authority should liaise with the provider to ensure that the complainant receives a co-ordinated response to their concerns.

#### **4.10 Multi-agency Complaints**

The Local Authority has a duty to co-operate with other agencies to resolve complaints. If a complaint is sent to another responsible body and, after consideration, that responsible body feels that the complaint should be considered under the regulations and the Local Authority is implicated, the two responsible bodies must liaise and co-operate to ensure that the complaint is handled appropriately and so that the complainant receives a co-ordinated response to their concerns. The two responsible bodies should agree who should take the lead in the complaint and who is responsible for communicating with the complainant. The Local Authority should provide, where possible, information relevant to fully consider the complaint and attend, or ensure it has representation at, any meeting which is reasonably held in connection with the consideration of the complaint.

#### **4.11 Local Government Ombudsman**

If the complainant is dissatisfied after the Local Authority has investigated their concerns and provided a response, the complainant can ask the Local Government Ombudsman to review their case.

The Ombudsman is completely independent of both the Local Authority and the Government. If the Local Authority receives notification from the Ombudsman that they have received a complaint, the Health and Social Care Complaints Officer will liaise with the Legal Department within the Council to respond to any requests for information or queries from the Ombudsman.

## **5. Unreasonably Persistent Complainants**

### **5.1 Defining an “Unreasonably Persistent” Complainant**

The Local Authority is committed to resolving all concerns and complaints. However, it is recognised that, on rare occasions, staff have contact with individuals whose complaints are considered to be “unreasonably persistent”. The Local Authority would classify an individual’s behaviour as such if one or more of the following indicators have been noted:

- Persistent in pursuing a complaint where the complaints procedure has been exhausted.
- Seek to prolong contact by re-phrasing the same complaint in different terms.
- Refuse to accept, without good cause, documented evidence as being factual e.g. social work records.
- Deny receipt of an adequate response despite evidence of correspondence that specifically addresses the original concerns and issues.
- Do not accept that facts can sometimes be difficult to verify when a long period of time has elapsed.
- Do not clearly identify the precise issues which they wish to be investigated, despite reasonable efforts of staff and, where appropriate, independent advocacy, to help them specify their concerns, and/or where the concerns identified are not within the remit of the Local Authority to investigate.
- Focus on a trivial matter to an extent which is disproportionate to its significance and continue to focus on this point.
- Place unreasonable demands on staff resources in the course of addressing a registered complaint. (Discretion must be used in determining the precise number of "excessive contacts" applicable under this section using judgement based on the specific circumstances of each individual case).

If there are indications that a complainant is demonstrating such behaviour, staff must consider several issues before taking further action.

The Local Authority must determine whether the complaints procedure has been followed correctly and all concerns have been adequately addressed. Consideration must be given as to whether there was a specific incident or time when a complainant has become habitual or unreasonably persistent. If without consent or prior knowledge of the people involved, the complainant has recorded conversations either from

telephone conversations or meetings this may be deemed to be unreasonably persistent. If the individual concerned is displaying unreasonable expectations or placing unreasonable demands on staff this could also lead to the complainant being treated as unreasonably persistent.

If the individual concerned has behaved in an intimidating manner or threatened or used actual physical violence towards staff or their families at any time - this will in itself cause personal contact with the complainant and/or their representatives to be discontinued and the complaint will, thereafter, only be pursued through written communication. Any such incident should be reported in line with the Local Authority's incident reporting procedure.

Similarly, if the individual has harassed or been verbally aggressive towards staff dealing with their complaint or their families or associates, all incidents should be documented and considered before a final decision is made. However, caution must be exercised by staff who must recognise that complainants may sometimes act out of character at times of stress, anxiety or distress and should make reasonable allowances for this.

## **5.2 Procedure for dealing with “unreasonably persistent” Complainants**

Careful judgement and discretion must be used in applying criteria to identify habitual and unreasonably persistent complaints and to decide what action to take in specific cases. This should only be implemented following agreement by all concerned, including the Health and Social Care Complaints Officer, Investigating Officer and a representative from the Legal Department.

The course of action must be agreed by the above and put in writing to the complainant, including reasons why the complaint has been classified as unreasonably persistent, and signed by the appropriate responsible person. The letter should be copied for the information of those involved in the complaint and a record should be kept by the Health and Social Care Complaints Officer of the reasons why a complainant has been classified unreasonably persistent and the actions taken.

Unreasonably persistent complainants may be dealt with in one or more of the following ways:

- Confirm that only one means of communication will be maintained – decline to communicate via any other means.
- Confirm dates of correspondence from the responsible person to the complainant and confirm that the issues have been comprehensively addressed and that continuing contact on the matter will serve no useful purpose. Complainants should be advised that this is the final decision and that further communications will be acknowledged only and a dialogue will not be entered into.

- Inform complainants that in extreme circumstances, the Local Authority reserves the right to refer members of the public whose complaint is considered unreasonably persistent or unreasonable to the Legal Department and, if appropriate, the police.

### **5.3 Withdrawing Unreasonably Persistent Status**

Once a complainant is considered to have been determined as habitual or unreasonably persistent, there needs to be a process for withdrawing this status at a later date if, for example, the complainant or member of the public subsequently demonstrates a more reasonable approach, or if they submit a further complaint for which the normal complaints procedure would appear appropriate. Discretion should be used in recommending that this status be withdrawn as appropriate.

If it is agreed that this status can be withdrawn, any future complaints or concerns can be dealt with in line with the regulations and normal contact can be resumed.

### **5.4 Appeal**

If a complainant disagrees with the decision to deem their complaint as being unreasonably persistent, they may put their reasons in writing and address them to the appropriate responsible person. If such an appeal is received, the responsible person will consider the available information and will reconsider the decision to impose such status on the complainant and will do so in consultation with the Health and Social Care Complaints Officer. The outcome of this review must be communicated in writing to the complainant, outlining the reasons for the decision.

## **6. Monitoring Compliance with this Policy**

The Health and Social Care Complaints Officer will keep a record of all complaints received. For each complaint, the details of the complaint, the outcome and any actions taken will be recorded. The length of time taken to provide a full response to the complainant will also be monitored. A record will be held of the initial timescale agreed with the complainant and if there was any amendment to this period.

The Local Authority is responsible for producing an annual report each year and contained within this report must be:

- The number of complaints received
- The number of complaints upheld
- The number of complaints referred to the Local Government Ombudsman
- A summary of:
  - i. The subject matter of complaints received
  - ii. Any matters of general importance arising out of the complaints or the way in which they were handled
  - iii. Any actions identified and taken to improve services as a consequence of these complaints
- The number of complaints for which a response was issued to the complainant within the response time originally agreed.

The annual report must be made available to anyone on request.



## 7. Useful Contacts

### **Sefton Council**

Bootle One Stop Shop, 324/342 Stanley Road, Bootle  
Southport One Stop Shop, Cambridge Arcade, Southport

**Tel: 0345 140 0845**

**Minicom: 0151 934 4657**

[www.sefton.gov.uk](http://www.sefton.gov.uk)

### **Health and Social Care Complaints Officer**

1<sup>st</sup> Floor, Magdalen House, 30 Trinity Road, Bootle, L20 3NJ

**Tel: 0345 140 0845**

[www.sefton.gov.uk/complaints](http://www.sefton.gov.uk/complaints)

### **Local Government Ombudsman**

PO Box 4771, Coventry CV4 0EH

**Tel: 0300 061 0614**

[www.lgo.org.uk](http://www.lgo.org.uk)

### **Sefton Carers Centre**

27-37 South Road, Waterloo, L22 5RF

**Tel: 0151 288 6060**

### **Sefton Advocacy**

Gordon House, 3-5 Leicester St, Southport PR9 0ER

**Tel: 01704 500 500**

### **Sefton Pensioners Advocacy Centre**

4th Floor Shakespeare Centre

43-51 Shakespeare Street

Southport

Merseyside

PR8 5AB

**Tel: 01704 538 411**

**Email:** [info@spacadvocacy.org.uk](mailto:info@spacadvocacy.org.uk)

**Citizen's Advice Bureau**

24 Wright Street SOUTHPORT Merseyside PR9 0TL

**Tel: 01704 531 456**

Goddard Hall, 297 Knowsley Road BOOTLE L20 5DF

**Tel: 0151 922 1114**

**Care Quality Commission**

**Tel: 03000 616 161**

[www.cqc.org.uk](http://www.cqc.org.uk)

**Department of Health**

[www.dh.gov.uk](http://www.dh.gov.uk)