

# Adult Social Care Statutory Complaints and Representations Procedures



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## Relevant Policies

- 1.1 These procedures should be read in conjunction with:
  - Adult Social Care Statutory Complaints Policy
  - ASC Statutory Complaints Guidance for Investigating Managers
  - ASC Statutory Complaints Guidance for Commissioned Provider Investigating Managers
  - ASC Statutory Complaints Vexatious Complainants Procedure
  - Protocol for Handling Multi-Agency Formal Complaints

## 1. Introduction

- 1.1 These procedures seek to provide guidance in handling Adult Social Care Statutory Complaints in line with the Adult Social Care Statutory Complaints Policy.
- 1.2 Concerns or worries are often raised as part of the normal everyday interaction between Adult Social Care and the customers they serve. Normally, these will be easily resolved by the staff working with the customer. Where this is not possible however, the customer will be given the opportunity to raise a formal complaint.
- 1.3 This procedure **does not apply** to Children's Social Care Services. Such complaints will continue to be dealt with under the Children's Statutory Complaints and Representations Procedure. Where a complaint relates to a child during transition to Adult Social Care Services, the Customer Relations Manager will determine under which process the complaint will be handled.

## 2. Basic Principles

- Most complaints arise from a genuine feeling of grievance and not of maliciousness
- Small grievances can develop / increase if not dealt with at an early stage
- Complaints can serve to highlight deficiencies in service staffing levels
- People have the right to complain, to be heard and to have their complaints looked into as quickly as possible
- Handling complaints properly is an important part of the way the Council provides its services
- If the customer considers their comments as a complaint, then it should be regarded as a complaint. We cannot deny them the right to complain, unless they do not fit the description of who can complain/ what can be complained about, as outlined in points 6 and 7 of the Council's Statutory Complaints Policy.
- Complaints form part of the feedback system of how services are provided – and it's free!
- The confidentiality of the complainant and those mentioned in the complaint should be appropriately protected
- Even persistent / vexatious complainants (or their representative) can have a new valid complaint

#### 4. Responsible Officer

- 4.1 The Adult Social Care Statutory Complaints Policy requires the Council to designate a “Responsible Officer”, who will be responsible for managing the procedures for handling and considering complaints and ensuring compliance with the arrangements contained within the Policy.
- 4.2 Within Solihull, the Responsible Officer is the Customer Relations Manager, who is part of the Children & Adults Complaints Team. The Children & Adults Complaints Team are responsible for the day-to-day management of Adult Social Care Complaints, on behalf of the Adult Social Care Directorate.
- 4.3 Regulations require that the Local Authority designates a Responsible Person, who is responsible for ensuring compliance with the Regulations. This responsibility has been delegated to the relevant ASC Assistant Director, who is responsible for overseeing all complaint responses and providing the “Responsible Person” letter that accompanies the investigation response.

#### 5. Receiving a Complaint

- 5.1 Complaints can be received at any point of access across the Council. They may also be received by the service or individual directly involved.
- 5.2 All complaints **must** be signposted to the Children & Adults Complaints Team, who has responsibility for recording and monitoring all complaints through to conclusion. Contact details for the team are:

Children & Adults Complaints Team  
Council House  
Manor Square  
Solihull  
B91 3QB  
0121 704 8296  
[candacomplaints@solihull.gov.uk](mailto:candacomplaints@solihull.gov.uk)

- 5.3 Complaints can be received via:
  - a. Phone
  - b. Email
  - c. In person
  - d. Completing the complaints form available at [candacomplaints@solihull.gov.uk](mailto:candacomplaints@solihull.gov.uk) or
  - e. by sending a letter to the address at 5.2 above.
- 5.4 If the complaint is made orally, the Council **must**:
  - make a written record of the complaint; and
  - provide a copy of the written record to the complainant.

- 5.5 Anonymous complaints should always be passed to the Children & Adults Complaints Team in the same way as other complaints. However, anonymous complaints fall outside the scope of the Adult Social Care Statutory Complaints Policy. The Customer Relations Manager is responsible for deciding what action will be taken on a case-by-case basis and whether the information should be acted upon under other procedures i.e. Safeguarding.

## **6. Data Protection**

- 6.1 All functions within the complaint procedures must adhere to the requirements of the General Data Protection Regulations. Particular attention should be given to ensuring that personal information obtained in relation to a complaint is only used for that purpose. The consent of the service user will be sought by the Children & Adults Complaints Team to access and share relevant personal information to ensure a full response is made.
- 6.2 The Children & Adults Complaints Team will seek written consent from the service user for a representative to make complaints on their behalf, unless the complaint is about the impact of a service on themselves only.
- 6.3 The Children & Adults Complaints Team will also liaise with the relevant Social Work Team Manager to determine whether the complainant has the capacity to understand and to consent to a complaint being made on their behalf and if not, whether the complainant is likely to be acting in the best interests of the service user.
- 6.4 The Complaints Team, in conjunction with Adults Social Care, will firstly ascertain whether any representative already has consent or other lawful basis for acting on another individual's behalf (e.g. power of attorney). Representatives should be expected to act with the best interests of the complainant in mind.

## **7. Timeframes**

- 7.1 If a complaint is received directly by another area of the Council, then this should be passed to the Children & Adults Complaints Team as soon as possible after receipt.
- 7.2 The Children & Adults Complaints Team will acknowledge receipt of complaints to the complainant, within 3 days of receipt into the Team, explaining how the complaint will be handled and how long it will take to respond.
- 7.3 Within 10 working days of acknowledgement of the complaint, the complainant will be advised of the defined complaint(s), details of the investigating manager and the date by which a response will be provided.
- 7.4 The Children & Adults Complaints Team may need to liaise further with the complainant and the Social Work Team to confirm the best interests decision (outlined at 6.3 of the Statutory Complaints Policy) above and also regarding the detail of the complaint and this may delay final confirmation of the complaint.

- 7.5 Investigating managers will provide a draft response to the Children & Adults Complaints Team within 17 working days of receiving the defined complaint(s). (See *Appendix 1a: Statutory Complaints Guidance for Investigating Managers*).
- 7.6 Complainants will receive a final response to their complaint within 12 weeks of the complaint being acknowledged. This will only be extended in exceptional circumstances and must be agreed with the Customer Relations Manager and the complainant.

## **8. External Independent Investigations**

- 8.1 External independent investigators will only be appointed if the case has sufficient complexity and it would not be feasible for an Investigating Manager to be appointed internally. The Customer Relations Manager, in conjunction with the Assistant Director/Director, will determine whether an investigation warrants the appointment of an external independent investigator. The service area will meet the cost of appointing an external independent investigator.
- 8.2 The Customer Relations Manager will appoint an external independent investigator from the list of external investigating officers and will ensure that the investigating officer:
- a. Has had no previous involvement in or responsibility for the service area being complained about
  - b. Has sufficient relevant investigative experience
  - c. Is able to complete the investigation within the prescribed timeframe

## **9. Withdrawing a Complaint**

- 9.1 A complaint may be withdrawn by the complainant at any time, either verbally or in writing. The Children & Adults Complaints Team will inform the Investigating Manager that the complaint has been withdrawn and that no further action is required.
- 9.2 Should the complainant advise the Investigating Manager directly, that they wish to withdraw the complaint, the Investigating Manager should notify the Children & Adults Complaints Team, who will then write to the complainant to confirm that the complaint has been withdrawn and that no further action will be taken.

## **10. What May Be Complained About**

- 10.1 A complaint can be made in relation to any aspect of Adult Social Care including:
- a. Adults Social Care Finance
  - b. Attitude or behaviour of Staff
  - c. Decision Making
  - d. Delivery / non delivery of service
  - e. Dissatisfaction with care plan / assessment / review

- f. Domiciliary care providers
- g. Failure to respond / delay
- h. Frequency / change / cost of service
- i. Impact of LA policy on service user
- j. Inappropriate / quality of service
- k. Service declined / eligibility criteria not met
- l. Timescale of a decision about service provision
- m. Dissatisfaction with the impact of the contracting process
- n. Unsatisfactory communication

- 10.2 These suggestions are not an exhaustive list and should be used as a guide only.
- 10.3 These procedures cannot be used to investigate complaints about the content of Council policy. Such complaints should be referred to the Council's Corporate Complaints Process.
- 10.8 Where there is a suitable appeal process in place, complainants will not be expected to go through the appeal process and complaints process in succession. In this situation, the Council will signpost the individual to the Local Government and Social Care Ombudsman, once the appeal process is concluded.

The only exception to this is in relation to reviews regarding financial assessments or charging issues. Paragraph 8.70 of the Care Act guidance says: *"Where a local authority has established a special panel or fast track review processes to deal with financial assessment/charging issues, they should remind the person that they still have access to the statutory complaints procedure."* In these situations, individuals will be referred to the statutory complaints process.

## **11. Direct Payments**

- 11.1 It is important to understand the difference between complaining about how the direct payments scheme is organised and dealing with problems that may arise with an employee or service provider.
- 11.2 If there are problems around the employment of a carer then this is not something that the statutory complaints system can be used for.
- 11.3 The Council does however contract with a direct payment support service that can provide a payroll service and advice and guidance in relation to employment issues relating to PAs. If a service user has concerns about this contracted provision, then a complaint can be made about this directly to the Council who will oversee the process.
- 11.3 If problems occur regarding the service provision from an agency chosen by the service user themselves, then the complainant needs to go directly to the service provider involved and use the provider's own complaints procedure.



- 11.4 The following issues can be considered under the Statutory Complaints Process:
- information provided by the Council about direct payments
  - the way in which the payments are managed by the Finance Team
  - the process of allocating a direct payment
  - where the Council has commissioned services to support the person to manage direct payments
- 11.5 These suggestions are not an exhaustive list and the Customer Relations Manager has the discretion to consider complaints on a case-by-case basis.
- 11.6 As outlined at 10.3 above, complaints about the policy itself should be addressed via the Council's Corporate Complaints Policy.

## **12. Court Decisions**

- 12.1 Dissatisfaction with the way the Council has managed or handled a complainant's case, even when related to a case that has led to Court action, may be considered under these procedures, for example, the actions of a member of staff. However, the Customer Relations Manager will determine which elements of a complaint can be investigated under Adult Social Care Statutory Complaints Policy on a case-by-case basis.
- 12.2 These procedures cannot be used to investigate complaints about decisions that are taken by the Courts and cannot overturn a Court decision.

## **13. Vulnerable Adults**

- 13.1 Complaints that, in the view of the Children & Adults Complaints Team, contain concerns or information that may constitute abuse or risk of harm towards an adult will be referred to the appropriate Team Manager and/or the Police for consideration.
- 13.2 Should such a referral result in an individual safeguarding investigation, the complaints process will be suspended until that investigation is complete.
- 13.3 Should such a referral result in a large-scale safeguarding enquiry, the Customer Relations Manager will liaise with the Safeguarding Manager to discuss any potential cross-over that may impact on the complaint investigation. Should such a conflict exist, the complaint investigation will be suspended until the safeguarding investigation is complete.

## **14. Advocates**

- 14.1 There is no duty on local authorities to provide an advocate service to complainants. The department will, where possible and appropriate, facilitate the provision of independent advocacy services to complainants, by providing information and help to identify sources of advice including relevant local voluntary organisations, community and self-help groups or specialist organisations for those with special needs.



- 14.2 If a service user has access to an advocate as part of their social care service, then in liaison with the complainant, this advocate could be involved in the complaints process.

## 15. A Rights-based Approach to Complaints

- 15.1 Adult care services provide a key role in protecting and promoting human rights, by ensuring that individuals are supported to live with dignity, autonomy, and participate in their family lives, communities, faiths, and cultures. When things go wrong with services, it can have a significant impact on someone's rights.
- 15.2 Rights-based issues will sometimes be an explicit part of a complaint, with individuals talking about their human rights being 'breached' by a local council or service. More commonly though, rights-based issues will be an implicit part of complaints, expressed around principles of fairness, respect, equality, dignity, and autonomy (the FREDA principles).
- 15.3 Complaint handlers are not expected to have technical knowledge of human rights law, and as outlined by the Local Government & Social Care Ombudsman, a complaints process cannot establish whether there has been a 'breach' of someone's human rights. However, it is good practice for councils to take a rights-based approach to complaints handling, especially in a service that is closely linked to human rights protection.
- 15.4 When thinking about rights-based issues, complaint handlers should think about the five FREDA principles. These are the core values that underpin all rights-based legislation. If an organisation has acted in line with these principles, then it is likely they have taken account of an individual's rights.
- **Fairness:** Organisations should be able to show they have given the opportunity for individuals to express their views and wishes. Organisations should be able to show how an individual's views have been listened to and weighed alongside other factors when making decisions about care services. Decision-making should be based on objective evidence and relevant factors, and free from arbitrary considerations or unclear conclusions. Doing this allows other people to determine how they might be treated in similar circumstances.
  - **Respect:** Organisations should show respect to individuals' rights, values, beliefs and property. Respect is demonstrated through courteous communication, that is sensitive to the individual's needs and circumstances, which provides them with a sense of being valued as an individual.
  - **Equality:** Organisations should be able to show they have treated individuals fairly in the way they access and receive services, regardless of race, sex, faith, sexual orientation, gender reassignment, marital status, pregnancy, or disability.

- **Dignity:** Organisations should demonstrate they have provided care that supports and promotes a person's self-respect and sense of worth, with regard for their individual circumstances. The fact that some individuals will have a limited ability to understand their circumstances should never diminish the organisation's treatment of them.
- **Autonomy:** Organisations should ensure that individuals are supported to make free and informed choices about how they are treated. This means organisations should provide clear, sufficient and relevant information and opportunities to enable individuals to participate in decisions relating to their care.

## 16. Inter-Agency Joint Working Protocol

- 16.1 Each agency should have a joint working protocol to ensure that both customers and officers are aware of the process involved should a complaint cover more than one agency. This protocol sets out the steps in the decision-making process about which organisation should take the lead in handling the complaint. It also sets out the steps necessary to gain permission to share information and inform the customer throughout the process. (See *Appendix 1b: Protocol for Handling Multi Agency Formal Complaints*).

## 17. Self-Funded Services

- 17.1 At present, those who purchase care under a privately arranged care arrangement and who need to raise a complaint, have no redress to the Council for this service. In this instance, they would need to access the provider's own complaint procedure.
- 17.2 Adults who fund and arrange their own care will have access to an independent complaint review service provided by the Local Government and Social Care Ombudsman (LGSCO).
- 17.3 The Children & Adults Complaints Team may provide **informal** advice to self-funders in how best to pursue their complaints.
- 17.4 Service users that are deemed eligible to contribute 100% of the cost of their service, would have recourse to the statutory complaints procedure, but only if their care is arranged and administered by the Council.

## 18. Complaints in Relation to Commissioned Services

- 18.1 Complaints in relation to services commissioned by the Council to meet its social care functions should be forwarded to the Children & Adults Complaints Team.
- 18.2 The Children & Adults Complaints Team, with the complainant's consent, will liaise with the contracted provider, to ensure the complaint is investigated thoroughly and response timeframes are adhered to.

18.3 *Appendix 1c: ASC Statutory Complaints Guidance for Provider Investigating Managers* provides details of the process to be followed by contracted providers.

## **19. Mediation / Alternative Dispute Resolution (ADR)**

- 19.1 Formal Mediation or ADR can be used at all stages of the complaints process and provides all those involved with the time and space to listen to each other and their expectations, with a better chance of focusing on the solutions rather than the problem.
- 19.2 Mediation must be agreed by the Customer Relations Manager, the complainant and the responsible service area. Once agreed, mediation will be arranged by the Children & Adults Complaints Team.

## **20. Recording and Monitoring Complaints**

- 20.1 The Children & Adults Complaints Team have responsibility for recording and monitoring all complaints through to conclusion. Each complaint will be allocated a unique reference number and a named person within the Children & Adults Complaints Team, who will be tasked with monitoring and tracking the complaint through to conclusion.
- 20.2 The Children & Adults Complaints Team will liaise with investigating managers on a regular basis aiming to ensure that complaints are thoroughly investigated, and a response is provided to the complainant within the agreed timeframe.
- 20.3 The Children & Adults Complaints Team will record the complainant's contact details, the service user's details, the nature of the complaint and each individual issue, the name of the Investigating Manager, the response timeframe, the name of the Responsible Person and the complaint outcomes. This data will be used to produce regular monitoring reports.

## **21. Learning from Complaints**

- a. Complaints and compliments are a valuable way of learning and will be used to inform service improvements. The Children & Adults Complaints Team will be responsible for ensuring that learning forms are sent to all investigating managers and will liaise with managers to track this learning through to implementation.
- b. On a quarterly basis, the Children & Adults Complaints Team will provide a summary of learning to Directorate Leadership Team (DLT). This summary will include the number of learning forms sent out and completed per team, along with the area of learning identified, e.g. Improve Communication.

- c. The Children & Adults Complaints Team will provide a detailed summary of learning as and when requested by Adult Social Care. This can provide more detailed information, including the specific learning actions identified and whether or not the learning has been implemented. Reports can also include any trends identified or if the learning is team specific / service specific or if it can be applied to the organisation as a whole.
- d. On an annual basis, the Children & Adults Complaints Team will provide a summary of all learning that has been implemented in the previous 12 months, in order to identify the impact that the learning has had on practice and what has changed as a result. The summary will be provided to team managers and the results collated and fed back to DLT.

## **22. Compliments**

- a. Compliments are positive feedback from service users / their representatives / other professionals and are a valuable tool for learning, as they provide information about which services people value and why. This is an opportunity to share best practice to ensure that services learn and develop.
- b. Compliments submitted directly to teams should be forwarded to the Children & Adults Complaints Team, at which point they will be registered and acknowledged.
- c. Compliment data will be included in quarterly monitoring reports to DLT and in the annual report outlined at 23.3 below.

## **23. Reporting Complaints Activity**

- a. The Children & Adults Complaints Team will provide, on a monthly basis, a summary of active complaints to senior management in Adult Social Care.
- b. The Customer Relations Manager will oversee the production of quarterly reports to DLT, containing details of complaint activity for the quarter, including the number of new complaints, number of closed complaints, outcome of complaints closed, response timeframes and any learning identified. The report will highlight any trends in complaints received and outcomes, as well as response timeframes and will also show any Local Government & Social Care Ombudsman (LGSCO) complaints received and their outcomes.
- c. The Customer Relations Manager is responsible for overseeing the production of the Annual Complaints Report, as defined in Section 17 of the Adult Social Care Statutory Complaints Policy.
- d. The Annual Report is presented to the Director for Adult Social Care for approval, before being presented to the appropriate Scrutiny Board and Cabinet Member. The report will subsequently be a published document, available to anyone who requests a copy and will, therefore not contain any references to specific people that may breach confidentiality. This report is also made available on the Council's website.

## **24. Local Government & Social Care Ombudsman (LGSCO)**

- a. The LGSCO receives and investigates complaints of maladministration by councils and operates separately from the Council's complaint procedure.
- b. Any complainant can approach the LGSCO directly at any time. However, the LGSCO will, in most instances, refer the complainant back to the Council if the complaint has not completed the complaints process or the Council has not had the opportunity to respond initially.
- c. The LGSCO encourages local settlement of complaints wherever possible.
- d. The LGSCO can be contacted at:

The Local Government & Social Care Ombudsman

PO Box 4771

Coventry

CV4 0EH

Telephone: 0300 061 0614

Web page: [Contact us - Local Government and Social Care Ombudsman](#)