

Appendix 1

Relationship with Other Procedures

1. Working with Other Procedures

Devon County Council's Adult & Community Services Directorate has other policies and procedures which have a significant bearing on the complaints procedures, for example:

- Protection of vulnerable adults;
- Court proceedings;
- Grievance procedures; and
- Disciplinary procedures.

It is important that the relationships between policies and procedures are clear and that their content is consistent. Policies and procedures may also need to link within the NHS and other agencies contributing to services. For example, NHS staff may become involved in residential homes and Protection of Vulnerable Adults work. Other agencies who may be involved in care services include, housing authorities, voluntary and private domiciliary organisations, the Probation Service and the Police.

It is essential that the Complaints Manager identifies at the outset complaints where other procedures are relevant and appropriate action is taken. The Complaints Manager should provide advice to staff until any concurrent investigations are resolved.

There should be effective coordination between the agencies involved and complainants should be provided with clear information as to how inter-agency matters will be dealt with.

In considering a complaint which is subject to concurrent investigation under one of the above procedures, local authorities should be careful not to do anything that may compromise or prejudice the other investigation. In such circumstances, the Complaints Manager should be mindful of developments and liaise closely with other staff.

1.1 Grievance and Disciplinary Procedures

Complaints procedures are kept separate from grievance procedures (which concern staff issues, i.e. conditions of service) and disciplinary procedures (which apply to the actions of staff in relation to failures to comply with job descriptions).

Where a complaint contains an element of grievance or discipline, the Complaints Manager should keep the complainant, and staff informed about progress in handling both the complaints and the disciplinary or grievance elements as appropriate and with regard to normal staff confidentiality.

Staff can feel confused and intimidated by systems which reinforce implications of culpability if a member of staff is named. It is important for managers and investigating officers to reassure staff that they should not be

held personally liable for carrying out resource decisions or allocations of service, according to the authority's criteria. In many cases they will have been named because they are the person best known to the user or carer.

1.2 Concurrent Investigations

The handling of a complaint may coincide with action under the disciplinary procedures or on occasion, Police investigation.

The Complaints Manager should ensure that alternative procedures can run concurrently with the complaints procedure. For example, a complaint about a deficiency in service may also bring to light issues of a disciplinary nature. If there are still substantive issues around the deficiency in service to be resolved, the fact that disciplinary procedures commence is not a reason to stop the complaints process carrying on in respect of the service issue (unless to do so would compromise or prejudice the concurrent investigation).

Decisions on how to proceed should be based on individual cases. Local guidance may be necessary on how priorities are identified and decisions made in relation to them. Local guidance should draw clear distinctions between a complaint, a grievance, legal proceedings and the reporting of a matter that is a criminal offence. The Complaints Manager will need to consider how best to inform service users which procedure is being applied in their case and why.

The Complaints Manager should also make clear to staff (and trades unions and professional associations) that consideration of the complaint is separate to any necessary action under the grievance or disciplinary procedures. In such cases, staff should be kept informed of progress of the complaint, but they should not be given any details that would breach confidentiality or work against the complainant's best interest.

The Complaints Manager has discretion not to commence the complaints investigation where to proceed with it would compromise a concurrent investigation under another procedure. However, the complaints investigation should start or resume once the concurrent investigation is discontinued or completed. Where the Complaints Manager decides not to consider a complaint in this circumstance he must notify the complainant of the extent to which the complaint will not be considered and the reason why.

1.3 Cross-Boundary Issues

A potential area of confusion can arise around boundaries between the Directorates responsibilities and those of other bodies delivering services on behalf of the authority. This can happen, for example, where the service commissioner provides domiciliary care through a private agency, and the service user wishes to complain about aspects of this service.

Boundary issues can occur among:

- Registered homes;
- Domiciliary Care Services;
- Contracted agencies and multi-agency services;

- Adult Placement Schemes;
- Social work reports submitted to Court;
- Safeguarding Adults;
- Multi-agency Health Service packages; and
- Single or joint Assessments

It is important that the Complaints Manager is alert to cross-boundary issues and that the Complaints Manager has protocols in place for the successful handling of these complaints. Partner agencies should have appropriate procedures of their own in place for responding to complaints in the first instance.

1.4 Complaints made to the Directorate about an NHS Body

Sometimes a complaint crosses over boundaries between the Directorate and the NHS. Where this happens, people who use services should not have to worry about whom to approach with complaints about different aspects of the service that they receive. Instead, the complaint can be made in its entirety to any one of the bodies involved.

Where the complaint consists of elements relating to both social services functions and services provided by an NHS body, the local authority should, within 10 working days, ask the complainant if he wishes details of the NHS complaint to be sent to the relevant NHS body. If the complainant agrees, the local authority should send the NHS complaint to the NHS body as soon as reasonably practicable. It should also advise the complainant which parts of the complaint the local authority is considering.

The regulations place a duty on the Directorate and NHS bodies to cooperate with each other and to agree which of the two bodies takes the lead in handling complaints against them in order to provide a coordinated response. Both bodies should aim to address the complaints as fully as possible by answering questions, providing information and attending meetings in connection with the consideration of the complaint where appropriate.

Ideally, both responses should be completed simultaneously and reports delivered to the complainant together. In order to facilitate this, the two bodies should aim to work to the shorter of their respective complaints procedure timescales. However, this may not always be possible.

The arrangements set out above for identifying a lead body apply only where the matters raised concern both bodies. However, sometimes one body receives a complaint about the actions of another. This can happen where the complainant does not understand which organisation is responsible for which service, but can also happen where there is an important issue of trust – someone might, for example, speak to a social worker he trusts about his concerns over his treatment by the NHS, or approach a District Nurse about a carer employed by the Directorate or an agency commissioned by the Directorate to deliver a service.

Where local authorities receive a complaint that is about services provided by an NHS body, and is subject to consideration under the National Health Service (Complaints) Regulations 2004, they should, within 5 working days, ask the complainant if he wishes the NHS complaint to be sent to the NHS body. The complaints manager should, if the complainant agrees, then forward the complaint to the NHS body as soon as reasonably practicable. Any doubts or disagreement over which body is responsible for handling the complaint should be resolved in a timely manner before the complaint is despatched. This decision, and the action taken, should then be recorded in writing.

Services may be delivered by one body acting on behalf of another. For example, a local authority may deliver NHS functions delegated to it under Section 31 of the Health Act 1999. In such cases, it remains the NHS body's responsibility to receive complaints about the delegated service. However, no matter where the responsibility for receiving complaints rests, the local authority delivering the delegated service should make every effort to resolve the problem anyway. This may negate the need for the service user to use the NHS complaints procedure. However, if the service user wishes to make a complaint, he should be given information on how to access the complaints procedure of the NHS body that has delegated the service.

2. Complaints Involving Regulated Services

With regard to those services that are regulated (including local authority functions) specific complaints procedures are required under separate regulations and National Minimum Standards under the Care Standards Act, 2000. They are therefore distinct from the complaints procedures for local authorities that are outlined in this guidance. Understandably, confusion may sometimes exist about which complaints procedure is appropriate for specific sets of circumstances.

Complaints are likely to arise from the following issues:

- Commissioning;
- Placement arrangements;
- Placement monitoring;
- Personal needs reassessments;
- Funding;
- Contractual arrangements;
- Service agreements;
- Service quality; and
- Care regime matters not covered by regulations and National Minimum Standards.

If the Complaints Manager receives such a complaint, he should normally direct it to the service provider. Where the local authority is responsible for the original assessment of need that led to a placement and associated funding, then the complainant should, in most instances, have recourse to the local authority's complaints procedure. However, access to the local authority's complaints procedure does not apply to people with private self-funding arrangements.

The complainant should also feel able to make a single complaint to the provider or the local authority and have this considered by the relevant parties as necessary. The Complaints Manager should therefore ensure good communication with all other parties, and organisations should discuss the details of the complaint to ensure a seamless response.

It is possible for someone to have two complaints ongoing at the same time. One to a care home, for example, about how it meets the regulations and/or Standards, and one to the local authority about how it has fulfilled its function in relation to the provision of services to meet the needs of the individual.

The local authority has responsibilities in terms of fulfilling its social services functions, and the regulator has the responsibility for ensuring that regulated providers (e.g. care homes) meet the appropriate regulations and National Minimum Standards.

Where local authorities receive a complaint that is about services provided under the Care Homes Regulations 2001, they should, within 5 working days, ask the complainant if he wishes details of the complaint to be sent to the registered person. If the complainant agrees, the local authority should send the complaint to the registered person as soon as reasonably practicable. Details of the relevant parts of the complaint should also be sent to the local authority's care management team and the contract monitoring team. Any issues of safeguarding and potential vulnerability of the user should be confirmed by the Complaints Manager with the service user before releasing the complaint to the relevant care service provider.

Where the complaint consists of elements relating to both social services functions and services provided under the Care Standards Act 2000, the Complaints Manager should co-operate with the provider to ensure that the complainant receives a coordinated response dealing with all aspects of the complaint. The local authority should, within 10 working days, ask the complainant if he wishes details of the Care Standards element of the complaint to be sent to the registered person. If the complainant agrees, the local authority should send the Care Standards element of the complaint to the registered person as soon as reasonably practicable. It should inform the complainant when it has done this as well as which element of the complaint the local authority is considering.

If the complainant considers that he has suffered an injustice as a result of any significant delay or failure by the Directorate to refer the complaint to the registered person, he is entitled to raise concerns to the Customer Services Manager. The Complaints Manager should then deal with this matter under the appropriate procedure.

The Complaints Manager should also be alert to Safeguarding Adults issues with regard to complaints relating to these services, as the customer groups are likely to be particularly vulnerable. The Complaints Manager has discretion to suspend the complaints process while the Safeguarding Adults

process is ongoing. The complainant may wish to reinstate the complaint after the conclusion of any consideration under Safeguarding Adults regulations and should be informed of the right to do so. However, this may not be a reason to stop the complaints process carrying on in respect of any other element of the complaint, unless to do so would compromise or prejudice the Safeguarding Adults process.

2.1 The role of the Regulator

The following information sets out the role and relationships of the regulator.

The Care Standards Act 2000 and the Health & Social Care (Community Health & Standards) Act 2003 define the role of the regulator in social care (currently the Commission for Social Care Inspection). The regulator's role is to ensure compliance with the regulations and associated National Minimum Standards (NMS).

The Complaints Manager should establish good communication with the regulator to ensure clarity in handling complaints involving regulated care services. Assumptions should not be made that a matter of complaint is the responsibility of one agency or another without agreeing the respective lines of accountability.

The regulator is not a complaints agency and has no statutory duties or powers for the investigation of complaints about either care services or local authority social services. It can only consider matters relating to the provider's compliance with regulations and National Minimum Standards. It should also not be seen as a mediator between care service providers and those commissioning or using a service.

Where the regulator receives information indicating a concern, complaint or allegation about a care service, it undertakes an assessment of that information and the accumulated evidence about the care service to determine the nature of its response. In the case of concerns and complaints, the regulator normally refers the matter to the care service provider and/or commissioning agency (where applicable). This highlights the importance of complaints procedures for both care services and the Directorate.

However, in certain circumstances the regulator may undertake direct enquiries using its powers of inspection. This will most commonly be where there has been a breach of regulations indicating the need for the regulator to issue recommendations and requirements, or to take other enforcement action.

3. Building a seamless service with other complaint procedures.

Where a complainant has other related complaints that do not fall within the statutory procedure, the local authority may wish to consider whether there are advantages in accepting these into a single investigation through this procedure. If the local authority feels that would be beneficial it should apply the following guidance.

The Complaints Manager responsible for Adult Community Services should liaise with other staff as relevant. These members of staff should agree who will take the lead, to make sure that the complainant is kept informed and, wherever possible, gets a single reply that covers all aspects of his complaint.

The local authority should also respond promptly by meeting the shorter of whichever timescales apply and should ensure that this process is not confusing for the complainant.

4. Court Orders

The procedure outlined in this guidance is not an appeals procedure. People wishing to appeal against Court orders should approach the Court. However, dissatisfaction about the Directorate's management or handling of a complainant's case, even where related to a Court order, may be appropriately considered by the complaints procedure, for example, conduct of social work staff involved in Court procedures. It is for the local authority to identify whether these circumstances might be considered under this procedure. The complainant should also be informed that the complaints procedure cannot overturn a Court decision.

The local authority should also consider whether any possible complaint relating to records used in Court may also constitute a challenge to accuracy of the records it holds under the Data Protection Act.