



Devon County Council

Adult & Community Services Directorate

Complaints & Representations Policy

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1. Introduction

This policy document provides the policy framework for the Directorate in operating the Adult Social Services Complaints and Representations Procedure. This document is supplemented by further operating procedures, instructions and guidance.

2. Legislative Background and Department of Health Regulations

The ***Health and Social Care (Community Health and Standards) Act 2003*** provides for regulations to be made about the handling and considering of complaints about the discharge by a local authority of its social services functions.

These regulations are defined in ***The Local Authority Social Services Complaints (England) Regulations 2006*** replacing the Complaints Procedure Directions 1990 made under section 7B(3) of the Local Authority Social Services Act 1970.

The regulations are accompanied by guidance contained in ***Learning from Complaints – Social Services Complaints Procedure for Adults, July 2006***.

It is recommended that this guidance is read alongside other appropriate guidance and standards including:

- ***No secrets – Guidance on developing and implementing multi-agency policies and procedures to protect vulnerable adults from abuse***, the Department of Health, and the Home Office, 2000.
- ***National Minimum Standards***, published by the Secretary of State under the Care Standards Act 2000.
- ***Performance Assessment Standards***, published by the Department of Health.

The Care Standards Act, 2000 requires regulated social care providers to have their own complaints procedures, which are themselves subject to regulations and National Minimum Standards. The Learning from Complaints, July 2006 guidance is not applicable to procedures established under those regulations and standards, but it does clarify the boundary issues that have caused confusion between the two complaints procedures.

The new regulations introduce a duty for local authorities to cooperate with the National Health Service in the coordination of complaints spanning both health and social care. The National Health Service (Complaints) Amendment Regulations 2006 (1st September 2006) include within them a duty to co-operate with Local Authorities in the area of statutory complaints which crossed boundaries.

3. Our Aims and Objectives

Aims

1. To ensure services are developed and improved by listening to and learning from the people using them.
2. To ensure that our complaints and representations procedure is used as a positive aid to inform and influence service improvements, not a negative process to apportion blame.

3. To ensure any dissatisfaction or concern with a service is resolved swiftly, and, wherever possible, by the people who provide the service locally.

Objectives

1. Procedures are clear, accessible and easy to use for service users, their carers or representatives and staff.
2. Service users are treated with dignity and respect, are not afraid to make a complaint, and have their concerns taken seriously.
3. Ensure the process is fair, is undertaken in an even-handed way, and there is adequate support for all people involved.
4. People who make a complaint receive a timely response (without delay).
5. Any concerns about the protection of vulnerable adults are referred immediately to the relevant adult & community services team or to the Police.
6. The procedures are linked and coordinated with other relevant Statutory, County Council and National Health Service regulations & procedures.
7. Service user's rights to access other means of redress are safeguarded, such as the Local Government Ombudsman (LGO) and the Commission for Social Care Inspection (CSCI).
8. The handling and outcomes of complaints are monitored and regularly reported, and are a priority within the Directorate's performance management and improvement of its services.
9. Learning from complaints is positively and actively used in staff development and training, and informs the ongoing review of the Directorate's policies.

4. What is a Complaint and a Representation?

Representations may not always be complaints; they might also be positive remarks or ideas that require a response from the local authority. Enquiries or comments about the availability, delivery or nature of a service which are not criticisms are likely to constitute representations; for example, people should be able to put forward ideas or proposals about the service they receive, or the establishment they live in, without having this framed as a complaint.

Representations may be defined as "a comment about the County Council or Government Policy, allocation of resources, the nature or availability of services".

Examples may include:

- Charging Policies
- How much resource is allocated to particular services, and as a result the delays in receiving services
- How services are commissioned and the transfer of services to the independent sector
- Eligibility Criteria

A Complaint may be generally defined as "**an expression of dissatisfaction or disquiet about the actions, decisions or apparent failings of a local authority's adult's social services provision which requires a response**". The Directorate will use this as a working guide rather than a rigid definition, and if it is possible to resolve the matter immediately there may be no need to fully engage the complaints procedure.

5. What May be Complained About?

A complaint may arise as a result of many things relating to statutory social services functions. These functions are set out in Section 1A and Schedule 1 of the Local Authority Social Services Act (1970). Complaints may relate to the following:

- An unwelcome or disputed decision;
- Concern about the quality or appropriateness of a service;
- Delay in decision making or provision of services;
- Delivery or non-delivery of services including complaints procedures;
- Quantity, frequency, change or cost of a service;
- Attitude or behavior of staff;
- Application of eligibility and assessment criteria;
- The impact on an individual of the application of a local authority policy; and
- Assessment, care management and review.

However, this is not an exhaustive list and the Directorate's Complaints Manager will seek legal advice as necessary.

It is important to note that **Care Standards complaints are not covered by this procedure**. This means a complaint relating to services provided by an agency or establishment of which a person ("the registered person") is required to be registered under section 11 of the Care Standards Act 2002.

However, with complaints about regulated services under the Care Standards Act 2000 where such services are delivered on the Directorate's behalf or through an internal service that is regulated, the Department will need to satisfy itself that the complaint can be considered under this procedure.

Complaints should be considered under this procedure when they are about relevant services provided under any "joined up" arrangements that the local authority may have with third party providers. This includes those that fall outside the formal arrangements under Section 31 of the Health Act 1999; for example, where a person's assessed needs are met by a contract with another public body, agency or voluntary body. Such arrangements do not absolve the authority from their duty of care.

Where social work information or a social work report has been used in Court proceedings, the complainant can make a complaint about the report (i.e. its quality/accuracy) distinctly and separately to the subsequent actions of the Court. If this complaint is upheld, the local authority should advise the complainant what action it proposes to take with regard to the Court action.

6. What Cannot Be Complained About

A complaint cannot be made or accepted where:

- The person wishing to complain does not meet the requirements of "who may complain", and is not acting on behalf of such an individual;
- The complaint is not in regard to the actions or decisions of the County Council, or of any body acting on its behalf;
- Where the same complaint has already been dealt with at all stages of the procedure;
- The same complaint has already been investigated by a local commissioner;
- The complaint is unclear, or it is frivolous or vexatious;

- Matters that should be dealt with under other proceedings such as:
 - Disciplinary proceedings;
 - Grievance procedure;
 - Complaints from staff about personnel issues;
 - Complaints that should be considered under the County Council's corporate complaints procedure;
 - Services for which an alternative statutory appeals process already exists; and
 - Criminal investigation where Court action is pending.

A decision made by an Approved Social Worker regarding the making of an application under the Mental Health Act, 1983, is an action taken independently of the County Council and therefore falls outside of the complaints procedure. However, complaints made about the process of the assessment and the Approved Social Worker's actions during the process would be covered by the complaints procedure.

Where the complainant has stated in writing that he/she intends to take legal proceedings in relation to the substance of the complaint, the local authority may wish to restrict his/her access to the complaints procedure. The local authority may wish to apply this restriction only in instances where the complainant has commenced legal action or where the complainant is certain that the complaint cannot be resolved through the complaints procedure, and that he/she intends to take legal proceedings in relation to the substance of the complaint.

7. Who May Complain?

A person is eligible to make a complaint where the County Council has a power or a duty to provide, or to secure the provision of, a service for him, and his need or possible need for such a service has (by whatever means) come to the attention of the County Council. This also applies to a person acting on behalf of someone else.

7.1 Who May Complain on Behalf of Someone Else?

A complaint may be made by a representative acting on behalf of an eligible person where that person, has asked the representative to act on his/her behalf or is not capable of making the complaint him/herself (this includes a person who has died).

Where a complaint is received from a representative acting on behalf of a service user, (i.e. his advocate) the County Council has the discretion to decide whether or not the person is suitable to act as a representative, in the individual's best interests. If the Complaints Manager considers the representative to be unsuitable, he should notify the representative accordingly in writing, explaining why no further action is being taken. The Complaints Manager should discuss this decision with relevant operational managers and take legal advice as appropriate.

7.2 Complaints from Self-Funded Users of Independent Services

Complaints from self-funded users of independent services cannot be considered under the local authority complaints procedures. The Care Standards Act, 2000 requires providers to have their own complaints procedure in place, and these service users can access that procedure.

The Directorate should therefore advise self-funded users of their rights as above.

7.3 Anonymous Complaints

Anonymous complaints should always be recorded and referred to the Complaints Manager in the same way as other complaints. Anonymous complaints fall outside of

the scope of the statutory procedure and it is for the County Council to decide what action it should take. The fact that the complaint is from an anonymous source should not in itself justify a decision not to pursue the matter nor should it rule out referral to other procedures as appropriate.

8. Withdrawing a Complaint

A complaint may be withdrawn verbally or in writing at any time by the complainant. The Directorate must write to the complainant to confirm the withdrawal of the complaint.

9. Time Limit for Making a Complaint

The regulations impose a time limit for making complaints. The Directorate need not consider complaints made more than one year after the date of the event that gives rise to the complaint. In these cases, the Complaints Manager should write to advise the complainant that the complaint falls outside the time limit. However, judgements need to be made on a case by case basis, and there should generally be a presumption in favour of accepting the complaint unless there is good reason against it.

10. Overview of the Procedure

The complaints procedure comprises three stages; however the objective is to achieve resolution at the earliest possible stage within the process (See diagram that follows).

THE PROCEDURE FOR ADULT & COMMUNITY SERVICES COMPLAINTS

Stage 1 – Local Resolution

Complainant brings concerns to the attention of the Directorate and resolution is provided at a local level and the Directorate will make attempts to resolve matters within **10 working days**. However, if an advocate is required or the complaint is complex an extension to **20 working days** is permissible. At this stage and all other stages, the Directorate will consider mediation and conflict resolution.



If not resolved – or if there is agreement for investigation



Stage 2 – Investigation

If the complaint is not resolved at Stage 1, or if there is agreement by the complaints manager for an independent investigation the Directorate will commission such an investigation by an investigating officer which results in the submission of a report to the directorate. This should happen within **25 working days** or in any case within the permissible **extended period of 65 working days**). A senior manager will then consider this report and make a response to the complainant.



If not resolved



Stage 3 – Review Panel

If the complaint is not resolved to the satisfaction of the complainant they can request a Review Panel Hearing. A panel of 3 people (all of whom should be independent of the local authority) meet with the complainant and the Directorate representatives to consider the complaint and remaining issues of dissatisfaction. Following this Hearing the Panel Members will make their recommendations.

The Panel is required to record its findings of the meeting and to notify the complainant and the Directorate in writing within **5 working days**.

The Directorate must send its response to the Panel's recommendations to the Complainant (and other participants as necessary) within **15 working days** of receiving the Panel's report.



If not resolved



Local Government Ombudsman

If not resolved satisfactorily the complainant can refer his/her complaints to the Local Government Ombudsman (note that complainant can approach the Local Government Ombudsman at any stage). The contact details for the **Local Government Ombudsman** are: P.O.Box 4771, Coventry, CB4 0EH Telephone: 0845 602 1983, SMS: Text: "call back" to 07624 804323, e-mail: advice@lgo.org.uk.

11. Recording

Local authorities must monitor the complaints arrangements that they have in place to ensure that they comply with the regulations. They must keep a record of:

- Each complaint received;
- The outcome of each i.e. the decisions made in response to the complaint and any action to be taken; and
- Whether there was compliance with the time limits.

The overall purpose of recording is to enable:

- Service users to see that their concerns and suggestions are being dealt with and that a thorough and fair investigation has taken place;
- The organisation to demonstrate that complaints are taken seriously and how they are resolved; and
- Feedback from complaints to lead to improvement in service planning and delivery.

12. Making complaints information accessible

For service users with difficulty reading, writing or speaking English, the local authority should identify a suitable method of communication so that these users can express their complaints in full. It is established best practice to meet the complainant to explain any report in person. Ensuring that the complainant understands the report as far as is possible, might also involve the provision of information (including responses to complaints) in large print, translation or in other formats.

For people with special needs, such as learning disabilities, sensory or physical impairment or with mental health problems and for people from specific community groups, the Complaints Manager should liaise closely with the authority's specialist teams and relevant voluntary bodies to ensure that the complainant is able to express their complaint in full (See also Section 3.4 on Providing Advocacy and Support). The complainant should have confidence that the authority can provide as thorough a response as for any other service user.

13. Diversity monitoring

Local authorities should, where possible and appropriate, ensure that they ask the complainant to define their own ethnic origin, gender, any disability and age. It is important that authorities seek to identify for the complaints procedure:

- An accurate picture of use by ethnic origin, age, gender, sexual orientation and disability;
- Where take-up or use could be improved or reviewed;
- A base-line for planning, target-setting and measuring change;
- That it is accessible equally to all sections of the community;
- Whether any distinct needs exist amongst members of minority groups, for which special provision may be necessary; and
- That it does not inadvertently discriminate against any particular group.

14. Monitoring and quality assurance

Local authorities should monitor the operation and effectiveness of their complaints procedure as well as how information about complaints is being used to improve services and delivery. Local authorities should ensure that their quality assurance systems include a cycle of planning with outcomes fed back into operational delivery. All local authorities should provide a system for:

- The dissemination of learning from complaints to line managers;
- The use of the complaints procedure as a measure of performance and means of quality control; and
- Information derived from complaints to contribute to practice development, commissioning and service planning.

Monitoring should also highlight how effective communication is within the authority and to all people who are receiving their services, where staff training is required and whether resources are targeted appropriately. This should be fed back into the system in order to facilitate and improve policy and practice.

15. Annual Reports

Local authorities are required to publish an Annual Report, covering the council year. The Annual Report should draw upon the information already gathered for recording purposes. However, the Annual Report is a separate requirement and should not contain personal information that is identifiable about any individual complainant.

The Annual Report should be arranged by the Complaints Manager and should provide a mechanism by which the local authority can be kept informed about the operation of its complaints procedure. The report should be presented to staff, the relevant local authority committee and should be made available to the regulator and the general public. It should provide information about:

- The number of complaints at each stage and any that were considered by the Local Government Ombudsman;
- Which customer groups made the complaints;
- The types of complaints made;
- The outcome of complaints;
- Details about advocacy services provided under these arrangements;
- Compliance with timescales, and complaints resolved within extended timescales as agreed;
- Learning and service improvement, including changes to services that have been implemented and details of any that have not been implemented;
- A summary of statistical data about the age, gender, disability, sexual orientation and ethnicity of service users; and
- A review of the effectiveness of the complaints procedure (see section 15 on Monitoring and Quality Assurance).

16. Record Management and Data Protection

All functions of the complaints procedure must adhere to the requirements of the Data Protection Act, 1998 and the Freedom of Information Act, 2000. The Directorate will ensure that any personal information obtained in relation to a complaint is only used for that purpose.

Section 119 of the Health and Social Care (Community Health and Standards) Act 2003, makes an amendment relevant to the complaints functions to Section 31 of the

Data Protection Act 1998. This is that people charged under the regulations with consideration of complaints are exempt from the subject information provisions of the Data Protection Act 1998 to the extent to which application of these provisions would prejudice considering the complaint. The subject information provisions of the Data Protection Act allow for individuals to obtain information which is held on them by others. Section 31 of the Data Protection Act provides an exemption from these provisions by reference to a number of different categories of regulatory function exercised by public bodies.

17. Alternative Dispute Resolution (ADR)

Nothing in this procedure precludes either the complainant or the Directorate suggesting Alternative Dispute Resolution. If agreed by both complainant and Complaints Manager, the Directorate should explore this option e.g. mediation.

However, entering into ADR should not restrict the complainant's right to use the complaints procedure and to request a panel hearing provided it is within the 20 working day timescale. Once the final date of the particular resolution process is agreed (i.e. following the final mediation meeting) and should the complainant decide that he wants to invoke his right to a Review Panel, he can terminate ADR any time.

18. General Principles of Redress

Under Section 92 of the Local Government Act 2000, the County Council is empowered to remedy injustice arising from maladministration. Remedies should include, but are not restricted to, financial redress.

The Directorate will consider each case on its merit and any application of remedies should:

- Be appropriate and proportionate to the injustice;
- Put the complainant in the position he would have been in except for the fault;
- Consider financial compensation, where the above is not possible
- Take into account the complainant's views and desired outcomes; and
- Take into account the effect of the complainants own actions (i.e. delay).

19. Deferring (Freezing) Decisions

If the complaint is about a proposed change to a care plan, a placement or a service, the decision may need to be deferred (frozen) until the complaint is considered. However, care will be taken to ensure deferring a decision will not have a significant detrimental effect upon the mental or physical wellbeing of an individual.

The decision will normally be made through detailed discussion and risk assessment between the Complaints Manager and the manager responsible for the service, within the context of the work being undertaken with the service user.

20. Complaints made to a local authority about an NHS Body

The regulations place a duty on County Council 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.

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

Where there are two responses they 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.

Where the County Council receives 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 will, if the complainant agrees, then forward the complaint to the NHS body as soon as reasonably practicable.

Services may be delivered by one body acting on behalf of another. For example, a County Council 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.

21. Complaints about an Independent Provider

Access to the Directorate's complaints procedure does not apply to people with private self-funding arrangements. The Care Standards Act, 2000 requires providers to have their own complaints procedure in place, and these service users can access that procedure.