

This Policy covers the Procedure In making a Complaint, raise a Concern, or to make a Compliment to Adult Social Care

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Adult Social Care & Health Department

Adult Social Care Services – 1st April 2009

This Policy covers the Procedure in making a Complaint, Compliment or to raise a Concern to Adult Social Care

The following documents have been used in consultation:

The Local Authority Social Services and
National Health Service Complaints (England) Regulations 2009

Direct Link:

http://www.opsi.gov.uk/si/si2009/uksi_20090309_en_1

Listening, Responding, Improving – A Guide to Better Customer Care
(Department of Health, 2009)

Direct Link:

http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/dh_095408

Safeguarding Adults Policy and Procedure – September 2008

Direct Link:

<http://www.bracknell-forest.gov.uk/berkshire-safeguarding-adults-policy-and-procedures.pdf>

Care Quality Commission – Guidance for inspectors
How we manage concerns, complaints and safeguarding information (CCS)

Direct Link:

www.cqc.org.uk

Records Management Policy

Direct Link:

<http://www.bracknell-forest.gov.uk/records-management-policy.pdf>

Unreasonably Persistent Complainants and Unreasonable Complainant
Behaviour Policy – January 2010

Direct Payments Information Pack – 2009

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Introduction to the Complaints Procedure

1. Background

New regulations and guidance on the joint social care and health complaints procedure were published on 27th February 2009 and came into force on 1st April 2009. This procedure is based on the Department of Health's guidance, 'Listening, Responding and Improving' which supports the statutory requirements for the handling and consideration of complaints. Its intention is to allow us more flexibility to respond to complaints and to encourage a culture that uses people's experiences of care to improve the service we provide. To achieve this we aim to look at people's needs rather than the process of dealing with the complaint.

2. Who does this procedure apply to?

This procedure applies to all staff within Adult Social Care Services; the objective is to ensure that:

- ❖ All complaints are dealt with efficiently.
- ❖ Complaints are properly investigated.
- ❖ Complainants receive a timely and appropriate response.
- ❖ Complainants are told the outcome regarding the investigation of the complaint.
- ❖ An apology is given if required.
- ❖ Appropriate response is taken where necessary.

3. What is a complaint?

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 social care provision which requires a response.

If it is possible to resolve the matter immediately (within 24 hours) there may be no need to engage the complaints process.

Sometimes people may report that they have 'concerns' regarding a social care service, but often want to avoid making a fuss or a formal complaint. By listening to people voicing their concerns, managers can resolve mistakes faster, learn new ways to improve and prevent the same problems from happening in the future.

4. Time Limit for making a Complaint

There is a time limit of 12 months from when the matter being complained about occurred, to when a complaint may be made. After this time, a complaint will not normally be considered.

However, the 12 month time limit does not apply where the local authority is satisfied that the complainant had good reasons for not making the complaint within that time limit and where it is still possible to investigate the complaint effectively and fairly.

5. Timescales

Acknowledgement/receipt of complaint must be made within 3 working days.

The standard timescale for a formal investigation will be 3 months.

The standard timescale for the overall life of the complaint will be 6 months,

Otherwise a new plan of action must be agreed/negotiated with the complainant.

6. Who may complain?

Section 5 of the Regulation (2009) requires local authorities to consider complaints made by someone who:

- ❖ Is receiving or had received services from the authority
- ❖ Is affected, or likely to be affected, by the action, omission or decision of the authority
- ❖ A complaint may be made by a representative, acting on behalf of a person who, has died, or is unable to make the complaint themselves because of:
 - (i) physical incapacity, or
 - (ii) lack of capacity within the meaning of the Mental Capacity Act 2005 or
 - (iii) has requested that a representative act on their behalf (proof must be provided in this instance).

A complaint by a representative will not be considered if the authority is satisfied that the representative is not acting in the best interests of the person on whose behalf the complaint is being made. If this occurs, the authority will inform the representative of the reason for this decision in writing.

If it is considered that a complaint is outside of these regulations, the complainant will be notified in writing of this, outlining how this decision was reached.

7. What may be complained about?

Under regulation 6, the local authority has a duty to use these procedures to handle complaints which are received on or after 1st April 2009 and which relate to its social services functions, or any function under arrangements made between it and an NHS body in relation to the exercise of the health-related functions of a local authority.

8. On receipt of a complaint.

A complaint may be received anywhere and by any person in the department. Acknowledgement of receipt for the complaint should be made within 3 working days. This may be done either verbally, in writing or electronically.

The more serious the complaint, the more important it is to ensure that the investigation is seen as fair and transparent, with a sufficient degree of independence to be credible.

9. What is excluded from the Complaints Procedure?

Under Regulation (2009) 8, the following complaints are not to be dealt with under the statutory complaints procedure:

- (i) Complaint by another organisation.
- (ii) Complaints by an employee of the local authority about any matter relating to that employment.
- (iii) Complaints that are the same as a complaint already resolved outside of the complaints procedure, i.e., which has been made verbally and has been resolved to the complainants satisfaction within 24 hours that the complaint was made.
- (iv) Complaints where the subject matter has previously been investigated under these procedures (or procedures in operation prior to this procedure).
- (v) Any complaint which is being, or has been, investigated by the Local Government Ombudsman.
- (vi) Complaints arising out of the alleged failure to comply with a request for information under the Freedom of Information Act 2000.

- (vii) Complaints arising out of the alleged failure to comply with a request for information under the Data Protection Act 1998.

10. Direct payments

It is important to understand the difference between complaining about how the direct payments scheme is organised and dealing with problems you may have with an employee or service provider. If there are problems around the employment of the carer, this is not something that the statutory complaints system can be used for, but advice can be obtained from the Direct Payments Team. If problems occur regarding the service provision, then the complaint needs to go direct to the service provider involved.

However if your complaint is regarding the information you have been given by the council about direct payments, the way in which the payments are managed by the finance team or about your needs assessment, this can be taken up and looked into within the complaints procedure.

11. Self funded services

At present, under a private care arrangement, service users who need to raise a complaint, have no redress for anything that has gone wrong except by using their provider's own complaints procedure.

With effect from October 2010 adults who fund their own social care will have access to an independent complaints review service provided by the Local Government Ombudsman (LGO).

Once the Care Quality Commission completes its new registration programme of providers, the LGO will be able to review complaints about privately purchased care services made by users, their family or others affected by the actions of a regulated adult care provider.

12. Councillors or MPs acting as an Advocate

Councillors or MPs cannot make a complaint using the statutory complaints procedure on behalf of their constituent. However, they are able to raise a concern or make a representation acting as an advocate and the council will reply on this basis. These are logged and recorded in the Compliments, Concerns and Complaints Annual Report for Adult Social Care as 'MP Enquiries'.

Third Party information will not be disclosed in accordance with the Data Protection Act 1998.

13. Complaints relating to regulatory standards - Care Quality Commission (CQC)

Where appropriate CQC can use their powers of inspection to undertake enquiries to enable them to make a judgement as to whether the provider is complying with the regulations. They will be clear with people sharing information about social care services, that they have no statutory powers to investigate complaints.

Their guidance has 4 main points:

- ❖ The responsibility for handling concerns and complaints about their service rests with the provider.
- ❖ We consider the fitness of the provider's own procedures for handling concerns and complaints.
- ❖ Other procedures may provide a better route for resolving particular kinds of complaint (e.g. the funding authority's complaints procedure)
- ❖ Safeguarding issues are the responsibility of local authority co-ordinated protection services.

14. Handling complaints involving more than one service (see appendix 1)

Health Service: Sometimes a complaint will cross the boundaries between a local authority and an NHS body. There is a protocol in place which enables the local authority and the NHS to co-operate and co-ordinate the handling of the complaint, to ensure the complainant receives a co-ordinated response to their complaint.

The joint local protocol outlines the duties of both organisations to:

- ❖ Provide the other organisation with information relevant to the complaint which is reasonably requested.
- ❖ Agree which of the two bodies will take the lead in co-ordinating the complaint and communicate with the complainant - there are many factors involved in making this decision, such as:
 - (i) Which organisation has the most serious complaints about it?
 - (ii) Whether a larger number of the issues in the complaint relate to one organisation compared with the other organisation.
 - (iii) Who originally received the complaint (if the seriousness and number of complaints are about the same for each one)
 - (iv) Whether the complainant has a clear preference for which organisation takes the lead.

Social Care provider/Voluntary Agency complaints

Where the Council has commissioned the service for a client, the provider will also have a complaints procedure of their own, and complainants should first use this procedure (the contracts team will also be notified). The Complaints Manager will obtain consent for details of the complaint to be sent to the relevant adult social care provider – this will ensure:

- ❖ All provider complaints/concerns brought to Bracknell Forest Council's attention will be logged. Information will be sent to the provider and they will be asked to respond.
- ❖ If the complaint is in part the responsibility of Bracknell Forest Council, the Complaints Manager will notify the complainant which part of the complaint will be handled by the Council.
- ❖ The Complaints Manager will work with the relevant social care provider for the purpose of ensuring the complainant receives a co-ordinated response.
- ❖ If the complainant is not satisfied with the response from the commissioned services or has reasonable reasons for not taking the complaint to the commissioned service, the complaint may, at the Complaints Managers discretion be taken through the complaints process.

15. Complaints which involve Safeguarding Adults (Adult Protection)

There are sometimes occasions when a complaint may highlight a possible safeguarding issue.

Such instances should be recorded as a complaint by the Complaints Manager, but then referred to be investigated under Safeguarding Adults procedure. If the Safeguarding Adults procedure is activated then this takes priority and action in relation to any complaint would cease until the Safeguarding procedure is complete. The Complaints Manager will inform the complainant in writing in this event.

16. Persistent and unreasonable complainants

Despite best efforts to resolve a complaint, the person making it can sometimes become aggressive or unreasonable

Unreasonable and unreasonably persistent complainants may have justified complaints or grievances but be pursuing them in inappropriate ways, or they may be intent on pursuing complaints which appear to have no substance or which have already been investigated and determined. Their contacts with authorities may be amicable but still place very heavy demands on staff time, or they may be very emotionally charged and distressing for all involved.

It is important to know how to handle circumstances such as these. Adult Social Care will respond in line with Bracknell Forest Council's 'Unreasonably Persistent Complainants and Unreasonable Complainant Behaviour Policy'.

17. Investigation, response, closure

As soon as is practicable after completing the investigation of the complaint, the department must send the complainant a written response by the authorised responsible person. At this stage, the case will have been investigated by an internal investigator.

This process involves writing to the complainant with a written response that outlines:

- (i) An explanation of how the complaint has been considered.
- (ii) The conclusions reached in relation to the complaint, including any matters where remedial action is needed.
- (iii) Confirmation as to whether the department is satisfied that any action needed in consequence of the complaint has been taken or is proposed to be taken.
- (iv) Details of any policies, protocols or guidelines that have or have not been followed properly.
- (v) An apology where appropriate.
- (vi) What has been learnt from the complaint?
- (vii) Sign-off by the chief officer.

If the complainant is unhappy with the response after the internal investigation, an independent investigator may be called upon. In such cases, the complainant will be sent a copy of their final written report. The complainant may, if suitable be offered a meeting to:

- ❖ Discuss the report and any recommendations.
- ❖ Consider any action/remedy to be taken to either resolve the complaint, or improve practice.
- ❖ Discuss the action plan.
- ❖ If the complainant is still not satisfied with the outcome/response, the local authority will provide them with details of how they can contact the Local Government Ombudsman.

18. Local Government Ombudsman (LGO)

The LGO will only investigate a complaint after it has been through the statutory complaints procedure.

Responses to complaints received by the LGO are co-ordinated by the Chief Executive's Department.

Action of the LGO:

- ❖ The LGO will conduct an inquiry and ask the Council to provide a brief background to the case, information about the Council's knowledge and approach to the complaint and any planned actions.
- ❖ Following the local authority's response the LGO will decide whether or not to investigate further.
- ❖ If the LGO decides to investigate, they will advise all parties.
- ❖ The LGO may visit the Council to view the records and interview staff.

- ❖ The LGO will follow a laid down procedure of formal investigation, a report and conclusions, against which there are no rights of appeal except via Judicial Review.

19. Advocates

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

20. Improving – learning from complaints

Complaints provide a vital source of insights about people's experiences of health and social care services, and how those services can improve.

With effect from April 2009 health & social care managers will need to evidence how they use feedback to improve care. By working in partnership with those who provide, support and use a service, we can use people's experiences to:

- ❖ Identify service problems and make improvements to the service we work in.
- ❖ Improve staff learning and enhance professional development.

21. Record Management and Data Protection

All functions of the complaint procedure must adhere to the requirements of the Data Protection Act 1998 and the Freedom of Information Act 2000.

22. Compliments

Our aim is to recognise and acknowledge good practice. Any compliments received are recorded on a central database and should also be passed onto the Complaints Manager. This information feeds into the complaints annual report and helps to give a balanced overview of services.



ADULT SOCIAL CARE COMPLAINT LOG FORM

Date:	Name:	D.O.B:
How do they wish to be addressed?		
Is complaint being made on behalf of someone else? Yes/No If Yes, Name of Complainant:		
Do they have permission? Yes/No		
Is an Advocacy Service Required? Yes / No / Not at Present		
Any access/language issues (i.e. Disabled, Need Interpreter): Yes / No If yes, what are they?		
<u>COMPLAINT(S) Made:</u> (all entries on this form are confidential)		
<u>Desired Outcome(s) / Action Plan:</u>		
Estimated time to Investigate (in Working Days):		
How does complainant wish to be kept informed? Phone / Email / Letter Address for mail to be directed: Email Address: Telephone Number:		
<u>Risk Grading:</u> Low / Moderate / Medium / High / Extreme (See a 'Guide to Better Customer Care' page 18/19)		
Complaint Acknowledged within 3 Working Days: Made Orally/ In Writing		Date:
Complaint forwarded to Chief Officer/Head of Service (name):		Date Details Sent:
Name of Investigating Officer:		

Outcome of Complaint

Name of Person Receiving the Service:	Case no:
Name of Complainant (if different):	Duration of Complaint:
Outcome/Decision: Upheld/Not Upheld/Partially upheld	Response letter sent:
List lessons learnt (if applicable):	
Improvement plan issued: Yes/No/Not Applicable	
Did complainant respond after 10 working days?: Yes/No Comments from complainant noted:	If yes, was Ombudsman then Involved?: Yes/No
Date closure letter sent:	Case closed on:
Closure approved by:	
Designation:	

LEARNING FROM COMPLAINTS FORM

Name of Person receiving the Service: Name of Complainant (if different?): Complaint Upheld: Yes / No / Partially		
What has your department learnt from this complaint?		
Signed: <small>(by Investigating Officer)</small>		Date:
What will you do differently as a result?		
Name of Person Taking Action:		By when:
Completed action:		
Is this action effective? <small>(Can this be proved by objective evidence?)</small>		
Action complete	Signed: <small>(By Chief Officer)</small>	Date:

Appendix 4



Statement of consent for the disclosure of personal records

Complainant's name: _____

Complainant's address: _____

Telephone number: _____

I hereby give my consent for the organisations listed below to share any relevant information in order to complete the investigation into my complaint. I understand that this is likely to include disclosure of my personal records.

_____ (Lead organisation)

_____ (Organisation)

_____ (Organisation)

This will assist the investigation of my joint organisation complaint, which is being co-ordinated by:

_____ (Name of complaints manager)

of

_____ (Organisation)

The reason for, and the implications of, this have been explained to me by the above named complaints manager. I understand that information exchanged as agreed by me must be used solely for the purpose for which it was obtained.

Signed: _____

Date: _____

Once completed, please return this consent form to: The Complaints Manager, Adult Social Care, Bracknell Forest Council, Time Square, Bracknell, RG12 1JD.

Listening, Responding, Improving - BFC Complaints process

