

Complaints: Assurance Framework for Bath and North East Somerset Council's Adult Social Care Duties

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Author(s) Camilla Freeth and Sarah Watts

Owners: Lesley Hutchinson (Head of Safeguarding and Quality Assurance, People and Communities Department)
Mike MacCallam (Senior Commissioning Manager, People and Communities Department)

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1. INTRODUCTION

This document provides a framework for handling complaints, comments, concerns and compliments for organisations carrying out the Council's adult social care duties on its behalf. These duties are:

- The provision of social care advice, information and signposting.
- Community care and carer assessments, support planning and reviews.
- Protection of Property
- Safeguarding.
- Best Interest Assessments under the Deprivation of Liberty Safeguards.

For the purposes of this document the Council considers the definition of a complaint to be:

“An expression of dissatisfaction about the Council's action or lack of action or about the standard of a service, whether the action taken or the service was provided by the Council itself or by an organisation acting on behalf of the Council”

A clear complaints framework in relation to the Council's social care duties is an essential aspect of the Council's quality assurance processes. The aim of this document is to work in partnership with the responsible organisations to ensure that individuals have access to timely, accountable and effective complaints procedures.

This document will also set out how the Council will quality assure responsible organisations' complaint handling processes in relation to the delivery of the Council's social care duties.

2. LEGAL AND REGULATORY REQUIREMENTS

The Council and responsible organisations are expected to apply the relevant legislation and regulatory guidance when responding to complaints, and will use the basic principles of good complaint handling identified by the Parliamentary and Health Services Ombudsman:

- Getting it right
- Being customer-focused
- Being open and accountable
- Acting fairly and proportionately
- Putting things right
- Seeking continuous improvement

The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009, which amended the Community Care Act 1990 statutory guidance, provides the legal framework to be used for handling complaints relating to the Council's social care duties.

The Care Act 2014 came into force on the 1st April 2015. The Act makes it clear that local authorities retain ultimate responsibility for how their functions are carried out and any delegation does not absolve local authorities of their legal responsibilities. When a local authority delegates any of its functions, it retains ultimate responsibility for how the function is carried out. Anything done (or not done) by an organisation carrying out the function is to be treated as if it has been done (or not done) by the local authority itself. This is a core principle of allowing delegation of care and support functions.

The Care Act 2014 guidance states that people using care and support must always have a means of redress against the local authority for how any of its functions under Part 1 of the Act are carried out. Individuals must be able to make their complaint to the organisation to which the local authority has delegated the function; but if this does not satisfy complainants, or they simply choose to complain directly to the local authority, the local authority will remain responsible for addressing the complaint.

3. WHO CAN MAKE A COMPLAINT?

A complaint may be made by an individual who receives or has received services provided or commissioned by the Council. A complaint can also be made by a representative acting on behalf of an eligible person. Representatives may have been asked to act by service-users or may act on behalf of service-users not capable of making complaints themselves (this includes people who have died).

If the responsible organisation has cause to believe that a representative is not acting in the best interests of a complainant, or they are not a suitable person to represent them, then the Council Complaints Manager must be informed at the outset of the complaint. If it is agreed between the Council and the responsible organisation that the complainant is not a suitable representative then the complaint will not be considered. The reasons for this decision will be sent in writing to the proposed representative with a copy sent to the complainant where appropriate.

4. ISSUES THAT FALL OUTSIDE THE COMPLAINTS PROCEDURE

The complaints procedure does not apply in the following circumstances:

- The individual making the complaint does not meet the requirements of those 'who may complain'.
- A complaint made by an employee relating to their employment.
- A complaint made verbally which is resolved to the complainant's satisfaction within one working day.
- The complaint is about actions and decisions which fall outside the organisation's remit and responsibilities.

The complaints procedure does not apply when the complaint is dealt with under different procedures, as in the following cases:

- Personnel issues, such as grievances and disciplinary processes.
- Services for which there is an alternative statutory appeals process.
- Matters which involve a suspicion of fraud or a criminal act
- Issues that override the complaints procedure, such as whistleblowing.

Safeguarding concerns will first be considered under the relevant safeguarding procedures and take precedence over the complaints procedure.

5. ACCESSING THE COUNCIL'S COMPLAINTS PROCEDURE

With the exception of complaints relating to Safeguarding Procedures, the responsible organisation should offer to seek to resolve the complaint through its own procedures in the first instance. However, all complainants should be advised from the outset that complaints can be considered by the Council instead; and that if, they are dissatisfied with the responsible organisation's or the Council's formal response, through the Local Government Ombudsman.

When a complaint is made regarding Safeguarding Procedures this must be brought to the attention of the Council's Complaints Manager and Deputy Safeguarding Lead: Adult and Quality Assurance, from the outset. The nature of the complaint will be considered and a decision made as to whether the complaint will be addressed through the Council's complaints procedure, jointly with the responsible agency or solely by the responsible agency in the first instance. Any complaint made specifically about a decision to make a safeguarding enquiry will be subject to the Council's complaints procedure because this is a Council duty that cannot be delegated to another organisation.

Managers and staff who are responsible for discharging the Council's social care duties may also seek advice/involvement from the Council's Complaints Manager when:

- The complaint relates to the Council's social care duties; and
- They have reason to believe that the organisation responsible for investigating the complaint is not appropriately addressing it; and
- They are unable to resolve the issue directly with the responsible organisation.

6. CORE STANDARDS

Organisations responsible for delivering the Council's social care duties are expected to have an accessible and effective complaints procedure that:

- Focuses on meeting the needs of the individual rather than following inflexible organisational processes.
- Is well publicised and provides information that is straightforward and tailored to meet the needs of the complainant, taking into account any specific communication needs.
- Provides a single point of contact for anyone wishing to make a complaint.
- Welcome feedback from service-users and their representatives.
- Acknowledges the complaint on receipt and offers to discuss the complaint and the nature of the investigation.
- Offers the complainant support throughout the handling of the complaint and advice on the availability of appropriate advocacy support.
- Deals with the complaint efficiently and thoroughly, avoiding unnecessary delay.
- Ensures that the complainant receives a timely response, in accordance with the timescales set out in the procedure or the complaint plan which has been developed
- Provides complainants with a written response to their complaint once it has been dealt with, explaining how it has been resolved and what action has been taken.

7. ORGANISATIONAL ACCOUNTABILITY

It is essential that the responsible organisations have an effective monitoring system to capture, analyse and report feedback and complaints. This system is a valuable source of information about how service-users view their community care assessment process; it can highlight strengths and weaknesses, identify good and poor performance and highlight training needs. Accordingly, the responsible organisations should:

- Have a system for capturing the details of all feedback received, including complaints, the outcome of each complaint and any action taken as a result.
- Undertake regular reviews of the complaints procedure and information provided and produce a report which illustrates the operation and effectiveness of the procedure. Reviews should take into account:
 - The number and type of complaints received.
 - Any broader themes that these complaints raise.
 - Whether the complaint has been upheld.
 - The actions taken in response to complaints.

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- The number of cases referred to the Council's Complaints Manager or the Local Government Ombudsman
- Present a report to the responsible organisation's board/senior management team on an annual basis (as a minimum) that includes information about how complaints have been used to improve service development.
- Consider the use of survey forms to obtain the views of complainants on the accessibility and effectiveness of the complaints procedure. Information from this should be included in the report above.

8. MONITORING AND ASSURANCE

The Council is responsible for ensuring that arrangements are in place for the effective handling of individual complaints in relation to its social care duties and that the responsible organisations are equipped to learn from these complaints. The following measures will be applied:

The Council's Complaints Manager will receive a copy of all complaints / concerns / compliments and final responses sent to complainants along with a copy of any action plans consequently developed and completed. (There is scope for this to be reduced to a sample of complaints once the nature of the complaints received by the responsible organisations is understood.)

The Council's Complaints Manager will write an annual audit report, providing an overview of the responsible organisations' performance in relation to their handling of complaints, making any necessary recommendations for improvement and highlighting areas of good practice.

The draft audit report will be submitted to the Head of Safeguarding and Quality Assurance and the Director of Adult Care and Health Commissioning. Once authorised, the draft audit report will be sent to the responsible organisation for consultation.

Where the audit has identified areas for improvement, the responsible organisation will submit an action plan to the Head of Safeguarding and Quality Assurance. When the action plan has been agreed a date will be set for the Council to review that the measures have been successfully implemented. The Council's Complaints Manager will undertake the review with the Complaints Manager for the responsible organisation.

9. ADDRESSING INDIVIDUAL COMPLAINTS

Where there is a concern that the quality of a complaint response does not meet the required standards, the Council's Complaints Manager will contact the Complaints Manager in the responsible organisation and seek to agree actions to remedy the issue.

If the Complaints Managers cannot resolve the matter satisfactorily then following process will be followed:

- The Council's Complaints Manager will set out the reason for the disagreement and will send the information to the Council's Head of Safeguarding and Assurance; the Council's Senior Commissioning Manager (relevant to the service area of the complaint); the relevant senior manager in the responsible organisation; and their Complaints Manager.
- The Council's Head of Safeguarding and Quality Assurance and the relevant senior manager in the responsible organisation will consider the information provided and will decide how to proceed.
- The final decision will rest with the Head of Safeguarding and Quality Assurance.
- If required, a senior commissioning manager will follow up any outstanding matters from the complaint at the relevant contract performance meeting.