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## Adult Social Care

Document Reference	GOVRN/POL/CMPLT/02.000
Document ID Number	8

# ADULT SOCIAL CARE COMPLAINTS

## Framework

Applicable to:	All staff in Adult Social Care
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Approval date	12/10/2018
Planned review date	23/11/2025

## Version Control

<b>Version number</b>	<b>Purpose of the change or details of the change</b>	<b>Person making the change</b>	<b>Date</b>
1.00	Approval by Gill Vickers, Director of Adult Social Care		26/2/2015
1.01	Review of framework commenced	Janna Kay	14/09/2018
1.02	Updates following consultation	Janna Kay/David Jennings	08/10/2018
1.03	Approved by Operations Meeting	David Jennings	15/02/19
2.00	Approved by Richard Outram. Interim Director of Adult Social Care	Richard Outram	15/02/19
2.01	Review or framework commenced	David Jennings	20/09/22
002.2	Approved by Richard Sparkes (Interim Director	Richard Sparkes	30/11/22

Documents superseded: None

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# 1 Framework Statement

Adult Social Care in Lambeth takes complaints seriously. We can put things right that have gone wrong and learn the lessons to avoid the problem happening again. This framework sets out the framework for how we will achieve this. The detail of how we will do this will be found in accompanying operating procedures.

# 2 Purpose

Complaints about adult social care are governed by “The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009” (‘the Regulations’).

This framework sets out the framework for how we will respond to complaints in line with the Regulations.

# 3 Scope

## **The legal framework for adult social care complaints**

### *Requirements and Mandate*

- The requirements are set out in “the Regulations”
- The power to publish the Regulations comes from the Health and Social Care Act 2003

Section 114 of the 2003 Act says

### **“Complaints about social services**

(1) The Secretary of State may by regulations make provision about the handling and consideration of complaints made under the regulations about—

- a) the discharge by a local authority in England of any of its social services functions;
- b) the provision of services by another person pursuant to arrangements made by such an authority in the discharge of those functions;
- c) the provision of services by such an authority or any other person in pursuance of arrangements made by the authority under section 31 of the Health Act 1999 in relation to the functions of an NHS body (within the meaning of that section).”

*What falls under the regulations?*

- The 2009 Regulations say “ ‘adult social care’ means social care within the meaning of Part 1 of the 2008 Act which is provided to an adult
- Part 1 of The 2008 Act says “ ‘Social care’ includes all forms of personal care and other practical assistance provided for individuals who by reason of age, illness, disability, pregnancy, childbirth, dependence on alcohol or drugs, or any other similar circumstances, are in need of such care or other assistance”

#### *Definitions*

- “the regulations”: The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009
- “the 2003 Act”: The Health and Social Care (Community Health and Standards) Act 2003
- “the 2008 Act”: The Health and Social Care Act 2008
- “Fairer Charging Guidance”: “Fairer Charging Policies for Home Care and other non-residential Social Services: Guidance for Councils with Social Services Responsibilities” (Department of Health, 2013)

#### **What comes under the Lambeth adults social care complaints process?**

The adult social care complaints process can be used to address concerns about things like

- Quality or amount of service
- Charges for a service
- A decision
- Failure to follow correct procedure
- Delay
- Application of assessment & eligibility criteria
- Attitude or behaviour of staff
- Failure to communicate with people either reasonably clearly or in a timely manner

**N.B.** The following areas are covered by and would be responded to under the Appeals Process. If the issue is not resolved through the appeal, it would escalate to a Stage 1 complaint.

- Outcome of an assessment or a review including carers assessments
- Your care and support plan
- Your personal budget
- Your financial assessment outcome
- Independent Advocacy support decision by the local authority

Please see our Appeals Guidance for more information

The adult social care complaints process can be used where these relate to adult social care, which includes

- Assessment and care planning by assessors, OTs and Social Workers
- Our work in commissioning and contract management of social care service providers
- Financial assessment and charging in relation to adult social care
- Handling Direct Payments for social care
- Client Affairs work
  - Protection of property
  - Management of affairs such as through Appointeeship
  - Management of affairs through the Mental Capacity Act 2005 such as acting as a Deputy
- In-house social care provision such as day centres that the Council manage

There are things that the adult social care complaints process cannot be used

- For matters that should be dealt with through other procedures. This includes things that should be dealt with under
  - Disciplinary or grievance proceedings
  - Criminal investigations
  - Where a statutory appeals process is in place
- Where the complainant intends to take legal proceedings in relation to the substance of the complaint
- A complaint by another organisation, unless that organisation is acting as the representative of the person as described in section 6 below
- Complaints which relate to contractual arrangements or other business arrangements made with the Local Authority
- Complaints by an employee of the Local Authority about any matter relating to that employment
- Complaints that have already been dealt with in line the Regulations
- Any complaint which is being or has been investigated by the Local Government & Social Care Ombudsman (LGSCO)
- Complaints arising out of the alleged failure to comply with a request for information under the Freedom of Information Act 2000

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

Some particular issues

- Complaints about our Accessible Transport services come under the Corporate Complaints process
- Complaints about social care services provided by independent and voluntary providers will need to be responded to by that service using its own complaints process. However, the Regulations allow the local authority to use its complaints process to “top-and-tail” the provider service’s process, which allows the local authority to track the progress of the complaint and scrutinise the outcome. Whether to pass the complaint over entirely or to use the “top-and-tail” approach will need to be a decision on a case-by-case basis. We shall produce guidelines on this.
- Where a complaint relates to concerns about abuse or neglect of a person with care needs consideration will need to be given to how the complaints process and the safeguarding adults enquiry will relate to each other. We shall produce guidelines on this.

However if some aspects of a complaint are being addressed through other processes it does not mean that the entirety of the complaint should not be progressed. Issues that can be considered under the complaints procedure, as long as they do not compromise any other process, can still be addressed this way. It is possible for two procedures to run side by side.

If at any point in dealing with a complaint it becomes apparent that there are issues that should be addressed through other procedures, that part of the complaint will be suspended and moved to another procedure as appropriate. If this is the case, the complainant will be informed in writing, unless there is another form of communication which is in the person’s best interests to use.

## 4 Objectives

Our arrangements for responding to complaints will meet the objectives set out in the regulations, which says arrangements for adult social care complaints must ensure

- complaints are dealt with efficiently;
- complaints are properly investigated;
- complainants are treated with respect and courtesy;
- complainants receive, so far as is reasonably practical—

- assistance to enable them to understand the procedure in relation to complaints; or
- advice on where they may obtain such assistance;
- complainants receive a timely and appropriate response;
- complainants are told the outcome of the investigation of their complaint; and
- action is taken if necessary in the light of the outcome of a complaint.

In addition, we have the objectives that

- There will be no adverse consequences for a person for the reason that they make a complain
- We will find out what is the right support the complainant needs and take all reasonable steps to ensure they have it

## **5 Roles and Responsibilities**

The Regulations define two particular roles

- The Responsible Person: This person is responsible for ensuring compliance with the arrangements made under these Regulations, and in particular ensuring that action is taken if necessary in the light of the outcome of a complaint;
- The Complaints Manager: This person is responsible for managing the procedures for handling and considering complaints in accordance with the arrangements made under these Regulations.

In Adult Social Care in Lambeth, these roles are undertaken by

- The Senior Responsible Person: The Director for Adult Social Care
- The Senior Complaints Manager: The Head of Safeguarding and Quality Safeguarding Adults

The postholders have strategic responsibility for the functions of the roles. Day-to-day discharge of these responsibilities in relation to any particular complaint may be delegated, and this will be determined by the risk level associated with the complaint. The delegation arrangements will be set out in the Adult Social Care Complaints Operating Procedures (on page 9).

## **6 Framework Details**

### **6.1 Relationship to other complaints processes in the Council**



This framework sets out our arrangements for complaints about adult social care services in line with the Regulations. However, there is a separate complaints processes for Children’s Social Care and there is a Corporate Complaints Process for all other matters.

Sometimes people will come to us with issues that, for one reason or another, do not fall within the Regulations and this framework. That does not mean they cannot make a complaint about them. It may be that

- we can respond to their issues through another process; or
- the matter is best dealt with solely through the Corporate Complaints Process or the Children’s Social Care processes. We should do all we reasonable can to help the person access the appropriate process

There will be issues that cross-over different areas, and therefore different complaints process. We will aim to ensure a well-coordinated response in such circumstances by working with colleagues elsewhere in the organisation to plan and deliver this.

## 6.2 What is a Complaint?

A complaint is an expression of dissatisfaction about an adult social care service, whether that service is provided directly by the council or by a contractor or partner, which requires a response. There is no difference between a ‘formal’ and an ‘informal’ complaint. Both are expressions of dissatisfaction that require a response.

Because most of our work in Adult Social Care is involved with supporting people to overcome problems, staff will often hear about a lot of things that are not going as well as our customers would like. Service users and their representatives do not have to label an issue as a complaint in order for it to be addressed in line with this framework and the regulations. It is up to the Council to ensure it can recognise when an issue is a complaint.

The Regulations say that if a complaint is made orally and a resolution can be agreed with the person by the end of the next working day then the complaint process will end here. If the complaint comes in writing, whether by letter, fax or email, or something needs to be done which will take longer, then that is a complaint that needs to be dealt with in line with the full process in the Regulations.

Often service users do not wish to make a complaint but do have things to say about our services that require us to do something about them. Such a representation, concern or comment that requires action and a response will be dealt with in the same way as a complaint. The terms complaint and complainant are used for ease throughout this document but should be taken to also apply to these other representations.

A complaint or representation can be made in person, in writing, by telephone, via e-mail or through the council's website. It can be made at any office. Every effort should be made to assist people in making their complaint and any member of staff can take a complaint, if that is what the complainant wishes.

The procedure for handling complaints applies even where the person raising the issue states they do not wish to make a complaint. It is a requirement that the Local Authority assess all expressions of dissatisfaction in order to give a personal and proportional response.

### 6.3 **Who can complain?**

A complaint can be made by

- a service user
- someone who has been turned down for a service to which they think they are eligible
- the representative of a service user – as long as consent is given, this can be anyone acting on the service user's behalf
- the representative of a service user who has not got capacity within the meaning of the Mental Capacity Act 2005, as long as they are seen to be acting in the interests of that service user, or on behalf of somebody who has died or is a child.
- Anyone who is or is likely to be affected by the actions, decisions or omissions of the service that is subject to a complaint.

The decision about whether a representative is acting in the best interests of a person lacking capacity within the meaning of the Mental Capacity Act 2005 is, in the first instance, for the local authority to make. If there is a dispute over this then this will need to be resolved in line with the requirements of the Mental Capacity Act 2005 and its Code of Practice.

A complaint can only be made by or on behalf of someone to whom the Local Authority may have the duty or power to provide a service.

Any decision that a complainant is not a qualifying complainant will be made by the person in the role of Responsible Person for dealing with the matter. The complainant will be informed of this decision in writing.

### 6.4 **Avoiding barriers to complaints**

There are a number of common barriers to people making complaints or having a resolution to them that they are happy with. We recognise these and will make efforts to avoid them.

#### *Fear of repercussions*

A significant barrier to people making complaints about adult social care is their fear of the repercussions for themselves or the person on whose behalf they are making the complaint.

People can fear that if they make a complaint they will face measures such as reduction or withdrawal of services.

Lambeth Adult Social Care welcomes complaints and will not take actions that disadvantage people using its services because they have made a complaint or someone has made a complaint on their behalf.

#### *Not knowing what to expect*

People can be put off from using the adult social care complaints process because they are not familiar with it or they do not know what it can be used for or what the outcomes might be. To reduce this barrier we will aim to make available accessible information about what the process is for, how to use it, and examples of cases and what we have learned from them. We will find out what support a person making a complaint needs and take reasonable steps to make sure they have it.

#### *Being obstructive*

A poor quality response from the Local Authority to a complaint can feel to the complainant like the response is obstructive. Examples of this can include

- Where a complaint covers a number of issues, and the response does not address all the issues raised.
- Refusing to deal with a complaint on the grounds that it has already been dealt with, without recognising that new issues have been raised

Such responses would fall short of the objectives we have set ourselves above. Steps we will take to avoid such lapses are

- Ensuring our staff are familiar with our framework and procedure
- Supporting our staff through good quality training
- Sharing the learning across adult social care from the complaints we receive
- Monitoring the quality of our responses to complaints

### **6.5 Direct Payments**

Service users and their representatives cannot raise issues under this procedure about services that they arrange and pay for themselves through a direct payment or a personal budget. However, issues can be dealt with under this process that relate to the Local Authority's role in Direct Payments or Personalised Budgets, for example in assessing for the amount of service or in the advice and assistance given in setting up and managing such payments.

### **6.6 Decisions made by Approved Mental Health Professionals**

A decision made by an Approved Mental Health Professionals (AMHP) on an application under the Mental Health Act 1983 falls outside these procedures. Complaints about the process of assessment or the AMHP's actions can be considered under these procedures.

## **6.7 Care standards complaints and social care provider complaints**

Where a complainant receives a service from a provider commissioned by the Local Authority the complainant may complain:

- directly to the external provider or;
- to Lambeth Adult Social Care or;
- to both organisations.

The complainant shall be informed by the organisation receiving the complaint of her/his right to use either or both procedures.

Where the external provider is contracted by the Local Authority to provide services on its behalf, it will have its own complaints procedure which will deal with any complaints relating to those services provided. Providers delivering services on behalf of the Local Authority are required to inform the Council of all complaints being reviewed under their procedures and the action taken in response

Complaints Regulations dictate that both the Provider and Local Authorities complaints processes should be used in these circumstances. This allows the local authority to track the progress of the complaint and scrutinise the outcome

If the provider is unable to resolve the complaint, they can appeal the decision (see Appeals and Stage 2 Complaints S7.17)

## **6.8 Complaints that cut across organisational boundaries in health and social care**

Both health and social care services are covered by the Regulations, and there is a duty to cooperate with other social care or health organisations where a complaint covers more than one.

The Operating Procedure will set out how we will do this.

## **6.9 Other or Concurrent Procedures**

The regulations and guidance do not refer to how to proceed with complaints handling where other procedures are more appropriate or concurrent, for example disciplinary, police or legal action.

Consideration of a complaint is separate from action under employee personnel, grievance, disciplinary, harassment or whistle-blowing procedures. Where these are already occurring or more relative to the complaint or concerns, staff will be kept informed of the complaint but not given details which would breach confidentiality or which may be against the best interests of the complainant.

The complaints manager may exercise discretion and put those parts of the complaint or the whole complaint on hold where to address them would compromise other procedures. The complaints manager will re-instate the complaints procedure once the other process has been concluded if applicable.

#### **6.10 Advocates**

There is no current duty on Local Authorities to provide an advocacy service to complainants, though from April 2015 the Care Act 2014 creates some duties around advocacy. The “Care and Support” statutory guidance says this statutory advocacy role includes “Assisting a person to challenge a decision or process made by the local authority; and where a person cannot challenge the decision even with assistance, then to challenge it on their behalf”, which clearly has a relationship to complaints processes. From April 2015, the Delegated Complaints Manager will consider in each case whether there is a duty to arrange for an independent advocate and, if so, will ensure the appropriate arrangements are made.

Until April 2015, and in circumstances after then in which there is no duty to involve an independent advocate, the Delegated Complaints Manager will in each case consider if the involvement of an advocate is desirable. Where it is, the Delegated Complaints Manager will where possible facilitate the provision of independent advocacy services to the complainant.

We will provide information and identify sources of advice including from relevant local voluntary organisations and community or self-help groups or specialist teams for those with special needs.

Staff cannot act as advocates in complaints against their employing authority.

#### **6.11 Publicity**

The regulations require the Local Authority to publicise its arrangements for dealing with complaints. This framework and the accompanying procedures shall be available on the Local Authority’s Website.

#### **6.12 Anonymous Complaints**

An anonymous complaint will not be ignored but will be investigated in the same way as any other complaint. Where necessary, the process will need some adaptation. For example, it will not be possible to send the complainant an acknowledgement or outcome.

### **6.13 Representations from Members of Parliament (MP) and Councillors**

Complainants may take their concerns to their MP or Councillor, and these are often referred to as “Member’s Enquiries”. Where appropriate it would be usual practice to refer them to the statutory complaints process. The Operating Procedures will set out how we will manage the relationship between Members Enquiries and the complaints process.

### **6.14 Representations from Solicitors**

If a letter is received from solicitors acting on behalf of a client or their representative, the relevant manager will check whether the subject matter constitutes a complaint under the criteria listed above. In such a case, or where a solicitor becomes involved in an ongoing complaint, the person in the Delegated Responsible Person role will ensure there is liaison with legal services for advice on how the matter will be progressed.

### **6.15 Persistent and unreasonably persistent complainants**

From time to time we will come across complainants who seek to raise a number of complaints or who become unreasonable in their conduct or expectations around contact. Whilst every effort should be made to address objectively any concerns that are raised, we must also seek to be proportionate and not to expose our staff to unreasonable situations. These complaints will be escalated to Senior Complaints Manager for direction

### **6.16 Ensuring natural justice**

Natural justice is a term in law for the rule against bias. It is part of a general duty to act fairly. There are two key principles to natural justice

- No-one should be judge in their own cause: There should be no actual bias, or the appearance of possible bias. This is sometimes summed up as “Justice must not only be done, but must be seen to be done”
- Hear the other party too: No-one should be judged without a fair process, in which they get to hear and respond to the evidence against them

We apply these principles in our work in responding to complaints by setting out in our procedures for responding to complaints

- how we will ensure the investigation into the complaint is carried out by someone with an appropriate degree of independence when needed
- expectations about involving the appropriate parties in the complaint

## 6.17 Learning and applying lessons

A good investigation into a complaint where something has gone wrong will identify what happened and why. However, it is not sufficient merely identify the lessons to be learned; we must apply those lessons. In doing so we will do what we can to reduce the chances of something similar happening again.

Similarly, it is not sufficient that the lessons are learned and applied just in that part of the business where the complaint arose. The learning must be shared and applied across adult social care delivery, and beyond if there is learning that is appropriate to other areas of the Council.

The operating procedure will set out the responsibilities for ensure that learning is acted on.

## 6.18 Appeals and Stage 2 Complaints

The complainant has a right to appeal the first response within 10 days. This will be responded to as a 'Stage 2' complaint and escalated within the scheme of delegation as set out within the Operational Procedures (page 12)  
The response to the Stage 2 complaint is final however will include details of the Local Government & Social Care Ombudsman.

## 6.19 The Local Government & Social Care Ombudsman

All people who use social care services have the right to take their complaint to the Local Government & Social Care Ombudsman (LGSCO). In most cases the LGSCO will expect the complaint to have been considered under the complaints procedures and for the department to be able to demonstrate that it has done everything in its power to resolve the complaint.

Where the LGSCO's office accepts a complaint as being within their jurisdiction, they may check that everything has been done to resolve the matter locally. They will consider:

- What has gone wrong
- What injustice has this caused
- What is the likelihood of achieving a worthwhile outcome

If they think more can be done, they will refer the issue back to the department. If they believe that there is a case to answer, there has been maladministration with a resulting injustice to the complainant, they will direct the department to put things right.

## 6.20 Time limit for making a complaint

The regulations identify that a complaint must be made not later than 12 months after the subject of the complaint occurred. Unless, there was a delay in the issue coming to the notice of the complainant, or the responsible body

is satisfied that the complainant had good reason for not making the complaint within the time limit specified