CITY OF WOLVERHAMPTON COUNCIL
ADULT DIRECTORATE

HEALTH AND SOCIAL CARE COMPLAINTS AND REPRESENTATIONS POLICY and PROCEDURES

Produced in Accordance with

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

Implementation date 1 April 2009

The new regulations revoke the Local Authority Social Services Complaints (England) Regulations 2006
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1. BACKGROUND

1.1 The Department of Health, to reform how the NHS and Local Authorities respond to health and social care complaints, formally consulted on their proposals between June and October 2007. The consultation document ‘Making Experiences Count’, published in June 2007 sets out its proposals to remove the rigid process-based arrangements that previously applied to NHS and social care complaints handling in order to unify the health and social care complaints procedures, to enable individual complainants to receive a person focused response and to enable the relevant organisation involved to learn from the complaint and improve its services. The Department of Health response to that consultation was published in February 2008. The new regulations lay down only the general legal framework within which the new arrangements for complaints delivery will operate, and do not prescribe the processes through which outcomes are to be delivered.

1.2 The Department of Health has issued ‘Listening, Improving, Responding’ (www.gov.uk/government/organisations/department-of-health-and-social-care) a practical customer care guide to support staff in implementing the new approach.

2. SCOPE

2.1 The revised complaints framework will apply to:

- Local Authorities who provide Adult Social Services
- all NHS bodies (including Clinical Commissioning Group (CCG) and Strategic Health Authorities)
- all statutory providers of NHS care (including foundation trusts and CCG providers)
- voluntary and independent sector organisations who provide services under contract to the NHS

2.2 These procedures outline the new single complaints system for the above bodies providing health and adult social care services in England and set out how they will receive and respond to complaints and representations. They follow the Regulations, issued on 27 February 2009, which determine the way the legislative framework will operate, what people can complain about and who is eligible to make a complaint.

2.3 Complaints which are resolved to the complainant’s satisfaction not later than the next working day after the day on which the complaint was made are not required to be dealt with in accordance with these Regulations (see point 10).
3. **POLICY OBJECTIVES**

3.1 City of Wolverhampton Council welcomes comments, concerns, representations, including complaints, as a means of learning about the quality of services and putting right or improving services.

3.2 In order to achieve these two objectives, we will ensure that the complaints arrangements meet the following basic criteria:

- **Open and easy to access** – flexible about the ways people can make a complaint and providing them with effective, individual support for people wishing to do so;
- **Fair** – emphasising early resolution to minimise the strain and distress for all those involved;
- **Responsive** – providing appropriate and proportionate response and redress;
- **Providing an opportunity for learning and developing** – ensuring complaints are viewed as a positive opportunity to learn from service users views and to drive continual improvement in services.

3.3 Complaints or representations are about the service provided by the authority, and can be about the conduct or attitude of an individual member of staff. A complaint which indicates a possible case for disciplinary action, may be investigated under different arrangements, in accordance with the authority’s disciplinary procedure.

The new regulations allow for a complaint to be investigated even if disciplinary action is being considered or taken against a member of staff, provided the organisation has regard to good practice around restrictions in providing confidential/personal information to the complainant.

3.4 All staff members, and others associated with services provided by the Council, such as advocates or sessional staff, are required to promote access to the complaints and representations procedures. It is important that all are given any necessary support or re-assurance in carrying out this part of their role. Staff who are involved in a complaint allegation may receive counselling support if required.

3.5 Any eligible person wishing to make a complaint may require the support of an advocate. This possibility will always form part of the authority’s consideration of the appropriate response to a complaint and the need for support will be reviewed on an ongoing basis.

3.6 Whilst all comments, including critical complaints, are positively welcomed, not all are upheld following investigations. However, the procedure is above all intended to promote a speedy, appropriate review and resolution of all complaints and in so doing recognises the
rights of all involved in the process, service users and staff alike.

4. **CO-ORDINATED WORKING ACROSS BOUNDARIES**

4.1 Under the previous procedures the ‘duty to co-operate’ was considered by the Government to dilute complaint ownership and that joint working needed to be strengthened further. Therefore, from April 2009 joint working will be referenced as ‘co-ordinated handling’ which places joint responsibilities upon health and social care bodies. The new provisions will cover all complaints received in the NHS and adult social care arena to ensure co-ordinated handling and to provide the complainant with a single response that represents each organisations final response.

4.2 When the Authority, Wolverhampton Clinical Commissioning Group (CCG) or the Royal Wolverhampton NHS Trust (RWT) receives what appears to be a cross-boundary complaint (i.e. it is from someone who receives both health and social care services), the receiving organisation must contact the complainant for their agreement to copy the complaint to the other organisation(s) involved.

5. **DEFINITION OF A COMPLAINT**

5.1 The Local Government and Social Care Ombudsman (LGSCO) states: ‘A complaint is an expression of dissatisfaction by one or more members of the public about the Council’s action or lack of action or about the standard of a service, whether the action was taken or the service provided by the council itself or a person or body acting on behalf of the Council’(taken from The Local Government and Social Care Ombudsman guidance on good practice – Running a complaints system)

A complaint may arise as a result of an unwelcome or disputed decision, concern about the quality or appropriateness of services, delay in decision-making, or about the delivery or non-delivery of services.

6. **WHO MAY COMPLAIN**

6.1 Complaints may be made by a service user or someone acting on behalf of that person, or any person affected by or likely to be affected by the action, omission or decision of the local authority, NHS body or independent provider that is the subject of the complaint. The complaint must be about a service, which the authority has the power to provide.

6.2 Where a complainant appears to be making a complaint or representation on behalf of a qualifying individual, the authority should take steps to satisfy itself that this is indeed the case. Where a local authority is satisfied that a complainant is not conducting the complaint in the best interests of the person on whose behalf the complaint is made, the authority may decide not to consider the complaint further. This decision will be made by or in discussion with the Complaints Manager, and the complainant must be given information about how to contact the Local Government and Social Care Ombudsman.
6.3 A person is a qualifying individual if:

➢ A local authority has a power or a duty to provide or to secure the provision of a social service for him or her AND
➢ His or her need or possible need for such a service has come to the attention of the authority.

6.4 Vexatious and Persistent complainants – Where a complainant is known to be abusive or violent or becomes so in the course of his/her contact with the authority, then the situation should be risk assessed and action taken with regard to the Council’s policy. Vexatious or persistent complainants should be dealt with in accordance with the Local Government and Social Care Ombudsman’s guidance.

7. WHAT PEOPLE CAN COMPLAIN ABOUT

7.1 People will be able to use the health and social care complaints procedure for any matter reasonably connected with the exercise of an NHS body or the local authority exercise of its social services functions. This deliberately allows for complaints about a very wide range of issues. If someone is unsure whether their complaint falls within the scope of the new arrangements, their local health organisation or local authority social services department will be able to provide advice through the complaint handling manager.

7.2 A complaint which is about a service which has been commissioned, or purchased by the Authority, to meet a social services’ function, will usually be considered within the provider’s own complaints procedures in the first instance. The Authority will ask the complainant for their consent for the details of their complaint to be sent to the relevant adult social care provider, and when consent is obtained, then send the details as soon as practicable to the provider concerned.

7.3 Where a complaint is in part a social care provider complaint and in part for the local authority to consider, the authority must as soon as reasonably practicable a) notify the complaint which part of the complaint will be handled by the local authority in accordance with these Regulations and b) co-operate as much as is reasonable and practicable with the relevant adult social care provider for the purpose of ensuring that the complainant receives a co-ordinated response to the complaint.

7.4 The Commissioning body will discuss and retain an overview with the provider of how the complaint is handled. The new Care Quality Commission will have enhanced capacity to enforce the registration requirement of external service providers to handle complaints effectively, but will not have any complaint investigation role.
8. **WHAT PEOPLE CANNOT COMPLAIN ABOUT**

8.1 The Regulations specify circumstances where a local authority shall not consider a representation or complaint, or shall not continue to do so. The authority may use discretion in deciding whether to consider complaints where to do so would prejudice any of the following concurrent investigations:

- Court proceedings
- Tribunals
- Disciplinary proceedings (see 14.2)
- Criminal proceedings.

8.2 Where the Complaints Manager decides not to consider a complaint subject to any of these concurrent investigations, the complainant must be informed of this and informed of the reason for the decision. Once any concurrent investigation is complete, the complainant may resubmit the complaint for investigation, but must do so within one year of completion.

8.3 On receipt of a complaint where legal action is being taken or the police are involved, the Government expects discussions to take place with the relevant authority (e.g. legal advisors, the Police or the Crown Prosecution Service) to determine whether progressing the complaint might prejudice subsequent legal or judicial action. If so, the complaint will be put on hold and the complainant will be advised of this fact. If not, an investigation into the complaint should take place, to ensure wherever possible, that any potential implications for service user safety or organisational learning are investigated to allow urgent action to be taken to prevent similar incidents arising.

8.4 Also excluded from the arrangements will be complaints:

- That have already been investigated under the Complaints Regulations,
- Which are being or have been investigated by a Local Commissioner under the LGA 1974, or the Health Service Commissioner under the 1993 Act,
- Arising out of an alleged failure to comply with a data subject request under the Data Protection Act 2018 and General Data Protection Regulation (GDPR) 2016/679, or
- Arising out of an alleged failure by an English local authority or NHS body to comply with a request for information under the Freedom of Information Act 2000.

8.5 A complaint which is about a service which has been commissioned, or purchased, to meet a function which is not a social services function, such as, for example, a **Supporting People programme**, will not be considered under these procedures.
8.6 Direct Payments and Individual Budgets are not explicitly part of the reformed arrangements, although complaints to a local authority are covered when they are about the process of allocating a Direct Payment or Individual Budget; about services that are provided directly by the local authority; or when the local authority manages the budget on behalf of the service user. The point of the exclusion is that the authority hands over money to the service user, and so decisions made by the service user are outside the procedure.

8.7 Persons who fund their own support arrangements and are in receipt of a service from an agency which is registered under the Care Standards Act 2000, will not have access to these procedures. The Local Government and Social Care Ombudsman (LGSCO) is considering ways in which some form of independent resolution may be achieved for this group of service users by 2010.

8.8 The arrangements cannot be used by health organisations or local authorities against other health organisations or local authorities. Similarly, staff working within, or contracted to, those types of organisations cannot use the arrangements to complain about employment, contractual or pension issues.

9. **TIME LIMIT FOR MAKING A COMPLAINT**

9.1 A complaint must be made no later than one year after the grounds for the complaint arose or the matter came to the notice of the complainant, but the authority may consider a complaint which has been made outside the specified time limit, where it considers that it would be reasonable to do so, and it remains possible to consider the complaint fairly and effectively. Where it is decided not to investigate, the complainant will have the opportunity to approach the Ombudsman.

10. **INFORMAL COMPLAINTS RECEIVED BY SERVICE**

10.1 To inform good practice, service development and capture any lessons learnt, representations of dissatisfaction that have been received and resolved immediately (not later than the next working day after the day on which the complaint was made) by front line service staff, will not need to be dealt with under the formal complaints handling arrangements but should still be recorded on Form CP1 along with compliments received and returned at the end of each month to the Complaints Manager.

10.2 Front line staff must distinguish those serious issues that, even if raised informally, need to be brought to the attention of senior managers within the organization, for example where they raise service user safety issues. Where information is received in the course of the consideration of any complaint which suggests that procedures to protect a vulnerable adult should be implemented, a Safeguarding Adults referral should be raised.
10.3 Staff should consider when an unresolved problem becomes a complaint. Involving people and agencies in the community who provide independent advice can assist problem solving and may prevent dissatisfaction developing into a complaint. Attempts at problem solving should not be used to divert an eligible person from making a complaint under the statutory procedure. There are a number of methods of resolution that do not require a full investigation than can be applied, including:

- The provision of an apology;
- Conciliation and mediation;
- A reassessment of the service user’s needs;
- Practical action specific to the particular complainant;
- An assurance that the local authority will monitor the effectiveness of its remedy; and
- Consideration of the need for a financial payment

These methods are commonly referred to as Alternative Dispute Resolution (ADR). If agreed by both the complainant and Complaints Manager, the local authority should explore the ADR option.

11. **FORMAL (LOCAL RESOLUTION) COMPLAINTS PROCESS AND PROCEDURE**

11.1 The new legislation lays down only the general legal framework within which the new arrangements for complaints delivery will operate. The regulations therefore, cover only the fundamental requirements of good complaints handling, not the processes through which outcomes are to be delivered. The focus on the new process will be to:

- Remove rigid process based arrangements that previously applied to complaints handling
- Make arrangements more flexible and simplified
- Make complaint person focused
- Treat all complaints according to their individual nature
- Focus on swift local resolution by looking closely at the complainants needs and desired outcomes
- Have a more unified way of handling and learning from complaints that span across social care and health

11.2 There will be a two stage process for formal complaints:

- **Stage 1 – Local Resolution**
- **Stage 2 – Local Government and Social Care Ombudsman**

The regulations stipulate that the authority will have an identified senior person who will sign off a complaint when action has been concluded. The Director of Adult Services may delegate a senior manager to act on their behalf. This person will also be responsible for the operation of the
complaints arrangements and ensuring that lessons learned are implemented and will be senior to the Complaints Manager who is responsible for managing the complaints handling function.

11.3 **Stage 1 Process and Options For Resolution**

To ensure easy access to making a comment or complaint, a complaint may be made in writing or in any other format. If it is not in writing, the authority must ensure that the details of the complaint are recorded and agreed with the complainant and the complainant offered the opportunity to discuss, either by telephone or face to face, how the complaint is to be handled. The member of staff receiving the complaint, must record the complaint on file, and will send a copy of the complaint to the Complaints Manager for monitoring purposes.

11.3.1 An acknowledgement of the complaint will be provided to the complainant or their representative within three (3) working days by the Complaints Manager.

11.3.2 The authority will ensure that any person, who wishes to make a complaint and needs assistance or support in doing so, is offered access to an advocate. An advocate where appointed, must be informed in writing of the outcome of the complaint, and of any further action, which may be necessary.

11.3.3 The Complaints Manager and/or the Service Manager will:
– Complete a Risk Assessment of the complaint
– Agree a ‘plan’ with the person making the complaint, the ‘plan’ needs to be proportionate to the risk. The ‘plan’ should outline:
  • how the complaint is going to be tackled (Options list 11.3.5)
  • who will be involved and the roles that they will play
  • whether the complainant requires the support of an advocate
  • Indicate the sorts of timescales involved, and
  • how the person making the complaint will be kept informed of progress during the process.

A complaint may not require an investigation if an explanation and well meant apology will suffice. If a case warrants an investigation to uncover the facts, a number of option are listed in point 11.3.5

11.3.4 Staff must attempt to resolve the problem within the organisational timescale of ten working days of receipt of the complaint. Where this is not possible, for example, because the complaint is complex, or because of delays in appointing an advocate, the Complaints Manager may, with the agreement of the complainant, extend the consideration of the complaint to twenty five working days or longer if necessary.

11.3.5 **Options List** (the list is not intended to be exhaustive or prescriptive). As action progresses and further information becomes available, it may be necessary to revise the handling response and therefore, undertake
more than one activity from the list:

- Document review of evidence
- A meeting with the complainant and possibly, any staff involved
- Obtaining additional evidence – individual statement or reviewing care plan
- Obtaining detailed responses from relevant service managers
- Multi agency review meetings
- The involvement of the Director responsible for that area of operation
- The commissioning of independent specialist opinion
- The commissioning of an investigation by someone outside the department complained about
- The commissioning of an investigation by someone outside the body complained about
- The commissioning of an independent investigation by someone outside the fields of health and/or social care

11.3.6 The Complaints Manager must be provided with a copy of the complaint resolution letter, for quality assurance and sign off by the Head of Performance, Quality and Equalities and it will then be sent to the complainant.

11.3.7 The complainant will be informed that they have a set timescale of ten working days to raise issues if they dispute the facts of the case, the interpretation of the facts or that on the facts available, the decision does not appear to be justified.

11.3.8 If no issues are raised, the Director of Adult Services will be invited to endorse the decision (or an officer nominated to act on the Director’s behalf) and sign off the final response to the complaint. Where the authority considers that all reasonable and appropriate action has been taken, the complaint would be signed off and at this stage, the complaint has completed local resolution.

11.3.9 If the complainant is satisfied with the authority's response to the complaint, no further action is required other than to ensure that any actions promised as a resolution are evidenced as followed up and completed. Any learning from complaints, such as unmet needs or training requirements, may form part of a trend and should form part of the council’s learning and improvement strategy.

11.3.10 Option-Independent Investigation
Where a case warrants an independent investigation, the Complaints Manager must ensure that a written record of the complaint is prepared and agreed with the complainant. This will form the basis of the complaint to be investigated and the likely time scale agreed at this stage. Undue delay in agreeing the written record, or terms of reference,
of the complaint must be avoided.

11.3.11 The Complaints Manager will appoint an officer to investigate the complaint and prepare a report as to their findings. The person appointed to conduct the investigation must not have had previous involvement in the matter, which is the subject of the complaint, and should not have line management responsibility for the service.

11.3.12 The Investigating Officer will have access to all staff, files and written records necessary for the conduct of the investigation.

11.3.13 The investigating officer’s report should detail the complaint(s) under investigation, the evidence considered in reaching conclusions, and state whether each aspect of the complaint has been upheld, not upheld, or considered inconclusive for a specified reason. The report will also make recommendations for improvement, and where necessary, redress. It will be written in the agreed format.

11.3.14 The reports will be seen by the relevant Head of Service, who will consider the recommendations of the report, and provide the authority’s adjudication response in writing to the Complaints Manager, who will send the response to the complainant, and to such other interested parties as may be considered appropriate. The complainant will be sent a copy of the investigation report; details of the decision; the reasons for that decision, based upon the available facts and their interpretation, and, where appropriate, an apology and a brief summary of action being taken locally as the result of an upheld complaint.

11.3.15 The Head of Service will also identify, in discussion with the investigating officer where appropriate, matters arising from the complaint and investigation, which may have relevance for the authority as a whole in improving services. Timescales for any action will be given.

11.4. Stage Two – Local Government and Social Care Ombudsman (LGSCO)

11.4.1 The complainant will be informed by the Complaints Manager of his/her entitlement to progress the complaint to the Local Government and Social Care Ombudsman (LGSCO) if he/she does not feel that the response at the Local Resolution stage has resolved the complaint to his/her satisfaction.

12. DEFINITIONS

12.1 Representations are matters other than complaints, which give rise to concern or comment from service users or carers.

12.2 An advocate is a person who provides assistance to the complainant under arrangements made by the local authority to meet the regulations. Advocacy is defined in the Advocacy Charter as taking
action to help people say what they want, secure their rights, represent their interests and obtain the service that they need.

12.3 An independent person, within these procedures, is someone who is neither a member nor an officer of the local authority, to which the representation or complaint has been made, nor the spouse or civil partner of such a person.

12.4 A care standards complaint is one which relates to services provided by an establishment or agency, where a person is required to be registered under the Care Standards Act 2000, section 11, and which is not about a relevant function of the local authority.

12.5 A relevant function is a social services function within the meaning of s.1A Local Authority Social Services Act 1970 or a function discharged by a local authority under arrangements made between the authority and an NHS body under s.31 Health Act 1999.

13. ORGANISATION LEARNING

13.1 The complaints team will review trends of complaints as part of learning lessons, on a quarterly basis. Each Service Area Manager will be responsible for ensuring that completed complaint action forms are sent to the Complaints Manager with a copy of the complaint resolution letter. This information will be analysed to identify the need for changes to practice or other actions.

13.2 A mechanism for reporting joint health and social care complaints handling data and trends will be established, so that lessons can be shared and where appropriate, improvements undertaken within and across the Authority, the Clinical Commissioning Group and the Royal Wolverhampton NHS Trust.

14. OTHER RELATED PROCEDURES

14.1 Safeguarding- www.wolverhampton.gov.uk/health-and-social-care The protection of vulnerable adults will always take priority over other procedures. Where information is received in the course of the consideration of any complaint, which suggests that the Safeguarding procedures to protect a vulnerable adult should be implemented, the complaint investigation process will be delayed.

14.2 Disciplinary and Grievance procedures do not form part of any complaint investigation or resolution. In a change from the previous procedure, the new arrangements allow for a complaint to be investigated even if disciplinary action is being considered or taken against a member of staff, provided the authority has regard to good practice around restrictions in providing confidential/personal information to the complainant.
14.3 **Regulated Services** - Complaints which are wholly or in part about care standards, the Local Authority Contract Monitoring Officer must ask the complainant for their consent for their details to be sent to the registered person for their complaint to be dealt with under the complaints procedure of the provider service. This should be done as soon as reasonably practicable once the complainants consent has been obtained.

Where a complaint is in part a care standards complaint and in part for the local authority to consider, the authority must as soon as reasonably practicable a) notify the complaint which part of the complaint will be handled by the local authority in accordance with these Regulations and b) co-operate as much as is reasonable and practicable with the registered person for the purpose of ensuring that the complainant receives a co-ordinated response to the complaint.

14.4 Managers of multi-disciplinary teams should ensure that there is a clear understanding of how complaints about a service, which is provided by staff from a range of disciplines, will be considered. This may involve managers reviewing the practice of any team member, regardless of discipline/qualification. Alternatively, it may be necessary to reach agreement with colleagues from different disciplines regarding responsibility for reviewing different aspects of any complaint.

14.5 Elected Members and Members of Parliament frequently act to seek information on behalf of their constituents. Such an information request should not be seen as a complaint, although following the receipt of any further information a constituent may choose to make a complaint, or to ask an elected member to complain on his behalf. When they are making a complaint on behalf of a member of the public, this will be in the remit of a complaints service.

15. **PERFORMANCE MANAGEMENT**

15.1 The Complaints Manager will keep a record of the nature and number of complaints and representations received, including compliments. Individual units should continue to be proactive in capturing information of informal representations, compliments and problem solving responses in order to get a picture of service trends.

15.2 The Complaints Manager will record performance in terms of complaints resolved within and outside the organisational timescales, the manner in which complaints were resolved and any corrective action which may have been taken or remain required.

15.3 Performance reports will be prepared for managers as required, and to enable monitoring for statutory returns. Adult Social Care complaints will be tracked, monitored and a combined weekly report will be produced. It will also highlight cross cutting learning opportunities. The report will differentiate between the timescales that apply to social care complaints and those arising from community service areas.
15.4 The Complaints Manager will prepare an annual report within three months of the end of each financial year, which provides information about the provision of the complaints and representations procedures, with specific reference to the learning and improvements which may have taken place.
THE NEW PROCESS FOR ADULTS SOCIAL CARE AND HEALTH COMPLAINTS

STAGE ONE – Local Resolution
The new complaints approach is structured around three main principles: listening, responding and improving.

Listening
Prior to initiating Stage One, if the complainant brings concerns to the attention of the person providing the services locally, staff should try to resolve the complaint immediately.

Make sure that you really understand the issues
Find out what they want to happen as a result
Obtain the right information to assess the seriousness of a complaint

If not resolved by the next working day, or the complaint is complex, the complaint should be entered into the formal procedure.

Stage One: Agree a plan with complainant - the ‘plan’ should outline:
• The nature of the complaint,
• How the complaint is going to be tackled,
• Who will be involved and the roles that they will play,
• Agree timescale and how regular communication is to be maintained with the person making the complaint.

Responding
Undertaking a risk assessment ensures serious complaints, such as those involving unsafe practice or abuse can be identified quickly, according to the appropriate legislation and the impact of the complaint on all parties involved can be gauged. This then enables a decision on the most suitable course of action to be taken swiftly.

Improving
Complaints provide a vital source of insight about people’s experiences of health and social care services and how these can be improved. By working in partnership with all those who provide, support and use a service, you can make improvements to the service you work in and foster service users confidence in the service and staff working within them.