

BEDFORD BOROUGH COUNCIL



**ADULT SOCIAL CARE
CUSTOMER COMPLAINTS
PROCEDURE**

**Complaints
Compliments
Comments**

April 2009

Web: www.bedford.gov.uk

1 LEGAL REQUIREMENTS

- 1.1 The Local Authority Social Services Act 1970 (as amended by the NHS & Community Care Act 1990) requires social services to have a complaints procedure for considering 'any representation, including a complaint' to the local authority in relation to the discharge of, or any failure to discharge, any of their Social Services functions' in respect of a 'qualifying individual'.
- 1.2 The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009 [hereafter referred to as the Regulations] is the legal framework for these procedures. Where there is any inconsistency between these procedures and the Regulations, the Regulations shall prevail.
- 1.3 Whereas previously a complaint about Adult Social Care went through a formal three-stage process the Regulations have reduced this to two. The first stage is handled by the organisation receiving the complaint whilst the second rests with the Local Government Ombudsman. Further details are outlined in Section 7.

2 PRINCIPLES OF THE PROCEDURE

- 2.1 The Council welcomes feedback: compliments, comments and complaints from customers. Feedback will be recorded and acted upon in accordance with the Customer Feedback Procedure.
- The Procedure ensures that the Council can demonstrate that it draws on the experience of its customers, positive or negative, to bring about change in services.
- 2.2 Best practice promotes a fair and responsive feedback procedure. Procedures need to be open, easy to access and responsive to enable customers and/or their representatives to make representations and complaints.
- 2.3 This Procedure is the method by which customers can give feedback and be sure that they will be listened to and taken seriously.
- 2.4 The Council is committed to promoting equality of opportunity for all people. We want to ensure all sections of the community are able to access the feedback procedure and will undertake monitoring to check that this is the case.
- 2.5 The Council recognises that some people have concerns about making complaints for fear of losing a service if they 'rock the boat' or fear being treated unfavourably. Customers will not be harassed or victimised as a result of making a complaint.

3 OBJECTIVES OF THE PROCEDURE

- 3.1 To provide an effective means for customers or their representatives to

give feedback about the quality or nature of services and, to ensure those who complain or comment have been dealt with promptly, fairly, openly and honestly.

- 3.2 To ensure complaints are acted on, with the focus on complainants' desired outcomes where these are realistic and achievable.
- 3.3 To resolve complaints quickly and as close to the point of service delivery as acceptable and appropriate.
- 3.4 To provide managers and councillors with information to assist in monitoring performance and quality of service delivery.
- 3.5 To maintain public accountability on the effectiveness of customer feedback handling through the production of an Annual Report.
- 3.6 To promote problem solving and focus on improvements in complaints handling and to avoid apportioning blame. Emphasis will be on correcting failings or problems.
- 3.7 To provide flexibility in resolving complaints as proposed by the Regulations and as is outlined more fully in Section 7.

4. TERMS USED AND THEIR MEANING

- 4.1 Where there is reference to responses 'in writing' the local authority will, if required, also provide the information in a format to meet the needs of the customer.
- 4.2 Days refers to working days, this excludes Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday in England and Wales under Section 1 of the Banking and Financial Dealings Act 1971 (b).

5. COMPLIMENTS & COMMENTS

- 5.1 Compliments about services from customers and service users and/or their representatives will be recorded and the information shared to promote learning and improvement.
- 5.2 Comments about services may be statements about how services could be improved and will be recorded to enable the Council to use suggestions to review the way services are provided. People may express disappointment, disagreement or observations about services without necessarily wanting to complain. Feedback of this nature will be recorded as a comment.

A reply in full will be made, where possible, within 10 working days to all Compliments and Comments.

6. COMPLAINTS

6.1 Definition of a Complaint

A complaint is....

"An expression of dissatisfaction about the standard of service, actions or lack of action by the Council or its staff affecting an individual customer or group of customers".

6.2 Who Can Complain?

6.2.1 A complaint may be made by:

- A person who receives or has received services from the Council;
- A person who is affected, or likely to be affected, by the action, omission or decision of the service;
- A representative of the person receiving the service

6.2.2 A complaint may also be made by a person acting as a representative acting on behalf of a person who has died or is unable to make the complaint themselves or has:

- Physical incapacity;
- A lack of capacity within the meaning of the Mental Capacity Act 2005;
- Requested the representative act on their behalf

6.2.3 If the Council 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 the service user, the complaint will not be considered.

Any decision that a person is not a suitable person to represent the complainant will be sent in writing to the proposed representative with reasons for the decision. We will also copy this response to the complainant where appropriate.

6.2.4 Individuals may approach Members of Parliament or councillors for advice or assistance. If the result is a complaint made on behalf of the individual, it will be routed through this Procedure.

6.3 Making a Complaint

6.3.1 A complaint can be made to any member of staff orally, in writing or electronically.

6.3.2 Where a complaint is made orally, the Council will make a written record of the complaint and provide a copy to the complainant unless, in line with the Regulations, the complaint is resolved on the spot. Complaints resolved on the spot (within 24 hours of being made) will be recorded locally and included in monthly returns to the Customer Relations Team.

6.3.3 Complainants may require the support of an independent advocate and consideration will be given to supporting complainants to access an independent advocate. Customer Relations can give assistance to complainants to follow the procedure and inform complainants of their rights.

6.3.4 Any person responding to a complaint must ensure the complainant has

access to this Procedure.

- 6.3.5 If the issue raised is a potential Safeguarding Of Vulnerable Adults (SOVA) issue, relating to abuse, neglect or safety of a vulnerable adult, the complaint will (with the knowledge and consent of the customer if possible) be immediately passed to the SOVA Team for consideration of action under the Safeguarding Vulnerable Adults protocol.

6.4 Withdrawing a Complaint

- 6.4.1 A complaint can be withdrawn orally, or in writing, at any time by the complainant, representative or advocate. The withdrawal of a complaint will be acknowledged in writing.

- 6.4.2 If at any time a complainant decides not to pursue a complaint further the service area must decide if the matter has been satisfactorily concluded. If there are outstanding issues to be investigated or addressed these must be followed up under appropriate internal management review systems, but cannot be done so using the complaints procedures.

6.5 Freezing Decisions

- 6.5.1 In extreme cases if a complaint is about a proposed change to a service, the decision may need to be deferred (frozen) until the complaint is resolved. Consideration will be given to deferring a decision that will have a significant effect upon the life of an individual until the complaint has been resolved, having regard to the best interests of the customer.

6.6 Time Limits

- 6.6.1 Complaints will not normally be considered where the subject of complaint relates to events more than one year before the date the local authority receives the complaint, or one year from when the matter came to the notice of the complainant unless:
- The local authority is satisfied that the complainant had good reason for not making the complaint within that time limit;
 - Although there had been delay in making the complaint it is still possible to consider the complaint effectively and fairly

7. THE COMPLAINTS PROCEDURE

- 7.1 **The complaints procedure includes a range of options for resolving complaints. Upon receipt the complaint will be assessed and a decision made on the most appropriate option for resolution.**

In line with the Regulations the Council offers a number of options for resolving the complaints we receive: Local Resolution; Conciliation; Mediation; Independent Investigation; and, Review Panel. Each option involves a different process and slightly different time-scales based on guidance and best practice.

- 7.2 All complaints will be acknowledged either orally, or in writing, within 3 working days of receipt.

The acknowledgement will include the plan of how the complaint will be handled in line with these procedures. It will include the offer to discuss with the complainant the proposed handling of the complaint and the period of time for investigating the complaint and responding to the complainant.

7.3 LOCAL RESOLUTION

7.3.1 The local authority will take all reasonable steps to resolve the complaint by local resolution. A local manager from the service complained about will undertake local resolution.

7.3.2 We will aim to respond to complaints in 10 working days from receipt of the complaint or 20 working days for detailed and/or lengthy complaints. Where this is not possible we will respond as soon as reasonably practicable.

The complainant will be kept informed as to the progress of the complaint.

7.3.3 Complainants will be notified in writing of the action taken to investigate the complaint; the outcome of the authority's consideration of the complaint; whether the complaint has been upheld or not and the reasons why; details of what remedial action will be taken and improvements made to service provision as a result of the feedback.

7.4 CONCILIATION

7.4.1 Conciliation is a meeting, chaired by Customer Relations, between a manager and the complainant (and/or their representative) to try to resolve the issues of complaint through discussion.

7.4.2 We will aim for the meeting to take place within 10 working days of receipt of the complaint or as soon as is reasonably practicable.

7.5 MEDIATION

7.5.1 Mediation is a more formal process. The process involves a number of stages including interviews with both parties with the aim of bringing them together in a face-to-face meeting to reach agreement on resolution. Only trained mediators will undertake mediation.

7.5.2 We will aim to mediate within 25 working days of receipt of the complaint or as soon as is reasonably practicable.

7.6 INDEPENDENT INVESTIGATION

7.6.1 Independent Investigation will be used when the complaint is of a serious and complex nature and the local authority, in agreement with the complainant, decides an independent investigation is required.

7.6.2 Unless already submitted by the complainant, the Council will record the complaint in writing and invite the complainant to comment on it. The local authority may amend the written complaint in light of the complainant's comments - the Independent Investigator can also carry out

this step.

7.6.3 Serious complaints will be notified immediately to the Executive Director for Adult Services under the need to know procedure.

7.6.4 The complaint will be investigated by a person outside of line management of the service complained about. The complainant will be kept informed of progress of the investigation.

7.6.5 The local authority will send a report detailing the outcome of the investigation to the complainant within 25 working days (or if complex this can be extended up to 65 working days) from the date on which all parties agreed the record of the complaint. Where it is not possible to send the report within this period, it will be sent as soon as reasonably practicable.

7.6.6 If a report has not been sent after 25 working days from the start of the above period Customer Relations and/or the Investigator will explain to the complainant why there is a delay and the expected completion date.

7.7 ADJUDICATION OF THE INVESTIGATION

7.7.1 Following the report being presented to the local authority and the complainant, Customer Relations may offer and facilitate an adjudication meeting between the service area and the complainant. This will be a further opportunity to resolve the complaint before a formal response is sent to the complainant.

7.7.2 At the meeting:

- There will be the opportunity to clarify aspects of the complaint. The report will be discussed, with the focus being on the complaint and the desired outcomes
- The department will be asked to respond to any recommendations in the report
- Where the local authority considers the complaint to be to any extent well founded it will explain to the complainant what action, if any, it proposes to take to remedy the complaint and make service improvements and provide timescales for completion.
- The potential for compensation may also be discussed.

The outcome of the meeting will be summarised and sent to the complainant. The authority's response to the complaint will be sent in writing and include information on how the matter can be progressed should the complainant remain dissatisfied.

7.8 REVIEW PANEL

7.8.1 The Executive Director of Adult Services, reserves the right to offer a review panel following an independent investigation, only where:

- There is a chance it may help resolve the complaint and service improvements to be identified;
- The complainant is in agreement;
- Previous attempts to remedy the complaint have been

unsuccessful

7.8.2 Where a complainant agrees to this approach, the local authority will convene a review panel within 30 working days.

7.8.3 The Panel will consist of:

- An Independent Chair
- An Independent Person
- A third person who may be a Borough Councillor or an independent person.

An officer of the Council, or their spouse or civil partner, may not sit on the review panel. An Independent Person cannot be a member of the Council or the spouse or civil partner of a member.

7.8.4 The Panel will be attended by:

- A representative of the service area complained about, preferably the manager who provided the response to the complaint
- The Independent Investigator
- The Customer Relations Manager
- The complainant and/or their representative(s)

7.8.5 Within 5 working days, the Panel will decide whether the local authority adequately dealt with the complaint at independent investigation and notify the complainant and the Executive Director of its decision and recommendations.

7.8.6 Within 15 days of the notification of the Panel's decision the Executive Director will notify the complainant what, if any, action he/she proposes to take in response to the decisions and recommendations.

7.9 REVIEWING THE COMPLAINT PLAN

7.9.1 Where a complaint is not resolved at the first attempt, Customer Relations will review the Complaint Plan in conjunction with the service area.

If the local authority is considering amending the Complaint Plan the complainant will be offered the opportunity to comment on the proposed changes.

7.10 SIGN OFF

7.10.1 Where a complaint is not resolved through the Complaint Plan and the Council's view is that they have taken all reasonable steps to resolve the complaint, the Council will send to the complainant a written response signed by the Executive Director or an Assistant Director.

7.10.2 The response will include:

- An explanation of how the complaint has been considered;
- The conclusions reached;
- Any action that has been or will be taken as a consequence of the

- complaint including remedial action;
- The complainants' right to take the complaint to the Local Government Ombudsman

7.10.3 If at the conclusion of the complaints procedure the complainant remains dissatisfied they may refer their complaint to the Local Government Ombudsman:

PO Box 4771, Coventry, CV4 0EH

Email: advice@lgo.org.uk

7.11 TIME LIMIT

7.11.1 According to the Regulations complaints should be responded to in less than 6 months. Unless all parties have previously agreed an extension the complainant will be notified of the reasons for the delay.

7.12 COMPLAINTS ABOUT SERVICE PROVIDERS

7.12.1 All provider agencies registered with the Care Quality Commission are required to have a complaints procedure in place.

7.12.2 Where a complaint is received by the authority which is in part about Adult Social Care and in part about an agency:

- The local authority will ask the complainant if they wish details of the provider element of the complaint to be passed to the agency to which it relates. If the complainant agrees the appropriate part of the complaint will be forwarded to the agency concerned.
- The local authority and the agency commissioned to provide the service will co-operate to ensure the complainant receives a single coordinated response to all of the issues.

We will aim to respond to the complaint in line with the time-frames detailed above in Sections 7.1 to 7.8.

7.12.3 Where a complaint is wholly about provider matters, the local authority will ask the complainant for consent for details of the complaint to be passed to the relevant agency. If the complainant agrees the local authority will forward the complaint to the agency concerned and notify the complainant accordingly.

7.12.4 If the complainant does not wish the provider element to be forwarded to the agency (as outlined in 7.12.2) the local authority may consider and respond to the complaint as a whole. However, consent should be sought from the complainant to discuss the complaint with the agency and the complainant should be made aware of the limits of an investigation if information cannot be shared.

7.12.5 Complaints that relate to commissioned services must be recorded and shared with the Contracts Compliance Team who will monitor the quality and timeliness of responses provided by service providers.

7.13 COMPLAINTS ABOUT SERVICES OPERATING UNDER SECTION 75

7.13.1 Where the Council receives a complaint about services delegated to an NHS Body under a Section 75 agreement (e.g. a pooled budget agreement under the NHS Act 2006), the complaint will be handled by the NHS body and reported to the Council in accordance with the agreement.

Relevant Data Protection consents will be sought from the complainant before information is forwarded.

7.13.2 Conversely, where the Council receives a complaint about services delegated to it by an NHS body under a Section 75 agreement, the complaint will be handled by the Council and reported to the NHS body in accordance with the agreement.

7.14 DUTY TO CO-OPERATE

7.14.1 Where the Council receives a complaint that contains matters about its Adult Social Care and the services of another 'responsible body' e.g. NHS body, it will co-operate with the other body in coordinating and handling the complaint.

7.14.2 Co-operation will include:

- Ensuring the complainant receives a coordinated response to the complaint;
- Seeking agreement on who will lead on handling the complaint;
- Communicating with the complainant;
- Providing relevant information for the consideration of the complaints;
- Attend any meeting reasonably required in connection with the consideration of the complaint.

7.14.3 The plan for responding to such complaints will be agreed in writing between the relevant service manager, the Customer Relations teams of the two bodies, and the complainant.

8 OTHER PROCEDURES FOR RESPONDING TO CUSTOMER FEEDBACK

8.1 Other Procedures

8.1.1 Complaints about Children's Services, including statutory complaints and education issues are dealt with under the Children's Services Procedure.

8.1.2 Complaints about all other council services will be dealt with under the Corporate Complaints Procedure.

8.1.3 The School Standards and Framework Act 1998 places a duty on the governing body of maintained schools to manage complaints about the school. These complaints are therefore not the responsibility of the Local Authority.

8.1.4 Complaints about councillors who may have breached the Code of

Conduct fall to the Council's Standards Committee to address under a separate procedure. Complaints of this nature must be submitted to the Monitoring Officer of the Council.

- 8.1.5 Representations about policies may be made but these will not be dealt with through this procedure. If someone raises a concern about a policy this should be recorded as a representation and those who have made the policy, very often councillors, informed. Customers will receive feedback on their representations.
- 8.1.6 Where a service is delivered through a partnership with another organisation the complaint should be directed to the organisation who delivered the service.
- 8.1.7 Where the delivery of a service is commissioned from another organisation, and arrangements are in place to respond to customers directly, feedback should be addressed to the provider in the first instance. Where customers remain dissatisfied with the response, they are entitled to escalate it to the service responsible for commissioning the service.

9 EXCLUSIONS

- 9.1 It is important that complaints are dealt with effectively and this includes ensuring the correct procedure is used to make sure that the rights of the individual are protected and that there is no interference with another procedure or process that may take precedence. **Appendix A** details the exclusions from this procedure.

APPENDIX A

Exclusions from the Adult Social Care Customer Feedback Procedure

A complaint will not be considered, or further considered in cases where it:

- a. Has been withdrawn by the complainant
- b. Is a complaint made by another 'responsible' body (*such feedback will be recorded and responded to as a comment as detailed under 7.12*)
- c. Is a complaint made by an employee about any matter relating to that employment
- d. Is a complaint made orally that has been resolved to the complainant's satisfaction no later than the next working day after the complaint was made
- e. Is a complaint which has the same subject matter that has previously been resolved as described in (d)
- f. Repeats a complaint that has previously been considered through these procedures, unless the incident has reoccurred
- g. Has been investigated by the Local Government Ombudsman
- h. A complaint arising out of the alleged failure by the Council to comply with a request for information under the Freedom of Information Act 2000 (b)
- i. Is vexatious or frivolous,

Or where,

- j. The local authority is taking disciplinary proceedings in relation to the substance of the complaint against a person who is the subject of the complaint where it will prejudice the proceedings
- k. The local authority has been notified that criminal proceedings have been commenced in relation to the substance of the complaint where it will prejudice the proceedings
- l. The local authority has been notified that proceedings have been commenced under section 59 of the Care Standards Act 2000 in relation to the substance of the complaint (i.e. the removal or suspension of a registered person);
- m. The substance of the complaint relates to a service commissioned using direct payments (unless it is covered by the SOVA procedures – as outlined in Section 6.3.5) or
- n. The substance of the complaint relates to a service that is self-funded (unless it is covered by the SOVA procedures - (as outlined in Section 6.3.5)