

Resolving Complaints and Improving Services
Policy and Procedure

Adult Social Care Services
Shropshire Council

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Section 1 – Scope of the Representations and Complaints Procedure

1. Defining representations and complaints

Shropshire Council welcomes all feedback from customers because it helps to improve the way we do things and to learn from things that have gone wrong.

The intention of this document is to set out the statutory procedure for a customer who is likely to want to make representations, including complaints, about the actions, decisions or apparent failings of our Adult Social Care Services and to allow any other appropriate person to act on their behalf.

A complaint may be generally defined as an expression of dissatisfaction or disquiet in relation to a customer, which requires a response. Representations may not always be complaints; they might also be positive remarks or ideas that require a response from the local authority. Enquiries or comments about the availability, delivery or nature of a service which are not criticisms are also welcomed and can help us to improve our services.

2. Policy

This policy outlines the procedure for Adult Social Care complaints. Complaints relating specifically to Children's Services or other services of the council are covered in separate policies.

The policy is framed to:

- provide a high quality and responsive process;
- acknowledge that all people who receive services have a right to complain, if they think that something that should have been done has not been done or that something has been done badly or wrongly.

Legislation

This procedure is a statutory requirement laid upon Social Services Departments by the Local Council Social Services Act 1970, Section 7 as amended by:

- a. National Health Service and Community Care Act 1990, Section 50.
- b. Health and Social Care (Community Health and Standards) Act 2003; any function discharged by it under arrangements made under section 75 of the 2006 Act.
- c. Local Authorities Social Services Complaints (England) Regulations 2009 (replacing Local Authorities Social Services Complaints (England) Regulations 2006).
- d. Statutory Instrument 2009 No. 309.
- e. Section 50 of the NHS and Community Care Act 1990 inserted a new section (7b) into the Local Council and Social Services Act 1970.
- f. This procedure complies with the Data Protection Act 1998 and the Freedom of Information Act 2000. Any information obtained in relation to a complaint can only be used for that purpose. S19 of the Health and Social Care (Community

Health and Standards) Act 2003 amends the complaints function to S31 of the Data Protection Act 1998. When considering a complaint this is exempt from the 'subject information' provisions of the Data Protection Act 1998 where any use of these provisions would prejudice considering the complaint. The subject information provisions of the Act allow individuals to obtain information which is held on them by others. S31 of the Data Protection act provides an exemption from these provisions by reference to a number of different categories of regulatory function exercised by public bodies.

Inter-Agency Joint Working Protocol

In April 2009 a duty to co-operate was introduced. Different agencies such as councils, Clinical Commissioning Groups, NHS Trusts etc. must work together to resolve issues effectively and quickly. Agencies should have a joint working protocol to ensure that both customers and officers are aware of the process involved should a complaint cover more than one organisation. The protocol sets out the steps in the decision making process as to which organisation should take the lead in handling the complaint. It also sets out the necessary steps to gain permission to share information and inform the customer throughout the process. You can request a copy of the joint protocol from Shropshire Council's complaints officers or find it on the council's website.

3. Key Principles

This procedure is designed to:

- promote user satisfaction;
- identify areas where services can be improved;
- be accessible;
- reflect the service's desire to provide a high-quality service.

Customers will receive whatever help and guidance they require to aid them in making a complaint or in understanding the procedure. Where appropriate this help will include the provision of interpreters and advocates.

Complaints will be investigated as quickly and thoroughly as possible, and in a positive problem-solving manner.

4. What may be complained about?

A complaint may arise as a result of many things relating to service functions such as:

- an unwelcome or disputed decision;
- concern about the quality or appropriateness of a service;
- delay in decision making or provision of services;
- delivery or non-delivery of services including complaints procedures;
- quantity, frequency, change or cost of a service;
- attitude or behaviour of staff;

- Insufficient proficiency in spoken English by a member of staff in a public-facing role. (Under the Code of Practice on the English language requirements for public sector workers; Part 7 of the Immigration Act 2016).

5. What is exempt from the complaints procedure?

There are occasions when this procedure will not be the appropriate procedure to be used, for instance:

- when the initial contact is a request for service;
- when the issue is about something other than social care provision; (The Corporate complaints procedure may be more appropriate.)
- complaints about Children's Services;
- where the issue of the complaint is over 12 months old (unless there are exceptional circumstances);
- allegation of staff misconduct (this is dealt with under a separate procedure);
- appeals against court rulings;
- matters under consideration by the courts, for example prosecutions;
- a criminal police investigation is invoked;
- multi-agency adult protection procedures are invoked;
- the same complaint has already been investigated/ taken through the complaints procedure.

Complaints Concerning Allegations of Abuse by Staff Against Vulnerable Adults

The Complaints Procedure will only apply to those allegations of abuse or ill-treatment made against Council staff, Council carers (adults) or any agency that the Council has contracted to provide a service on behalf of the Council.

A vulnerable adult is 'any person aged 18 years or above who is, or may be, in need of community care services by reason of mental or other disability, age or illness and who is, or may be, unable to take care of him- or herself, or unable to protect him- or herself from significant harm or exploitation'.

NB: Any allegation of abuse or ill-treatment registered as a complaint may still require a written response under the Complaints Procedure (particularly if the complaint was in relation to council processes). After the multi-agency adult safeguarding process has been carried out the relevant manager would be expected to investigate further any outstanding matters from the complaint which were not dealt with within the protection procedures.

The manager would reply directly to the customer and adult (unless he or she is not of sufficient understanding) or advocate. The reply would also refer to any additional matters.

Third Party Providers

A third party provider can be considered as:

- Services that are delivered on behalf of the Council by external providers (e.g. domiciliary care, residential care).
- This Statutory Procedure is applicable where there is a 'duty of care'.

Bodies delivering services on behalf of the Council, may include:

- Domiciliary care through a private agency
- Registered homes
- Contracted agencies and multi agency services
- Adult placement schemes
- Social work reports submitted to court
- Protection of vulnerable adults
- Multi agency health service packages
- Single or joint assessments

These bodies are expected to have their own complaints procedure and deliver good practice in complaints handling. Where a complaint is made about a service provided on the council's behalf it is the council's responsibility to ensure that complaint is progressed in the right way. Complainants should give the service provider the opportunity to try and address their concerns at an initial stage before making a formal complaint.

Complainants choose to follow the provider's complaints procedure or complain directly to the council. Complaints are part of the contracting procedure and will be monitored by the relevant officers at Shropshire Council.

In cases where Shropshire Council has not played any part in arranging care and individuals have purchased their own care privately, they should complain to the care provider in the first instance and have the same rights to approach the Local Government and Social Care Ombudsman.

Complaints about an Adult Placed in the Area of another Council by Shropshire Council

These instructions will apply to both independent and local council residential provisions in other local council boundaries.

Contracts with other local authorities and/or with privately provided residential carers should contain details of the agreement as to which area office will be responsible for receiving and responding to complaints from adults placed by this council.

Each residential home is required to have its own complaints procedure, whilst customers also have the right to have their complaints considered by the Local Government and Social Care Ombudsman (a memorandum of understanding and referral processes are in place between the CQC and Local Government and Social Care Ombudsman) or Shropshire Council as the purchasing council.

If a representation or complaint is received which involves more than one local council, it should be considered by the local council in whose area the adult is being looked after, unless a different arrangement was agreed in the contract.

Complaints Concerning Staff from Other Agencies

The complaint will be recorded by a complaints officer at Shropshire Council, and permission sought from the customer to pass the complaint to the relevant person who has responsibility for managing complaints for the other agency.

Compensation Claims

When a complaint gives rise to a potential or actual insurance claim; usually this involves the customer suffering loss or injury arising out of an alleged negligent act by the Council, its employees or agents. Such complaints will be forwarded to the Council's Insurance Officer and the customer informed.

The Statutory Process will not apply if:

- the complaint is on behalf of a group of service users. Group complaints should be referred to the Complaints Manager. Where discretion is used to consider a group complaint under the statutory procedure, it will be necessary for the group to appoint a single point of contact who will assume responsibility and to whom responses will be sent, and s/he will be responsible for distributing these to the group;
- the same complaint is received from a number of individuals in such a way as to suggest an organised campaign. Although the substance of the complaint may be investigated at the discretion of the Complaints Manager or the Monitoring Officer;
- the customer is abusive or makes threats to staff in the course of submitting the complaint. The customer appears to be a persistent or vexatious customer or other unreasonable behaviour;
- the complaint appears to be substantively indistinguishable from one that has already been submitted by, or on behalf of, the same service user, and has received a written response through the statutory procedure;
- the complaint concerns the behaviour of an individual who is not employed by the council, or in receipt of payment from the council to provide a service;
- the complaint has been made anonymously, although the substance of the complaint may be investigated a response cannot be made;
- the complaint is not about any actions or decisions of the council, or anybody acting on its behalf;
- the complaint has already been dealt with at all stages of the procedure;
- the same complaint has been dealt with by a local commission, other legal process, judicial review or Local Government and Social Care Ombudsman;
- the complaint is unclear or is vexatious – this should only apply to a very small number of customers. Staff should not tolerate unacceptable behaviour (abusive, offensive, threatening);
- the matters complained about should be dealt with under other procedures such as disciplinary or grievance procedures, personnel issues, or the corporate complaints procedure;
- the dissatisfaction is with a court decision or where a remedy to any issue is through an appeal to court (but, where social workers provide information or reports to court proceedings, a customer may make a complaint about the quality or accuracy of such information or reports);
- there is a special statutory procedure which already exists for dealing with a particular issue (e.g. an employment tribunal is available to examine complaints about selection and recruitment);
- there are separate internal arrangements for appeal and/or review for re-consideration of professional decisions taken (e.g. Blue Badge, Finance, Risk Panel, and Coordination Panel). The complaints process is then available if a

customer has grounds for complaint about the process (e.g. content of a report, flaw in the procedure);

- where the customer is 'self funded' and uses independent services. Customers will be advised of their rights under the Care Standards Act 2000;
- the actions or events occurred more than 12 months prior to the date of the complaint unless one or more of the following circumstances apply:
 - i. the customers/service users can demonstrate that they have been making efforts to resolve the matter with the council within those 12 months;
 - ii. the customers/service users were not aware, until beyond the period of 12 months, of the actions of the council which now form the subject of the complaint;
 - iii. the customer was incapacitated by ill-health beyond the 12 month period which prevented him/her from making a complaint within the allowed timescales and provides proof of this;
 - iv. it would have been unreasonable for the complaint to have been made earlier than it was made;
 - v. the customer was vulnerable;
 - vi. the customer was in fear of reprisal;
 - vii. it was not possible to consider the complaint effectively and fairly.

Approved Social Worker (ASW) decisions regarding applications under the Mental Health Act 1983, are actions taken independently of the council and fall outside this complaints procedure. (However, the process of the ASW assessment is covered by this procedure).

If customers are campaigning for new or amended services, or increased resources for groups of service users or potential service users they should consult with their elected representatives, not use the complaints process.

Where a customer states in writing s/he intends to take legal proceedings in relation to the substance of the complaint, access to the complaints procedure may be restricted, and where the Complaints Manager is certain the complaint cannot be resolved through this procedure. In the following situation customers should be advised to consult with their legal representative:

- Challenging legislation or judicial decisions underpinning service delivery.
- Applying for compensation or damages arising from alleged actions or inaction of staff. Where the subject of the complaint is being pursued through legal action. If a complaint has been initiated under the statutory procedure, then the process should be suspended until the final outcome of the legal action. There is no requirement to suspend the complaints process if the customer is simply seeking legal advice or is taking legal action against the council on a matter not directly related to the complaint.
- The complaint subject is a matter to be determined by a judicial body, the complaint should be referred back to the body in question.

In the following situation, complaints should be discussed with the Complaints Manager and a Senior Manager:

- The complaint involves allegations against staff of a serious nature, for example professional incompetence, dishonesty or criminal behaviour. In such cases, a relevant senior manager may determine that other processes should be used to deal with the complaint, for example formal disciplinary procedures or criminal investigation.
- Advice should be sought before a complaint is responded to within the statutory procedure in the above instances, where a degree of local discretion is required. Consideration would be given to these types of issues under the Corporate Complaints Procedure.

6. Who may complain?

Individuals can use this procedure if they are:

- someone for whom the council has a power or duty to provide or secure the provision of a service, and this need for a service has come to the attention of the council;
- someone in receipt of direct payments from the council for services; or
- anyone, such as a relative, acting as an advocate on behalf of a service user.

Where the complaint is being made on behalf of another person:

- The council must be satisfied the person making the complaint is a suitable person and is making the complaint in the best interests of the person on whose behalf the complaint is being made.
- Where the service user has capacity (i.e. the ability to receive, understand and process information given and can make a decision) then their written permission should always be obtained. The council will consider representations including complaints made to us by any customer or third party who is contacting us on the customer's behalf.

Complaints through a Member of Parliament

Complaints that are received from elected Members of Parliament will be processed through the procedure but the response will be sent from the Director of Adult Services within the agreed timescale of receipt. All communications will be copied to a complaints officer for recording purposes.

Who may act on behalf of a service user with written permission?

- A person providing care to a service user without being employed for that purpose (private carer).
- Family member or relative of the service user.
- Any other person having sufficient interest in the service user's wellbeing to warrant their making representations on their behalf (staff may make a complaint on behalf of a service user where there is no other person able to do so and there is a duty of care).

- Elected Councillor, Member of Parliament and similar roles, as appropriate.

7. Relationship to other policies and processes

This procedure may be suspended if any of the following procedures are invoked:

- a) Disciplinary and Grievance Procedures
- b) Children's Services Complaints Procedure
- c) Harassment Procedures
- d) Police Investigation – Criminal

Deferring or Freezing Decisions

If the complaint is about a proposed change to a care plan, a placement or a service, careful consideration will be given to deferring or "freezing" the change until the complaint is resolved. This will be considered on a case by case basis and will normally be made through detailed discussion and an assessment of the risks between the Statutory Complaints Officer and the Operational Service Manager. The aim of this process will be to reach a decision that is both fair to the complainant whilst not prejudicing the Service. Where an agreement cannot be reached, the case will be referred to the Head of Adult Social Care Operations. Once the decision has been made the Statutory Complaints Officer will record the reasons for not freezing a decision.

The investigation of complaints must preserve confidentiality and reflect the Council's commitment to equal opportunities and anti-discriminatory practice.

8. Basic Principles of Complaints

Concerns or worries are often raised as part of normal everyday interaction between services and their customers. Normally these will be easily resolved by staff working on a day-to-day basis with the customer. However, there may be complaints that cannot be sorted out in that way to the customer's satisfaction. The investigation of complaints must preserve confidentiality and reflect the council's commitment to equal opportunities and anti-discriminatory practice.

Basic Principles:

- Most complaints arise from a genuine feeling of grievance and not of maliciousness.
- Small grievances can become large if not dealt with at the early stages.
- Complaints can serve to highlight deficiencies in service and staffing levels.
- People have the right to complain, to be heard, and to have their complaints looked into as quickly as possible.
- Handling complaints properly is an important part of the way the local authority provides its services.
- If the customer considers their comments as a complaint then it should be regarded as a complaint; do not deny the right to complain.

- Complaints are part of the feedback system and are used to inform how services are provided.
- The confidentiality of the customer and those persons mentioned (whether staff or others) should be appropriately protected.
- Persistent/vexatious customers can have a new valid complaint.

Values

This policy sets out certain values:

- that services and information about services should be readily available and easy to understand;
- that customers are involved as fully as possible in our processes to promote better services;
- that individuals have rights, and can ask the council to account for its action or inaction on their behalf;
- that individuals have the right to redress when the services provided have not been good enough, and when there has been an injustice caused by the council.

These values imply a number of things for our services and for our staff:

- Council services should be trying to provide a quality service. Where this does not happen, for any reason, then the complaints procedure offers a means of redress and of improving the quality of the service provided.
- The rights of individuals to complain are clear. However, the right of staff to equally fair treatment is also explicit. This procedure does not provide a means of placing one person's rights above those of another.

Section 2 – How the Process Works

9. Introduction

This section details the procedure for handling all representations. These must be registered with a complaints officer or recorded on the council's complaints system.

Compliments, Comments and Suggestions

It is important that the council learns from the positive statements made by customers as well as the negative comments about services. Where these other forms of representation are made, including criticisms which the sender does not wish to regard as a complaint, a complaints officer will record and forward these representations to the appropriate manager for their attention. These comments/representations also present an opportunity to improve services.

How complaints can be made

Complaints can be in writing, by telephone, by email, on-line or in person. Once a complaint has been made an acknowledgment will be issued to the customer. The acknowledgment will set out the timescale for the complaint response. If more time is needed, the reasons for this will be explained with a request for a time extension.

Anonymous complaints

The Council is keen to receive customer feedback and considers it is important, especially if it has not provided the expected level of service. All feedback is treated in confidence and with impartiality and gives the council the opportunity to work positively with the customer towards a resolution and also to gain learning and improve services.

From time to time the council receives anonymous complaints and although these will be passed to the relevant service for investigation if appropriate, although there will be no response.

10. Complaints Procedure

An initial assessment of the complaint is carried out (usually by the Statutory Complaints Officer) to determine the issues, the severity and potential impact and to identify any other organisations that may be involved.

An acknowledgement is completed which may be via telephone contact to discuss the matter to seek an early resolution if possible. An explanation of the complaints procedure is given, and if deemed necessary, details of advocacy and an explanation of representation.

Timeline and actions:

Task	Timescale	Actions
Complaint received		Initial Stage Assessment of the complaint (severity/impact/likelihood of recurrence). Identify whether or not there is a safeguarding issue, if there is any involvement of other agencies (joint working protocol), if it is a complaint about a third-party

Task	Timescale	Actions
		<p>provider, or if there are any other considerations. If identified as a safeguarding issue the adult safeguarding process is followed before any other action. For complaints made by representatives, identify if consent is required or whether power of attorney is in place.</p> <p>Contact is made with the relevant team or service manager to discuss the issues raised and agree contact with the customer. This discussion may lead to more information being required from the customer in order to properly assess issues.</p>
Acknowledgement	Within 3 working days	<p>If a telephone number has been given, contact will be made with the customer to discuss issues. In some circumstances it may be appropriate to arrange a meeting, offer advocacy or signpost to other available support. If it is possible, work will take place to try to resolve issues.</p> <p>If the complaint is not clear, and a telephone number or email address has not been provided, a letter will be sent to the customer requesting a telephone number or email address or that they make contact, in order to discuss the issues and understand the detail of the complaint. Within this letter it will state that if no response has been received by the indicated target date then Shropshire Council will not be able to progress the complaint due to the lack of clarity.</p> <p>Once the complaint details have been confirmed, the customer will be informed of the following key information:</p> <ul style="list-style-type: none"> - Name of investigating officer. - Timescale for the investigation and response. - Contact details for the Complaints Officers. - Information concerning how to request advocacy support.
Meeting (if requested)	Mutually agreed timescale	<p>If a meeting is needed or requested work will take place to organise a meeting with the complainant, investigating officer and/or Complaints Officer to discuss the issues and work towards a solution. There may be other parties/agencies that need to be involved.</p>

Task	Timescale	Actions
Investigation and Response	65 working days maximum.	<p>The investigation into the complaint will involve gathering and reviewing a range of evidence, for example:</p> <ul style="list-style-type: none"> - Copies of any correspondence - Interviews - Review of case files and other documentation - Cross reference to policies and procedures <p>Following the investigation, a full response is sent to the customer.</p> <p>The customer may wish to seek clarification on the response in order for the complaint to be fully resolved. A Complaints Officer will assist.</p> <p>The customer is advised of their right to take the matter to the Local Government and Social Care Ombudsman (LGO) if they remain unhappy with the response.</p>
Review		A Complaints Officer will monitor complaints that are coming up to timescale without resolution and review the status with the investigator.
Referral to LGO		The customer can take the matter to the LGO for their consideration.

11. Meetings

Meetings can be used at all or any stage of the process of handling complaints. A meeting provides all persons involved the time and space to listen to each other and their expectations, with a better chance of focusing on solutions rather than on problems. Meetings will take the form of a structured and open approach to conflict resolution, seeking to help all parties identify their own and others' feelings and interests rather than defend individual positions. A meeting will be arranged in advance by the Complaints Officer upon request. It will be:

- Confidential.
- Without prejudice.
- Impartial, independent and non-judgemental and encourage collaboration with all people.
- All parties must be willing to be involved and be committed to seeking a resolution to the issues of the complaint.

Who is A Formal Authorised Representative?

A person with a formal statutory entitlement, locally recognised authority, or explicit mandate to complain on behalf of a service user. These may include:

- Power of Attorney, Enduring Power of Attorney, or Lasting Power of Attorney or Receiver (e.g. a person appointed by court of law).
- Person appointed as a proxy decision maker under Adults with Incapacity Act.

What is an Advocate?

An advocate is a person from an advocacy organisation who is able to speak on behalf of a service user (not to be confused with a solicitor) in respect of a representation.

The council will facilitate, as far as reasonably practicable, independent and confidential advocacy for customers where requested and will always offer assistance and information.

A professional or citizen advocate from an organisation recognised to be a provider of independent advocacy.

12. Resolution and Remedies

Where some justification is found for a complaint, consideration needs to be given to the question of appropriate remedy.

An apology and/or explanation will always be needed where any part of the complaint is upheld. It may be necessary to determine who can provide remedial action and what arrangements are needed.

The council's guidance in the use of financial redress is that this should be made in exceptional circumstances where some direct financial loss has been incurred, and where agreement has been reached with the Head of Service as well as the Complaints Monitoring Officer.

13. Vexatious and Persistent Complaints

The council is committed to dealing with complaints fairly and providing a high quality of service to those who make them. As part of this service there is not normally a limit to the contact that customers can have with the council. However, there are a small number of customers who, because of the frequency of their contact, hinder consideration of their and other people's complaints. The council refers to such customers as "unreasonably persistent complainants" and exceptionally, will take action to limit their contacts.

Note: Please refer to Shropshire Council's Unreasonably Persistent and Vexatious Customers Procedure for full details.

14. Complaints to the Ombudsman

The Local Government and Social Care Ombudsman (commonly referred to as the LGO) is independent and impartial, gives a service which is confidential and free of charge, and has the same powers as the High Court to require people to provide information and to produce documents for investigation.

Any member of the public is able to complain to the LGO if they feel there has been an injustice. However, the Ombudsman's office usually states that customers should first take up their complaint with the relevant department or council.

If the customer is not happy with how the council has dealt with their complaint, they can take the matter to the Local Government and Social Care Ombudsman. The Ombudsman's role is to investigate complaints of maladministration by local authorities. Maladministration means that there has been a fault in the way the council has, or has not, done something, such as a failure to follow its own rules or a breach of legislation.

Complaints which members of the public make to the Local Government and Social Care Ombudsman will be dealt with by complaints officers or the Complaints Monitoring Officer who will ensure that the complaints process has been followed.

The Ombudsman may reject any complaint as premature if the complaints procedure has not been followed. Ombudsman involvement may be ended at any point where it is clear there is no maladministration or where the council agrees to settle with the customer.

Referral to the Ombudsman

The complaint should progress through the council's appropriate council complaints procedure in the first instance. If the complainant is not happy with the response provided by the council they may wish to approach the Ombudsman. The contact details are:

Local Government and Social Care Ombudsman
Telephone: 0300 0610614
Online form: <https://www.lgo.org.uk>

Write to:
Local Government and Social Care Ombudsman
PO box 4771
Coventry
West Midlands
CV4 0EH