

# Appendix 3

## Adult Social Care Statutory Complaints Procedure

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# 1. Background and legal framework

This document outlines how Warwickshire County Council will respond to complaints made about adult social care services, as defined in the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009 (“the Regulations”).

This legislation applies to local authorities, NHS bodies, primary care providers and independent sector providers who are responsible for providing NHS and social care. The accompanying guidance for this legislation is ‘Listening, Responding, Improving: A guide to better customer care’. (Department of Health 2009)

The following legal frameworks have been considered when producing this document:

- Local Authority Social Services and National Health Service Complaints (England) Regulations 2009.
- Mental Capacity Act 2005.

## 2. Scope of the procedure

This procedure applies to all adults over the age of 18 and their representatives who approach the council in relation to making a complaint or representation about social care provision. It sits under the council’s Customer Complaints Policy. Aspects of the Customer Complaints Policy, such as the definition of a complaint, time limits for complaining and the approach to vexatious complaints and unreasonable complainants also apply to complaints made under this procedure.

## 3. Our duty

Warwickshire County Council has a duty to deal with complaints in relation to its adult social care functions to ensure that:

- complaints are dealt with efficiently.
- complaints are properly investigated.
- complainants are treated with respect and courtesy.
- complainants receive, so far as is reasonably practical:
  - (i) assistance to enable them to understand the procedure in relation to complaints; or
  - (ii) 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.

## 4. The responsible person and the complaints manager

The Regulations require that the council must designate a person to be responsible for compliance with the arrangements under the statutory process and to ensure that action is taken on the outcome of any complaint. In local authorities the responsible person is the Chief Executive and at Warwickshire County Council these functions are delegated to the Director of Social Care and Support. The Service Manager – Customer Relations (Complaints Manager) is responsible for managing our complaints handling procedures.

## 5. Who can complain under the Adult Social Care statutory complaints procedure?

A complaint under this procedure can be made by:

- A person who receives or has received services from Social Care and Support.
- A person who may be affected by the action, omission or decision of Social Care and Support. A representative may complain on behalf of a person who:
  - a. has died.
  - b. cannot make a complaint themselves due to mental or physical incapacity.
  - c. is a child or young person; or
  - d. has given consent for the representative to act on their behalf.

If a representative wishes to make a complaint on behalf of a person who lacks capacity (within the meaning of the Mental Capacity Act 2005) the council must be satisfied that this is appropriate. If we are unable to accept the complaint on these grounds, we will notify the representative in writing.

## 6. Which complaints are not covered by the Adult Social Care statutory complaints procedure?

The following complaints are examples of matters that will not be dealt with under this procedure:

- a complaint made by another Local Authority.
- a complaint from an employee of Warwickshire County Council concerning their employment.
- a complaint which is made orally and is resolved satisfactorily within 24 hours.
- a complaint about a matter that has already been investigated under these procedures.
- a complaint that is currently being investigated under Safeguarding procedures or is being investigated by the Local Government and Social Care Ombudsman
- a complaint resulting from a failure to comply with a request for information under the Freedom of Information Act (2000) or the Data Protection Act 1998 (or any subsequent replacement legislation or guidance).
- anonymous complaints.
- a complaint that has been investigated by a local commission, other legal process or judicial review.
- a complaint relating to a Court Decision or where a remedy to any issues is through an appeal to Court.
- where there are separate arrangements to appeal a professional decision, or a special statutory procedure already exists for dealing with a particular issue (i.e. Tribunal).
- a complaint on behalf of a group of service users or the same complaint is received from a number of individuals in such a way as to suggest an organised campaign.

Where the decision is taken not to investigate a complaint under this procedure, the complainant will be informed of the decision and the reason for that decision. Where possible, the complainant will be advised of the appropriate process to follow.

## 7. Our duty to co-operate

Where the council receives a complaint that relates to the actions of more than one agency (e.g. police/NHS etc) the council will liaise and co-operate with those agencies for the purposes of co-ordinating the handling of the complaint and ensuring the complainant receives a co-ordinated approach. This will include agreeing who will take the lead and communicate with the complainant. The council will ensure that it provides relevant information requested by another agency (where it is lawfully able to do so) and attends any meetings required in connection with the complaint.

## 8. Complaints relating to care standards

Where a complaint received by the council relates to care standards (i.e. services provided by an establishment or agency registered under the Care Standards Act 2000) consent will be sought from the complainant or their representative to share details of the complaint with the Registered Person (i.e. the person who is registered under Section 11 of the Care Standards Act 2000 as in charge of the establishment or agency complained about). Once this consent has been received, details will be shared as soon as reasonably practicable.

Where a complaint relates in part to care standards and in part to matters for the council to consider, the council will confirm to the complainant which parts of the complaint will be dealt with by the registered person responsible for the care provision and which elements by the council. The council will cooperate with the registered person to ensure a coordinated response is provided to the complainant.

## 9. Social Care provider complaints

Where a complaint relates to the actions of a social care provider, consent will be requested from the complainant or their representative to share details of the complaint with the provider. Once this consent has been received, details of the complaint will be shared with the provider as soon as is reasonably practicable.

Where a complaint relates in part to a social care provider and is in part for the council to consider, the council will confirm to the complainant which parts of the complaint will be dealt with by the social care provider and which elements by the council. The council will also cooperate with the social care provider to ensure a coordinated response.

## 10. Is there a time limit for making a complaint?

Complaints must be made no later than 12 months after:

- a. the date on which the matter which is the subject of the complaint occurred; or
- b. if later, the date on which the matter which is the subject of the complaint came to the notice of the complainant.

However, the responsible person has the discretion to waive this time limit if they are satisfied that:

- a. the complainant had good reason for not making the complaint within the time limit; and
- b. notwithstanding the delay, it is still possible to investigate the complaint effectively and fairly.

# 11. Procedure before investigation

A complaint may be received orally, in writing or electronically and will be acknowledged within 3 working days of receipt. If the complaint has been received via another organisation (e.g. NHS), the complainant will be notified within 3 working days of receipt of the complaint from that agency that their complaint details have been received by the council.

The acknowledgement may be made verbally or in writing and will contain details of the way in which the complaint will be handled and the response timeframe. The complainant will also be offered the opportunity to discuss their complaint issues.

# 12. Investigation and response

Complaint investigations will be appropriate and proportionate, aiming to resolve the issue quickly and efficiently. During the investigation as far as reasonably practical, the complainant will be kept informed of progress.

Following the investigation, the complainant will receive a written response signed by the responsible person containing an explanation of how the complaint has been considered; the conclusions reached; and any remedial action Warwickshire County Council considers necessary. The response will also contain details of the complainant's right to take their complaint to the Local Government and Social Care Ombudsman should they continue to be dissatisfied (see paragraph 15 below for contact details) and any further recourse the complainant may have in the case of a complaint which also concerns the NHS.

Warwickshire County Council has a maximum of 6 months from the receipt of a complaint to provide a written response. Should a longer period be required, they will notify the complainant in writing explaining why and send the response as soon as reasonably practicable thereafter.

It is important to note that care providers will have their own processes and timescales for dealing with complaints, and it may be necessary for those processes to conclude before the council can fully deal with the complaint.

The responsible officer will ensure that information relating to the arrangements for making a complaint is available to the public. This information will include relevant contact details and the process followed when investigating a complaint.

## 13. Unreasonable behaviour and vexatious complaints

Unreasonable behaviour or vexatious complaints will be treated in accordance with the provisions set out in the council's Customer Complaints Policy on the [Warwickshire County Council complaints policy](#)

## 14. Complainants who are unhappy about the outcome of their complaint

Once the council has dealt with the complaint, the complainant may refer it to the Local Government and Social Care Ombudsman (LGSCO) and ask for it to be reviewed. The LGSCO provides a free and independent service.

Complaints may be registered with the LGSCO using their complaint form or by phone or post.

The contact details are:

[www.lgo.org.uk/](http://www.lgo.org.uk/) Phone: 0300 061 0614

**The Local Government and Social Care Ombudsman**

**PO Box 4771**

**Coventry**

**CV4 0EH**

*NB: The LGSCO will not normally investigate a complaint until the council or the provider has had an opportunity to respond and resolve matters.*