Oxfordshire County Council Policy for Adult Social Care Comments, Complaints and Compliments

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Purpose

1. This policy outlines what the council will do to ensure that Adult Social Care statutory complaints are handled in line with The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009.

2. The policy includes the collation of comments and compliments about services which form part of the reporting alongside statutory complaints

3. This policy is aligned with the Care Act 2014, associated regulations and statutory guidance.

4. It should be read in conjunction with the council's Adult Social Care policies on Assessment and Review, Support Planning, Safeguarding and Contributions, and associated operational procedures and guidance.

5. It should also be read in conjunction with partners’ policies where applicable. Examples include the Oxfordshire Clinical Commissioning Group, NHS Continuing Healthcare and mental health services.

Context

6. Oxfordshire County Council is committed to delivering quality services, so it is essential that the people who access Adult Social Care services feel able to give feedback, whether this is positive or negative.

7. By taking comments and complaints seriously, the council can ensure that it continuously reviews and improves its services to promote people’s wellbeing. This policy will support people’s wellbeing by ensuring that the council responds and listens to the wishes and feelings of the people who are using its services.

Policy principles

8. The council is committed to adhering to the six principles of good complaints handling, as set out by Local Government Ombudsman:

   - getting it right;
   - being customer focused;
   - being open and accountable;
   - acting fairly and proportionately;
• putting things right;
• seeking continuous improvement.

Transparency

9. The process for making a complaint about Adult Social Care services will be as simple and transparent as possible.

10. The formal responses given to people making a complaint, will include honest, evidence-based explanations, giving the reasons for any decisions that have been made.

Information and advice

11. The council will ensure that clear and comprehensive information and advice about the complaints process and advocacy services is made available.

12. All information will be made available in a range of formats and presented in Plain English.

13. The Comments and Complaints Service will ensure that in the event that a complaint cannot be resolved to the complainant's satisfaction, that they are told how to contact the Local Government Ombudsman.

14. This policy will be explained and referred to in the induction training for all Adult Social Care staff. Further training on this policy and the associated guidance will be made available to all relevant staff.

Fairness and equity

15. The council will ensure that all statutory complaints are investigated thoroughly, fairly and without prejudice towards any staff involved or the person making the complaint.

16. Decisions made in the process of handling a complaint will be proportionate and appropriate.

Choice and control

17. The vision for Adult Social Care in Oxfordshire is to enhance people’s control over the decisions that will impact their lives, as the council believes that people themselves are best placed to determine the care and support they need. This includes giving people the opportunity to appeal against a decision relating to their care and support, or raise concerns with the process and/or the service they are receiving or have received.

18. Focusing on best outcomes for the council and the person making the complaint, the council will ensure that its staff are equipped and empowered to act decisively to resolve complaints.
Partnership

19. The council will work closely with other social care and health organisations to resolve complaints where they concern more than one organisation and will aim to do this as promptly and effectively as possible.

Promoting prevention, early intervention and independence

20. The council will use all feedback and lessons learnt from complaints to improve service design and delivery, with the aim of intervening promptly where issues arise to prevent further complaints.

21. The council will have appropriate systems in place for recording, analysing and reporting on complaints and compliments, so that lessons can be learnt and service improvements made.

Policy inclusions

22. Any statutory Adult Social Care service or function may be complained about. This may include, but is not limited to:

- the referral process/getting access to services;
- the assessment and care planning process;
- delays or waiting times;
- the behaviour of staff;
- issues related to funding or financial assessments.

23. Complaints should be made within 12 months of the incident occurring. However, the council has the discretion to consider a complaint made outside of this timeframe, providing the complainant can demonstrate they had good reason for not making the complaint within the time limit and it is still possible to investigate the complaint effectively and fairly.

24. A person is able to make a complaint if he/she is:

   (i) a person (or their representative) who receives or has received Adult Social Care services arranged by Oxfordshire County Council;
   (ii) a person (or their representative) who is affected or likely to be affected by the action, omission or decision of Oxfordshire County Council's Adult Social Care services.

25. A representative is someone who is acting on behalf of a person who:

   (i) has died;
   (ii) is unable to make the complaint themselves because of physical incapacity or lack of capacity (within the meaning of the Mental Capacity Act 2005); or
   (iii) has requested the representative act on their behalf.
26. Where a representative makes a complaint on behalf of a person who lacks either the physical or mental capacity to represent themselves, the council will not consider, or further consider, the complaint under this complaints procedure unless it is satisfied that the representative is conducting the complaint in the best interests of the person on whose behalf the complaint is made.

The Complaints Team will make this decision in consultation with the relevant managers in Adult Social Care. This decision will take into account the need to respect the service user’s confidentiality and any previously expressed wishes about disclosure of information to third parties. They will also consider whether the third party has the relevant legal authority to make the complaint on behalf of the service user.

**Appealing a decision made by Adult Social Care**

27. If a person does not want to complain but would instead like to appeal a decision made by Adult Social Care, in the first instance this will be referred back to the relevant team for them to review. Examples might include decisions related to:

- eligibility to receive funded social care support;
- the professional assessment of needs;
- support planning; including
- Personal Budgets – the amount of money allocated to a person to the meet outcomes of their Support Plan.

**If the person is not satisfied with the response to their appeal they may request that this is escalated to a complaint.**

**Policy exclusions**

28. Certain types of complaint are not intended to be dealt with by this policy and are more appropriately dealt with through alternative mechanisms or forums. These include, but are not limited to:

(I) complaints where the person does not meet the appropriate timeframe mentioned in paragraph 23 of this policy;

(II) complaints that are made verbally and can be resolved within one working day;

(III) a complaint that has already been investigated by the council or other appropriate organisation and a final response issued.

(IV) complaints that do not relate to actions or decisions of Adult Social Care or to anybody acting on its behalf;

(V) any matter that is already subject to legal proceedings against the council;

(VI) a complaint made by a council employee about their employment.
(VII) complaints arising out of an alleged failure to comply with a request for information under the Freedom of Information Act 2000;

(VIII) complaints that fall under the council’s Corporate Complaints procedure.

**Independent Advocacy**

29. Independent advocacy will be offered to everyone who makes a complaint and details of the advocacy service will be included in the information sent to people making a complaint, when first lodging their case.

**Mental Capacity**

30. In line with the principles set out in the Mental Capacity Act, the council will assume that people have mental capacity and can make decisions for themselves unless it is established otherwise. If it is determined that the person does not have mental capacity, the council will follow the guidance contained in the Mental Capacity Act.

31. The council will facilitate the person’s involvement and supported decision making throughout the processes as much as possible. This will be the case whether they have mental capacity or not, in line with the principles set out in the Mental Capacity Act.

**Safeguarding**

32. Where issues of abuse or neglect are raised in the course of handling a complaint, the council’s safeguarding policy will be referred to and the issue must be discussed with the adult safeguarding lead, as well as the Safeguarding Manager if appropriate.

33. If the safeguarding issue concerns a person over the age of eighteen who is continuing to receive children’s services, children’s safeguarding teams and other partner organisations/persons involved in the case will be consulted in handling the complaint. This also applies to people moving from another local authority to Oxfordshire who are in the process of transitioning from children’s to Adult Social Care and support.

34. A decision about how to proceed with the complaint will be based on the wishes of the person at the centre of the safeguarding issue. If the council thinks a person may lack capacity to decide how they want to proceed, it will carry out a mental capacity assessment (see Mental Capacity section).

**Handling and consideration of complaints**

35. On receipt of a statutory complaint the council will have procedures in place to:

(I) acknowledge the complaint within the three day statutory timeframe and offer to discuss the matter with the person making the complaint;
(II) deal efficiently with complaints and investigate them properly, appropriately and in a timely manner;

(III) treat the person with respect and courtesy;

(IV) provide assistance to the person to enable them to understand the complaints procedure or to provide advice on where they may obtain such assistance (so far as is reasonably practicable);

(V) resolve the complaint within the six month statutory timeframes;

(VI) keep the complainant informed, as far as is reasonably practicable, as to the progress of the investigation;

(VII) tell the person the outcome of their complaint in writing;

(VIII) take action if necessary in light of the outcome of a complaint.

36. If the complaint relates to a care provider and the person making the complaint agrees, it will initially be passed to the provider to investigate and provide a response. This will be coordinated through the Comments and Complaints Service. If the provider is unable to resolve the complaint, or the person making the complaint does not give their consent, the principles of this policy will be applied.

37. Where a complaint crosses organisational boundaries a joint investigation will be completed, with one organisation taking overall responsibility.

38. Complaints relating to more than one organisation will be dealt with by each body according to their own complaints policies and procedures, and the relevant governing legislation, but a lead organisation for responding to the complaint will be identified as appropriate.

Responsibilities

39. The head of the council has overall responsibility for ensuring compliance with the complaints arrangements and for agreeing all responses to complaints.

40. The Director of Adult Social Services has delegated authority to ensure compliance with the complaints arrangements within Adult Social Care. The Deputy Director, or in most cases the relevant Service Manager, has delegated authority to agree responses to statutory complaints. This will depend on how serious the complaint is considered to be.

41. The Complaints Manager, as defined in The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009, is responsible for managing the complaints procedure. The Complaints Manager will be responsible for undertaking training on procedures, supporting staff in dealing with complaints and for publicising the Comments and Complaints Service. The ‘Complaints Manager’ is a function, and will be fulfilled by staff in the Comments and Complaints Service as appropriate.
Local Government Ombudsman

42. In the event that a complainant is unhappy with the way the council has responded to their complaint, they can pursue the matter with the Local Government Ombudsman.

43. The Ombudsman has discretion as to whether to take on a case based on the presenting facts and circumstances. The Ombudsman’s powers are set out in the Local Government Act 1974, which includes the rules about how the scheme works.

The Ombudsman:

- can only investigate complaints of maladministration, which have led to injustice to the complainant;
- will generally not investigate a complaint unless and until the local authority has been given the opportunity to resolve it first,
- cannot investigate a complaint if the complainant is also taking legal proceedings.

Unacceptable behaviour and unreasonably persistent complaints

Unacceptable behaviour

44. We do not expect our staff to tolerate unacceptable behaviour from people making a complaint and we will take action to protect staff from such behaviour.

Unacceptable behaviour may include

- Using abusive or foul language on the telephone
- Using abusive or foul language face to face
- Sending multiple emails, and
- Leaving multiple voicemails.

When we consider that a complainant’s behaviour is unacceptable we will tell them why we find their behaviour unreasonable and we will ask them to change it. If the unacceptable behaviour continues, we will take action to restrict the complainant’s contact with our officers.

Where a complainant continues to behave in a way, which is unacceptable, we may decide to terminate contact with that complainant and discontinue any investigation into their complaint.

Where the behaviour is so extreme that it threatens the immediate safety and welfare of the council’s staff, we will consider other options, for example reporting the matter to the police or taking legal action. In such cases, we may not give the complainant prior warning of that action.
Unreasonably persistent complaints

45. By ‘unreasonably persistent complainants’, we mean those who, because of the frequency of their contact with us hinder our consideration of their or other peoples’ complaints. Exceptionally, we will take action to limit the contact that such a complainant has with our offices.

If we decide to carry on treating someone as an unreasonably persistent complainant and we are still investigating their complaint six months later, we will carry out a review and decide if restrictions will continue.

Restrictions

46. In the event that we need to impose restrictions due to unacceptable behaviour or unreasonably persistent complaints we will follow our Corporate Complaints Policy and guidance. Any restrictions imposed will be appropriate and proportionate.

Monitoring and review

47. The council will have procedures in place for the purposes of monitoring complaints dealt with under this policy. This will be reported to Senior Managers at least annually and copies of the report will be available on the intranet and internet. Reports will also be provided for inspection purposes when required.

48. This policy will be reviewed every two year unless changes to statutory guidelines indicate this should take place sooner.