



Factsheet 59

How to resolve problems and complain about social care

February 2024

About this factsheet

This factsheet explains what to do if you are not satisfied with any

1 Sources and terms used in this factsheet

Care Act 2014

The *Care Act 2014*

The complaints regulations require the local authority to have a complaints procedure. You should be given a copy of it on request. The authority should publicise the procedure on its website. It should be easily available in various formats and through a range of channels reflecting the needs of the local population. For example, it may be printed in different languages.

If the local authority arranges for your care to be provided by independent service, for example a care home or home care provider, you can complain to the local authority because they remain responsible for your care and support. If the local authority needs to involve the care service in handling your complaint, they should seek your consent.

The Local Government and Social Care Ombudsman (LGSCO) deals with complaints that cannot be resolved to your satisfaction by the local authority. They look at how the authority has acted regarding your case. They also act as a complaints service if you privately arrange and fund your own care and support and cannot resolve the complaint using the

3.1 What can you complain about?

A complaint has been described as being an expression of dissatisfaction or disquiet about the actions, decisions or apparent failings of a local authority's adult social services provision which requires a response.

You have a right to complain about any aspect of the local authority's duties and powers under the *Care Act 2014*, apart from in a few circumstances. The local authority must understand its legal duties and powers under the Act, regulations, and statutory guidance.

The following are examples of situations that might lead to a complaint:
you have been inappropriately refused an assessment of your needs
there have been excessive delays in providing a needs assessment, a

3.4 What to expect when you make a complaint

The regulations state the local authority must ensure that:

complaints are dealt with efficiently, are properly investigated, and receive a timely and appropriate response

you are treated with respect and courtesy and told the outcome of your complaint

necessary action is taken following your complaint.

They should ens

3.6 Information, advice and advocacy duties

The regulations require the local authority to provide information about its complaints procedure and how further information can be obtained. A similar information and advice duty applies under the Act.

Under the *Equality Act 2010*, the local authority must ensure that information about complaints is accessible to you, for example if you

4 **Complaining as a self-funder**

If you arrange and pay for your own care and support services, without receiving any assistance from the local authority, you can complain using

5.3 How and when to make the complaint

The general time limit for making a complaint is **12 months**. The time starts to run from the date you first became aware of the issue you are complaining about. One reason for the rule is because the longer the delay, the harder it is to gather evidence.

You can phone the LGSCO for advice about making a complaint. There is an online complaint form. Whether or not you use the online form, your complaint should generally be in writing and should set out both the issue you are complaining about and the injustice you have suffered. You can make your complaint by phone if this is easier for you.

Practical tip: Keep your complaint as concise and clear as possible. If it has a long history, a chronology of the main events with dates can help the LGSCO investigator to understand what has happened. Provide copies of important relevant documents, for instance the complaint you made to the local authority and their response.

Friends, relatives and independent advisers can complain on your behalf, with your permission. If you pay a solicitor, it is very unlikely you will get costs back, even if the LGSCO upholds your complaint. This is because it is not necessary to go through a solicitor to make a complaint.

If you lack mental capacity, someone can make the complaint on your behalf if the LGSCO is satisfied they will act in your best interests. See factsheet 22, *Arranging for someone to make decisions on your behalf*, for more information.

The LGSCO may agree to investigate if you complain after the 12-month time limit, but only if there is a good reason for the delay, which is not your fault. For example, you were prevented from complaining due to ill health, were taking the complaint through the local authority's procedure and this took more than 12 months, or had a mistaken belief that action had already been taken to resolve the issue.

If your complaint is late, it is important to explain why and to explain any reasons why this was not your fault.

Note

The LGSCO expect you to have used the local authority complaints procedure first, so they have had a chance to put things right.

If there is unreasonable delay in dealing with your complaint, or you have good reason for losing faith in the local authority's ability or willingness to deal with your complaint, they may agree to investigate your complaint even though you have not completed the local authority procedure.

The LGSCO has information about making a complaint on their website and a telephone advice line. You can access recent investigation reports, which may assist a complaint you plan to make.

Publishing decisions and reports

The LGSCO publishes a summary of the investigation on their website three months after the date of the decision, unless they decide it is not in your best interests to do so. This will not reveal your name or the names of other people involved. The local authority and other organisations involved are named.

Sometimes the LGSCO needs to write a formal report about a complaint if it is against a local authority. This can happen, for example, if the local authority does not agree to the suggested settlement, or if the LGSCO thinks the issue is of particular interest to the public.

Unless there are special reasons, the report is made available to the public and includes the LGSCO's recommendations to put the injustice right. They do not publish your name.

If a local authority does not follow the recommendations set out in the report, the LGSCO may produce a second report dealing with the non-compliance, but this is rare.

5.6 What powers does the LGSCO have to put things right?

They can make recommendations about what the local authority should do to put things right. This can include:

a written apology to you

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What are the grounds for judicial review?

There are three types of grounds for judicial review:

Illegality – this can be a failure to carry out a statutory duty, for example, a needs assessment, or a breach of a human right, for example, not considering your right to home and family life.

Illegal decision-making includes a local authority not following regulations or statutory guidance; operating a blanket policy and not genuinely considering each case on its own merits, or carrying out an

8 Other avenues of complaint and safeguarding

Write to your local councillor or MP

It may be helpful to seek support from your local councillor or MP in dealing with a problem, or if you feel the formal complaints process has not dealt appropriately with your issue.

Safeguarding from abuse and neglect

If you, or someone you know, is experiencing, or is at risk of, abuse or neglect, you should raise a safeguarding concern with the local authority. For more information, see factsheet 78, *Safeguarding older people from abuse and neglect*.

If the person lacks mental capacity

Where a complainant lacks mental capacity, any decision or action taken on their behalf must be in their 'best interests', in line with the *Mental Capacity Act 2005* and its Code of Practice. For more information, see factsheet 22, *Arranging for someone to make decisions on your behalf*.

9 Care Quality Commission

The Care Quality Commission (CQC) is the body responsible for regulating, monitoring and maintaining standards in health and adult social care in England. They are also responsible for assessing how local authorities comply with their duties under the *Care Act 2014*.

The Fundamental Standards and complaints

All care homes, home care agencies and other care service providers must be registered with the CQC and meet a set of standards, known as the Fundamental Standards, based on the *Health and Social Care Act 2008 (Regulated Activities) Regulations 2014*.

The Fundamental Standards include a requirement that your care must be safe and appropriate to your needs and reflect your wishes and preferences. You must also be treated with dignity and respect.

People employed to care for you must be of good character, have the necessary qualifications, skills and experience, and be able to perform the work for which they are employed – the '*fit and proper persons requirement*'.

Regulation 16 requires all registered service providers to have an easily accessible complaints procedure, stating:

any complaint received must be investigated and necessary and proportionate action must be taken in response to any failure identified by the complaint or investigation.

Registered service providers must be open and transparent with service users about their care and treatment, '*the duty of candour*', for example reporting incidents appropriately.

Explanatory CQC guidance states
be affected if they make a complaint, or if somebody complains on their

The inspection regime and ratings system

The CQC has a four-tier rating system for each service provider. This

10 Human rights and equality

The local authority must not act in a way that is incompatible with human rights and equality laws and all staff must understand them.

10.1 Human rights

The *Human Rights Act 1998* sets out a number of basic rights covering issues such as: a right to life, a right to privacy, and rights to home and family life. Some rights are absolute, which means they must be followed in all cases, but most rights can be interfered with in certain circumstances. Any such interference must be legal,ou2e-3(c)10(a0.3san ꝑ f)11(a)-3(n)-3d1 0 0.404 r

Public Sector Equality Duty

The Public Sector Equality Duty requires all public bodies, such as local authorities, to have due regard to the need to:

eliminate discrimination,

advance equality of opportunity, and

foster good relations between people who share a relevant protected characteristic and people who do not.

This can relate to a policy that appears to apply to everyone in the same way, but, because you BT/F1 12000887e samsa ,ebut, 7 595.32 841.92 reW*nBT/F1 12 Tf1 0 0 1 77.18

Useful organisations

Care Quality Commission

www.cqc.org.uk/

Telephone 03000 616 161

The independent regulator of adult health and social care services in England, whether provided by the NHS, local authorities, private companies or voluntary organisations. They also assess how local authorities meet their duties under the Care Act 2014.

Care Rights UK

www.carerightsuk.org

Telephone 020 7359 8136

Provides advice and support to older people in care homes, their relatives and friends.

Competition and Markets Authority

www.gov.uk/government/organisations/competition-and-markets-authority

Telephone 020 3738 6000

The public body responsible for consumer protection. It has published guidance for care home providers on complying with consumer law.

Citizens Advice

www.citizensadvice.org.uk

Telephone 0800 144 8848

National network of advice centres offering free, confidential, independent advice, face to face or by telephone.

Citizens Advice consumer helpline

www.citizensadvice.org.uk/about-us/contact-us/contact-us/consumer-service

Telephone 0808 223 1133

Consumer advice over the phone and online.

Disability Rights UK

www.disabilityrightsuk.org

Telephone 0330 995 0400

Information about issues affecting disabled people.

Equality Advisory Support Service

www.equalityadvisoryservice.com

Telephone helpline 0808 800 0082 Mon-Fri 9am-7pm, Sat 10am-2pm

Helpline provides information and advice about the *Equality Act 2010* and human rights.

Equality and Human Rights Commission (EHRC)

www.equalityhumanrights.com/en

Telephone 0161 829 8100

Independent statutory body with the responsibility to encourage equality and diversity, eliminate unlawful discrimination, and protect and promote the human rights of everyone in Britain.

Age UK

Age UK provides advice and information for people in later life through our Age UK Advice line, publications and online. Call Age UK Advice to find out whether there is a local Age UK near you, and to order free copies of our information guides and factsheets.

Age UK Advice

www.ageuk.org.uk

0800 169 65 65

Our publications are available in large print and audio formats

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The evidence sources used to create this factsheet are available on request. Contact resources@ageuk.org.uk

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Every effort has been made to ensure that the information contained in this factsheet is correct. However, things do change, so it is always a good idea to seek expert advice on your personal situation.

Age UK is a charitable company limited by guarantee and registered in England and Wales (registered charity number 1128267 and registered company number 6825798). The registered address is 7th Floor, One America Square, London, EC3N 2LB. Age UK and its subsidiary companies and charities form the Age UK Group, dedicated to improving later life.