

Information sheet for care providers – No.2

## **Adult social care complaints – frequently asked questions**

### ***Why have you sent this complaint to me as the registered care provider?***

From 1 October 2010 the Local Government Ombudsman (LGO) has powers<sup>1</sup> to deal with complaints made by people who self fund their care or have arranged it themselves. This means they are in a direct contractual arrangement with you as their care provider.

If instead their adult social care provision has been commissioned and paid for by a council's social services department their complaint is against the council. Please tell us if you think that is the position. The LGO has dealt with complaints against councils for many years.

If you are not the registered care provider for the service in question, or your contract for provision of this service is not with the service user, please let us know immediately.

### ***Why has this complaint gone to the Ombudsman now?***

The law says that, before investigating a complaint, the LGO must be sure that the care provider knows about the complaint and has had a reasonable opportunity to investigate and reply to it. Otherwise a complaint to the LGO is premature (see Information sheet No. 1).

The LGO can, in exceptional circumstances, waive this requirement and take on a case for investigation earlier. If we do this, we will always explain why to all concerned.

### ***Does every complainant have a right to have their complaint investigated?***

No. The LGO decides which cases are suitable to pursue, based on our jurisdiction, how old the matter is, and the initial facts highlighted in the case. We must be satisfied that there appears to be a valid injustice for the service user or complainant which links to the alleged shortcomings in what the provider has done.

### ***This complaint is about our plan to change someone's service provision in the next few weeks. Can the LGO stop that happening?***

The LGO can't stop you from going ahead with your plans, but may ask you whether you can preserve current arrangements while the complaint is dealt with. If the change is unjustified, continuing with the plan may increase the injustice to the service user or complainant, and affect any eventual remedy that is needed.

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<sup>1</sup> Health Act 2009 amended the Local Government Act 1974 with a new part 3A. This widened the Ombudsman's jurisdiction.

## ***Who investigates the complaint?***

Each LGO office has teams of investigators to deal with the cases. Some investigators have an adult social care background while others have received adult social care training. They have delegated powers from the Ombudsman to pursue enquiries and make decisions. They often consult directly with the Ombudsman.

The investigator establishes what the complaint is about and gathers relevant facts. They then benchmark what has happened against good practice standards, your own contract commitments and other relevant information. They know there are two sides to every story. Investigators are always looking for ways to reach a prompt and proportionate remedy where the complaint is justified. Equally a key part of their role is bringing matters to a close where the complaint is not justified.

## ***How do you gather the evidence?***

Enquiries are usually made by email, and we ask for your response in three weeks. You should let us know promptly if that date can't be met: you have the investigator's name and contact details so you can discuss any difficulties in providing what we require. Most providers are happy to co-operate, but we have the powers of the High Court to obtain evidence if needed. Investigators may visit you to inspect records and interview the people involved. If some evidence you provide is confidential and cannot be shared with others please tell us. Once the investigator is satisfied that they have enough evidence to reach a reliable conclusion they will set out their draft decision and invite the parties to comment.

## ***How does the LGO make decisions?***

LGO decisions are set out in a Statement. The complainant's identity is anonymised. This is first released to the parties concerned as a draft decision, and your comments are invited. The Statement will address the following questions:

- ***Was there fault or service failure?***
- ***Did that cause the injustice claimed?***
- ***If so what could provide proportionate redress?***
- ***What can be learned from this case for the benefit of others?***

The draft decision can be changed if you, or the complainant, have new information or further arguments about the complaint that may lead to a different conclusion.

The final Statement will close the case, and is issued to the complainant and the care provider. It will set out the grounds for the decision and the LGO's recommendations for service improvement and remedy – if required. The LGO publishes most decisions on their website.

## ***What do we have to do next?***

If the case is not upheld, and you are not, therefore, called upon to provide a remedy, it is still worth considering whether you had good enough arrangements to deal with the complaint yourself.

In most justified cases we will recommend an agreed plan to put matters right and provide a suitable remedy, and a timetable for doing so. We expect you to keep the complainant and the LGO informed of progress on that. This approach provides the best possible outcome for the complainant.

If you reject the LGO's recommendations, or agree them but fail to implement the remedy as promised, the LGO will go on to publish an Adverse Findings Notice. Publicity of this nature is not good for a care provider's reputation, and so we hope we will rarely need to do this.

### ***How long does it take the Ombudsman to investigate a complaint?***

We aim to complete the investigation of 65% of complaints made to us within 13 weeks and 85% within 26 weeks. But complex social care complaints do tend to be among those that take us longer to investigate.

### ***If the complainant is still unhappy – what happens next?***

Complainants can ask for a case review if they feel their case was not properly considered. As the LGO is a public body, we can be subject of a Judicial Review if the complainant or service provider considers our final decision is legally unsound.

### ***I am using this complaint to review how good our current complaints procedures are. What should I think about? Do you have a model procedure I can copy?***

[CQC Regulations for Service Providers and Managers, Regulation 16](#) sets out the expectations. We will look to that as a benchmark when deciding how effective your arrangements have proved to be. Useful information for providers on handling complaints can be found on the '[Resources for care providers](#)' section on the LGO website.

We also know that, however good procedures are in theory, what matters most to people is the commitment providers show to implementing them, by listening to complaints openly, investigating issues thoroughly and resolving justified complaints as soon as possible.

When revising your complaints procedures, or telling people about the LGO in your closing letters, you may find the insert below helpful. We aim to provide a seamless service to complainants, who may not always be clear whether they should go to the council that did their care needs assessment, or to the provider. We will redirect any cases if necessary.

***Insert for use by adult social care providers in complaints documentation***

Once your complaint has been fully dealt with by [name of care provider], if you are not satisfied with the outcome you can refer your complaint to the **Local Government Ombudsman (LGO)** and ask for it to be reviewed. The LGO provides a free, independent service.

You can contact the LGO for information or to register your complaint:

T: 0300 061 0614

W: [www.lgo.org.uk/adult-social-care/](http://www.lgo.org.uk/adult-social-care/) (there is a link to a complaint form on this page)

Or write to: The Local Government Ombudsman, PO Box 4771, Coventry CV4 0EH

The LGO will not usually investigate a complaint until the provider has had an opportunity to respond and resolve matters.

Our service is registered with and regulated by the Care Quality Commission (CQC). The CQC cannot get involved in individual complaints about providers, but is happy to receive information about our services at any time. You can contact the CQC at:

Care Quality Commission National Correspondence

Citygate

Gallowgate

Newcastle upon Tyne NE1 4PA

T: 03000 616161

W: [www.cqc.org.uk/contactus.cfm](http://www.cqc.org.uk/contactus.cfm)

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