

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

*Please note, any reference to the council's appeals process is based on interim policy and practice and may be subject to change following the release of the Care Act 2014 guidance on handling appeals.*

## Purpose

1. This policy outlines what the council will do to ensure that adult social care appeals and statutory complaints are handled in line with The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009.
2. This policy is aligned with the Care Act 2014, associated regulations and statutory guidance, which has replaced most of the previous adult social care legislation and guidance, including National Health Service and Community Care Act 1990 and Fair Access to Care Services: Guidance on eligibility criteria for adult social care.
3. It should be read in conjunction with other Oxfordshire County Council policies and associated guidance. This includes other adult social care policies, and children's social care policies where applicable **(insert link when available)**.
4. It should also be read in conjunction with partners' policies where applicable. Examples include health commissioning and provider partners' policies and guidance, including on NHS Continuing Healthcare and mental health services.

## Context

5. Oxfordshire County Council aims to support and promote strong communities so that people live their lives as successfully, independently and safely as possible. The council aims to provide independence and choice, be fair and equitable and give individuals more power and control over their lives.
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.
8. Wellbeing relates to any of the following:

- a. personal dignity (including treatment of the individual with respect);
- b. physical and mental health and emotional well-being;
- c. protection from abuse and neglect;
- d. control by the individual over day-to-day life (including over care and support provided and the way it is provided);
- e. participation in work, education, training or recreation;
- f. social and economic well-being;
- g. domestic, family and personal relationships;
- h. suitability of living accommodation;
- i. the individual's contribution to society.

## Policy Principles

9. 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

10. The process for making an appeal or complaint about adult social care services will be as simple and transparent as possible.
11. All formal responses to people making appeals and complaints will include honest, evidence-based explanations, giving reasons for decisions.

## Information and Advice

12. The council will ensure that clear and comprehensive information and advice about the appeals and complaints process and advocacy services is made available, where appropriate.
13. All information will be made available in a range of formats and presented in plain English.
14. The Comments and Complaints Service will be responsible for ensuring that people know how to contact the Local Government Ombudsman.
15. 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**

16. The council will ensure that all statutory complaints are investigated thoroughly, fairly and without prejudice towards staff involved or the person making the complaint.
17. Decisions made in the process of handling an appeal or complaint will be proportionate and appropriate.

## **Choice and Control**

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

## **Partnership**

20. The council will work closely with other social care and health organisations to resolve appeals and complaints that concern more than one organisation as promptly and effectively as possible.

## **Promoting prevention, early intervention and independence**

21. The council will use all feedback and lessons learnt from complaints to improve service design and delivery, with an aim to intervene promptly where issues arise and prevent further complaints.
22. 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**

23. An appeal is a request for the review of a decision(s) taken by adult social care staff 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.

24. 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 assessment.

25. If a complaint is to be made, it should be within 12 months of the incident occurring. However the council has discretion to consider a complaint outside this period if it is satisfied the person making the complaint had good reasons for not making the complaint within the time limit and it is still possible to investigate the complaint effectively and fairly.

26. A person is able to make a complaint or appeal against a decision 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.

27. 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 to act on their behalf.

## **Policy Exclusions**

28. Certain types of appeal or 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 or appeals where the person does not meet the requirements of paragraph 25 in this policy;
- (ii) complaints that are made verbally and can be resolved within one working day;
- (iii) where the same complaint has already been dealt with by the council or the local commissioner;

- (iv) complaints or appeals that do not relate to actions or decisions of Adult Social Care or to anybody acting on its behalf;
- (v) any matter where the person making the complaint could have recourse to the courts – for example, where there is alleged negligence;
- (vi) any matter that is already subject to legal proceedings against the council;
- (vii) personnel complaints from staff employed by the council;
- (viii) complaints arising out of an alleged failure to comply with a request for information under the Freedom of Information Act 2000; and
- (ix) complaints that should be dealt with under the council's Corporate Complaints procedure.

## **Independent Advocacy**

- 29. Independent advocacy will be offered to everyone who makes an appeal or a complaint. Details of the advocacy service will be included in the information sent to people making an appeal or a complaint, when first lodging their case.
- 30. Where complaints cross adult social care and health boundaries consideration will be given on a case by case basis as to whether independent NHS advocacy services are required.

## **Mental Capacity**

- 31. 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.
- 32. 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.
- 33. If the council reasonably believes a person may lack capacity to make a decision in the appeal and complaint process, it will carry out a capacity assessment in relation to the specific decision to be made. This and the following steps are covered in the associated mental capacity guidance.
- 34. If a person has been assessed as lacking capacity to make a decision in relation to an appeal or a complaint, the council will determine if there is an appropriate substitute decision maker. This will usually be someone who holds Lasting Power of Attorney for Health and Welfare.
- 35. If a person has been assessed as lacking capacity to make a decision and there is not an appropriate substitute decision maker, the council will follow the best interests process set out in the Mental Capacity Act to reach the decision. This will include consulting interested family and friends to obtain their views.

## Safeguarding

36. Where issues of abuse or neglect are raised in the course of handling an appeal or complaint, the council's safeguarding policy will be referred to and the issue should be discussed with the adult safeguarding lead, as well as the Safeguarding Manager if appropriate.
37. 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 appeal or 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.
38. A decision about how to proceed with the appeal or 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 of this (see Mental Capacity section).

## Handling and Consideration of Appeals

39. On receipt of an appeal the council will have procedures in place to:
- (i) acknowledge the appeal and offer to discuss the matter with the person making the appeal;
  - (ii) review the person's reasons for appealing against a decision in a timely manner;
  - (iii) treat people making an appeal with respect and courtesy;
  - (iv) provide assistance to people making an appeal to enable them to understand the procedure in relation to appeals, or to provide advice on where they may obtain such assistance (so far as is reasonably practicable);
  - (v) keep the person making the appeal informed, as far as is reasonably practicable, as to the progress of their appeal;
  - (vi) inform the person making the appeal of the outcome of their appeal;
  - (vii) take action if necessary in light of the outcome of an appeal;
  - (viii) escalate the appeal if the person making the appeal is not satisfied with the outcome of the initial review.

## Handling and Consideration of Complaints

40. On receipt of a statutory complaint the council will have procedures in place to:
- (i) acknowledge the complaint within the 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 people making complaints with respect and courtesy;
- (iv) provide assistance to people making a complaint to enable them to understand the procedure in relation to complaints, or to provide advice on where they may obtain such assistance (so far as is reasonably practicable);
- (v) resolve the complaint within statutory timeframes;
- (vi) keep the person making the complaint informed, as far as is reasonably practicable, as to the progress of the investigation;
- (vii) inform the person making the complaint of the outcome of their complaint ;
- (viii) take action if necessary in light of the outcome of a complaint.

41. If the complaint relates to a service provider and the person making the complaint agrees, it will initially be passed to the provider to investigate and provide a response which will be coordinated through the Comments and Complaints Service. If the complaint cannot be resolved in this way, or the person making the complaint does not give their consent, the principles of this policy will be applied. In order to manage these complaints the Comments and Complaints Service will work in partnership with the Contracts Monitoring Team.

42. Where a complaint relates to the council and other social care and health organisations, the council is duty bound to work with all organisation(s) involved to co-ordinate communication with the person making the complaint and a response to their complaint. This duty to co-operate, contained within the 2009 Regulations, ensures that all organisations concerned will attend or be represented at any meeting related to the complaint and relevant information is shared. Protocol between the council and its healthcare partners exists to ensure compliance with this duty.

43. 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**

44. The Chief Executive of the council has overall responsibility for ensuring compliance with the complaints arrangements and for agreeing all responses to complaints.

45. The Director of Adult Social Services has delegated authority to ensure compliance with the appeals and 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 and appeals. This will depend on how serious the complaint is considered to be.

46. 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.

### **Unacceptable Behaviour and Unreasonably Persistent Complaints**

47. The council does not expect its employees to tolerate unacceptable behaviour from people making an appeal or complaint. This includes, but is not limited to, abusive, offensive or threatening behaviour.
48. Similarly, the council recognises that complaints are often made as a last resort. As part of our service, we will not normally limit the contact people making an appeal or complaint have with our offices. However, in the interests of effective use of resources for people making an appeal or complaint and the wider public, we may restrict access on occasions where contact by a person making a complaint becomes so frequent that it hinders consideration of their, or others' complaints or the provision of council services. When dealing with these issues the principles set out in the Corporate Complaints Procedure will be adhered to.

### **Monitoring and Review**

49. The council will have procedures in place for the purposes of monitoring appeals and complaints dealt with under this policy. Reporting will take place on a quarterly and annual basis to the Adult Social Care Leadership Team, and copies of the annual report will be available on the intranet and internet. Reports will also be provided for inspection purposes when required.
50. This policy will be reviewed annually by the Comments and Complaints Service. This will take into account learning from complaints, compliments and concerns, including from people who use the council's services.