

London Borough of Barnet  
Adults and Communities

# Statutory Complaints Procedure

September 2016

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# London Borough of Barnet Adults and Communities

## Statutory Complaints Procedure

Updated September 2016

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## Introduction

### 1. Principles and purpose

- 1.1. Adults and Communities is required to operate a statutory complaints procedure under the Local Authority Social Services and National Health Services Complaints (England) Regulations 2009 and the Local Authority Social Services and National Health Service Complaints (England) (Amendment) Regulations 2009 (referred to as 'the Regulations') [www.legislation.gov.uk](http://www.legislation.gov.uk) A complaint that does not qualify for consideration under this statutory social services procedure may still be considered under the council's Corporate Complaints Procedure available on the staff intranet - [Corporate Complaints](#)
- 1.3. The following principles guide the Adults and Communities complaints process:
- 1.4. Complaints are welcomed as an important part of improving our service and ensuring quality
- 1.5. There is a commitment to making changes to our services where a complaint or representation shows a need for change
- 1.6. We are committed to ensuring that our complaints system is accessible and available to everyone
- 1.7. Establishing what the complaint is, together with the desired outcome at an early stage, can lead to a better resolution for all involved
- 1.8. We are committed to responding to complaints speedily and, wherever possible, to achieving an outcome that is agreeable to the complainant
- 1.9. All service users may enlist the help of an advocate in making their complaint and we will assist to arrange this
- 1.10. We aim to achieve the easiest, least stressful way to involve the complainant in the complaints process.
- 1.11. The aim of this procedure is to enable service users or potential service users and/or their representative, to comment on, complain about or compliment the quality and nature of social care services provided by Adults and Communities.

### 2. Aims and objectives of the complaints procedure

- 2.1. To recognise the rights of all service users to make complaints and to have their views considered within a clear procedure as defined by law.
- 2.2. To ensure that council staff and all partner organisations work together so that every qualifying adult facing problems and challenges who wishes to make a complaint or representation is well supported in reaching a satisfactory resolution.
- 2.3. This procedure aims:
- 2.4. To ensure that a service user, potential service user, carer and / or their representative are aware of how to make a complaint
- 2.5. To provide a sensitive and customer focussed service for complaints by offering help and advice to complainants, members of the public and other interested parties

- 2.6. To clarify the complaints process for service users, their carers and/or representatives and members of staff
- 2.7. To meet the complaints performance target requirements for Adults and Communities
- 2.8. To report on complaints in order to provide an additional means of monitoring performance and improving service quality.
- 2.9. Adults and Communities will always take into consideration and pay respect to issues of race, ethnicity, religion, culture, age, language, sexual orientation and disability during the complaints process to ensure that an equal service is available to all.
- 2.10. A complaint can be made verbally or in writing to the Complaints and Information Manager:

By writing to: The Complaints and Information Manager  
Adults and Communities  
London Borough of Barnet  
Barnet House  
1255 High Road  
London N20 0EJ

Telephone: 020 8359 4299

Email: [complaints.adults@barnet.gov.uk](mailto:complaints.adults@barnet.gov.uk)

## Complaints procedure

### 3. Principles

- 3.1. To provide an open, fair and prompt resolution of complaints within a procedure which is accessible, clear and easy to use for service users.
- 3.2. To ensure that people who use the service are treated with dignity and respect, are not afraid to make a complaint and have their concerns taken seriously.
- 3.3. To ensure that any concerns about the safeguarding of vulnerable adults are referred immediately to the relevant manager for consideration under the appropriate procedure.
- 3.4. To ensure that the complainant has the opportunity to receive support if they so wish.
- 3.5. To secure sensible and effective links with other policies and procedures in the council, with external partners and with service providers.

### 4. Legal framework

- 4.1. Complaints about adult social care services provided by Local Authorities are governed by:
  - a) The Local Authority Social Services and National Health Services Complaints (England) Regulations 2009 (The Regulations) and the Local Authority Social Services and National Health Service Complaints (England) (Amendment) Regulations 2009 - [www.legislation.gov.uk](http://www.legislation.gov.uk)
  - b) These Regulations also apply to complaints on services provided by partnership arrangements under Section 75 of the NHS Act 2006.
  - c) Guidance issued by the Department of Health in February 2009 entitled [Listening, Responding, Improving - A Guide to Better Customer Care](#)
  - d) The Care Act 2014 - [The Care Act](#)

### 5. Duties of the local authority

- 5.1. Adults and Communities must:
  - consider any representations or complaints
  - give due regard to any findings
  - decide any action or proposed action
  - formulate a response providing reasons for the decision, and
  - notify the decision in writing within a given timescale.

- 5.2. Where there are significant concerns about the vulnerability of the complainant and the seriousness of the complaint, consideration should be given to appointing an advocate to support the person making a complaint. The Council will signpost complainants to an advocacy service if this is deemed appropriate. Adults and Communities must offer assistance and guidance to complainants and provide accessible information, as appropriate.
- 5.3. Regulations require the local authority to designate an officer, known as the Complaints Lead, to undertake key tasks to ensure the efficient management and implementation of this procedure. Within Adults and Communities the Complaints Lead role is taken by the Business Support Lead and the day to day management of complaints is delegated to a Complaints and Information Manager who reports to the Business Support Lead.
- 5.4. The Head of Communications and Customer Care also has a role in the complaints procedure, scrutinising the procedure to ensure it conforms to the Council's standards in relation to customer care, and to ensure that appropriate lessons are learned from complaints.

## 6. What is a complaint?

### Complaints

- 6.1. A complaint is any verbal or written expression of dissatisfaction or disquiet about the actions, decisions or apparent failings of a local authority's adult's social care services provision which requires a response.
- 6.2. If a complaint can be resolved within 24 hours, there is no need to engage this complaints procedure.
- 6.3. A complaint will be considered under this procedure when it arises from a statutory social services function as set out in Section 1A and Schedule 1 of the [Local Authority Social Services Act 1970](#) . Complaints made about care standards in care services that are regulated under the [Care Standards Act 2000](#) are not covered by this procedure. Examples of these kinds of services include domiciliary care provided by an agency or by a private residential home.
- 6.4. Where complaints relate only to a service regulated under the Care Standards Act 2000, we will ask the complainant's consent to send the details of the complaint to the relevant registered person i.e. the person registered as in charge of the service.
- 6.5. Complaints may arise for various reasons, such as:
  - An unwelcome or disputed decision
  - Concern about the quality or appropriateness of a service
  - Delay in decision making or provision of services
  - Delivery or non-delivery of services including the complaints procedure
  - Quality, frequency, change or cost of a service
  - Attitude or behaviour of staff
  - Application of eligibility or assessment criteria
  - The impact on an individual of the application of a local authority policy
  - Assessment, care management and review.
- 6.6. Complaints should also be considered under this procedure when they are about

relevant services provided under any 'joined up' arrangements with third party providers. This includes those which fall outside the formal arrangements under Section 75 of the NHS Act 2006, for example where the service user's assessed needs are met by a contract with another public body, agency or voluntary organisation.

## 7. Who can complain?

- 7.1. A complaint may be made by:
- (a) a person who receives or has received a service from Adults and Communities and
  - (b) a person who is affected or likely to be affected, by the action, omission or decision of Adults and Communities which is the subject of the complaint.

## 8. Who may complain on behalf of someone else?

- 8.1. A complaint can be made by a representative acting on behalf of a person mentioned in 7 above who:
- (c) has died
  - (d) is a person under the age of 18
  - (e) is unable to complain themselves due to physical or mental incapacity
  - (f) has asked the representative to act on their behalf.
- 8.2. Where a representative acts on behalf of a person under the age of 18 or a person who lacks mental capacity and Adults and Communities is satisfied that the representative is not conducting the complaint in the best interests of that person, the complaint will not be considered further. The representative will be notified in writing by the responding officer explaining why no further action is being taken.

## 9. Complaints relating to more than one local authority

- 9.1. Where a complaint relates to two or more local authorities, the complaint should be considered by the authority which is responsible for looking after the service user, or in any other case by the authority within whose area the service user is ordinarily resident, providing the complainant meets the requirements of 'who may complain'.

## 10. Complaints that do not qualify under this complaints procedure

- 10.1. The following are examples of complaints that do not qualify for investigation under this complaints procedure:
- 10.2. If the person wishing to complain does not meet the requirements of 'who can complain' (see Section 7 and 8 above) and is not acting on behalf of any such individual – for example, a company or provider complaining about the level of service received from Adults and Communities. These complaints would be covered under the Council's corporate complaints procedure.
- 10.3. The following complaints:
- (a) a complaint by a responsible body

- (b) a complaint by an employee of Barnet Council or Barnet NHS complaining about their employment or a pension scheme
  - (c) a complaint which is made orally; and is resolved to the complainant's satisfaction not later than the next working day after the day on which the complaint was made
  - (d) a complaint arising out of the alleged failure by a responsible body to comply with a request for information under [Freedom of Information Act 2000](#).
- 10.4. The complaint is a repeat of a complaint which has already been (or is being) investigated by Adults and Communities or the Local Government Ombudsman or a Health Service Commissioner or a Local Commissioner.
- 10.5. The complaint is unclear or unreasonably persistent (see Appendix 1).
- 10.6. If the complaint is made more than 12 months after the event which is the subject of the complaint, unless the Business Support Lead in consultation with the Adults and Communities Director is satisfied that:
- (a) it would not be reasonable to expect the complaint to have been made earlier than it was made and
  - (b) notwithstanding the delay, it is still possible to consider the complaint effectively and fairly.
- 10.7. The Complaints and Information Manager and responding officer, in consultation with the Adults and Communities Director, are satisfied that the representative is not conducting the complaint in the best interests of a person on whose behalf s/he is making the complaint, and who lacks mental capacity.
- 10.8. Complaints about policy decisions to withdraw or reduce on-going services in relation to Barnet Council's services generally, rather than in relation to the impact on an individual, should be provided with an explanation and advised to refer the matter to the Leader of the Council, the relevant portfolio holder or their local councillor.
- 10.9. Complaints from self-funded users of independent services cannot be considered under this complaints procedure, for example self-funded users cannot complain about the standard, quality of care or other matters that they have arranged themselves, unless they relate to an affected person as described in paragraph 8 above. That said self-funded users may be able to lodge a complaint with the department pertaining to the manner in which the care was commissioned, including any dealings with the department had in this regard. The Local Government Ombudsman has powers to deal with complaints from people who self-fund or arrange their own personal adult social care. This gives self-funded users the same access to the service as those who have assistance from the council.
- 10.10. The local authority has been notified that proceedings have been commenced under Section 5.10 of the Care Standards Act 2000 in relation to the substance of the complaint.
- 10.11. Anonymous complaints fall outside this procedure. However they should be referred to the Complaints and Information Manager, who will record them and give due consideration and refer them to the Business Support Lead if serious concerns are raised.



- 10.12. Where a complaint does not qualify under these procedures, the complainant will be notified in writing by the Complaints and Information Manager explaining why no further action is being taken.

## 11. Freezing decisions

- 11.1. If the complaint is about a proposed change to a care plan, a placement or a service, the change may need to be deferred (frozen) until the complaint is considered. Consideration will be given to deferring such a decision to change a care package, where it would have a significant effect upon the life of an individual, until the complaint has been resolved.
- 11.2. Decisions will be made on a case-by-case basis having regard to the best interests of the service user, but there should be a general presumption in favour of freezing, unless there is a good reason against it (for example, if it puts a service user at risk).
- 11.3. The Complaints and Information Manager should bring the matter to the attention of the Adults and Communities Director who will have the final say on 'freezing' the decision to change.
- 11.4. Other than in such a case, the fact that a complaint has been made will not have an impact on the delivery of any service to the complainant.

## 12. Confidentiality

- 12.1. All functions of the complaints procedure must adhere to the requirements of the [Data Protection Act 1998](#) and the [Freedom of Information Act 2000](#). Referral should be made to council policies and procedures on these Acts.
- 12.2. Complainants and staff have the right to know what use will be made of personal information. Information will be shared only on a need-to-know basis.
- 12.3. All complainants requesting independent consideration of a complaint will provide written, signed and dated agreement to sharing personal information for this purpose.
- 12.4. Those involved in the investigation should have access to the notes of their own interview in order to confirm the accuracy of the content.

## 13. Recording and monitoring of complaints

- 13.1. The Regulations set out monitoring as one of the aims of an effective complaints procedure. Information gathered from complaints will be used for monitoring purposes.
- 13.2. The Complaints and Information Manager will record all complaints received about services within Adults and Communities including those under the corporate complaints procedure and those referred to other bodies.
- 13.3. The Complaints and Information Manager will be responsible for collecting and aggregating information on complaints about any service provided under Adults and Communities. This information should include all stages of the complaints process and cover the following:
- the number and subject of complaints in each service area

- compliance with timescales for acknowledgement and response to complaints
  - actions taken
  - outcomes of complaints
  - lessons learned and implemented from complaints.
- 13.4. Where possible, the following information relating to complaints will be collected and reported:
- age
  - gender
  - ethnic origin
  - faith
  - disability
- 13.5. Regular progress and monitoring reports will be produced by the Complaints and Information Manager and will incorporate information on lessons learned. Information gathered will provide a means by which councillors and managers can monitor performance, assess to what extent service objectives are being met and how services can be improved. Information on complaints about the performance of external services will give information about the effectiveness of the contract. This information will be circulated on a regular basis to senior managers in Adults and Communities. The Head of Communications and Customer Care will review this information to identify any significant trends in customer service and satisfaction levels, identify improvement initiatives and escalate any recurrent issues seen in relation to the complaints process.
- 13.6. An annual report will be presented to the relevant Committee of the Council to include statistical information on the complaints procedure and give a review of the operation of the complaints procedure. The content of the Annual Complaints Report will meet the requirements set out in the Local Authority Social Services and National Health Services Complaints (England) Regulations 2009.
- 13.7. Statistical information and the effectiveness of the complaints procedure will be evaluated periodically through consultation with all those involved in the complaint process. This information will help in evaluating:
- how policy is interpreted by staff and users
  - how effective communication is with staff and the public
  - where staff training is required
  - whether resources are targeted correctly.
- 13.8. Records and reports of any complaints, including investigation reports and responses, will be placed on the relevant service user's file unless there are specific reasons not to do so (for example it contains information which may cause distress to the service user).

## 14. Publicity

- 14.1. Adults and Communities will ensure that information about the complaints procedure and how to make a complaint is available to all members of the community in a format relevant to their age and/or need.
- 14.2. As soon as possible after receiving a complaint, Adults and Communities will provide

the complainant with details of the complaints procedure and information about advocacy services.

- 14.3. Adults and Communities will make sure that this procedure is known and understood by all staff, elected members, investigating officers, independent persons, advocates and independent reviewing officers.
- 14.4. Information, training and support will be available for staff and those who operate within this procedure, to ensure that they are able to work positively with the procedure and the cultural and specific needs of the complainant.

## 15. Remedies

- 15.1. Adults and Communities will ensure that where it has been found at fault, it will acknowledge errors, apologise for them, provide an explanation, and take any necessary action.
- 15.2. Under Section 102 of the Local Government Act 2000, local authorities are empowered to remedy injustice arising from maladministration. Remedies may include, but are not restricted to, financial redress.
- 15.3. Each case will be considered on its own merits.

## 16. Unreasonably persistent complainants and unacceptable behaviour

- 16.1. Barnet Council is committed to dealing with all complaints fairly and impartially and to providing a high quality service to those who complain. Access to this service and to council offices and employees is not normally limited. However, there are a small number of complainants who, because of the frequency of their contact with the council, hinder consideration of their own complaints.
- 16.2. Features of a persistent complainant may include:
  - making the same complaint repeatedly or with minor differences but never accepting the outcome
  - seeking an unrealistic outcome and persisting until it is reached
  - someone with a history of making other unreasonably persistent complaints.
- 16.3. When the relationship has become unworkable, the Complaints and Information Manager, together with the Head of Communications and Customer Care, will consider the matter under the procedure for unreasonably persistent complaints - see Appendix 1.
- 16.4. In a very small number of cases, a complainant's behaviour may become unacceptable. The council has a duty to protect its staff from behaviour which is abusive, offensive and threatening, and in these cases will consider the matter under the procedure on unacceptable behaviour - see Appendix 2.

## 17. Cross boundary complaints

- 17.1. A potential area of confusion can arise around boundaries between the council's responsibilities and those of other bodies delivering services on behalf of, or in partnership with, Adults and Communities. Examples are:
  - Where domiciliary care is provided to a service user by a private agency

- Where a joint service is delivered with the NHS through an agreement under Section 75 of the NHS Act 2006.
- 17.2. In these cases managers must be clear as to the appropriate action to take. There may be cases where some elements of a complaint need to be considered by Adults and Communities under this procedure (such as dissatisfaction with an assessment or design of a care package) and others need to be considered by the service provider (such as quality of care, behaviour or attitude of the agency's staff). The Complaints and Information Manager will advise in these cases. It will be the aim of Adults and Communities to provide a co-ordinated response wherever possible in such cases.
- 17.3. Complaints which relate only to a service regulated under the Care Standards Act 2000 will need to be referred, with the complainant's consent, to the relevant registered person, i.e. the person registered as in charge and responsible for the private or voluntary agency, residential home or domiciliary service.
- 17.4. Complaints which relate only to a service provided by an NHS body will need to be referred, with the complainant's consent, to the relevant NHS body.

## 18. Stages of the complaints procedure:

**For the purpose of this procedure, the term 'complainant' refers to a service user, potential service user or other eligible person(s).**

- 18.1. Upon receipt of a request to register a complaint the Complaints and Information Manager will determine:
- Whether the complaint has been dealt with previously and
  - Whether the complaint qualifies under the complaints procedure.
  - Where complaints are about loss of service, change in placement or any similar situation, the Adults and Communities Director has the power to freeze any delegated decision regarding service delivery or withdrawal.
- 18.2. Consideration will be given to deferring any decision that will have a significant effect upon the life of an individual until the complaint has been resolved.
- 18.3. Decisions will be made on a case-by-case basis having regard to the best interests of service users (see Section 11 – Freezing decisions).
- 18.4. The Investigating Officer (usually the relevant Head of Service) will provide the complainant with information about the investigation process and will clarify the main elements of the complaint with the complainant, and their expected outcome(s). Responsibility for dealing with complaints and representations lies with the senior manager where the service is provided locally. It must be made clear who is taking responsibility for the complaint.
- 18.5. The Complaints and Information Manager will organise any necessary support that the complainant may need to make the complaint, for example advocacy, interpretation, accessibility services in relation to disabilities.
- 18.6. The council can suspend the start of the investigation until advocacy is in place if it has been requested or alternatively, it can transfer the complaint to be dealt with as an independent investigation, see Section 21 below, with the agreement of the complainant.

- 18.7. The Complaints and Information Manager will keep a register of all complaints which includes the:
- date of registration
  - name/address of complainant
  - nature of the complaint
  - service area involved
  - name of the appointed investigating officer (and independent person)
  - date the response is due and whether the due date was met.
- 18.8. Where a complaint is made orally and is resolved to the complainant's satisfaction (no later than the next working day after the day on which the complaint was made) the complaint does not need to be fully investigated under the statutory guidance or recorded for reporting purposes. However, the complaint should still be recorded on the service user's file.
- 18.9. New complaints will be assessed in terms of their seriousness and how likely the issue is to recur, so that appropriate and proportionate action can be taken in response.
- 18.10. In line with the national guidance [Listening, Responding, and Improving - A Guide to Better Customer Care](#), complaints will be considered as low, moderate or high risk, and then designated 'Straightforward' or 'Serious and/or complex'. A complaint can be re-designated if new information arises. See Appendix 3 - Risk Assessment Matrix.
- 18.11. A complaint can be expressed in person, by telephone, by letter, by email, or via the Complaints and Information Manager.
- 18.12. A complaint can be made to any member of staff but, in the first instance, the complainant should be encouraged to make the complaint to the member of staff they usually have contact with.
- 18.13. Where a complaint is received directly by the local service and not by the Complaints and Information Manager, the local manager must ensure that it is passed on immediately to the Complaints and Information Manager for logging and acknowledgement. .
- 18.14. Complainants must be informed of their rights under the complaints procedure and be given the relevant information on how to complain.
- 18.15. Complaints received directly by the Complaints and Information Manager will be recorded and forwarded to the Head of Service responsible for the service being complained about for action. That Head of Service will become the investigating officer, unless an alternative arrangement is reached.
- 18.16. The written response should include:
- The nature and content of the complaint
  - The expectation of outcome
  - Offers to resolve the complaint
  - The conclusions, resolutions and/or agreements reached, if any
  - The date by which the department will assume completion if the complainant makes no further contact

- 18.17. The complainant's right to request a meeting if dissatisfied with the response to the complaint.
- 18.18. The Head of Service will be responsible for the quality control of responses, supported by the Complaints and Information Manager and will seek clarification from the investigating officer, where necessary on any queries regarding the meaning or the manner in which the conclusions are derived. They will in conjunction ensure that responses are customer friendly, clear and address all issues raised.
- 18.19. A complainant has the right to withdraw their complaint at any time. However, should the issues raise serious concerns, Adults and Communities have a duty to investigate further.
- 18.20. Where a complaint cannot be resolved through the full complaints procedure – including mediation - the complainant should be informed of their right to register the complaint with the Local Government Ombudsman and should be given the information to do so. In this instance, all correspondence relating to the complaint should be sent to the Complaints and Information Manager.
- 18.21. The responding Head of Service is responsible for updating the complainant on the status of any actions taken as a result of the complaint within three months of the response being sent.
- 18.22. Some people will not wish to make a complaint, but merely a **representation**. When a service user or an eligible person does this, the representation should be received, recorded on the complaints database and passed to the relevant manager. The relevant senior manager will acknowledge the representation by writing to the service user or eligible person outlining how they intend to respond. This response should be copied to the Complaints and Information Manager. Representations should be recorded in the same way as complaints.
- 18.23. Staff dealing with complaints at any level must be aware of:
  - The need to report any concerns of abuse to a vulnerable adult under the department's safeguarding adults' policy and procedure.
  - The need to try to achieve resolution through mediation or another alternative form of dispute resolution (see Appendix 4).

## 19. Straightforward Complaints

- 19.1. New complaints will be acknowledged no later than 3 working days after receipt by the Complaints and Information Manager.
- 19.2. The investigating officer will contact the complainant within 5 working days to agree the approach of the investigation, the desired outcome and timescales (this will usually be 20 working days unless the investigating officer and complainant agree a longer timescale).
- 19.3. In exceptional circumstances (e.g. safeguarding investigation, criminal investigation, legal proceedings or disciplinary proceedings) a longer timescale may be necessary.
- 19.4. Within 20 working days of receipt (or alternative agreed timescale), the investigating officer will send a written response to the complainant.
- 19.5. The complainant will be invited to comment on the response. They will have up to 20 working days to decide whether to accept the response or to pursue their

complaint further

- 19.6. If there is disagreement, a meeting will be offered to discuss the concerns with the investigating officer and the Complaints and Information Manager.
- 19.7. If the complainant is unsatisfied, the investigating officer will contact the complainant within 5 working days to discuss the reasons, what further action they would like pursued and timescales. If the complainant specifies that they would not like any further contact with the current investigating officer, the Assistant Director Adults and Communities will contact the complainant themselves, or appoint another senior manager as the new investigating officer.
- 19.8. They will agree the approach of the review and the timescales (this should usually be up to 20 working days, extending to a maximum of 40 working days if multiple meetings are required).
- 19.9. The investigating officer then carries out the review in accordance with the agreed approach and timescales. If, upon completion of the review, the complainant is still unsatisfied, the investigating officer will consult with the Director of Adults and Communities on how best to proceed.
- 19.10. If the Director of Adults and Communities is satisfied that all proportionate internal avenues for investigation have been pursued, the complainant will be advised to pursue their complaint with the Local Government Ombudsman.
- 19.11. The maximum timescale for resolving any complaint, including reviews, is six months.

## **20. Serious or Complex Complaints**

- 20.1. If upon receipt of a complaint the Investigating Officer believes the complaint especially serious and/or complex they will confer with the Head of Communications and Customer Care to decide if an independent investigation is required. This can occur before the investigation begins or at any during the process of investigating a complaint. If the Head of Communications and Customer Change deems the complaint to be a sufficiently complex complaint, the council will arrange an independent investigation
- 20.2. The Complaints and Information Manager will appoint an independent investigating officer on behalf of the Adults and Communities Director (and where appropriate, an independent person) to undertake the investigation of the complaint.
- 20.3. Investigations should be concluded within 25 working days (or within an extended period of up to 65 working days). In exceptional circumstances (e.g. safeguarding investigation, criminal investigation, legal proceedings or disciplinary proceedings) a longer timescale may be necessary.
- 20.4. If a decision is made to appoint an external investigating officer, the Head of Communications and Customer Care will confirm the budget code to meet the investigating officer's costs.
- 20.5. The Complaints and Information Manager will identify a senior manager as adjudicating officer in consultation with the Director of Adults and Communities. This will usually be the head of the relevant service.
- 20.6. The Complaints and Information Manager will inform the complainant, in writing, of

the name of the investigating officer (and where appropriate, the independent person), confirming the date by which the complainant will receive the formal response.

- 20.7. The Complaints and Information Manager will inform the relevant team and senior managers in writing that a complaint has been made about a service they manage.
- 20.8. All staff involved in the complaint will be notified of the complaint by the Complaints and Information Manager. A copy of the statement of complaint will be sent to any person who is involved in the complaint unless doing so would prejudice the consideration of the complaint. Where this may be the case, the Complaints and Information Manager should advise senior management, who should inform staff of the details of the complaint through normal line management.
- 20.9. The investigating officer has overall responsibility for investigating the complaint and will do so in line with guidance issued by the Department of Health (for example Listening, Responding, Improving - A Guide to Better Customer Care), and in line with Barnet's operational guidance.
- 20.10. When the investigating officer is a member of staff, they should have undertaken investigating officer training and should not be within line management of the service being complained about.
- 20.11. Alternatively, investigating officers can be independent of the council and be appointed under contract.
- 20.12. Independent investigating officers must possess an enhanced Disclosure and Barring Service check and provide referenced evidence that they have the necessary investigative skills and knowledge of the statutory framework within which Adults and Communities operates to undertake an investigation. The Complaints and Information Manager will manage such appointments.
- 20.13. Internal investigating officers will be appointed by the Adults and Communities Director. With the authorisation of the Director of Adults and Communities, the Head of Communications and Customer Care and the Complaints and Information Manager will appoint independent investigating officers.
- 20.14. The investigating officer must declare any interest in the complaint, either personal or professional, as this may invalidate their independent status.
- 20.15. The Complaints and Information Manager will confirm, in writing to the investigating officer, their appointment including details of the complaint and the 'Guidance for Investigating Officers' pack.
- 20.16. **Appointment and conduct of an independent person**

An independent person can also be appointed for a complaint where there are significant concerns about the vulnerability of the complainant and the seriousness of the complaint.
- 20.17. The Head of Communications and Customer Care may appoint an independent person on behalf of the Director of Adults and Communities. An independent person can be neither an elected member nor an employee of the local authority, nor the spouse/partner of an employee or elected member of the local authority. Former local authority staff are eligible, but a minimum of three years must have elapsed since they were employed by the local authority.



- 20.18. The independent person may not undertake any other role in the consideration of the same complaint (for examples, as an advocate).
- 20.19. The role of the independent person is to ensure that the investigation is thorough and fair and that the welfare of the service user is paramount.
- 20.20. The independent person will be briefed by the Complaints and Information Manager on local investigation practice.
- 20.21. The independent person will work alongside the investigating officer, participate in all interviews and discussions about the complaint and will have access to any relevant members of staff and documents.
- 20.22. Should the investigating officer and independent person identify that the complaint could be resolved by mediation or conciliation the matter should be referred back to the Complaints and Information Manager.
- 20.23. The investigating officer and independent person (if appointed) will meet the complainant and together agree a statement of complaint which meets the remit of this procedure.
- 20.24. The timescale of the investigation will start from the date the Complaints and Information Manager receives the agreed statement of complaint, signed and dated by the complainant.
- 20.25. The investigating officer and independent person (if appointed) will carry out an investigation in accordance with the 'Guidance on Good Practice for Investigating Officers', by examining relevant policies and procedures, considering the background to the complaint, interviewing those concerned, examining all relevant documents, and making a formal record of all investigative work.
- 20.26. If the investigating officer becomes aware that the investigation will exceed the timescale for completion of the investigation of the complaint (in most cases, 25 working days), they must discuss an extension of the deadline with the complainant. The investigating officer will confirm the agreed extended deadline in writing to the complainant and the Complaints and Information Manager. In all cases, a reason must be given for an extension of the deadline.
- 20.27. If the deadline has to be extended more than once, the Complaints and Information Manager will notify her/his line manager so that appropriate action may be taken.
- 20.28. The investigating officer will provide a report at the end of the investigation which will give the information listed below. The report will be made available to the complainant following adjudication with any confidential matters removed as defined by the Freedom of Information Act 2000 and Data Protection Act 1998.
- 20.29. The report should include a:
  - list of complaints as agreed with the complainant
  - record of desired outcomes of the complaint
  - description of the context and setting of the complaint
  - identification of complainant(s) and their eligibility under the appropriate procedure
  - record of any involvement of advocates or representatives
  - outline of activities, e.g. what was the timescale of the investigation who was

interviewed and dates what legislation, principles or procedures were used as benchmarks a detailed list of documents, files, and correspondence read and analysed

- chronology of events
- list of complaints and the evidence to support or disprove each
- summary including information about mediation discussions
- findings
- conclusions
- recommendations (specifying which aspects of the complaints are well founded).

20.30. The independent person, if appointed, will provide a written report at the end of the investigation giving a view of the complaint and the investigation as follows:

- whether the investigation was undertaken in an impartial, comprehensive and effective manner
- whether all concerned have been able to express their views fully and fairly
- identifying any findings by the investigating officer with which the independent person disagrees with, giving reasons and including any recommendations.

20.31. The investigating officer's report will be passed to the Complaints and Information Manager who will be responsible for the quality control of the report and will seek clarification from the investigating officer, where necessary on any queries regarding the meaning of the report or the manner in which the conclusions are derived.

20.32. The investigating officer retains the right not to amend the report. Should the Complaints and Representations Lead consider the report is not logical and the findings not evidence based, the Complaints and Information Manager will record their reasons and submit these with the investigation report for adjudication by a senior manager.

## **21. Conciliation and Mediation**

21.1. Some complaints that have not been resolved locally may be satisfactorily concluded by mediation.

21.2. Conciliation and/or mediation can effectively resolve complaints and can prevent protracted investigations. Conciliation and/or mediation should be considered throughout the complaints process.

21.3. The purpose of conciliation and/or mediation is to offer a neutral third party who can assist, by negotiation between the complainant and Adults and Communities, in the process of reaching resolution and agreement. A conciliator or a mediator can be a senior officer, either internal or external to the service being complained about, or be an independent person.

21.4. To qualify for conciliation and/or mediation, the nature and content of the complaint has to be appropriate, e.g. breakdown in communication and trust, and both/all parties must agree to it.

21.5. The Adults and Communities Director and/or the Complaints and Information

Manager will be responsible, in consultation with the complainant and relevant officers of Adults and Communities, for establishing if there is eligibility and agreement for conciliation or mediation, whether it should be provided internally or externally and, if externally, how this will be funded. See Appendix 4.

- 21.6. If at any stage during an investigation it appears to the investigating officer and the Complaints and Information Manager that the complaint could be resolved before adjudication, the Complaints and Information Manager will arrange contact between the investigating officer, the independent person (if appointed), the Adults and Communities Director and/or the senior manager of the service which is the subject of complaint. The Director or relevant senior manager will review the investigating officer's reasons and/or report and formulate an action plan if appropriate.
- 21.7. Any decision might include the use of internal or external mediation.
- 21.8. Any offer of a resolution could include a meeting between the Adults and Communities Director and/or the relevant head of service and the complainant and a resolution of the complaint attempted.
- 21.9. Following mediation and/or the meeting, the Adults and Communities Director or the relevant head of service will confirm the decisions of the meeting in writing to the complainant which will include a request that the complainant confirm in writing to the Complaints and Information Manager that the complaint is satisfactorily resolved. A copy of this letter will be passed to the Complaints and Information Manager.
- 21.10. The Complaints and Information Manager will monitor the reply and will inform all relevant staff members on whether any further action is necessary.

## **22. Adjudication**

- 22.1. The adjudicating officer can be the Director of Adults and Communities. However, the Adults and Communities Director can delegate this responsibility to a manager who is in a sufficiently senior position to make strategic decisions regarding service delivery, normally an Assistant Director.
- 22.2. The investigating officer's and independent person's reports on the complaint will be passed by the Complaints and Information Manager, to the Adjudicating Officer for adjudication, re-confirming in writing the date by which the complainant should receive the departmental response. In complaints where the Adjudicating Officer has previously been involved, adjudication responsibilities will be decided by the Adults and Communities Senior Management Team.
- 22.3. Adjudication on a complaint is normally based upon an investigation undertaken by an investigating officer and, if appropriate, an independent person.
- 22.4. Adjudication of the complaint should be fair, thorough and transparent with clear and logical outcomes.
- 22.5. The Complaints and Information manager will notify the complainant that the reports are being considered and that a response can be expected.
- 22.6. The adjudicating officer will consider the reports. If the adjudicating officer requires clarification on any aspects of the reports, s/he may meet with the investigating officer and independent person or ask them to look at that point again and provide a short additional report.

- 22.7. The adjudicating officer may wish to meet the service user as part of the adjudication process or afterwards, to explain the outcome of the complaint and what action is to be taken.
- 22.8. The adjudicating officer will respond in writing, outlining:
- whether or not the complaint is well founded (upheld)
  - what action is required and how this will be achieved
  - what further action the complainant may take if they so wish.
- 22.9. The written response should include:
- The nature and content of the complaint
  - The expectation of outcome
  - Offers to resolve the complaint
  - The conclusions, resolutions and/or agreements reached, if any
  - The date by which the Delivery Unit can assume resolution if the complainant makes no further contact
  - The complainant's right to request a meeting if dissatisfied with the response to the complaint.
- 22.10. The adjudicating officer will pass the response to the Complaints and Information Manager together with copies of the report with instructions of who may have copies of the report(s).
- 22.11. The adjudicating officer will separately identify what actions have been agreed, who is responsible for implementing them and by what date the actions are required to be completed and forward these to the Complaints and Information Manager. The Complaints and Information Manager will be responsible for monitoring the implementation of any agreed action.
- 22.12. The report should be given to the complainant with confidential matters, as prescribed under the Freedom of Information Act 2000 and the Data Protection Act 1998 or by rules of court confidentiality, removed from the report if so decided by the adjudicating officer.
- 22.13. The Complaints and Information Manager will send the investigating officer's and independent person's report(s) and the adjudicating officer's response to the complainant. The Complaints and Information Manager will send a covering letter inviting comment on the response and advising the complainant of his or her right to request a meeting to discuss the investigation report and adjudication.
- 22.14. The Complaints and Information Manager will ensure that the people listed below also receive a copy of the response.
- All staff interviewed
  - The investigating officer
  - The independent person (if appointed)
  - All staff responsible for implementing recommendations in the response.
- 22.15. The investigating officer's and independent person's reports may also be circulated to other staff if instructed to do so by the adjudicating officer
- 22.16. The complainant will be invited to comment on the response and if there is disagreement, a meeting will be arranged to discuss the concerns with the

independent investigator, the responsible Assistant Director and the Complaints and Information Manager. A secondary investigation may be agreed to.

### **23. Serious and/or Complex Complaints – Secondary investigation**

- 23.1. If the complainant is unsatisfied, the independent investigator will contact the complainant within 5 working days to discuss the reasons, what further action they would like pursued and timescales. They will agree the approach of the secondary investigation and the timescales (this should usually be up to 20 working days, extending to a maximum of 40 working days if multiple meetings are required).
- 23.2. The independent investigator will carry out the secondary investigation in accordance with the agreed approach and timescales. If, upon completion of the review, the complainant is still unsatisfied, the Complaints and Information Manager will consult with the Director of Adults and Communities on how best to proceed.
- 23.3. If the Director of Adults and Communities is satisfied that all proportionate internal avenues for investigation have been pursued, the complainant will be advised to pursue their complaint with the Local Government Ombudsman.

### **24. External Appeal**

- 24.1. The final decision of the adjudicating officer is the last stage of the Adult and Communities complaints procedure and the decision is not open to arbitration.
- 24.2. The complainant can, however, pursue their complaint further by referring the matter to the Local Government Ombudsman. The Ombudsman is independent and impartial and provides a free and confidential service to complainants.

### **25. Learning from the complaint - Debriefing**

- 25.1. When the consideration of a serious or complex complaint is completed, the Delivery Unit will review issues arising from the complaint. The relevant Head of Service together with the Complaints and Information Manager will be responsible for co-ordinating this review as appropriate. The function of this review is to:
  - Give staff the opportunity to discuss any concerns they have about the complaint and the processes of complaint investigation
  - Record any changes to policy or practices that may be required
  - Look at quality control issues that may have arisen as a result of the complaint
  - Identify a monitoring officer responsible for ensuring that any agreed action is carried out.
- 25.2. The Complaints and Information Manager will record the relevant details of the review on the action sheet and circulate the record to all relevant members of staff.
- 25.3. The Complaints and Information Manager will use any relevant recorded information for monitoring and evaluation purposes.

### **26. Complaints involving more than one service area or department**

- 26.1. It is essential to establish a single point of accountability for dealing with a complaint involving more than one internal service area or Delivery Unit.

- 26.2. The Complaints and Information Manager will be responsible for the co-ordination of the complaint if it is internal to Adults and Communities. For complaints involving other council departments, the receiving Complaints Manager or contact person will co-ordinate the complaint and the response.
- 26.3. The Complaints and Information Manager or contact from the other council department(s) involved in the complaint will assist the investigation by collating information required to establish the facts of the case.
- 26.4. By agreement, the response to the complaint will be written by the relevant manager. The receiving Complaints and Information Manager will ensure, if at all possible, that the complainant receives a single written response.

## **27. Links with other organisations - working with other procedures**

- 27.1. Any complaint received within the department should, if it meets the criteria, be put through the complaints procedure. There are some complaints which might involve other procedures as well or which are more appropriately dealt with by another procedure. Other agencies who may be involved in services to adults include NHS bodies, education, housing, voluntary and private care organisations and the police.
- 27.2. It is important to separate out complaints appropriate to other procedures and cases where joint action is required. The Complaints and Information Manager will advise staff, including consideration of suspending decisions until any concurrent investigations are resolved. Complainants should always be provided with clear information as to how inter-agency matters will be dealt with.
- 27.3. In considering a complaint which is subject to concurrent investigation under a different procedure, Adults and Communities has the discretion not to commence the complaint investigation, if this would compromise or prejudice the other investigation.

## **28. Grievance and disciplinary procedures**

- 28.1. Complaints procedures should be kept separate from grievance and disciplinary procedures.
- 28.2. Where complaints contain an element of grievance or staff discipline, the Complaints and Information Manager in agreement with relevant staff will decide how to progress both elements of the complaint and will keep the complainant informed about progress as appropriate and with due regard to normal staff confidentiality.
- 28.3. Staff should be reassured that they will not be held personally liable for carrying out resource decisions or allocations of service according to the authority's criteria.

## **29. Complaints involving regulated services**

- 29.1. For services regulated under the Care Standards Act 2000, specific complaints procedures are required under separate regulations and national minimum standards. They are, therefore, distinct from this statutory complaints procedure.
- 29.2. Where Adults and Communities is responsible for the original assessment of need that led to a placement or associated funding for this service, then the complainant should, in most instances, have recourse to this procedure if required.
- 29.3. The following should clarify responsibilities between the local authority and the

independent service provider:

- 29.4. The local authority is responsible for:
- assessment of needs
  - design of care packages
  - monitoring the care packages
  - monitoring the quality of the service provisions and delivery
  - regular review
  - investigation of complaints not resolved by the provider
  - investigation of any complaint that raises serious concerns.
- 29.5. The independent service provider is responsible for:
- recruitment
  - training
  - supervision of staff
  - competence/practice
  - working procedures
  - management of service provision and delivery
  - meeting the requirements of the contract
  - ensuring that service users receive their service package
  - establishment and operation of a complaints procedure
  - keeping a register of complaints.
- 29.6. When a complaint is received about services which are regulated, the complaint should be referred by the Complaints and Information Manager to the registered provider within 5 working days subject to the complainant's agreement.
- 29.7. If there is a social care element to the complaint, it should be processed in accordance with this procedure. For joint complaints, the Complaints and Information Manager should co-ordinate a single response with the provider within 20 working days which deals with all aspects of the complaint.
- 29.8. Any issues of safeguarding and potential vulnerability of the service user should be confirmed by the Complaints and Information Manager with the service user before releasing the complaint to the relevant care service provider.
- 29.9. If the service user considers that they have suffered an injustice as a result of any significant delay or failure by the local authority to refer their complaint to the registered person, they are entitled to raise concerns under this complaints procedure.

## **30. Safeguarding Adults Procedures**

- 30.1. If a complaint is received concerning an allegation of abuse in a regulated setting the complaint will not be processed further through this complaints procedure until the outcome of an investigation under adult or children's safeguarding procedures is known. The complainant will be advised of this by the Complaints and Information Manager.
- 30.2. If a complaint raises concerns with regard to adult safeguarding issues, the

Complaints and Information Manager will immediately stop the investigation and refer the matter to adults or children's safeguarding procedures in accordance with agreed protocols. A decision will then be made concerning a formal investigation under those procedures.

- 30.3. If there are subsequent complaints about the work of individual agencies involved in an investigation with regard to their performance or the provision or non-provision of services, these should be handled in line with the particular agency's complaints process, unless their performance or provision or non-provision of service has led to harm or risk of harm of a vulnerable adult in which case this matter should also be dealt with under adults or children's safeguarding procedures.

## **31. Court Orders**

- 31.1. Anyone wishing to appeal against court orders should approach the Court. However, dissatisfaction about a local authority's management of a complainant's case relating to a court order may be appropriately considered under this procedure. The complainant must be informed that the complaints procedure cannot overturn a Court decision.
- 31.2. The council may consider whether any possible complaint relating to records used in court may also constitute a challenge to the accuracy of the records it holds under the Data Protection Act 1998.

## **32. National Health Service (NHS) Procedures**

- 32.1. Where Adults and Communities receives a complaint relating wholly or partly to services provided by a National Health Service body, the Complaints Team will, within 3 working days, ask the complainant if they wish the complaint to be sent to the NHS body responsible.
- 32.2. If the complainant does not wish this, Adults and Communities will only be able to address those aspects of the complaint that relate to services they provide or commission.
- 32.3. Where a complaint consists of elements relating to both social services and services provided by an NHS body, the Regulations place a duty on councils and NHS bodies to co-operate with each other and to seek to agree which will take the lead in providing a single co-ordinated response to a complainant. The Complaints and Information Manager will contact the NHS body concerned to achieve this end.
- 32.4. Where the council provides an NHS service under any formal partnership agreement, the Complaints and Information Manager will endeavour to resolve the problem through contact with the relevant manager. However, if the service user wishes to complain, they may have recourse to the NHS complaints procedure.



## Appendices

Appendix 1 - Unreasonably persistent complaints procedure

Appendix 2 - Unacceptable behaviour procedure

Appendix 3 - Risk Assessment Matrix

Appendix 4 - Mediation procedure

Appendix 5 - Outline of complaints procedure

Appendix 6 - Guidance on using relevant complaints procedures

## Other related policies and information

- London Borough of Barnet Corporate Complaints Procedure
- Barnet Multi Agency Adult Safeguarding Policy and Procedures
- Learning From Complaints, Department of Health 2006
- Listening, responding, improving: A guide to better customer care, Department of Health 2009
- NHS Act 2006
- Care Standards Act 2000
- Local Government Act 2000
- Freedom of Information Act 2000
- Data Protection Act 1998
- The Care Act 2014