



Telford & Wrekin  
Co-operative Council

Protect, care and invest  
to create a better borough

# **Resolving Complaints and Improving Services**

## **Policy & Procedure for Telford and Wrekin Council Adult Social Care**

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## Section 1 – Scope of the Representations and Complaints Procedure

### 1. Defining representations and complaints

- 1.1 At Telford and Wrekin Council we welcome all feedback from customers this is because it helps us improve the way we do things and to learn from things that have gone wrong.
- 1.2 The intention of this document is to set out the statutory procedure for a customer who is likely to want to make representations, including complaints, about the actions, decisions or apparent failings of our Adult Social Care Services and to allow any other appropriate person to act on their behalf.
- 1.3 We define a complaint as

*'An expression of dissatisfaction or disquiet about the actions, decisions or apparent failings of our adult social services provision, which requires a response.'*
- 1.4 We realise that it would be unrealistic to register every such statement within the procedure, particularly in cases where it is possible to deal with the matter of concern there and then. Indeed the 2009 Regulations specify that a complaint which is made orally and which is resolved to the person's satisfaction the same or the following working day, does not need to be registered within this procedure.
- 1.5 It is nevertheless the complainant's right ultimately to decide whether or not the matter of concern should be registered within this complaints procedure. It is crucial therefore that clear information about the procedure is made available in advance, so that complainants can make an informed decision about whether they want to make a complaint using this procedure.
- 1.6 Representations may not always be complaints; they might also be positive remarks or ideas that require a response from the Local Authority. Enquiries or comments about the availability, delivery or nature of a service which are not criticisms are also welcomed and can help us to improve our services.

### 2. Legislation

- 2.1 This complaints procedure is based upon The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009, which came into force on 1<sup>st</sup> April 2009.
- 2.2 The Regulations simplified the framework for dealing with complaints. It removed the previous three-stage process which marked Local Authority complaints procedures for social services since 1990, and set out a requirement that there should be a single investigation and response to complaints raised.
- 2.3 The way the matter is handled is to be determined in consultation and agreement with the complainant, on the basis of how serious and far-reaching the concerns raised are.

- 2.4 This procedure complies with the Data Protection Act 2018 and the Freedom of Information Act 2000. Any information obtained in relation to a complaint can only be used for that purpose.
- 2.5 This complaints procedure will support individuals to appeal their assessment decisions under Section 72 of the Care Act 2014.

### **3. Our Policy on Complaints**

- 3.1 This policy and procedure on complaints applies to services provided by the Council's Adult Social Care in Telford and Wrekin.

Complaints about the areas of the service which are not concerned with Adult Social Care will generally be handled within separate policies.

- 3.2 The policy is framed to:

- Provide high quality and responsive service;
- Acknowledge that all people who receive services have a right to complaint if they think that something that should have been done has not been done, or that something has been done poorly or incorrectly.

#### **3.3 Inter-Agency Joint Working Protocol**

As of April 2009 there is a duty to co-operate between different agencies for example Councils, Primary Care Trust's etc., to resolve issues effectively and quickly. Each agency should have a joint working protocol to ensure that both customers and officers are aware of the process involved should a complaint cover more than one organisation. This protocol sets out the steps in the decisions making process as to which organisation should take the lead in handling the complaint. It also sets out the necessary steps to gain permission to share information and inform the customer throughout the process. A copy of our Joint Working Protocol can be found on our website at [www.telford.gov.uk/complaints](http://www.telford.gov.uk/complaints). (For more information regarding this process see 14)

- 3.4 We are committed to ensuring that Adult Social Care meet the highest quality standards. This applies regardless of whether we provide the service directly, or whether we purchase it from a provider (such as a care home or a home-care service) with whom we have a contract.

- 3.5 We know that things sometimes go wrong with services, and that staff and managers sometimes make mistakes. When this happens, we believe it is important to put things right, as rapidly and as effectively as possible. Through this complaints procedure, we are committed to working with customers who use our services, their advocates, carers and relatives, listening to them and deciding with them the most effective way of sorting out whatever has gone wrong, and putting it right.

- 3.6 Above all, the way we deal with complaints will be based on

- Customer focus – listening to what people tell us
- Responsiveness – acting on what people say to us

- Promptness – making sure people get answers in good time
- Transparency – dealing openly and honestly with problems
- Proportionality – making sure that the resolution fits the complaint
- Learning – making sure complaints result in changes and improvement

3.7 We recognise our responsibility to ensure a high level of awareness of their entitlement to complain among people who use or may be eligible for services. We will therefore make sure in a number of ways that people are informed and reminded that the complaints procedure is available if necessary and they can expect assistance and support if they have cause to use it. Among the ways in which we will meet this obligation are

- Information about the complaints process will be made available in a variety of ways e.g. on the Council website, by means of leaflets and posters.
- Individuals will be given details by staff members in the course of their work.
- Case management correspondence will routinely incorporate references to the right to make complaints.
- Dedicated email address for complaints including those about Adult Social Care.

3.8 Also, for this procedure to be of benefit, we think it is crucial for all customers who use our services, their advocates, carers and relatives, members of the public, staff, managers and providers of our contracted services to be well informed about how the complaints process works, so that everyone is aware of their rights and obligations. Recognising that we serve a diverse community, we will therefore make details of the procedure available on request in a range of formats, in order to maximise its accessibility and to ensure that no individual or group is prevented from using and benefiting from it. To request this information, please call the Customer Relationship team on 01952 382006 or email [customer.relationship@telford.gov.uk](mailto:customer.relationship@telford.gov.uk).

3.9 We recognise that some people who use our services are especially frail or vulnerable, have communication difficulties, do not speak English as a first language or are without the support of family members or friends. If we receive a complaint from such a person, we will ensure that details of an approved independent advocacy service are offered, and we will arrange this if the service user agrees. Where a service user lacks mental capacity, advocacy will always be considered. In cases where a complaint is made on behalf of a vulnerable person by a family member or friend, we will try as far as possible to establish that the complaint reflects the vulnerable person's own wishes. In such cases, we will always consider whether it would be beneficial for the vulnerable person to involve an independent advocacy service, as well. Once this has happened the advocate will be entitled to participate on the complainant's behalf in all activities related to the complaint, and speak for him/her, for as long as the complainant agrees, until the matter is concluded.

Details of how the advocate should be involved in the process should be discussed and agreed when the investigation plan is compiled.

The contact details for locally accessible advocacy services will be publicised through the Council's information systems and in material which is addressed to persons in receipt of or have received Adult Social Care Services, both in hard-copy and electronic formats.

- 3.10 Whenever we deal with a comment or a complaint, we will look critically at what has happened, to see what lessons we can learn, and ensure that any changes which need to be made are applied, not only in the case being complained about, but across the service. We believe that if Adult Social Care have got something wrong, then we need to put it right, and to make sure that the service user has not lost out as a result. If we conclude, when the process has been completed, that the complaint was not justified, we will provide a full written explanation. In all cases, we will provide clear information about how to take matters further, so that the person making the complaint can decide if that is what they want to do.
- 3.11 We realise that the different procedures which could be applicable when concerns are raised about services (e.g. Adult Safeguarding Procedure, the complaints procedures of other bodies, a provider's own in-house complaints arrangements, disciplinary processes, criminal investigations etc.) could result in confusion for customers. In cases like this, complaints staff will ensure that there is consultation and engagement with complainants, and that sound decisions are reached with them about which procedure should take precedence, and why. Where, for example, a complaint raises concerns about any person's safety, the matter will be referred for investigation under the Adult Safeguarding Procedure, and the decision may be taken that action on the complaint will be suspended, pending the outcome. We regard it as crucial however that people are provided with clear information about the possible interplay between different procedures and are reassured that they are entitled to request that any remaining issues can be taken up through this complaints process, once the other process is concluded.
- 3.12 We recognise that many people fear that making a complaint may result in reprisals or in a deterioration of the service provided, and so we offer an assurance that we would regard this as wholly unacceptable, and that we would take very seriously any concern that this had happened. We will work to ensure that all members of our staff and management have a positive and informed view of complaints, and will give whatever help is necessary to enable people to get due benefit from the procedure.
- 3.13 The overall responsibility for ensuring the Council's compliance with the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009 rests with the Council's Chief Executive. As the 'responsible person' within the regulations, s/he may delegate this function as appropriate.
- 3.14 Responsibility for managing the day-to-day operation of the Adult Social Care complaints process lies with the Customer Relationship Team Leader who is the designated Complaints Manager, and whose duties and functions may be delegated.
- 3.15 This policy and procedure will be available to members of the public on the Council's website, but hard copies will be provided on request. The complaint leaflet 'Have your say...?' which summarises this information is widely distributed and is available at a range of community contact points, as well as from the Customer Relationship Team.
- 3.16 We also believe that when people who use our services send us comments and compliments based on their experiences, they should be acknowledged, considered and acted upon. This is an important aspect of the dialogue between local people and local services and forms an important part of our Quality Assurance Framework.

## **4. What may be complained about?**

A complaint may arise as a result of many things relating to service functions such as:

- An unwelcome or disputed decision;
- Concern about the quality or appropriateness of service;
- Delay in decision making or provision of services;
- Delivery or non-delivery of services including complaints procedures;
- Quantity, frequency, change or cost of a service;
- Attitude or behaviour of staff;

## **5. Who can complain under this procedure?**

5.1 The following parties are entitled to make complaints under this procedure:

- Individuals accessing support from Adult Social Care.
- Someone for whom the Council has a power or duty to provide or secure the provision of a service, and this need for a service has come to the attention of the Council;
- People whose needs have been the subject of an assessment within one or more of Adult Social Care Services.
- People whose possible need for a service has been notified to the service area.
- People who wish to dispute the service's assessment of their mental capacity.
- Someone in receipt of direct payments from the Council for services.
- Family members, friends, carers, advocates or representatives of people in any of these groups, providing that it is established as far as possible that the service user agrees with the complaint.
- People who are or might be affected by an action or decision which is the subject of a complaint.

Where the complaint is being made on behalf of another person:

- Telford and Wrekin Council will consider representations including complaints made to us by any customer or third party who is contacting us on the customers behalf.
- Where the service user has capacity (i.e. the ability to receive, understand and process information given and can make a decision) then written permission should always be obtained.
- Where the service user lacks capacity (within the meaning of the Mental Capacity Act 2005) then Power of Attorney documentation should be requested.
- We will also consider representations from Formal Authorised Representatives for further information see section 9.7.
- The Council must be satisfied the person making the complaint is a suitable person, and is making the complaint in the best interests of the person on whose behalf the complaint is being made.
- Responses will be proportionate based on the individual circumstances of the case.

5.2 The Complaints Manager may decline to register a complaint if it appears that it is being brought by a representative who is not acting in the best interests of the service user. Any such decision will be recorded and notified in writing to the complainant.

### **5.3 Who may act on behalf of an individuals with written permission?**

- A person providing care to a service user without being employed for that purpose (private carer).
- Family member or relative of the service user.
- Any other person having sufficient interest in the service user's wellbeing to warrant their making representations on their behalf (staff may make a complaint on behalf of a service user where there is no other person able to do so and there is a duty of care).
- Elected Councillor, MP and MEP.

**5.4** Complaints will not be registered more than a year after the matter giving rise to concern arose. Nevertheless, the Complaints Manager may waive this time limit if;

- It would not be reasonable to expect the complainant to have made the complaint sooner, and
- It is still possible to deal with the complaint effectively and fairly.

## **6. What is excluded from this procedure?**

**6.1** There are occasions when this procedure will not be the most appropriate procedure to be used, for instance;

- When the initial contact is a request for service.
- When the issue is about something other than Adult Social Care provision; the Corporate Complaints Procedure may be more appropriate.
- Where the issue of the complaint is over 12 months old, unless there are exceptional circumstances.
- Allegation of staff misconduct is dealt with under a separate procedure.
- Appeals against court rulings.
- Matters under consideration by the courts, for example prosecutions.
- A criminal Police investigation is invoked.
- When there are Court of Protection Proceedings underway.
- Multi-agency adult protection procedures are invoked.

**6.2** Complaints within the following categories are deemed to lie outside the remit of these procedures and will not be registered or dealt with under this process:

- Complaints by other local authorities, independent providers or NHS bodies.
- Complaints about Children and Young People's Services.
- Complaints from staff about their terms and conditions of employment.
- Complaints which are resolved to the complainant's satisfaction by the end of the working day following receipt (see 1.4 above).
- Complaints of which the subject matter has been previously investigated within the terms of this procedure or another relevant complaints procedure.
- Complaints of which the subject matter has been previously investigated by the Local Government Ombudsman and where no new information has been raised to cast doubt on the Ombudsman's decision.

- Complaints about a failure to comply with the Freedom of Information Act 2000.
- Approved Mental Health Professionals (AMHP) decisions regarding applications under the Mental Health Act 1983, are actions taken independently of the council and fall outside of this procedure. However the process of the AMHP assessment is covered by this procedure.

### **6.3 Contracted Services and Other Cross Boundary Issues**

An area of confusion arises around boundaries between the Council's responsibility and those of other bodies delivering services on behalf of the Council, for example:

- Domiciliary care through a private agency
- Registered homes
- Contracted agencies and multi-agency services
- Shared Lives schemes
- Independent Social Work reports submitted to court
- Multi-agency health service packages

Protocols are in place for successful handling of these complaints. Partner agencies will have appropriate procedures of their own in place for responding to complaints in the first instance. This will be part of the contracting procedure and will be monitored by the relevant service managers. (For more information regarding this, please see section 12.)

### **6.4 Complaints regarding residential and Domiciliary Care and/or NHS/ Integrated Care Board**

As of 1 April 2009 The Care Quality Commission (CQC) took over the work of the following three commissions:

- Commission for Social Care Inspection (CSCI)
- Healthcare Commission
- Mental Health Act Commission

Where a complaint includes issues that are the responsibility of CQC these should be sent to the CQC National Customer Service Centre ([enquiries@cqc.org.uk](mailto:enquiries@cqc.org.uk)), as soon as possible.

A member of the Customer Relationship Team will discuss and agree with the customer those parts of the complaint that are the responsibility of the other agency, and seek their agreement to forward this part of the complaint to the other agency (please see section 14 for further information).

### **6.5 Complaints concerning Allegations of abuse by staff against vulnerable Adults**

The complaints procedure will only apply to those allegations of abuse or ill-treatment made against Council Staff, Council carers (adults) or any agency that the Council has contracted to provide a service on behalf of the Council.

A vulnerable adult is 'any person aged 18 years or above who is or maybe in need of community care services by reason of mental health and other disability, age or illness

and who is, or may be, unable to take care of him or herself, or unable to protect him or herself for significant harm or exploitation'.

An allegation of abuse or ill-treatment registered as a complaint would still require a written response under the complaints procedure. After the multi-agency Adult Safeguarding Policy has been carried out the relevant manager would be expected to investigate further any outstanding matters from the complaint which were not dealt with within the protection procedures.

The manager would reply directly to the customer and adult (unless he or she is not of sufficient understanding) or advocate. The reply would also refer to any additional matters.

## **6.6 Complaints about an individuals placed in the area of another Council by Telford and Wrekin Council**

Telford and Wrekin Council will retain responsibility for all individuals that are placed in another local authority area as we will continue to fund and review these placements.

Each residential home is required to have its own complaints procedure, whilst customers also have the right to have their complaints considered by the CQC or Telford and Wrekin Council as the purchasing Council.

## **6.7 Complaints concerning staff from other agencies**

The complaint will be recorded by the Customer Relationship Team. The Customer Relationship Team will seek permission from the customer to pass the complaint to the relevant person who has the responsibility for managing complaints for the other agency.

## **6.8 Compensation Claims**

When a complaint gives rise to a potential or actual insurance claim; usually this involves the customer suffering loss or injury arising out of an alleged negligent act by the Council, its employees or agents. Such complaints will be forwarded to the Councils Insurance Team and the customer informed.

## **6.9 The statutory process will not apply if:**

- The complaint is on behalf of a group of customers who use our services; group complaints should be referred to the Complaints Manager. Where discretion is used to consider a group complaint under the statutory procedure, it will be necessary for the group to appoint a single point of contact who will assume responsibility and to whom responses will be sent, and s/he will be responsible for distributing these to the group.
- The same complaint is received from a number of individuals in such a way as to suggest an organised campaign. The substance of the complaint maybe investigated at the discretion of the Complaints Manager.

- The customer is abusive or makes threats to staff in the course of submitting the complaint. The customer appears to be a persistent and vexatious customer or other unreasonable behaviour.
  - The complaint appears to be substantively indistinguishable from one that has already been submitted by, or on behalf of, the same service user, and has received a written response through statutory procedure.
  - The complaint concerns the behaviour of an individual who is not employed by the Council, or in receipt of payment from the Council, to provide a service.
  - The complaint has been made anonymously, although the substance of the complaint may be investigated and learning taken, a response cannot be sent (see section 6.15).
  - The complaint is not about any actions or decision of the Council, or anybody acting on its behalf.
  - The complaint has already been dealt with at all stages of the procedure.
  - The same complaint has been dealt with by a local commission, other legal process, judicial review or Local Government and Social Care Ombudsman.
  - The matters complained about should be dealt with under other procedures such as disciplinary or grievance procedures, personal issues or the corporate complaints procedure.
  - The dissatisfaction is with a court decision or where a remedy to any issue is through an appeal to court.
  - There is a special statutory procedure which already exists for dealing with the particular issue.
  - Separate internal arrangements for Appeal and/or Review for reconsideration of professional decisions taken. The complaints process is then available if a customer has grounds for complaint about the process, this will include appeals against assessment decisions under section 72 of the Care Act 2014.
  - Where a customer is 'self-funded' and uses independent services. The customer will be advised of their rights under the Care Standards Act 2000.
- 6.10 If customers are campaigning for a new or amended services, or increased resources for groups of service users or potential service users they should consult with their elected representatives, not use the complaints process.
- 6.11 Where a customer states in writing s/he intends to take legal proceedings in relation to the substance of the complaint, access to the complaints procedure may be restricted, and where the Complaints Manager is certain the complaint cannot be resolved through this procedure. In the following situation customers should be advised to consult with their legal representative;

- Challenging legislation or judicial decisions.
- Applying for compensation or damages arising from alleged actions or inaction of staff.
- If a complaint has been initiated under a statutory procedure then the process should be suspended until the final outcome of the legal action. There is no requirement to suspend the complaints process if the customer is simply seeking legal advice or is taking legal action against the Council on a matter not directly related to the complaint.
- The complaint subject is a matter to be determined by a judicial body, the complaint should be referred back to the body in question.

- 6.12 In the following situation complaints should be discussed with the Complaints Manager and a Senior Manager;
- The complaint involves allegations against staff of a serious nature, for example professional incompetence, dishonesty or criminal behaviour. In such cases, a relevant senior manager may determine that other processes would be used to deal with the complaint, for example formal disciplinary procedures or criminal investigation.
  - Advice should be sought before a complaint is responded to within the statutory procedure in the above instances, where a degree of local discretion is required. Consideration would be given to these types of issues under the Corporate Complaints Procedure.

#### **6.13 Relationship to other Policies and Processes**

This procedure may be suspended if any of the following procedures are invoked:

- a) Disciplinary and Grievance Procedures
- b) Children and Young Peoples Services Complaints Procedure
- c) Harassment Procedures
- d) Police Investigation- Criminal

#### **6.14 Deferring or Freezing Decisions**

Customers must not be discouraged from making their complaints. The status of the provision of a service which is subject of complaint would not usually be subject to change, delay, suspension or withdrawal while a complaint is being dealt with under this procedure.

Decisions may be frozen when a complaint has been made about such a decision/action which could have a significant impact on the life of an individual. The decision would be considered by the relevant operational manager and unless good reason could be shown for doing otherwise, the decision would be frozen pending the outcome of the complaint. The manager would be expected to record the reasons for not freezing a decision and to provide a copy to the Complaints Manager.

The investigation of complaints must preserve confidentiality and reflect the Council's commitment to equal opportunities and anti-discriminatory practice.

- 6.15 Whenever a complaint is received and any of the above exclusions apply, we will (unless the complaint has been resolved within 24 hours) acknowledge the matter in writing, explaining why the relevant elements will not be considered within this statutory complaints process. We will as far as possible continue to deal with any other elements of the complaint which are not affected by these exclusions.
- 6.16 If an anonymous complaint is received, it will as far as possible be registered as usual under the corporate complaint procedure, and notified to the relevant Service Manager. This is particularly important where the anonymous complaint contains information which may need to be considered within the procedure for the Protection of Vulnerable Adults. It is obviously not possible to acknowledge and respond to anonymous complaints, and telephone callers who prefer to withhold their identity will be reminded of this. The substance of any such complaint will however be addressed by the relevant manager.

## Section 2 - How the Process Works

### 7. How the process works

7.1 This section details the procedure for handling all representations, which must be registered with the Customer Relationship Team.

#### 7.2 Compliments, Comments and Suggestions

It is very important that the service learns from the positive statements made by customers as well as the negative comments about services. Where these other forms of representation are made, including criticisms which the sender does not wish to regard as a complaint, the Customer Relationship Team will record and forward these representations to the appropriate manager for their attention.

#### 7.3 Complaints

The purpose of a complaints process is to resolve concerns raised by customers who use our services and their representatives, to deliver outcomes which are appropriate and proportionate to the seriousness of the issues and to ensure that changes are made in response to any failings which are identified.

7.4 To achieve this, the approach to handling complaints must incorporate the following elements

- Engagement with the complainant or representative throughout the process
- Agreement with him/her about how the complaint will be handled
- A planned, risk-based and transparent approach
- Commitment to prompt and focussed action to achieve desired outcomes
- Commitment to improvement and the incorporation of learning from all complaints.

#### 7.5 How complaints can be made

Complaints may be received through a variety of channels (phone, letter, email, feedback form, personal visit etc.) and at various points within the organisation (to staff members, via the respective email addresses) or direct to the Customer Relationship Team.

7.6 Regardless of the medium used or the point where it arrives within the organisation, each complaint must be notified immediately to the Customer Relationship Team, so that it can be registered and formally acknowledged within three working days – this is a required and regulatory standard. If the complaint has been received verbally, staff in the Customer Relationship Team will make a written account of it which will be sent to the complainant for approval in an appropriate format, the complaint will be formally acknowledged when the written account has been approved.

#### 7.7 Complaints Procedure

An initial assessment of the complaint is done to determine the issues, the severity and the potential impact and to identify any other organisations that may be involved.

Either through the acknowledgement or by means of direct contact, complaints staff will in the first instance, if appropriate, offer the complainant the opportunity to meet to discuss the matter or to establish his/her desired outcomes. Should the complainant decline a meeting, then the matters set out below at 7.8 will need to be clarified over the phone, or if this is not acceptable, then by correspondence or failing that on the basis of existing information.

7.8 Agreement will be sought on the following points;

- Detailed account of the complaint.
- Complainant's view of the impact, which this has had on him/her.
- Specific reference to any aspect which requires immediate action within the adult safeguarding/protection procedures.
- Details of the outcome(s) which will resolve the matter from the complainant's perspective.
- Whether the subject of the complaint could relate, entirely or partly, to another body (eg an NHS body or an independent care provider) and could therefore need a joint approach (see sections 13 and 14 below).
- How the complaint will be investigated, and by whom.
- How long it should reasonably take to investigate the matter and to provide the complainant with the Council's formal response.
- How often and by what means, the complainant will be updated on the progress of the investigation.
- Whether an advocacy, translation or other support service is required.
- Whether the involvement of an impartial mediator might contribute to a satisfactory resolution of the complaint.

The meeting/communication should result in an agreed Investigation Plan, which both parties are content to sign.

7.9 The meeting/communication provides an opportunity for complaints staff to explain how the procedure works and to explain any matters on which the complainant needs clarification. It is at this point also that any desired outcomes by the complainant which are unrealistic or unfeasible should be identified. The outcome of any such discussion must be confirmed in writing at the earliest opportunity.

7.10 The meeting should also ensure the capture of information upon which the issues raised in the complaint can be risk-assessed, for the purpose of ensuring that the mode of investigation is appropriate and proportionate. Accordingly the issues raised are plotted on two axes

- Seriousness (both from the service user's perspective, in terms of harm, risk or other damaging impact, and from that of the service, in terms of risk of litigation or serious damage to reputation).
- Likelihood of a similar failing recurring

The resulting categorisation of the risks raised by the complaint will promote a logical approach to the way forward in managing the complaint, and in providing an indication of

the most suitable means of investigating it, in a way which is proportionate to the nature of the concerns raised.

- 7.11 The receipt of any complaint indicates that something has gone wrong, so it is vital to establish the facts about what happened. For some serious complaints, it will be necessary to appoint someone independent of the authority to look into the case. In most cases however, complaints will be investigated by a manager from within the Service Delivery Area. This will usually be the manager of the team subject to the complaint unless there are clear reasons why this is felt to be inappropriate. The risk assessment process will provide a guide as to which approach should be adopted.
- 7.12 Complaint investigations may be suspended if the subject of the complaint is subject to criminal proceedings or action under the disciplinary procedure. This is because these are considered to have priority over the complaint investigation process. Once they are concluded, any residual matters of complaint can be investigated. It may also be appropriate to suspend all or part of an investigative process to enable an Adult Safeguarding investigation to proceed. In such cases the Complaints Manager will engage with Adult Social Care managers to determine the most appropriate course of action. There is no presumption for suspension, and each case will be treated on its merits.
- 7.13 The Department of Health and the Local Government Ombudsman's Office have both published guidance on the conduct of investigations into complaints
  - Investigating Complaints (Advice Sheet 1, DoH 2009)
  - Guidance on Running a Complaints System (LGO's Office 2009)

The principles set out should be observed in all complaint investigations under this procedure, whether undertaken in-house or externally.

- 7.14 Investigating a complaint may involve any or all of the following activities;

- Meeting with the complainant
- Reading case file records
- Reading Council policies and procedures
- Accessing relevant law and regulations
- Making site visits
- Interviewing staff and managers

All investigations need to be summarised in a report, the relevant Service Manager will then respond to the complaint, within the timescale agreed with the complainant when the investigation plan was drawn up.

The relevant Service Manager (who formally responds to the complaint based upon the report received from the Investigating Manager) will be the SDM who has senior management responsibility for the team subject to the complaint, again unless there are clear reasons why this is felt to be inappropriate.

- 7.15 The report, of which the nature and level of detail will be proportionate to the concerns raised in the complaint, will contain the following elements;

- Description of how the complaint has been investigated
- A judgement of ‘upheld’ or ‘not upheld’ in regard to each element
- Conclusions reached, especially in relation to the desired outcomes originally specified in the complaint
- Recommendations for changes and improvements which need to be made following resolution of the complaint (these need to be specified within the Learning Log section of each investigation report).

- 7.16 The relevant Service Manager is responsible for sending a formal letter of response including the rationale, to the complainant. The letter of response should summarise the salient aspects of the report, offer apologies as appropriate, specify what action will be taken in consequence and set out what broader learning points have been identified, for future implementation. It must also refer to the complainant’s entitlement, should s/he remain dissatisfied, to refer the matter to the Local Government and Social Care Ombudsman.
- 7.17 In the event that the responding manager is of the view, on receiving the investigation report, that additional action, communication or liaison could contribute to a surer or more effective resolution of the complaint, s/he may request that this be put in hand, by complaints staff or operational staff as appropriate. Any consequent delay to an agreed timescale should be explained to and agreed with the complainant.
- 7.18 If the complaint is about a proposed change to a support plan, a placement or a service, the decision may need to be deferred until the complaint has been considered. Consideration should always be given to deferring a decision that will have a significant effect upon the life of an individual until the complaint has been considered, always keeping in mind the best interests of the service user. The decision to defer will normally be made through detailed discussion and risk assessment between the Complaint Manager and the Service Manager responsible for the service. In cases where decisions are met with opposing views, the relevant Director will make a final decision.
- 7.19 In seeking to resolve complaints to the satisfaction of our customers and their representatives, the underlying aim needs to be to return the person who has suffered a loss, distress, delay or inconvenience as a result of the Council’s actions or inactions, to the position in which they would have been, if the failing which gave rise to the complaint had not occurred. This means that the remedy offered should be proportionate to the failing. When a complaint is upheld, the desired outcomes agreed with the complainant at the outset will provide a guide to the means of putting the matter right. If it is not possible to provide a remedy in any other way, consideration should be given to offering the complainant financial redress. This should always take account of the Ombudsman’s published guidance on Remedy, and of the appropriate sections of Treasury guidance ‘Managing Public Money’.
- 7.20 Unlike the previous complaints arrangements, no specific timescale is stipulated for the specified components of this procedure. The length of time which is allowable will largely be negotiated and agreed with the complainant when the investigation plan is drawn up. Once agreed if any additional time is required it must be explained to and agreed with the complainant, by the Customer Relationship Team, who remain responsible for keeping the complainant informed throughout the process.

7.21 Any complaint which remains unresolved after six months will be the subject of formal review by the Complaints Manager and a Director.

## 7.22 The Process

| Task                      | Timescale             | Actions  |
|---------------------------|-----------------------|--|
| Complaint Received        |                       | <ul style="list-style-type: none"><li>• Assessment of complaint- severity /impact/liability or reoccurrence.</li><li>• Identify if involvement from other agencies, consider Joint Working Protocol.</li><li>• Identified Safeguarding issue: follow Adult Protection Policy and protocol before any other action.</li></ul>   |
| Telephone Service Manager |                       | <p>Contact relevant Service Manager to discuss;</p> <ul style="list-style-type: none"><li>• the issues raised and</li><li>• agree the risk assessment and</li><li>• possible required action plan</li></ul> <p>prior to contact with customer.</p> <p>This discussion may lead to more information being required from customer in order to properly assess the issues.</p>  |
| Acknowledgement           | Within 3 working days | <p>If telephone number has been given then telephone customer to discuss issues raised, where appropriate;</p> <ul style="list-style-type: none"><li>• arrange a meeting and</li><li>• offer advocacy and</li><li>• signpost to support or resolve issue if possible.</li><li>• Confirm date and time of any meeting,</li><li>• the name of officer involved and</li><li>• Advise them of the complaint handling process.</li></ul> <p>Signposting leaflets will be sent, along with if relevant 3<sup>rd</sup> party consent forms, if a representative is involved.</p> <p>If no telephone number, write to the customer acknowledging the complaint requesting they make contact with the Customer Relationship Team in order to discuss the issues and offer a meeting with a stated date and time.</p> <p>Within this letter it will state that if we receive no response by the indicated target date then we will send out a further letter that will outline the complaint handling process and responding officer.</p> <p>If the complaint received is about a social care provider or ICB (Integrated Care Board) then consent to share this with the named organisation is required from the customer</p> |

|   |   |  |
|---|---|--|
|   |   | <p>and agreement gained that the organisation be allowed to investigate and respond to the complaint.</p> <p>The Customer Relationship Team can act as main contact and work with other agencies to agree a combined response.</p>   |
| Mediation Meeting                       |   | <p>It is useful to arrange a mediation meeting to discuss the issues and work towards a solution.</p> <p>If no meeting is possible it is essential that contact either by letter or telephone is made with the customer to agree a way forward which will shape the action plan and work towards an agreed timescale of resolution. There may be other parties/agencies that need to be involved.</p>  |
| Response with action plan and timescale | Mutually agreed timescale                           | <p>Following the mediation meeting The Customer Relationship Team will send out a letter giving details of the action plan, timescales of resolution and confirm the name of responding officer.</p> <p>If no meeting has taken place but contact has been achieved by letter, email or telephone and agreement has been reached via this method; then the Customer Relationship Team will send out a letter giving details of the action plan, timescale of resolution and confirm the name of the responding officer.</p>  |
| Investigation                           | Mutually agreed timescale – no longer than 6 months | <p>Issues are fully investigated – this investigation may be undertaken by an independent person or in most cases the complaint will be investigated by a manager from within the Service Delivery Unit. See 7.11</p>  |
| Full Response                           | Mutually agreed timescale – no longer than 6 months | <p>Following the investigation a copy of the investigation report is submitted to the Service Manager who will respond to the complaint, within the timescale agreed with the complainant when the investigation plan was drawn up.</p> <p>Full response is sent to the customer along with an investigation report.</p> <p>The customer is advised of their right to take the matter to the LGSCO if they are unhappy with the response and investigation findings. They have 12 months in which to do this.</p> <p>If once the report has been submitted to the Service Manager there is the view that additional action, communication or liaison could contribute to a more effective solution it may be referred back to operational staff to carry out further work.</p> |

|                   |          |   |
|-------------------|----------|---|
|                   |          | Any delay to the agreed timescale should be explained to and agreed with the complainant.   |
| Review            | 6 Months | Customer Relationship Team will monitor complaints that are coming up to six months without resolution and review the status with relevant officers and the Director. |
| Referral to LGSCO |          | The customer can take the matter to the LGSCO for their consideration.  |

## 8. Conciliation and Mediation

- 8.1 The complaints regulations which came into force in April 2009 are less prescriptive than their predecessors. By focussing on the complainant's perspective, the sustainable resolution of concerns and the identification of learning points, they encourage creativity and innovation in the manner in which complaints can be handled.
- 8.2 It is recognised that a complaint investigation may not contribute to the improvement of working relationships between the service user and the staff involved. We will offer complainants the opportunity to take part in conciliation, through the Customer Relationship Team, to help resolve issues of concern and to improve working relationships as an alternative to, or in addition to, pursuing action through the complaints procedure.
- 8.3 In certain circumstances, it may be appropriate to propose that a mediation approach be considered. This can be especially useful if there is an actual or a potential breakdown in relationships or communication. It is a means of addressing the disagreements and conflicts which arise in such cases, with the aim of resolving them, on a win-win basis.
- 8.4 There is no single prescribed mediation process, but the two requirements which are essential to successful mediation are
- An impartial mediator who enjoys the confidence of both sides
  - Commitment to and belief in the mediation process

### 8.5 What is Mediation?

Mediation is sometimes referred to as Alternative Dispute Resolution (ADR) and can be used at all or any stage of the process of handling complaints.

Mediation provides all persons involved the time and space to listen to each other and their expectations, with a better chance of focusing on solutions rather than on problems, which benefit everyone.

A structured and open approach to conflict resolution, seeking to help all parties identify their own and others feelings and interests rather than defend individual positions.

Mediations will be agreed in advance by the Complaints Manager, the customer and the responding officer. It will be offered as early as possible in the process, but can be accessed at any point by agreement, and will be:

- Confidential
- Without Prejudice

- Impartial, independent and non-judgemental and encourage collaboration with all people.
- All parties involved in mediation must be willing to be involved and be committed to seeking a resolution to the issues of the complaint.

## **8.6 What is Adjudication and who is the adjudicator?**

Adjudication is part of the decision making process following the investigation. The Adjudicator may take the opportunity on receipt of the Investigation Report to meet the customer and discuss outcomes before a written response is sent. The Adjudicator can be the responding Service Manager.

## **8.7 Who is a Formal Authorised Representative?**

A person with a formal statutory entitlement, locally recognised authority, or explicit mandate to complain on behalf of a service user. These may include:

- Power of Attorney, Enduring Power of Attorney, or Lasting Power of Attorney or Receiver (e.g. a person appointed by court of law).
- A Court appointed deputy by the Court of Protection registered with the Office of Public Guardian.

## **8.8 Who is an Independent Person?**

An independent person may take part in the Council's consideration of a complaint during the process, about services provided to vulnerable adults.

An Independent Person is:

- Not a current or former member of the Council.
- Not the spouse or partner of a Member of the Local Council handling the complaint.
- Not the advocate; his/her role is to provide an objective element in the Council's considerations for the vulnerable adult.

The Independent Person will:

- Have written consent from the Complaints Manager to have access to the customer's files, should access not be with the Investigating Officer.
- Treat all aspects of the complaint with strict confidentiality.
- Begin by first meeting the Investigating Officer and/or Complaints Manager to plan their part of the investigation.
- See the customer with the Investigating Officer, if required, to hear about the complaint.
- With the Investigating Officer, see other people involved in the complaint - then be invited to attend any meetings in connection with the complaint.
- Be informed of all information relevant to the complaint.

The local council cannot direct the Investigating Officer and Independent Person to see or interview anyone. It is for them to decide how many interviews they will attend in order to satisfy themselves that the investigation has been thoroughly investigated.

The Independent Person should not:

- Assume the complaint could not have happened;
- Make promises they may not be able to keep;
- Say that nothing can be done.

## **9. Resolution and Remedies**

- 9.1 Where some justification is found for a complaint consideration needs to be given to the question of appropriate remedy.
- 9.2 An apology and/or explanation will always be needed where any part of the complaint is upheld. It may be necessary to determine who can provide remedial action and what arrangements are needed.
- 9.3 The Council's guidance in the use of financial redress is that this should be made in exceptional circumstances where some direct financial loss has been incurred, and where agreement has been reached with the Service Manager as well as the Monitoring Officer.

## **10. The Local Government and Social Care Ombudsman (LGSCO)**

- 10.1 The Local Government and Social Care Ombudsman is independent and impartial and gives a service which is confidential and free of charge. The Ombudsman has the same powers as the High Court to require people to provide information and to produce documents for investigation.
- 10.2 Any member of the public is able to complain to the Ombudsman if they feel there has been an injustice. However, the Ombudsman's office usually states that customers should first take up their complaint with the relevant Department or Council.
- 10.3 If the customer is not happy with how the Council has dealt with their complaint, they can take the matter to the Ombudsman, whose role is to investigate complaints of maladministration by Local Authorities. Maladministration means that there has been a fault in the way the Council has or has not done something, such as a failure to follow its own rules or a breach of legislation.
- 10.4 Complaints which members of the public make to the Ombudsman will be dealt with by the Customer Relationship Team who will ensure that the complaints process has been followed.
- 10.5 The Ombudsman may reject any complaint as premature if the complaints procedure has not been followed. The Ombudsman's involvement may be ended at any point where it is clear there is no maladministration or where the Council agrees to settle with the customer.
- 10.6 Complainants who remain dissatisfied with the proposed outcome after their complaints have been handled within this procedure will be notified advised that they are entitled to approach the Local Government and Social Care Ombudsman, to request that the matter be considered. The Local Government and Social Care Ombudsman can be contacted via telephone on **0300 061 0614** or online at [www.lgo.org.uk](http://www.lgo.org.uk)
- 10.7 People who use the Council's services are in fact entitled to make an approach to the Ombudsman at any point. It is generally the case however, that the LGSCO declines to

undertake an investigation until the complaint has been dealt with within the local authority's complaints process.

## **11. Improving services following complaints**

- 11.1 A primary objective of the complaints process is to ensure that mistakes are identified and remedied, and that they are not repeated in future. Achieving this requires analysis of what went wrong, why the mistake was made and what changes are needed to ensure that it does not recur.
- 11.2 Following the resolution of a complaint, one of the following two courses of action must be adopted
  - Where the matter has been the subject of internal investigation, the manager undertaking the investigation will complete a Learning Log, and incorporate its conclusions into the report. This will follow a prescribed pattern, and detail the learning points which arose from the complaint and the measures which need to be put in place to minimise the recurrence of mistakes. The report should be submitted to the Customer Relationship Team for endorsement, collation and subsequent reporting to the Service Manager.
  - If the complaint was investigated by someone independent of the Council, a formal Learning Outcome Meeting involving relevant managers will be convened by the Customer Relationship Team for the purpose of identifying learning points, planning remedial actions, setting timescales and assigning tasks. The outcomes will be reported to and monitored by the Service Manager.
- 11.3 Where the complaint has involved another body (e.g. an NHS trust or an independent care provider) it will be **important** to secure the participation of their relevant managers for the purpose of maximising and sharing the learning process.
- 11.4 The complainant should be kept informed about whatever actions are taken as a result of the complaint. Once implemented, the changes or service improvements should be notified to him/her, with a note of appreciation for raising the issue.

## **12. Complaints about services provided under contract (Care Standards/Social Care Provider complaints)**

- 12.1 In considering complaints about services which the Council purchases from independent providers, there is a distinction between the authority's responsibilities and those of the provider of the service. The Council is responsible for commissioning and purchasing services, arranging placements, (re-)assessing individual needs, monitoring the adequacy of particular packages of care etc. The provider is responsible for ensuring that the service provided meets the necessary standards, as set out under the Care Standards Act 2000 (and from 1<sup>st</sup> April 2010 under the Health & Social Care Act 2008) and complies with the respective regulations. The provider must also comply with the requirements of its contract with the authority.
- 12.2 Each of the independent providers from whom the Council purchases services is required to have arrangements for handling complaints about the service it provides (known as

'Care Standards complaints' or 'Social Care Provider complaints'). These arrangements have to be sufficiently robust and effective to enable the provider to deal with complaints promptly, fairly and in a way which is proportionate to the concern raised, without the need to refer the matter elsewhere for action. The arrangements which the provider has in place for this purpose must also comply with the respective regulations and National Minimum Standards prescribed by the Department of Health, and monitored by the Care Quality Commission.

- 12.3 While the Council is accountable through this complaints procedure for the way in which it carries out its own obligations, it is not primarily responsible for Care Standards complaints/ Social Care Provider complaints. These are for the provider to handle within the arrangements prescribed in the relevant regulations. Nevertheless, the Council is also responsible and accountable for services it commissions. Telford & Wrekin will seek to ensure that all complaints which arise within the services which it purchases are properly and satisfactorily resolved.
- 12.4 In cases where the provider's final response to a Care Standards/Social Care Provider complaint proves unsatisfactory to the complainant, the complaint may be referred to the Customer Relationship Team, for a consideration of further options, which could include
  - Action within the Adult Social Services complaints procedure.
  - Action taken by the contracting/commissioning unit.
  - Referral to the Care Quality Commission for their consideration of regulatory action.
- 12.5 If the Service Delivery Unit receives a Care Standards/Social Care Provider complaint, complaints staff will the same or the next working day ask the complainant whether s/he wants the matter to be passed to the registered manager of the service concerned? If so, the matter will be sent to the registered manager within 3 working days. The service area will also notify the Care Quality Commission of any such complaint, and liaise as necessary with its staff.
- 12.6 Where a complaint received by the service area includes aspects which relate both to Care Standards/Social Care Provider matters and to the way in which the service area has carried out its duties, the complainant's permission will be sought to pass the relevant information to the registered manager of the service. Service area staff will then collaborate closely with the provider and with the complainant, within the remit of this complaints procedure in order as far as possible to provide a single co-ordinated response to the complainant.
- 12.7 The distinction between areas of complaint which are Care Standards/Social Care Provider matters and those which properly fall to the service area to deal with is not always self-evident. In general terms, if the matter being complained about is one where the provider service is acting or carrying out a function on the local authority's behalf, then it will fall within the remit of this complaints procedure.

## **13. Complaints which are partly about National Health Service bodies**

- 13.1 The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009, which came into force on 1<sup>st</sup> April 2009 put complaints about Adult Social Services and about the NHS on the same legal and procedural footing. This means

that, although each authority and NHS organisation will operate its own procedure, the processes, ethos and aspirations of each will be similar. The regulations impose a 'duty to co-operate' on local authorities and NHS bodies, with respect to complaints.

13.2 Adult services not only collaborates closely with local NHS organisations but also provides services jointly in some cases, including;

- Community Mental Health services
- Community Learning Disability services
- Community Substance Misuse services
- Intermediate Care services

It is therefore necessary to clarify the manner in which complaints which may cross traditional service boundaries are to be handled, so that people who bring complaints are provided with prompt considered responses and are clear about how cross-cutting matters will be handled.

13.3 A collaborative approach to cross-cutting complaints will rely on close communication, contact and engagement between complaints staff in the Service Delivery Unit and in the NHS organisation, on relevant complaints. A protocol to which all local authorities and NHS organisation within the Staffordshire and Shropshire sub-region are signatories has been agreed for this purpose, and is an adjunct to these procedures.

13.4 If a complaint received by the service area appears in part to require a response from an NHS organisation, Customer Relationship Team staff will notify the complainant within 3 working days of its intention to collaborate with the NHS organisation as regards;

- Identifying which agency will take the lead in the complaint
- Establishing a joint investigation plan
- Providing a single co-ordinated response

13.5 It is vital that the written consent of the complainant is obtained before personal information is passed to complaints staff in the NHS organisation. When this is received, those aspects of complaint which are for the NHS organisation to address must be sent to them without delay.

13.6 When the Service Delivery Unit receives a complaint which appears not to relate to social services functions at all, but to apply solely to the remit of a NHS organisation, the Customer Relationship Team staff will ask the complainant within 3 working days for permission to pass that part to complaints staff in the NHS organisation. When consent is received, the complaint must be sent to them without delay.

## **14. Unacceptable behaviour and unreasonable persistent complainants**

14.1 Adult Social Care Services is committed to providing an inclusive, responsive and easily accessible complaints process for Adult Social Services. It will generally not impose restrictions upon the way in which complainants are able to contact or communicate with staff members.

14.2 In line with the authority's duty of care however, staff are entitled to protection from complainants whose behaviour is abusive, offensive or threatening. In such cases, the

Complaints Manager will inform the complainant why his/her behaviour is considered unacceptable and ask him/her to change it. If this has no effect, possible ways forward will be discussed at a formal (noted) strategy meeting, convened and chaired by the Customer Relationship Team. Decisions and action in such cases must be consistent, proportionate to the concerns, time-limited and subject to review at least annually.

14.3 Among the possible measures available are

- Restriction of access to service area sites
- Routing of all contact with the person through a named staff member
- Requiring contact with the person to be by letter only
- Proposing a formal agreement with the complainant about his/her behaviour
- Accessing legal advice regarding obtaining an injunction
- Notification to the police
- Notification to the keeper of the Council's Personal Safety Precautions Register

14.4 Whilst no single definition of an unreasonable persistent complainant exists, vexatious behaviour may include some or each of the following, this is not an exhaustive list;

- Refusing to specify grounds of the complaint, despite offers of assistance from the council.
- Refusing to cooperate with the complaints investigation process whilst still wishing the complaint to be resolved.
- Refusing to accept that issues are not within the remit of a complaints procedure despite having been provided with information about the procedure's scope.
- Unwillingness to accept the terms of the complaints procedure.
- Insisting on the complaint being dealt with, in ways that are incompatible with the complaints procedure or good practice.
- Making what appear to be groundless complaints about the staff dealing with the complaint, and seeking to have them replaced.
- Changing the basis of the complaint as the investigation proceeds and/or denying statements made at an earlier stage.
- Introducing trivial or irrelevant new information which the complainant expects to be taken into account and commented on, or raising large number of detailed but unimportant questions and insisting they are fully answered.
- Electronically recording meetings and conversations without the prior knowledge and consent of the other persons involved.
- Making unnecessary excessive demands on the time and resources of staff whilst a complaint is being looked into, by for example excessive telephoning or sending

emails to numerous council staff, writing lengthy complex letters every few days and expecting immediate responses.

- Submitting repeat complaints, after complaints processes have been completed, essentially about the same issues, with additions/variations which the complainant insists make these “new” complaints which should be put through the full complaints procedure.
- Refusing to accept the decision – repeatedly arguing the point and complaining about the decision.
- Repetition of identical or similar complaints, but failure to accept any outcome
- Excessive focus on the complaints process, as opposed to the desired outcome
- Focus on unrealistic and unachievable outcomes
- Unreasonably persistent and repetitious contact with the service area
- Tendency to approach different parts of the organisation, in the apparent hope of eliciting different responses
- Abusive or threatening behaviour or language towards council staff.

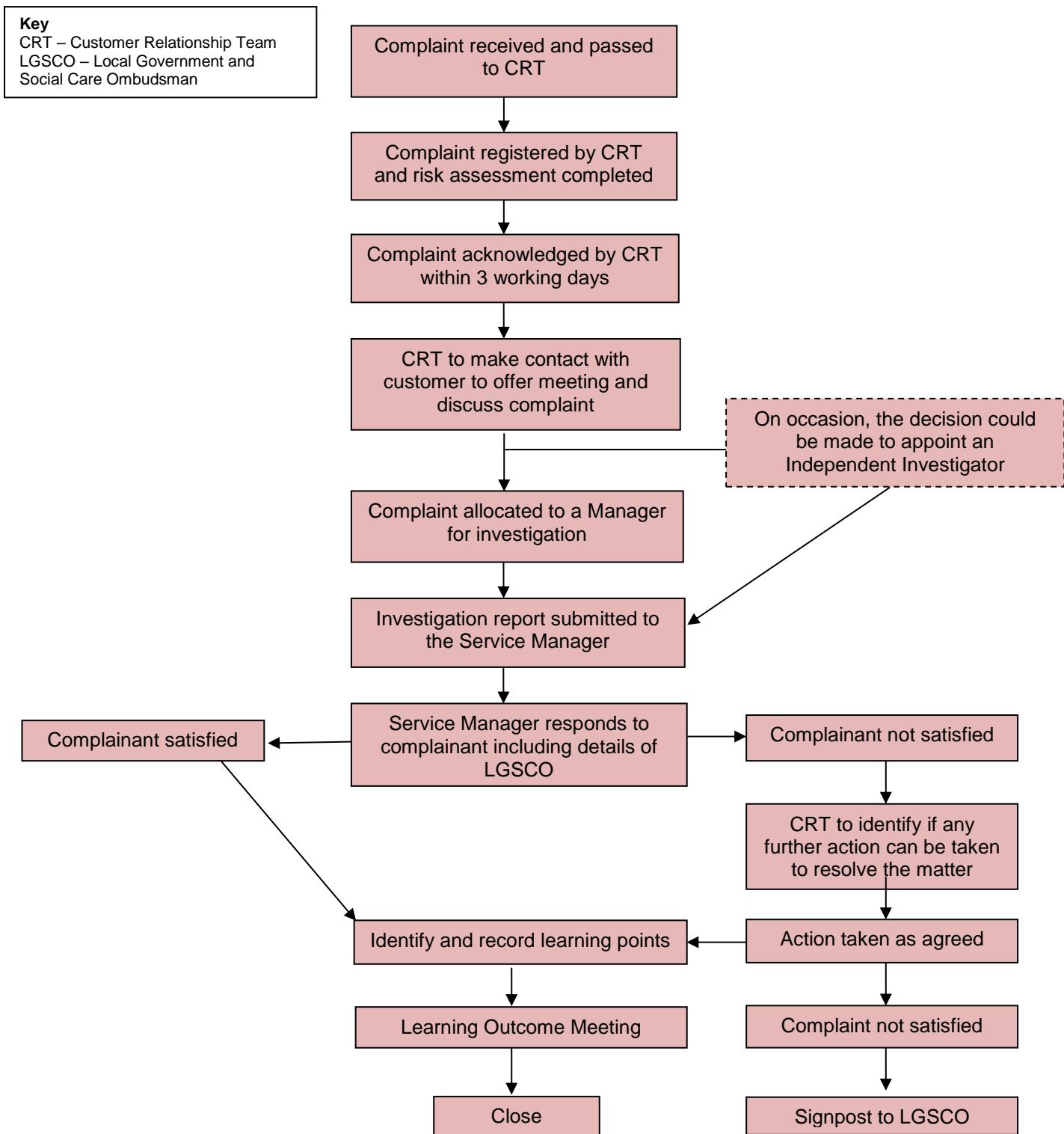
- 14.5 Subject to any considerations about unacceptable behaviour, it is crucial to ensure that the substance of any complaint which seems to be being pursued in a vexatious manner is considered and investigated with the same rigour as any other complaint, as far as possible. Only on this basis could the service area justify any later course of action which had the effect of treating the complainant differently from others.
- 14.6 The basis on which a vexatious complainant might be treated differently from any other complainant stems from the authority’s obligation to deploy its resources as fairly as possible. This entails avoiding using resources disproportionately and unproductively in respect of some individuals. Responding to vexatious complaints can be stressful to the staff involved and the authority’s duty of care to its employees requires appropriate remedial action to be taken in such cases.
- 14.7 As in the case of unacceptable behaviour, the manner in which the portfolio deals with vexatious complainants must be agreed at a noted strategy meeting. The actions agreed which may include several of those listed at 14.4, must be consistent, proportionate to the concerns, time-limited and subject to review at least on a six monthly basis.

## **15. Performance monitoring**

- 15.1 Activities undertaken within the complaints procedure will be reported on a quarterly and 12 monthly basis to the Senior Management Team, and will be summarised in an Annual Report, which will be published on the Council’s website.
- 15.2 In considering complaints performance, particular attention will be paid to

- Number of complaints arising in each service area.
- Proportion which were upheld on investigation.
- Significance of any common themes which emerge from complaints.
- Extent of compliance with agreed timescales.
- Extent of service user satisfaction with the operation of the process.
- Number of complaints which have not been resolved within the process, and are referred to the Ombudsman.
- Any learning identified.
- Changes and improvements which occur in consequence of complaints.

## 16. Statutory complaints process for Adult Social Services



## 17. Non Section 42 Provider Complaints

