

Adult Social Care and Public Health

HANDLING COMPLAINTS GUIDANCE

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1. Introduction

- 1.1 This document is designed to give details about Adult Social Care and Public Health complaints procedure.
- 1.2 Although Adult Social Care and Public Health complaints are governed by separate regulations, Middlesbrough Council uses common processes and timescales for complaints that fall under either area.
- 1.3 Both Adult Social Care and Public Health complaints are managed by the Adult Social Care Complaints Manager, who oversees the process across both areas, liaising with Heads of Service and Managers of relevant teams where required.

2. Social Care Complaints

- 2.1 Local Authorities must make arrangements for dealing with complaints in accordance with *The Local Authority Social Services and NHS Complaints (England) Regulations 2009* (the regulations). This document outlines Middlesbrough Council's arrangements for dealing with complaints that fall under these regulations.
- 2.2 A single approach for handling complaints about adult social care services and the NHS was introduced with a duty for Social Care to co-operate. The aim is for a better co-ordinated response where a complaint involved both sectors. There will then be a joint investigation and a joint response.
- 2.3 The approach allows each organisation to determine the mechanisms best suited for them to deliver effective complaints arrangements within their own organisations taking into account local circumstances.
- 2.4 The focus for complaints handling aims to ensure that all complaints are undertaken on a case-by-case basis in discussion with the complainant. As a result of this there is no prescriptive process with set timescales. Expected timescales are therefore agreed between the investigating officer and the complainant as well as an agreement about how the complaint will be investigated.
- 2.5 Whilst the regulations allow a maximum of six months to respond to a complaint we will endeavour to send you a response to your complaint as soon as practicable.

3. Public Health Complaints

- 3.1 From April 2013 responsibility for public health and some health services transferred from the NHS to Local Authorities.
- 3.2 Public health is about preventing disease and helping people to live healthier and longer lives by providing the information and facilities they need to do this.
- 3.3 The Public Health service is not responsible for providing health services to individuals for example through hospitals. Complaints concerning these services should be directed to the Integrated Care Board (ICB) or to PALS (Patient Advice and Liaison Service) for hospitals or directly to the service provider.

- 3.4 This document sets out how Middlesbrough Council aims to deal with complaints in line with the NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012 (the Regulations), which came into effect in April 2013
- 3.5 The focus for all complaints handling aims to ensure that all complaints are undertaken on a case-by-case basis in discussion with the complainant. As a result of this there is no prescriptive process with set timescales. Expected timescales are therefore agreed between the investigating officer and the complainant as well as an agreement about how the complaint will be investigated.
- 3.6 Whilst the regulations allow a maximum of six months to respond to a complaint we will endeavour to send you a response to your complaint as soon as practicable.

4. Our Aim

- 4.1 We aim to deal with complaints from members of the public, service users and carers in a fair and consistent way in line with current legislation.
- 4.2 The process is based on the principles of good complaints handling published by the Parliamentary and Health Service Ombudsman and endorsed by the Local Government Ombudsman. The principles are
- Getting it right
 - Being customer focused
 - Being open and accountable
 - Acting fairly and appropriately
 - Putting things right
 - Seeking continuous improvement

5. Complaints about Children's Services

- 5.1 Separate guidance is available on handling these complaints. This guidance relates to the Children Act 1989, The Children Action 1989 Representations Procedures (England) Regulations 2006 and 'Getting the best from Complaints' guidance issued by the Department for Children, Schools and Families on social care complaints and representations for children/young people and others.

6. Learning from Complaints and Monitoring Outcomes

- 6.1 Regulations emphasise the importance of learning from complaints and actively using this information to improve service provision.
- 6.2 'Making Experiences Count' highlights the role complaints have in assisting organisations to identify:
- Potential service problems.
 - Risks (and prevent them from getting worse).
 - Opportunities for staff improvement.
 - Information for the reviewing of services and procedures.
- 6.3 Learning from complaints provides opportunities for services to be shaped by people's experiences. These can often be people who are traditionally considered 'hard to reach' and who may be less successful at navigating complex public services. When

developing a policy or service model, it is almost impossible to anticipate all potential variables of implementation and impact. This is why complaints should be viewed as a strategic resource providing rich and diverse perspectives. They can illustrate how well goals and standards are being achieved from the point of view of the needs and aspirations of citizens and on any unintended consequences of the way policies are implemented or decisions are made.

- 6.4 Complaints can be a rich source of citizen insight. Complaints are unsolicited and should be valued as illustrating what a 'customer journey' may be like for the citizen in practice. Complaints can help councils identify risks and weaknesses across services that should inform future planning and commissioning decisions.
- 6.5 All complaint representations received must be recorded and the outcomes reported to the Adult Social Care Complaints Manager, this includes those that are not subject to a full investigation. For day-to-day resolution, copies of the outcome should be sent to the Complaints Manager upon resolution. This approach will supplement the more in depth recording of complaints handled under the regulations and allow for learning around the nature and range of complaints made in service areas.
- 6.6 A detailed record of all complaints, handled in line with these procedures will be maintained by the Complaints Manager in order to monitor that actions taken are in line with these procedures and within any relevant Departmental timescales.
- 6.7 Each resolved complaint should identify the issues raised and if actions are required to resolve the complaint. Such actions should be identified within an action plan, the implementation of which can then be monitored by the Complaints Manager. The Complaints Manager will perform an audit of 'open' complaint action plans at the end of every quarter.
- 6.8 The Complaints Manager will send follow-up reminders to the Head of Service with responsibility for the implementation of an action plan following a complaint. An update report on progress on every 'open' action plan will be requested by the Complaints Manager at the end of every quarter.
- 6.9 The Complaints Manager will also analyse the range of complaint information received to highlight any common themes or cross service issues. This will allow for an overview of complaint issues and will be reported to the respective Senior Management Teams for their consideration on a quarterly and annual basis.
- 6.10 Information on complaints performance, learning and action points should be used by teams to monitor the quality of service user experience.

7. Raising a Complaint

- 7.1 A complaint may be generally defined as 'an expression of dissatisfaction or disquiet about the actions, decisions or apparent failings of a local authority's adult social services provision that requires a response'. The intention is for complaints not to be too rigid in their definition.
- 7.2 Under regulation 5 (Social Care)/ regulation 22 (Public Health), a person (or their representative) who receives or has received services and a person affected or likely

to be affected by the action, omission or decision of the Local Authority Social Care or Public Health functions can complain.

- 7.3 A complaint may be made by a representative acting on behalf of a person who, themselves, has a right to complain where this person:-
- Has died
 - Is unable to make the complaint themselves because of physical incapacity; or lack of capacity within the meaning of the Mental Capacity Act 2005 or
 - Has requested the representative to act on their behalf. (Proof must be provided in this instance)
- 7.4 If a complaint is made on behalf of someone who is deemed to 'not have capacity' as defined by the Mental Capacity Act, the complaint will only be considered if the person submitting the complaint is acting in that person's best interest.
- 7.5 All Staff who have access to information about individual service users have a duty of confidence. The individual's right to confidentiality must be respected. Personal information must be treated with care and this means not disclosing it to people who do not need to know. In normal circumstances the consent of the service user will always be required for the disclosure of information to third parties when investigating complaints. A form is available from the Complaints Manager. Service users and those providing the information must be satisfied that information supplied for complaints investigation purposes will not normally be disclosed without their permission.
- 7.6 A complaint can be made about anything that is connected with the local authority exercising its Social Services or Public Health functions. This could be:
- Quality or amount of service.
 - Charges for services.
 - Failure to follow correct procedures.
 - Delay in service provision.
 - A service not being provided.
 - Application of eligibility criteria.
 - Assessments, review, care plan outcomes.
 - Attitude or behaviour of staff.
 - The quality and proficiency of spoken English language used by staff in the provision of a service
 - The impact for an individual of the application of a local authority policy.
- 7.7 Certain issues raised that should be dealt with by other procedures will not be investigated as a complaint under these procedures e.g.
- Disciplinary or grievance proceedings.
 - Criminal investigations.
 - Where a statutory appeals process is in place.
 - The complainant intends to take legal proceedings in relation to the substance of the complaint.
 - Children & Young People's social care complaints.
 - Corporate complaints
 - Complaints arising out of an alleged failure to comply with a data subject request under the Data Protection Act 1998.

- Complaints arising out of an alleged failure to comply with a request for information under the Freedom of Information Act 2000.

8. Decisions made by Approved Mental Health Professionals

- 8.1 A decision made by an Approved Mental Health Professional (AMHP) on an application under the Mental Health Act 1983 falls outside these procedures. Complaints about the process of assessment or the AMHPs actions can be considered under these procedures.

9. The Mental Capacity Act 2005

- 9.1 Under the Mental Capacity Act health or Social Care professionals can assess a person as lacking capacity and make decisions or carry out actions on behalf of that person. When such a decision has been made it cannot challenge it using this procedure. Guidance on how to challenge decisions made under the Mental Capacity Act is included in the Mental Capacity Act Code of Practice, which is available from the Department of Health.
- 9.2 If it is evident there has been a fault in the decision-making process it may be appropriate to invoke the complaints procedure. Although a best interest decision cannot be overturned through the complaint procedure, if it is found that there was a fault in the decision-making process a re-assessment may be carried out.
- 9.3 Where someone lacks capacity an Independent Mental Capacity Advocate (IMCA) may be involved in the decision-making process.

10. Responding to Complaints

- 10.1 Dealing with complaints is the responsibility of every member of staff. All complaints or concerns should be treated as being serious and dealt with appropriately. All staff should allow people to express their views, listen to them and use problem solving as a route to achieving satisfaction for the Complainant.
- 10.2 The Council's Chief Executive is the responsible person for ensuring that the Council complies with the arrangements made under relevant regulations and for ensuring that action is taken, if necessary, in the light of the outcome of the complaint. The Council has authorised the Director of Adult Social Care and Health Integration and the Joint Director of Public Health to act on behalf of the Chief Executive to carry out the responsible person's functions under the Regulations.
- 10.3 The function is then in turn, delegated to the Complaints Manager who works with relevant Heads of Service to appoint an Investigating Officer to act on their behalf.
- 10.4 Regulations on complaints identify 'if a complaint is made orally and resolution can be agreed with the client by the end of the next working day' it does not fall within the regulations and therefore it can be viewed as day-to-day business. Adult Social Care and Public Health, however, considers that such representations should be included within recording for a service area. Details of such representations managed within service areas should be forwarded to the Complaints Manager, this information will assist in the overall departmental learning from complaints.

10.5 However, if a complaint cannot be resolved by the end of the next working day, or the complainant remains dissatisfied with the immediate response, the complaint must be brought directly to the attention of the Complaints Manager. The representation will then be handled in line with the Regulation requirements and classified as a complaint.

11. The Procedure for Managing a Complaint

11.1 A complaint is taken as having been made on the date on which it is first received by the local authority. The Complaints Manager will acknowledge the complaint within **three working days** and liaise with the appropriate Head of Service who will act as the Adjudicating Officer. The Adjudicating Officer has the overall responsibility for addressing complaints made about their service area.

11.2 The Adjudicating Officer, in discussion with the Complaints Manager, will assess the seriousness and complexity of the complaint, consider any risks, service improvements and, if appropriate, any disciplinary action. They will decide who will investigate the complaint; give an indicative timescale for when the complaint should be dealt with by and how it should be progressed. The Investigating Officer is then given the responsibility of considering the complaint, collating all relevant information, speaking to appropriate people involved and collating all the information into a report.

11.3 Complaints are categorised as Low, Medium or High. This will help to determine how the complaint will be dealt with and how long is given for the complaint to be investigated. This will make sure there is a consistency of approach to all complaints and that they are dealt with appropriately. The factors that should be taken into account when assessing a complaint are

- The seriousness of the issues raised
- How likely the issues are to recur
- The risk to the service user
- The risk to the Council
- The Complainant's views

11.4 In some cases there may be serious issues that are raised that could cause long-lasting damage such as grossly substandard care, professional misconduct or death. In such cases these complaints will require immediate and in-depth investigation and would in most instances involve other procedures such as adult safeguarding.

11.5 When a complaint is received, the Complaints Manager and Adjudicating Officer will make an initial assessment of how long it should take to deal with the complaint. The timescale can range from **20 working days** to **six months** from the receipt of the complaint. These timescales are taken from the Local Authority Social Services Complaints (England) Regulations 2006. We use the timescales internally for monitoring purposes. Complaints regarding Public Health Functions also have a limit of **six months**, which is defined by the NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012 (the Regulations).

11.6 Although Adult Social Care and Public Health complaints are governed by separate regulations, Middlesbrough Council uses common processes and timescales for complaints that fall under either area.

- 11.7 The Adjudicating Officer assigns an Investigating Officer to oversee the complaint. They are tasked with developing a 'plan' that has to be agreed with the person making the complaint and the Adjudicating Officer. Each plan will be different and depend of the assessed risk. The plan should include
- The details of the complaint and its constituent parts
 - An assessment of risk
 - The complainant's desired outcomes
 - When the investigation should be completed and who will carry out the investigation/who will be involved
 - Who will provide the Complainant with support through the process if necessary
 - How and when the Complainant will be contacted to tell them what is happening
 - Any immediate action that staff can take to try and resolve the complaint such as a re-assessment, putting in place a service, an apology etc.
- 11.8 The Investigating Officer will be given copies of the complaint, the level of risk and timescale assigned by the Adjudicating Officer and the report format.
- 11.9 The Investigating Officer must check whether the Complainant needs support to help them to understand the process such as interpretation (sign or languages other than English), provision of information in another format such as Braille, large print, or support from an independent advocate.
- 11.10 If a complaint is made on behalf of someone else, the Investigating Officer needs to check that the person concerned agrees to the complaint being made (unless for reasons of age, health, death capacity etc. this is not possible). They should also clarify where the response should be sent.
- 11.11 The Investigating Officer must discuss the complaint with the Complainant and/or their representatives as soon as possible to clarify the complaint and ensure that the Department has an understanding of the complaint's constituent parts, the desired outcome and timescales as a minimum. This will form the basis of the Complaint Plan.
- 11.12 On completion of the investigation the Investigating Officer should prepare a report. The report should address each point raised by the Complainant and state whether they were upheld, partially upheld or not upheld. This will be determined as a result of the discussions with the complainant and any other staff involved. The report should also include
- Reasons and evidence to support the decision
 - Identify changes in practice or procedure that are recommended as a result of the inquiry
- 11.13 The Adjudicating Officer will complete an adjudication letter and will decide on any required actions in line with any recommendations identified in the report in discussion with the Investigating Officer and appropriate staff.
- 11.14 All correspondence, including hand written notes, emails etc. should be stored securely by the Investigating Officer.
- 11.15 The complaints files are kept centrally by the Complaints Manager.

11.16 Where the matter is not resolved, or the Complainant is dissatisfied with the response, the Complaints Manager in consultation with the Adjudicating Officer will make a decision on what needs to happen next.

12. Timescales

- 12.1 Timescales for completion of a complaint are determined by the Adjudicating Officer and discussed with the Complainant by the Investigating Officer. Timescales are determined by the seriousness of the issue and how critical the issues are that are raised.
- 12.2 Where possible this timescale should be adhered to however there are circumstances where it may be necessary to extend the deadline, due to the complainant going away or the need to wait for detailed information etc. If this is the case then any changes to the deadline should be discussed and then agreed with complainant. The Complaints Manager should be notified of the revised target date to ensure that complaints records are kept up to date.
- 12.3 Complaints are generally given the following timescales
- **20 working days** – where the complaint can be resolved promptly because the issues are straightforward and may just take a couple of phone calls to put right
 - **Up to 65 working days** – where the issue is more complex and will involve a detailed investigation
 - **Six months** – where a complete investigation is needed and information may need to be drawn from many sources
- 12.4 The timescale for the complaint begins from the day when the complaint was received by the Department to the date the adjudication letter is sent by the Adjudicating Officer. It is, therefore, important to build in a minimum of **10 working days** from the end of the investigation to the target completion date to allow the complaint to be passed to the Adjudicating Officer for them to construct their response.
- 12.5 If a response is not sent to the complainant within 6 months of receipt of the complaint, or such longer period if agreed, the council has to write to the complainant giving an explanation and send a response as soon as reasonably practicable after the 6 months.

13. Low Level Complaints

- 13.1 Where a complaint is assessed as a low level then the Adjudicating Officer will arrange for the investigation to take place and appoint an appropriate person to investigate. This will be a senior member of staff within the service area who does not have a conflict of interest.
- 13.2 It may be that the complaint can be resolved informally in the initial stages and the Investigating Officer will discuss this with the complainant before progressing to a full complaints investigation. In these situations it may not be necessary to draw up a complaints plan or to complete a complaint report and adjudication letter.

14. Medium and High Level Complaints

- 14.1 Where a complaint is assessed as a medium or high level then the Adjudicating Officer will arrange for the investigation to take place without delay and appoint an appropriate person to investigate.
- 14.2 A senior member of staff who is not in direct line management of the area of service and does not have a conflict of interest will be appointed as the Investigating Officer. In some circumstances it will be necessary to involve someone who is independent of the Social Care/ Public Health Department. The Adjudicating Officer will make this decision.
- 14.3 Complaints assessed at a high level are the most complex and require a greater degree of formality and independence to address and resolve. A detailed Complaint Plan must be drawn up and agreed with the Complainant and discussed with the Adjudicating Officer.
- 14.4 In all circumstances the Adjudicating Officer must be kept involved and consulted during every stage of the complaint investigation. The Adjudicating Officer is responsible for responding to the Complainant at the end of the investigation and drawing up an action plan to address the issues raised.

15. Adjudication

- 15.1 Adjudication is the responsibility of the Adjudicating Officer. The purpose of adjudication is for the department to consider the report or reports and identify:
 - Its response
 - Its decision on each point of complaint
 - Any action to be taken, with timescales for their implementation
- 15.2 The Investigating Officer must send a copy of the report to the Adjudicating Officer and clarify any aspects of the report and to discuss the findings, conclusions and recommendations. It is important to build in **10 working days** before the Target Completion Date to enable the Adjudicating Officer to complete their final response.
- 15.3 The Adjudicating Officer will then decide how Social Care will deal with the findings, conclusions and recommendations in the Investigating Officers report.
- 15.4 The Adjudicating Officer's response will contain:
 - Actions that will be taken by the department or which have already been taken and
 - The right to refer the complaint to the Local Government Ombudsman if they are not satisfied with the outcomes.
- 15.5 The Adjudicating Officer will make recommendations to the relevant Manager(s) or Registered Person (in the case of contracted services).
- 15.6 The Adjudicating Officer will monitor the implementation of any recommended actions in liaison with the Complaints Manager. These actions will be shared with the relevant Team Manager and the Investigating Officer

16. Support for staff involved in a complaint

- 16.1 Support will be provided by the individual's line manager or Complaints Manager as required.

17. Data Protection

- 17.1 In line with Caldicott guidance on data protection, originals of all paperwork should be kept in the complaints file and any additional copies should be destroyed. This should include all written note, e-mails, reports, interviews, etc. The Complaints Manager will keep the file centrally once the investigation is complete.

18. Local Government Ombudsman

- 18.1 The complainant can refer their complaint to the Local Government Ombudsman once they have received the adjudication. However, if the Complainant is dissatisfied with the response to their complaint they will be offered a discussion with the Adjudicating Officer and/or the Investigating Officer and Complaints Manager. They will look at the reasons for the dissatisfaction and whether the investigation adequately answered the issues.
- 18.2 If it is felt that after this consideration there are grounds to revisit some or all elements of the complaint then this will be agreed with the Complainant. If it is decided that there are not grounds then the Complainant it will be reiterated that the complainant can refer their complaint to the Local Government Ombudsman.

19. Relationship with other procedures

- 19.1 It is important that the relationships between procedures are clear and that there content is consistent. Procedures may need to link with the NHS and other agencies contributing to services. For example, NHS staff may become involved in residential homes and adult safeguarding work. Other agencies that may be involved in care services include, housing authorities, voluntary and private domiciliary organisations, the Probation Service and the Police.
- 19.2 It is essential that local authorities separate out complaints appropriate to other procedures and cases where some joint action is required. The Complaints Manager will provide advice to staff until any concurrent investigations are resolved.
- 19.3 A joint protocol has also been developed to ensure the effective handing of joint complaints.

20. Complaints relating to staff behaviour or attitudes

- 20.1 Where complaints relating to the behaviour or attitudes of staff are received they should be treated as a complaint about the quality of service provided, and proceeded with in the usual way of dealing with service complaints. Within the time limits set out the exact nature of the complaint should be established and attempts should be made to resolve the matter with the Complainant.
- 20.2 If immediate resolution is not possible, the Investigating Officer needs to speak to the member of staff concerned to hear their account of the alleged behaviour. If there

were witnesses to any incident, the Investigating Officer should speak to as many of these people as is considered necessary.

- 20.3 During the complaint handling process it might become apparent that the alleged behaviour or attitude of a member of staff is so serious that it might amount to misconduct. Consideration must then be given as to whether the disciplinary procedures might need to be implemented. At this point, a senior officer (Adjudicating Officer or the equivalent) and the Complaints Manager must be consulted.
- 20.4 Decisions on how to proceed will have to be based on individual cases. It will be important to ensure that the complaints procedures are kept separate from disciplinary procedures.
- 20.5 In those cases where the complaint relates to both a service matter, for example about the level, quality or refusal of a service, and the behaviour or attitude of a member of staff, **and** it is felt that disciplinary proceedings might need to be implemented, then an early decision will be required as to whether both procedures should run concurrently. This decision should be made by the relevant Adjudicating Officer and the Complaints Manager.
- 20.6 In any case where proceeding with the complaint investigation might compromise a concurrent disciplinary investigation, then the complaint investigation should not commence, or should be suspended.

21. Complaints dealt with under Disciplinary Procedures

- 21.1 If a complaint is received and it is clearly a disciplinary matter and not a complaint about a service the response to the Complainant should indicate that:
- The issues that have been raised are not appropriate to be dealt with through the complaints procedure;
 - They will be dealt with through other internal procedures but the response does not need to mention disciplinary action;
 - If there is any injustice arising from the disciplinary procedures, the Complainant can request a complaints investigation. (Complainants do not need to be given the details of the disciplinary procedure).
- 21.2 In those cases where the complaint investigation was suspended the Complainant must be written to, following the conclusion of the disciplinary investigation, and asked if they want to continue with those aspects of the complaint that were suspended pending the outcome of the disciplinary investigation. If the Complainant wants to proceed they must request this within one year of the conclusion of the disciplinary investigation. The Complainant must be advised of this time limit.

22. Allegations of Racism

- 22.1 Where the complaint relating to the behaviour or attitudes of a member of staff includes an allegation of a racist incident the Complaints Manager should proceed as above and receive the complaint and process as normal. It is important to be aware of the sensitivity of such complaints. If the complaint relates a failure to recognise a cultural tradition or norm the Investigating Officer should try to establish whether this was as a result of ignorance or malice.

23. Adult Safeguarding

- 23.1 Sometimes it is evident from the outset that a complaint is highlighting safeguarding issues that are best addressed within adult safeguarding procedures. In such cases, the complaint will not be registered as such and will instead, become subject to the adult safeguarding process. The Complaints Manager will write to the complainant explaining that the issues have been referred into adult safeguarding and that they will be informed of the outcomes. A copy of the Teeswide Adult Safeguarding Board (TSAB) Procedure should be enclosed for information.
- 23.2 The Complainant will be informed that, if they are dissatisfied with the outcome of the Adult Safeguarding Investigation, they have further redress to the complaints process.
- 23.3 If the original complaint consists of a number of elements and only some of these are considered appropriate for immediate referral to adult safeguarding then the remaining elements should be investigated in the usual manner. In such instances the Complaints Manager will write to the complainant informing them of the course of action to be adopted clearly outlining:
- The elements of the complain that have been referred to the adult safeguarding process and
 - The elements of the complaint that will be addressed via the Complaints process
- 23.4 If it becomes evident during a complaint investigation that there are safeguarding issues, an immediate outcome of the investigation will be recorded as the case being referred to adult safeguarding and the Complaint investigation will cease. The complainant will be informed of the outcome of their complaint in the usual manner.
- 23.5 Where safeguarding concern is raised to the Access Safeguarding Team and the issues are more appropriate to be dealt with under complaints legislation, the Complaints Manager should be contacted. The Access Safeguarding Manager and Complaints Manager will decide the course of action and the referrer will be informed of the outcome. Where it is decided that the referral is more appropriate to be dealt with via the Complains procedure then the usual process will be initiated.

24. Criminal Issues

- 24.1 Should it become apparent to the Investigating Officer during the course of a complaint investigation that there is reason to suspect criminal activity this should be reported immediately to the Adjudicating Officer. This will normally include discussing the matter internally with Human Resources, Legal Services and Internal Audit and, where appropriate reporting such matters to authorities such as the Audit Commission or the Police. Under corporate procedures, it is not necessary to delay disciplinary action pending the outcome of any criminal procedure.

25. Joint Health and Social Care Complaints

- 25.1 There is a duty to co-operate with health colleagues when handling complaints where there are elements relating to both organisations.
- 25.2 A Joint Protocol has been developed with Redcar & Cleveland Borough Council, South Tees NHS Foundation Trust, Tees, Esk & Wear Valleys NHS Trust and the Integrated Care Board. The Protocol sets out how all agencies will work together to

co-ordinate responses to complaints that effect more than one agency. The Complaints Manager will coordinate any joint complaints and provide a copy of the protocol when necessary.

26. Complaints Involving Regulated Services

- 26.1 Where local authorities receive a complaint that is about services provided under the Care Homes Regulations 2001, the Complaints Manager will, within **five working days**, ask the Complainant if he or she wishes details of the complaint to be sent to the registered person. If the Complainant agrees, the Complaints Manager will send the complaint to the registered person as soon as reasonably practicable. Details of the relevant parts of the complaint will also be sent to the social work team and the contract monitoring team within social care. The Complaints Manager will confirm any issues of safeguarding and potential vulnerability of the service user with the service user before releasing the complaint to the relevant care service provider.
- 26.2 The registered person should feedback to the Contract and Commissioning Unit when the recommended actions have been completed. In turn, the Contract and Commissioning Unit should inform the Adjudicating Officer and Complaints Manager of any outcomes.
- 26.3 Where the complaint consists of elements relating to both social services functions and services provided under the Care Standards Act 2000, the local authority will co-operate with the provider to ensure that the Complainant receives a coordinated response dealing with all aspects of the complaint. The Complaints Manager will, within **10 working days**, ask the Complainant if he or she wishes details of the Care Standards element of the complaint to be sent to the registered person. If the Complainant agrees, the Complaints Manager will send the Care Standards element of the complaint to the registered person as soon as reasonably practicable. The Complaints Manager will inform the Complainant when this has been done and also explain which element of the complaint the local authority will consider.
- 26.4 Boundary issues also arise with regard to other regulated services for instance where a Middlesbrough resident is placed in a home in another local authority area. The Complaints Manager will apply the above guidance in a similar manner with regard to these services.
- 26.5 Where appropriate, the CQC can use their powers of inspection to undertake enquiries to enable them to make a judgement as to whether a provider is complying with the Government's standards of quality and safety. However, they have no statutory powers to investigate complaints. Their guidance has 4 main points:
- The responsibility for handling concerns and complaints about services rests with the provider
 - The commission will consider the fitness of the provider's own procedures for handling concerns and complaints
 - Other procedures may provide a better route for resolving particular kinds of complaint (e.g. the funding authority's complaints procedure)
 - Safeguarding investigations are the responsibility of local authority.
- 26.6 The Local Government Ombudsman (LGO) can investigate complaints from people who arrange their own care and self fund. This means that adults who arrange and

pay for their own care, or have a personalised budget, have the same access to the independent complaints service as those people who have had their care arranged and funded by local authorities. The Health Act 2009 amended the Local Government Act 1974 to give the LGO service its new powers from 1 October 2010.

- 26.7 The LGO investigates complaints about services that are registered under the new Care Quality Commission essential standards that also came into force on 1 October 2010.

27. Direct Payments and the Complaints Process

- 27.1 It is important to understand the difference between a complaint about the process used for a personal budget and dealing with problems a service user or informal carer may have with an employee or service provider that they pay using their personal budget.
- 27.2 Complaints, which are about direct payments and individual budgets, are excluded from the procedures, once the service user has taken control of their care provision. If there are problems around the employment of a Carer that a service user or informal carer pay for using their personal budget, this is not something the statutory complaints procedure can be used for.
- 27.3 If problems occur regarding a Provider that a service user or informal carer use and pay for using their personal budget, then the complaint needs to go direct to the Provider involved. They will have their own complaints procedure in place for the Customer to request.
- 27.4 However, if a complaint relates to the process undertaken by the Department in assessing a person's needs and the care management process or the way in which the payments are managed by the finance team then this can be investigated and responded to under the complaints procedure.

28. Unreasonably Persistent Complainants and Vexatious Complaints

- 28.1 Whilst the Council tries to respond to the needs of all Complainants there are times when there is nothing further that can reasonably be done to assist or to rectify a real or perceived problem. Because of the frequency of their contact with the local authority, or the irresolvable and persistent nature of their complaints, a small number of Complainants will need to be considered under the Unreasonably Persistent Complaints and Vexatious Complaints Policy.
- 28.2 Before implementing any of the provisions of this policy the Complaints Manager will then consider whether the Council has correctly followed its procedures in relation to complaints (or the provision of information), whether full and reasonable responses have already been given, and whether the complaint (or request for information) is now inappropriately persistent. This policy will only be pursued if appropriate.

29. Compliments and Comments

- 29.1 Compliments should be sent to the Complaints Manager.

- 29.2 Comments may take the form of observations about a service or absence of a service, or might be in the form of suggestions. Comments should be forwarded to the Complaints Manager who will report any issues to appropriate Heads of Service. If appropriate, an acknowledgement letter will be sent to the person making the comment outlining any actions as a result of their comments.
- 29.3 It is not necessary to respond to comments or suggestions that are trivial, abusive or meaningless, or are clearly designed to waste officer time.

30. Questions

30.1 Questions can be directed to the Complaints Manager on 01642 729814.

30.2 Alternatively correspondence can be sent to:
Complaints Manager
Fountain Court
119 Grange Road
Middlesbrough
TS1 2DT

E-mail: complaints@middlesbrough.gov.uk

31. Useful Links:

- 31.1 Local Government Ombudsman [Make a complaint - Local Government and Social Care Ombudsman](#)
- 31.2 Information Governance – [Data protection | Middlesbrough Council](#)

32. Glossary and Abbreviations

Action Plans are a list actions to be taken as the result of a complaints investigation. The plan includes timescales and the person responsible for carrying out the action.

Adjudication is the responsibility of the Adjudicating Officer and provides a response to the complainant about outcomes and actions arising as a result of the complaint investigation

Adjudicating Officer is the Head of Service responsible for deciding how complaints will be dealt with including the findings, conclusions and recommendations in the Investigating Officers report.

Advocacy means taking action to help people say what they want, secure their rights, represent their interests and obtain the services they need.

Capacity is the ability to make a decision about a particular matter at the time the decision needs to be made.

Care management is the process of assessment of need, planning and co-ordinating care for people with physical and/or mental impairments to meet their long-term care needs, improve their quality of life and maintain their independence for as long as possible.

Carer refers to unpaid carers for example, relatives or friends of the adult. Paid workers, including personal assistants, whose job title may be 'carer', are called 'staff'.

Clinical governance is the framework through which the National Health Service (NHS) improves the quality of its services and ensures high standards of care.

Complaint may be generally defined as 'an expression of dissatisfaction or disquiet about the actions, decisions or apparent failings of a local authority's adult social services provision that requires a response'.

Complaints Manager is the officer who acts as the operational lead for the implementation of the complaints process.

Complaint Plan is the document produced by the Investigating Officer clarifying elements of the complaint and agreeing actions with the complainant.

Concerns & comments are expressions of dissatisfaction or suggestions of how services are failing or could be improved.

Consent the voluntary and continuing permission of the person to the intervention based on an adequate knowledge of the purpose, nature, likely effects and risks of that intervention, including the likelihood of its success and any alternatives to it.

Contracted Service are those purchased by the Local Authority to meet the assessed needs of users and carers

Care Quality Commission (CQC) are responsible for the registration and regulation of health and social care in England.

Care Standards Act is an Act of the Parliament of the United Kingdom which provides for the administration of a variety of care institutions, including children's homes, independent hospitals, nursing homes and residential care homes.

DoH (Department of Health) is the government strategic leadership for public health, the NHS and social care in England.

DoLS (Deprivation of Liberty Safeguards) are measures to protect people who lack the mental capacity to make specific decisions at specific times. The Safeguards came into effect in April 2009 using the principles of the Mental Capacity Act (MCA) 2005, and apply to people in care homes or hospitals where they may be deprived of their liberty.

Data Protection Act 1998 makes provision for the regulation of the processing of information relating to individuals, including the obtaining, holding, use or disclosure of such information.

Human Rights Act 2000 is legislation introduced into domestic law for the whole of the UK in October 2000, in order to comply with the obligations set out in European Convention of Human Rights

IMCA (Independent Mental Capacity Advocate) were established by the Mental Capacity Act (MCA) 2005. IMCAs are mainly instructed to represent people where there is no one independent of services, such as family or friend, who is able to represent them. IMCAs are a legal safeguard for people who lack the capacity to make specific important decisions about where they live, serious medical treatment options, care reviews or adult safeguarding concerns.

Integrated Care Boards are NHS organisations which organise the delivery of NHS services in England. They replace Clinical Commissioning Groups.

Investigating Officer is the member of staff of any organisation who leads an investigation/assessment into a complaint. This is often a professional or manager in the organisation who has a duty to investigate.

Joint Complaints Protocol is a framework for dealing with complaints involving more than one of the participating agencies

Local Authority is Middlesbrough Council

Local Authority Social Services & National Health Service Complaints (England) Regulations 2009 is the legislation outlining what is expected from councils when running a complaints process

Local Government Ombudsman (LGO) is an official employed by the Commission for Local Administration in England, a body of commissioners established under the Local Government Act 1974 to investigate complaints about councils and certain other bodies in England.

Mental capacity refers to whether someone has the mental capacity to make a decision or not.

Mental Capacity Act 2005 provides a statutory framework to empower and protect people aged 16 and over who lack, or may lack, capacity to make certain decisions for themselves because of illness, a learning disability, or mental health problems. The act was fully implemented in October 2007 and applies in England and Wales.

Mental Health Act 2007 amends the Mental Health Act 1983 (the 1983 Act), the Mental Capacity Act 2005 (MCA) and the Domestic Violence, Crime and Victims Act 2004. This includes changing the way the 1983 Act defines mental disorder, so that a single definition applies throughout the Act, and abolishes references to categories of disorder.

Office of the Public Guardian supports the Public Guardian in registering enduring powers of attorney, lasting powers of attorney and in supervising Court of Protection appointed deputies.

Parliamentary & Health Service Ombudsman investigates complaints that individuals have been treated unfairly or have received poor service from government departments and other public organisations and the NHS in England. They work in partnership with the LGO.

Personal budget (PB) is money allocated for social care services, allocated based on the needs of the individual following an assessment. Councils or another organisation on behalf of individuals could manage them. They could also be paid as a direct payment, or a mixture of both.

Regulated Services are Health and social care services such as those provided in nursing homes, residential homes and children's homes that are inspected by staff from CQC.

Review is the process of re-examining a support plan and its effectiveness.

Safeguarding: This relates to the management of concerns relating to abuse and neglect. A Safeguarding concern is a concern that an adult at risk of or is a victim of abuse or neglect. A concern may be a result of a disclosure, an incident, or other signs or indicators. Abuse includes physical, sexual, emotional, psychological, financial, neglect and acts of omission, discriminatory, organisational and domestic abuse.

Self funders are people who are not entitled to financial assistance from social services.

Strategic Health Authority (SHA) is one branch of the National Health Service in England. In 2002, the existing NHS health authorities were renamed SHA's and merged to form 28 new Strategic Health Authorities. The same board and governance structures apply to SHA's as to all NHS trusts.

South Tees Hospitals NHS Foundation Trust is the hospital trust in the Tees Valley serving the people of Middlesbrough, Redcar and Cleveland, Hambleton and Richmondshire and beyond. The trust runs The James Cook University Hospital in Middlesbrough and community services in Middlesbrough and Redcar and Cleveland.

Staff are paid workers, including personal assistants, whose job title may be 'carer', are called 'staff'. Volunteers are also classed as staff. See also carer.

Tees, Esk & Wear Valley Foundation Trust (TEWV) Trust provides a range of mental health, learning disability, eating disorders and substance misuse services across County

Durham, the Tees Valley, Scarborough, Whitby, Ryedale, Harrogate, Hambleton and Richmondshire.

Upheld, partially upheld, not upheld are terms used by within the complaint report about each element of a complaint.

Unreasonably persistent complainant is a person who pursues either reasonable complaints in an unreasonable manner; or unreasonable complaints; or unreasonable or unrealistic outcomes to a complaint.

Vexatious Complaints if it is considered that the sole purpose of the complaint is to cause the Council inconvenience, harassment or expense or the complaint is unreasonable or has no serious purpose or the complaint is part of an organised or concerted lobby, campaign, or protest aimed at or against the Council it is deemed vexatious.

Version Control

Version	Date	Change Description	Originator of change
1 Original	October 2009		
2 Revised	July 2010		
3 Revised	April 2012		
4 Revised	November 2012		
5 Revised	April 2014		
6 Revised	September 2014		
7 Revised	20/12/2016	Inserted English language usage as a complaint	Malcolm Bateman
8 Revised	18/06/2021	Updates to ensure references to adult safeguarding are accurate.	Malcolm Bateman/Ruth Musicka
9 Revised	24/01/2023	Review and update of policy	Malcolm Bateman/Ruth Musicka