

Cabinet – 22 April 2009

Revised complaints arrangements for Health & Adult Social Care

Portfolio: Councillor McCracken, Social Care, Health & Housing
Councillor Arif, Procurement, Transformation & Performance Management

Service: Corporate Performance Management

Wards: All Wards

Key decision: No

Forward plan: No

1. Summary of report

The report outlines revised arrangements developed by the Department of Health, to be implemented from 1 April 2009 as a result of Statutory Instrument 309/2009, the Local Authority Social Services and National Health Service Complaints (England) Regulations relating to complaints handling for both health and social care services. The changes seek to simplify and make more flexible complaints handling arrangements, to bring the arrangements for NHS and local authority services into greater alignment, and to enable complaints which relate to both council and NHS services to be investigated jointly.

2. Recommendations

- 2.1 That cabinet note the changes to the statutory complaints procedures for social care services as set out in this report
- 2.2 That cabinet endorse the approach set out in this report for the implementation of those changes.

3. Background information

Existing Procedures (to March 2009)

- 3.1 The council operates statutory complaints arrangements for the social care services, in accordance with provisions in the Local Authority Social Services Act 1970, as amended by the NHS and Community Care Act 1990 (for Adult Services) and the Children Act 1989 (for Children's Services), and by subsequent secondary legislation. These arrangements are coordinated by the Customer Care Team, part of Corporate Performance Management, working closely with

relevant services provided by the directorates for Social Care & Inclusion and Children & Young People.

3.2 Under those arrangements, clients have been able to make complaints about all aspects of the service including for example

- The quality of the service received
- The lack of a service
- An assessment decision
- The attitudes, actions or behaviour of staff
- Delay in providing a service

3.3 The procedure has had three stages:

Stage 1: at this stage, in most cases the local manager responsible for the service would review the case or matter of concern and would seek to resolve the complaint to the client's satisfaction. If the complaint was about a service provided by an independent agency, such as home care which has been bought for the client by the council, or a private residential home, the complaint would be passed to them at this stage, with the client's permission.

Stage 2: if after receiving the stage 1 response, the complainant remained dissatisfied, or if the stage 1 investigation had been delayed significantly, the complainant might elect to ask for a further investigation. This investigation would be carried out by an officer who is not directly involved with this service, normally from the Customer Care Team, or, on occasion, by an independent person. The investigating officer would prepare a report and, after considering the facts, the service would write to the complainant with the outcome.

Stage 3: if the complainant remains dissatisfied, he/she has the right to ask for a further review, involving at least two independent persons.

The complainant also has the right to refer his/her complaint to the Local Government Ombudsman, who may investigate the matter normally only after the council has had an opportunity to investigate it locally.

3.4 Under these arrangements, the council has been required to acknowledge complaints within 5 working days, and to provide a full response within a further 5 working days, or 15 working days in the case of more complex complaints. Members will be aware that, increasingly, the service has sought to use the information provided by complaints, and gleaned from the investigation of those complaints, as a means of identifying service improvements.

New procedures from April 2009

3.5 The Department of Health had identified that, with the increasing focus on partnership working between local authority social services and NHS services, the existence of two very different sets of complaints procedures for services provided by the NHS and council services was unhelpful. Accordingly, the Department has undertaken discussions within the two services on the reform of complaints handling procedures, seeking to establish arrangements which are

more closely aligned, more user friendly, and which better enable the joint investigation of complaints which relate to both council and NHS services.

- 3.6 The government announced its intention to establish a common framework for complaints handling for both NHS and council provided health and social care services in the 2006 white paper “Our health, our care, our say”, consulting in 2007 on proposals set out in the consultative paper “Making experiences count”, and feeding back on the results of that consultation in 2008 in the paper “Making experiences count – the proposed new arrangements for handling health and social care complaints – response to consultation”. Subsequently the new arrangements were tested on the ground in a number of council areas through an Early Adopter programme, running to the Autumn 2008, after which, in December, the department issued draft proposals for comment to 6 January 2009. The council has contributed to those consultation exercises, locally, and through professional associations and networks including networks of social care complaint managers.
- 3.7 The regulations issued on 27 February, and the associated guidance provided by the Department of Health at the same time, represent a significant change to the way in which complaints made about the council’s social care services will be handled. As noted above, the changes seek to provide a common framework so that someone making a complaint to the council regarding our care services, or making a complaint to the Walsall tPCT or the Manor Hospital regarding health services, would follow a single framework, and that as a result, complaints relating to both services can be addressed together rather than (as previously) separately under two separate sets of procedures.
- 3.8 Organisations will have to follow the requirements set out in the new regulations. In addition they will be expected to adopt good practice. In summary the new arrangements will require that organisations must:
- publicise their complaints procedures
 - acknowledge a complaint on receipt and offer to discuss the matter
 - deal efficiently with complaints and investigate them properly and appropriately
 - write to the person who complained once the complaint has been dealt with, explaining how it has been resolved and what appropriate action has been taken, and reminding them of their right to take the matter to the Health Service Ombudsman or Local Government Ombudsman (as appropriate to the case) if they are still unhappy
 - have someone senior within their organisation who is responsible for both the complaints policy and learning from complaints
 - help the complainant to understand the complaints procedure
 - produce an annual report about complaints that have been received and outline what has been done to improve things as a result.
 - generally speaking, a complaint has to be made within 12 months of an incident happening
 - if the complaint involves two or more organisations, the complainant should get one, co-ordinated response.

3.9 Much of the above reflects the previous arrangements, for instance the requirement to prepare and publish an annual report, to have a designated complaints manager for social care complaints, and to provide advice and assistance to clients and to those wishing to make a complaint. However, there are also significant differences in detail, and in what might be described as the 'culture' relating to complaints, building on best practice, including the following:

- greater emphasis on clear communications throughout the process including a specific provision of an initial point of contact within the organisation able to talk through the complaint or concern with the client so as to obtain all the information necessary to assess the concerns accurately and therefore to ensure that the concerns are addressed appropriately.
- a systematic approach to understanding the reasons for the complaint so as to assess the 'seriousness' of the complaint and to help ensure that the right course of action can be taken in each case. The guidance categorises complaints as of low, medium or high risk, as follows:
 1. Low: Unsatisfactory service or experience not directly related to care. No impact or risk to provision of care or unsatisfactory service or experience related to care, usually a single resolvable issue. Minimal impact and relatively minimal risk to the provision of care or the service. No real risk of litigation.
 2. Medium: Service or experience below reasonable expectations in several ways, but not causing lasting problems. Has potential to impact on service provision. Some potential for litigation
 3. High: Significant issues regarding standards, quality of care and safeguarding of or denial of rights. Complaints with clear quality assurance or risk management issues that may cause lasting problems for the organisation, and so require investigation. Possibility of litigation and adverse local publicity or serious issues that may cause long-term damage, such as grossly substandard care, professional misconduct or death. Will require immediate and in-depth investigation. May involve serious safety issues. A high probability of litigation and strong possibility of adverse national publicity.
- a requirement to perform a risk assessment, classifying the risk as low, moderate, high or extreme, based on the correlation between the seriousness of the issue complained about and the likelihood of recurrence.
- an expectation that the service will obtain a clear understanding from the start as to the complainant's expectations – what they would like to happen as a result of the complaint (for example, an apology, new appointment, reimbursement for costs or loss of personal belongings or an explanation). Guidance also indicates that the service should advise complainants at the outset if their expectations are not feasible or realistic.
- the development with the complainant of an agreed plan of action for the handling of their complaint, including when and how the person complaining will hear back from the service, and making provision for the person complaining to receive advice and support, if necessary, while going through the complaints process, e.g. from an advocacy service.

- changes to timescales. Under the new regulations, services will have to acknowledge receipt of complaints within 3 working days, rather than the previous five working days. However, the new regulations move away from the previous arrangements where a full response was required within a set timescale (10 working days, or 20 working days for more complex complaints) to a much more flexible model where the timescale is determined on a case by case basis. Normally, the time limit for the investigation, should not exceed six months from the date when the complaint was received, and if it does, then the longer time limit must be agreed with the person complaining before the end of the original six month period. A timescale should be given to the complainant in each case, and the service will be expected to keep the complainant informed of progress or any delay. Monitoring will however be more complicated, as services will in future be expected to monitor their achievement against these locally set timescales.
- new arrangements for dealing with complaints which straddle council and NHS services to ensure a seamless approach for the customer or service user which avoids the need for two separate complaint investigations
- a new focus in the regulations on learning from complaints. Department of Health guidance stresses the value of complaints as customer feedback, indicating that services should use comments, compliments, concerns and complaints that they receive to show what is working well, to help identify potential service problems, help identify risks and prevent them from getting worse, highlight opportunities for staff improvement, and provide the information needed to review services and procedures effectively

Implementing the changes

- 3.10 The new regulations take effect from April 2009. However, although the regulations and associated guidance was published at the end of February, other guidance from the National Complaints Managers Group, the Association of Directors of Adult Social Services and the Local Government Ombudsman is still awaited. Accordingly, the Department of Health has acknowledged that organisations will require time in order to ensure a smooth transition to the new arrangements – in terms of publicity, staff training and the practical move from a procedure based upon three stages to one based on local resolution followed by, in cases where a complainant remains dissatisfied, referral to the Local Government Ombudsman. This is helpful and will help ensure that the changes are implemented locally in a way which does not inconvenience service users or complainants.
- 3.11 Accordingly, the changes will be implemented locally in two phases. Firstly, from 1 April 2009, the following changes have come into effect:
- All complaints received will be acknowledged within 3 working days
 - All complaints will have a clear plan drawn up based upon a new standard pro forma
 - Each complaint will be risk assessed by the Customer Care Team against agreed criteria to determine how it should be investigated
 - Current timescales for providing a response to the complaint will be retained as good practice

- All responses to complaints will be made via the Customer Care Team who will 'quality assure' each reply
- There will be a more intense focus on the outcome and the process followed including whether the complaint plan had been followed in practice.

Alongside these immediate changes, the Customer Care Team will work with colleagues in Adult Services, and with the relevant professional bodies to ensure that the council's leaflets, written guidance and web pages reflect the new arrangements and best practice in their implementation, that staff are aware of the changes and understand them, and that effective links with NHS services are developed in readiness for full implementation of the new regulations with effect from 1 October 2009

4. Resource considerations

- 4.1 **Financial:** At this point, it is not anticipated that there will be additional financial implications for the council.
- 4.2 **Legal:** Complaints procedures relating to social care services are governed by legislation, and in particular the Local Authority Social Services Act 1970, as amended by the NHS and Community Care Act 1990 (for Adult Services) and the Children Act 1989 (for Children's Services), and by subsequent secondary legislation. The present report, and changes, will ensure that the council meets the requirements set out in Statutory Instrument 309/2009, the Local Authority Social Services and National Health Service Complaints (England) Regulations.
- 4.3 **Staffing:** The statutory complaints procedures for Adult Services and Children's Services are coordinated by the Customer Care Team, part of Corporate Performance Management. The team is currently reviewing its leaflets, and other information provided to clients, including information on the web site, to ensure widespread awareness of the changes internally and externally. A programme of training and awareness raising within the service is also underway.

5. Citizen impact

The changes relate to procedures for local people to make complaints about the council's social care services, and about health care services. In addition, the new regulations and guidance place emphasis on the use of complaints and other customer feedback towards service improvement and meeting customer expectations.

6. Community safety

None specific to this report. Clearly where complaints raise issues of public safety, at an individual or wider level, appropriate action would be taken.

7. Environmental impact

None specific to this report.

8. Performance and risk management issues

8.1 Risk:

The implementation of the new arrangements by the council and by health agencies should be added to the risk register for the service, and monitored through the year to ensure that services are fully aware, and that clients continue to receive a full response to their complaints in a timely manner.

Likewise, the change from a three stage approach to a more flexible, single stage model, may result in increased numbers of complaints being referred to the Local Government Ombudsman.

8.2 Performance management:

The changes will have an impact upon performance measures currently monitored by the service: these are included in the Social Care & Inclusion performance scorecard and in the statutory annual report on statutory complaints. The change to a more flexible approach, without set timescales, will require changes to monitoring arrangements, and may present practical difficulties in relation to benchmarking with other councils.

The changes requiring that complaints that relate to both council and NHS care services to be investigated jointly, reflects the increased focus, for instance in the Comprehensive Area Assessment, on partnership working.

9. Equality implications

The new arrangements reflect a commitment to equality. Monitoring of the implementation of these changes will include an assessment of any impact on particular client groups.

10. Consultation

The Department of Health has consulted on these proposals.

Background papers

Statutory Instrument 309/2009, the Local Authority Social Services and National Health Service Complaints (England) Regulations

Explanatory Memorandum to the above

Department of Health, *Listening, responding, improving: a guide to better customer care* (February 2009)

Department of Health, *Listening, responding, improving: the quick guide to customer care* (February 2009)

Department of Health, Advice Sheets 1-3: *Investigating complaints; Joint working on complaints – an example protocol; Dealing with serious complaints*
Department of Health, *Making experiences count: a new approach to responding to complaints – a document for information and comment* (2007)
Department of Health, *Making experiences count: the proposed new arrangements for handling health and social care complaints – response to consultation* (2008)

Author

Paul Cooper
Customer Care Manager
Corporate Performance Management
☎ 650486
✉ cooperpaul@walsall.gov.uk



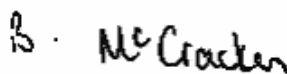
Rory Borealis
Executive Director

27 March 2009

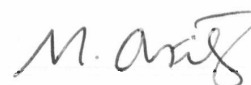


Dave Martin
Executive Director

27 March 2009



Councillor B.
McCracken
Portfolio holder
27 March 2009



Councillor M. Arif
Portfolio holder

27 March 2009