



# Social care and support

---

## Making a complaint to a local authority

---

Date: August 2020

---

### Common types of issues

You can complain about any aspect of adult social care. Here is a list of some of the things you might need to complain about but remember this isn't a complete list. You can still make a complaint about adult social care even if something isn't in this list. Examples include:

- The attitudes or behaviour of individual care workers, for example, abuse or persistent lateness.
- The local authority refuses to assess your need for adult social care.
- Unreasonable delays in making a decision or providing services, including delays in assessing your needs. There are no national legal rules on how quickly a local authority must assess your needs once you've asked them to. Many local authorities do set and publish their own standards and all assessments should be done within a reasonable time. This will depend on individual circumstances. The Local Government Ombudsman has said that a reasonable time for an assessment should normally be between four and six weeks from the date of the first request. In one case, a seriously disabled man's needs were assessed within a reasonable time but then it took over two years for the local authority to provide the services he needed. The Local Government Ombudsman investigated this case and found that this delay was unreasonable and recommended compensation.
- Discrimination by local authority staff. For example, if you're disabled, they should provide you with information that you can access. If they don't so this, this is against equality law.
- An unreasonable decision taken by the local authority. For example, the Local Government Ombudsman investigated one case where a local authority had reduced the individual budget of a client, even though his needs had not changed. This was found to be an unreasonable decision, causing injustice.
- The delivery of services provided or commissioned by a local authority. For example, a Local Authority may have failed to provide a service that meets your cultural, language or dietary needs.
- How the cost of a service is worked out.

- The way a local authority has applied criteria for community care services

## **Ways to make a complaint**

Depending on what you want to achieve, you may have different options to make a complaint:

- First speak to the person providing the care, or their manager. This could sort out the problem quickly
- Use the Local Authority complaints procedure or the complaints procedure of the care provider if this isn't the local authority
- Report your complaint to the Local Government Ombudsman
- Take legal action, for example, for personal injury, negligence, discrimination or for breach of your human rights
- Report concerns to a regulatory body
- Report concerns to other bodies such as the Care Quality Commission or your local Healthwatch
- Talk to your local councillor about your concern
- Write to the local authority's monitoring officer

The complaint system is underpinned by regulations, but those regulations do no more than require local authorities to have a system. Your local authority must provide you with a copy of information about it on request. It should publicise the procedure on its website and it should be easily available in various formats and through a range of channels reflecting the needs of the local population.

## **Investigation of standard complaints**

The organisation must investigate your complaint and aim to sort out the problem quickly and efficiently. They should also keep you informed about how the investigation is going.

When they investigate the complaint, the complaints manager may invite you for a meeting or, if you agree, arrange for conciliation, mediation or other help to resolve the complaint. It's good practice for them to allow you to be accompanied to a meeting by, for example, a representative from a local independent advocacy service. In some cases, it could be against equality law not to allow you to have an advocate, for example, if you need one because of your disability.

## **Response to your complaint**

At the end of your investigation, the complaints manager must prepare a written response to your complaint and send it to you. This response should:

- Give an explanation of how the complaint has been looked at
- Set out the conclusions reached, including any action that is needed to sort out the problem

- Give details of your right to take your complaint to the Local Government Ombudsman if you aren't satisfied with their response

The investigation should be done within a reasonable time but there's no time limit for the organisation to finish their investigation. This will depend on the complexity of the case. However, if they don't finish the investigation within 6 months of the date when they received the complaint, they must write to you explaining the reason for the delay and then send you their final response as soon as they can.

## What should you do if you're not happy with the outcome?

### Complaining to the Local Government Ombudsman

Once you get the final response, you can complain to the Local Government Ombudsman (LGO) if:

- You aren't happy with the final answer from the local authority or the organization providing care.
- They don't give you an answer within a reasonable time.

The LGO can look at complaints about things that have gone wrong:

- With the way the service was delivered.
- If the service wasn't delivered at all, even though you have a right to that service.
- With the way a decision was taken, or not taken.

To find out how to contact the Local Government Ombudsman, go to the [Local Government Ombudsman's website](#).

You can also call the Local Government Ombudsman on 0300 061 0614.

### Report your experience to the Care Quality Commission

The Care Quality Commission (CQC) regulates adult social care. They don't investigate individual complaints, but you can report your experience to them and this could result in them taking action against the care provider.

### Appealing to the Secretary of State for Health

If the local authority has a duty to provide you with a service and they refuse to do so, or if they unfairly take a service away from you, you could report them to the Secretary of State. The Secretary of State has a legal power to rule that a local authority is in breach of their legal duties. This could be a possibility where there are serious and systematic failures by the local authority. Get specialist advice about this option.

### Legal action

You may be able to take legal action against the local authority or organisation providing care. For example, you might be able to apply for judicial review if you need to challenge a decision not to provide care that you have a right to. You'll need expert legal advice about applying for judicial review. Another option may be to start legal action to claim compensation.

## **Contacting your local councillor or MP**

Depending on the situation, you could also take up the issue directly with your local councillor or MP.

## **Using the Local Authority Monitoring officer where you feel there has been a breach by the local authority regarding its duties under the Care Act 2014**

The Monitoring Officer is a statutory appointment under Section 5 of the Local Government and Housing Act 1989 as amended by paragraph 24 of schedule 5 Local Government Act 2000.

The most relevant functions of the Monitoring Officer with regards to complaints of breaches of Care Act law are:

- To report to the Council and to the Executive in any case where s/he is of the opinion that any proposal or decision of the authority has given rise to or is likely to or would give rise to any illegality, maladministration or breach of statutory code under Sections 5 and 5A of the Local Government and Housing Act 1989; (LGHA 89).
- To investigate any matter which s/he has reason to believe may constitute, or where s/he has received an allegation that a matter may constitute, a reportable incident under Sections 5 and 5A of the LGHA 89;
- To act as the Proper Officer for the preparation, publication and retention of records of decisions taken by or on behalf of the Council and the Executive; and
- To have responsibility for responding to complaints to the Local Government Ombudsman.

Raising an issue regarding a breach of statutory duty (failure of the local authority to meet its Care Act 2014 obligations) with the local authority monitoring officer may be the single most effective way to escalate a complaint and to bring about its timely resolution.

## **Reporting on any proposal, decision, or omission that is, or may be, illegal**

In particular the Monitoring Officer has a duty to write a report if he/she considers any proposal, decision, or omission made is illegal or would be illegal.

This is not a duty to write a report every time an allegation of illegality is made, but only if, in his/her personal opinion, that it did, or will occur. The duty is a personal duty, and the Monitoring Officer cannot delegate it to someone else unless he/she is ill, or away, in which case the Deputy Monitoring Officer can take over the role. The Deputy Monitoring Officer will also act when the issue involves the Monitoring Officer him/ herself or regards some advice he/she has previously given. The Monitoring Officer has designated the Assistant Director Legal Services to fulfil the position of Deputy Monitoring Officer.

No Local Authority is entitled to look at a letter that says something hasn't been done lawfully, and then just process it as if it were a standard complaint. If you make an allegation of illegality – breach of Guidance, breach of statutory duty, failure to abide by common law rules of procedural fairness, breach of human rights – failure to take relevant considerations into account, fettering of discretion (a public authority must not 'fetter' its discretion by applying a

rigid or one-size-fits-all policy to all) or just plain old fashioned unreasonableness the local authority monitoring officer must exercise their obligation to investigate and respond

## We can help

If you have any questions about social care, please contact us using Tel: 0333 1212 300 or Email: [info@downs-syndrome.org.uk](mailto:info@downs-syndrome.org.uk). If our information officers are unable to help, they will refer you to our social care adviser.

### Contact us

t. 0333 1212 300

### Down's Syndrome Association

Langdon Down Centre  
2a Langdon Park  
Teddington  
Middlesex  
TW11 9PS

e. [info@downs-syndrome.org.uk](mailto:info@downs-syndrome.org.uk)

w. [www.downs-syndrome.org.uk](http://www.downs-syndrome.org.uk)

© Down's Syndrome Association 2020