



Adult social care:

LGO – the single point of contact
for complaints

Focus Report: learning the lessons from complaints
about adult social care providers registered with the
Care Quality Commission

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Summary

Issues surrounding the quality of adult social care have been brought into the spotlight with several high profile cases over the last year. The Local Government Ombudsman (LGO) has an important role in the landscape of regulators and shapers of service improvements in making a difference to the quality of care and ensuring that individual rights are protected.

We are the Ombudsman for adult social care complaints following the extension of our jurisdiction in October 2010 to include private providers of social care services. It means we can deal with complaints from all users of social care irrespective of the funding model and arrangements for organising care.

We carry out impartial investigations of complaints from members of the public who consider that they have been caused injustice by the actions of a local authority or registered care provider, and seek redress for the complainant where we find this has happened. Our investigative teams considered more than 1,000 adult social complaints in 2011/12, an increase of 22 per cent from the previous year, giving us a unique insight into issues affecting all users of social care. This report shares key trends we have identified, with the wider aim being to help improve services and good administration.

The report identifies four key areas arising from the complaints we have investigated, illustrated with case studies:

1. **Improving the quality of care** – the complaints investigated reveal the most common issues of complaint about care, both residential and at home, and the need for an effective complaints process for speedy, local resolution and service improvement.

2. **Making informed choices** – service users face a complex system and need accurate advice and information to make well-informed choices about the care options available. They need to be clear about what they should pay and what services they should get. It is vital for care contracts to be transparent for all the parties concerned.
3. **Protecting the most vulnerable** – complaints to us illustrate the challenging nature of the process of safeguarding vulnerable adults. Councils have the lead role but all care providers have a duty to protect vulnerable people and alert others if an issue arises.
4. **Resolving complaints locally** – prompt and open action to resolve complaints benefits the service user and the care provider, helping to repair damaged relationships and improve services. People should be made aware of their right to complain to the Ombudsman if a matter is unresolved after a care provider has considered it.

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Introduction and context

This report is aimed at anyone with an interest in social care. The Local Government Ombudsman has investigated complaints about social care that is funded or arranged by local government since 1974. This has traditionally included looking at care assessments, commissioning arrangements and direct provision of care. In October 2010 our jurisdiction was expanded to include private providers of social care services. We investigate complaints and seek to redress injustice caused by service failure for all users of social care, irrespective of the funding model and arrangements for organising care. We can look at both domiciliary care and residential care.

Purpose

We receive and investigate over 1,000 adult social care complaints per year, giving us an insight into issues affecting all users of social care. Through this report we wanted to share key emerging trends, with the aim of helping to improve services and public administration.

We also highlight the importance of good complaints handling in resolving issues and providing important feedback to bodies about the quality of the care they are providing from a user perspective, identifying potential risks and weaknesses. Sometimes relations may break down and issues appear intractable, or the service user may still not be happy with the outcome of a complaint and the solution offered. In these cases, the LGO can offer an independent review of the complaint in order to help resolve the matter. We believe that both sides should be open to complaints, and we support local resolution, which in the first instance may be informal. A culture that encourages complaints is positive for all.

We will continue to share insights across the broad range of complaints that we receive. We plan to publish our decision statements on complaints on our website during the coming year. Making this information public will enhance our openness and transparency as well as enabling potential users and providers of services to assess whether a complaint may be legitimate and, more broadly, for the public to be able to analyse general trends in complaints themselves.

The role of the Ombudsman

The LGO investigates complaints by members of the public who consider that they have been caused injustice by the action of a local authority, registered care provider or other organisation in jurisdiction. The LGO scheme provides a free, independent and impartial service. We investigate the 'reasonable' actions of public bodies against their statutory powers and duties. We make recommendations to resolve a dispute and try to put the complainant back in the position they would have been but for the maladministration or service failure.

Working with the Care Quality Commission

We consider complaints in the light of the regulatory framework set out by the Care Quality Commission (CQC), the body that regulates social care provision. CQC produces guidance about compliance in the form of Essential Standards of Quality and Safety.

In accordance with our Memorandum of Understanding, LGO shares information with CQC about the outcomes of complaints that may indicate service failures or a breach of regulatory issues that may affect registration status. More information can be found at: <http://www.lgo.org.uk/about-us/links-with-other-bodies/>.

Wider adult social care context

There has been increasing public concern about the quality of care services since we took on our new role with a renewed need to provide the public with greater confidence and assurance in the quality of provision. The LGO has an important part to play in providing information from complaints to support informed choice of services and to bring about improvements. Our work with adult social care providers puts us in a good position to resolve disputes with independent providers and seek redress for citizens who pay for their own services.

Issues arising from complaints

The LGO's expanded jurisdiction

The changes in jurisdiction that came into effect in October 2010 have ensured the LGO can consider complaints about provision of personal care wherever they arise. Our previous powers allowed us to consider complaints about care needs assessment, care commissioning and care provided or arranged by councils. Our extended powers mean we can now deal with complaints about personal care for adults, whoever the provider is, and however that care is funded.

Complaints about health care are dealt with by the Health Services Ombudsman. We work together across our respective jurisdictions where the facts in a case raised with either one of us require joint investigation.

Making a complaint for someone else

Most complaints made to us have come from close relatives, advocates or friends of a service user. Their representative may help with setting out an accurate account of the issues, but we always try to give the person affected an opportunity to set out their version of events and how they have been affected. This is key to properly evaluating their injustice.

If someone makes the complaint on behalf of a service user, the LGO's investigator must first establish whether that person is suitable to represent them. We ask:

- > Has the person affected authorised this person to raise the complaint for them?
- > If the complainant says that the service user cannot act on their own behalf, have they been given authority for this complaint to be made in their name?
- > Does the person affected have the legal capacity to make this decision?
- > Is the complainant a suitable person to represent them if they lack capacity?

Complaints made by service users in person are more often about domiciliary rather than residential care. These are people who are still able to arrange their own affairs, even though they may require assistance to stay in their home surroundings.

Case study one: New service contract issued following home care plan review

Ms B paid for her own domiciliary care with a home care agency. Care staff were scheduled to visit her several times a day. They assisted her with getting in and out of bed, personal hygiene and food preparation. She considered the agency had not responded properly to her complaints about short or missed calls or investigated discrepancies in her charges.

In response to the LGO's enquiries, the company agreed there had been shortcomings and that its record keeping was poor. It waived charges for calls omitted from previous invoices. The manager agreed to review Ms B's care plan in discussion with her, and issue a new, clearer, service contract. Ms B decided to stay with the agency, as she liked the carers she relied on. The LGO was satisfied that these steps provided a fair remedy for Ms B's concerns.

Care quality – securing service improvements

Properly responding to individual needs is at the heart of good quality social care. In domiciliary care we have received complaints about a range of issues, including:

- > carers making short calls, being late, or failing to attend when scheduled
- > too many changes in carers
- > disputes about the proper role of carers
- > staff attitudes and levels of skill – especially where the client has special needs
- > inadequate records and handovers between staff, and
- > inaccuracy in billing and delayed invoicing.

Case study two: New procedures implemented after poor and inconsistent care

Mr Y lived in his own home and had a privately funded package of care. His family arranged for an increase in his care package to allow for the emptying of his catheter bag. This was agreed but not written into Mr Y's care plan. When visiting, a carer observed that Mr Y looked unwell and was not eating. Her manager advised her to contact his GP and a neighbour. Only the neighbour was contacted. The following day a health care assistant reported that Mr Y's catheter and leg bag were missing. An ambulance was called and he was admitted to hospital. Mr Y subsequently went into residential care.

Mr Y's daughter-in-law complained to the LGO. We found evidence of poor, inconsistent and, on occasion, nonexistent care. The provider apologised to the family, dismissed the carers responsible for the failings and implemented new procedures to reduce the risk of such failings occurring again. The provider also agreed to make a remedy payment of £1,500 in recognition of the injustice suffered by Mr Y and the time and trouble in pursuing the complaint.

Within residential care the most commonly raised issues are:

- > attitudes of care staff
- > skill in handling dementia care
- > meeting health needs – calling medical help promptly, and
- > responsiveness to call bells.

Case study three: Complaint leads to wider service improvements in care home

The family of Mr D were dissatisfied with the way his residential home's management acted when he was found in a street near his old home by a neighbour. Mr D was suffering from anxiety and confusion. It became clear that he had been missing for more than two hours, and the home had not noticed. The home did not keep a reasonable check on people in their care who were at risk of wandering. At first the home's manager was very guarded and resisted explaining what had happened.

The LGO's involvement ensured the home's management investigated the incident more rigorously, explained matters fully to the family, and apologised. They recognised that this incident exposed a wider weakness in their daily arrangements. They consulted the residents and their families as they introduced improvements. They sought to strike a more appropriate balance between respecting people's freedom to come and go and safeguarding their more vulnerable residents.

In addition to these service improvements the home's management agreed to make a remedy payment of £250 to Mr D, and £250 to the family, to recognise the avoidable distress these events had caused.

Most care providers have responded well to the LGO when enquiries have been pursued, and have demonstrated a genuine wish to resolve matters when they can. But in a few cases the provider concerned does not have a clear complaint process, which can add to confusion and uncertainty on the part of the complainant.

Making informed choices in a mixed care economy

Relatives often report how difficult it is to navigate knowledgeably around the care system and to make well-informed choices about the care options that may be available.

In a crisis situation, councils may provide respite care or domiciliary support while care managers assess care needs. The outcome of this defines the care plan, including whether residential care is required. Suitable services are then identified and costed to meet the assessed needs. A financial assessment can then be undertaken to determine whether or not the citizen has sufficient resources to pay for their own care, or is liable to contribute to care costs. Councils should provide clear information and advice throughout this process.

It is for the service user to decide whether to opt for care at home, consider sheltered housing or move into a particular residential care setting. Many charities, such as Age UK and Mencap, provide excellent general information and advice.

The person concerned (or those acting for them) has major financial decisions to make in order to meet care charges. There can be implications for any property the service user may own. Where a council is funding the care fees, and the service user is assessed to make a nil contribution, full fees may not be

covered. Where residential charges are above the local authority payment rate in that area, relatives may have to commit to paying the top-up when identifying a home of their choice.

In making important decisions about care, citizens need good quality information. Sometimes we have found complainants to have been put at a considerable disadvantage by inaccurate or misleading information.

Costs vary substantially between care providers and accurate information is important. People in the same care home may pay different charges depending on the room they occupy and how their level of care needs has been banded. Different charges can apply when care is commissioned by the council, perhaps at a block contract rate. Privately arranged care may be charged at a higher rate. These are all commercial decisions that the service provider is entitled to make. Complaints can arise where service users or relatives have been unable to clarify how charges are being made. Sometimes unforeseen costs arise, or unexpected debts build up.

In such cases the LGO looks for compliance with CQC's Essential Standard of Quality and Safety. Regulation 19(1) says that a person entering care should be provided with a clear statement

"specifying the terms and conditions in respect of services to be provided to the service user, including as to the amount and method of payment of fees."

Case study four: Charges for extra services not clear

Mr G was receiving personal care at home following a care needs assessment. He understood that the services he received were in accord with the council's definition of his needs. The provider sent him invoices for shopping and cleaning services it said he had asked carers to provide. These went beyond what the council had commissioned according to his care plan. He refused to pay on the basis that he had been given no agreement to sign to identify these extra services as separate from his care package.

Following the LGO's enquiries, the provider agreed to call off the debt recovery action it had started, and provide Mr G with a clearly costed contract so that he could in future decide what services he wanted to pay extra for.

It is vital for care contracts to be transparent for all the parties concerned. In practice we consider that the individual contract and/or the Resident's Guide (which every residential home should provide) should be clear about its charging in the following areas:

- > notice arrangements and any exit charges
- > cost bandings for assessed care need levels
- > available choices of accommodation (ie per room and with what facilities)
- > the costs of the accommodation chosen (specific to the selected room)
- > clarity on extra, separately chargeable services: chiropody, shopping, hairdressing, newspapers, telephone charges, etc
- > how and when any price changes will be notified and implemented, and
- > in what circumstances increased care needs will trigger increased charges.

Both councils and care providers should ensure that all billing is timely, properly itemised and clearly laid out.

Case study five: Payment refunded after residential home's error

Mr and Mrs J went into a residential home in December 2010 for four weeks respite care. Mrs J's condition worsened while she was in the home and Mr J was not able to care for her any longer at home. They decided to enter permanent residential care which they would pay for themselves. Mr J says that when they first went into the care home, his wife had not yet been assessed for NHS nursing care and the manager asked if Mr and Mrs J would pay the home £108 a week – the amount of nursing band funding – until the NHS had approved the funding. The manager said that once the funding was approved, the home would refund the money to Mr and Mrs J. They agreed and paid the full amount of their care, including the amount for nursing care, every week from December 2010 until April 2011 when they moved to another home.

In February the local NHS trust wrote to Mrs J confirming that her healthcare needs met the eligibility criteria for NHS-funded nursing care and it would pay the nursing band funding directly to the care home.

Mr J says that despite writing to and telephoning the first care home, he did not receive the money back from the home when they moved. In July the first care home owner wrote to him saying that the rates agreed with him on entry into the home were £500 a week for himself and £580 a week for Mrs J who needed nursing care. She said the standard home rate for nursing care was £580 plus nursing band funding, a total of £688 a week, but she said that because Mr and Mrs J had entered the home together they were offered a reduced rate and had been informed at the time that the home would retain the nursing band funding for Mrs J. She said the home would not now refund the nursing band funding.

Mr J replied to the care home owner. He said he knew that the care home was entitled to receive the nursing band fees but he had agreed to pay them directly until the NHS repaid the home. He pointed out that the invoices he had received from the home were paid in full and clearly showed the element of nursing band fees had been paid by him. He said he had now received a letter confirming that the NHS would pay Mrs J's nursing band funding.

In August, the home owner wrote to Mr J apologising for the error she had made and acknowledging that he was due a refund for the nursing band fees he had paid. Mr J was satisfied that the payment resolved his complaint. Mr J had complained to the LGO but his complaint was not pursued because the home owner recognised that they had made an error, rectified the situation and Mr J was satisfied that the payment resolved his complaint.

Safeguarding

We have received a small but significant number of cases about safeguarding. Councils are the lead agency in a safeguarding investigation. All care providers have a duty to protect service users, and to alert others if they consider a safeguarding issue has arisen. The approach is based on 'No Secrets' guidance from the Department of Health.

Councils co-ordinate a multi-agency approach, through which early decisions are made about the seriousness of issues raised. Officers must consider how to protect the vulnerable person against any immediate risks to their safety or wellbeing, yet minimise any unnecessary intrusion into people's private and family life. They must balance the need for open, honest dialogue with those involved against the need

to avoid unjustified allegations. The wellbeing of the vulnerable person must be paramount, and their wishes respected.

Where a council is already involved, and has been alerted to a safeguarding matter, it must promptly assess those alerts, and act accordingly to protect the vulnerable person.

Case study six: Council fails to explain safeguarding concerns to family

Ms S and her mother were longstanding carers for her brother Mr P, who had learning disabilities. He had been living at home and the family managed his benefits, his motability car, and did all they could to meet his needs as they saw them. They reluctantly agreed to his moving on to a supported living scheme not far from the family home. Once he was there they were unhappy that the staff did not look after him as the family had at home. His flat became dirty, so they visited frequently to clean and stock the fridge. They had concerns that other residents were getting access to his benefit allowance, and so limited his available spending money.

Care staff took a different view; they believed they were promoting Mr P's independence and developing his self care skills. They thought the family interventions were intrusive. Mr P's advocate became concerned that he did not have access to his own benefits and that funds were being used by family members – as was the motability car. A safeguarding meeting was held among professionals, steps were taken to recall the motability car, seek suspension of benefits and to freeze his bank account. The family were unaware until refused access to their accounts at their bank.

There was a later safeguarding case conference which the complainants attended, but they left saying it was a kangaroo court. They could see no equity in the situation: criticisms they made of poor care standards were ignored, whereas what they saw as unjustified criticism of the family had caused them embarrassment and financial problems.

Some weeks later Mr P decided to move back to the family home. His advocate satisfied herself that this was his choice. This meant that Ms S was reinstated as his benefits appointee. Whatever their concerns about his future independence the council considered there were no continuing safeguarding issues to pursue.

We investigated and found that there were reasonable justifications for the safeguarding alert and the steps taken to secure Mr P's finances while he was living in supported housing. But the council failed to explain their concerns openly and in a timely way to the family. They also failed to notify organisations such as the family's bank of the changed situation once the safeguarding enquiry was closed. The council was asked to put these things right and pay compensation to the family for the avoidable distress they were caused.

Councils may be unaware of a risky situation until a late stage in events but face criticism that with hindsight it was 'obvious' that someone was at risk of abuse or neglect. The LGO is careful to test actual actions against what was known, or could reasonably have been identified at the time. This includes ensuring proper establishment of any lack of mental capacity.

Case study seven: Council fails to look after property following move to residential care

Mr A had been living in his own home, and despite failing health had refused all offers of domiciliary care. He had become reclusive, and his son and family had had no contact for several years. After a fall in the street and hospital admission, he accepted help from the council to move into respite residential care. It took the council some time to contact his family. The council had done little to secure his property, and no inventory was made.

Some years previously he had been known as something of a collector. Neighbours who had been offering informal support said that Mr B's house was in a poor state and that he had given many things away. There were suggestions that he had cash hidden in the house.

Once alerted to the situation the family came to help sort out his affairs. They planned to help him move to a care home in their area. They were appalled at the state of his home, that the property had been inadequately secured, and that it seemed to have been ransacked. They thought valuable property may have been stolen. They were very distressed to think that the proud, independent man they used to know had been left in such a neglected state, without anyone protecting his interests. They asked the Ombudsman to investigate. We found that the council failed to make an inventory, remove valuable items and secure the property. The council agreed to apologise to the complainant and review its policies, make a payment of £500 to the complainants for their distress and time and trouble in making the complaint, and to pay Mr A £2,000 in notional recognition of loss, damage and associated uncertainty.

Timeliness and good complaint handling

All care providers are obliged to have suitable complaint-handling arrangements in place – this is a regulatory requirement. No care user should suffer adverse consequences from a complaint being raised. The LGO has written to all care providers asking them to review their complaint-handling arrangements.

Many practical difficulties can be resolved if they are raised promptly and openly, even if it takes time to investigate what lies behind the presenting issues. Prompt action to resolve complaints benefits the person directly affected by any poor service, as well as giving care providers the chance to make immediate improvements for the benefit of all their clients.

All providers should handle complaints put to them briskly and openly. They should not let disputes drag on but be clear when they have investigated the issue and taken remedial action. If they are not satisfied, providers should let complainants know they have a right to take matters on to the LGO, and how to do so.

Our experience shows that when complaints are ignored, or proper consideration is delayed, conflicts and disputes become entrenched. Providers find that they are distracted from the day job of providing good care for all their clients, and may be in danger of putting their reputation at risk. Sometimes a complaint will result in the service user being given notice to terminate, which can cause more distress and disruption.

Case study eight: Care home not at fault in terminating contract

Mr E complained about the way a private care home dealt with his wife and her father before he was given notice to leave. The father died shortly after the move. The family repeatedly said call bells went unanswered, and that the home staff was not attentive to his needs. Mr E felt the family had made reasonable attempts to raise care quality concerns and that it was wrong to dismiss this as unacceptable behaviour.

The home said they had repeatedly looked into the family's claims but thought they were unjustified. They had followed medical advice, which did not support some of the family's views about how best to manage the father's catheter or when pain relief was needed. The care home manager gave notice as he felt the home could no longer work satisfactorily with Mr and Mrs E and her father. The family reluctantly moved him, despite feeling that he had settled well in the home. The Ombudsman investigated the concerns raised by the complainants and found that the care home did nothing procedurally or legally wrong in terminating Mr E's contract at the care home because of the conflict with the complainant.

Details to assist providers with good complaint handling can be found on our website at www.lgo.org.uk/adult-social-care/providers/.

What next for LGO and care providers

The LGO's power to investigate complaints on behalf of people who fund their own care has come at a crucial time. Within the first year of operation we have seen the publication of the Equalities and Human Rights Commission Report on older people and home care as well as the Health Service Ombudsman's report *Care and Compassion?* into the NHS care of older people. We also saw the BBC's *Panorama* exposé on the behaviour of Castlebeck and the aftermath of the financial difficulties faced by Southern Cross. The profile of the quality of care given to adults could not be higher.

We want to make sure that those people who need to complain know who we are and how they can find us.

As a follow-up to this report we will publish more information about cases we investigate and our findings through regular newsletters. We also want to work more with care providers – directly and through their member organisations – to ensure that details of our service are provided in welcome packs and other points accessible to service users. With CQC's assistance we want to ensure that all care providers have updated their complaints procedure to signpost to the LGO. We will also work in partnership with the new Healthwatch England and Local HealthWatch organisations.

Further information and contacts

Visit our website at: www.lgo.org.uk

If you have a complaint contact our Advice Team on 0300 061 0614.