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trading standards law explained

Part 4: Internal complaints

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In its shared commitment to high-quality, person-centred social care, 'Quality Matters' (a professional collaboration in England jointly led by partners from across the adult social care sector to improve the quality of adult social care) says that residents and their representatives should feel empowered to tell you about their experiences of adult social care in your care home. They should be able to know what to expect from high-quality care, and what to do when the quality of care falls short.

Generally speaking, your residents and their representatives have a right to complain about any aspect of a service received, but how they make that complaint will depend on the nature of their complaint and how their service is funded (see Parts 1 and 5 of this guide for flowcharts showing the different steps).

What a good complaints procedure looks like

Across the UK, there is a drive to align social care complaints with other public services' CHPs to improve procedures for reporting and dealing with complaints. In Scotland, for example, the Scottish Ombudsman's Complaints Standards Authority has defined what a good CHP should look like. According to guidance on its Valuing Complaints website, your CHP should put your resident or their representative at the heart of your complaints process: they should feel listened to, respected and treated with dignity. Internal investigations should be proportionate and robust, and offer quality outcomes. Investigations should also be evidence-based, objective and driven by the facts of each case, rather than based on assumptions. They should be conducted efficiently, aiming to resolve complaints at the earliest opportunity, and your records of complaints received should help your organisation to improve its services.

Guidance, regulations and minimum standards across the UK nations suggests that all your staff must know how to respond when they receive a complaint about your care home, and all complaints should be acknowledged, whether they are written or verbal. It is also important that your staff, residents and their representatives know when a concern or complaint is a safeguarding / adult support and protection issue or a criminal offence, and how these particular issues must be dealt with.

Across the four nations there is also a requirement for appropriate investigations to be carried out, and for staff involved in assessing and investigating complaints to have the right level of knowledge and skill to do so. There is an expectation for complainants, and those being complained about, to be kept informed of a complaint's progress, with resolutions expected to be achieved within certain timescales. However, the suggested timescales for each aspect of a complaint to be achieved within publicly funded services, for example, differs from nation to nation (see the 'Key points of note' sections for each UK nation for

differences that may apply in your country).

To help care homes understand their responsibilities under consumer law more generally when dealing with complaints internally, the CMA advises that it aims to have a 'quick, simple and streamlined' process to 'resolve complaints early and with as few steps as necessary'.

Detailed within the CMA's compliance advice are three internal stages before an unresolved complaint progresses to an external body, which you can follow (if your regulatory framework allows it). The CMA's three stages are:

1. Frontline resolution stage
2. Investigation stage
3. Escalating a complaint within your organisation if the complainant is unhappy with the outcome

1. Frontline resolution

In many ways, the CMA's guidance complements the UK nations' existing advice. For example, in Scotland, the frontline resolution stage outlined in guidance for social services is the first stage of the complaints process and should be used for issues that are straightforward and easily resolved, requiring little or no investigation. This might involve an 'on-the-spot' apology, explanation or other action that would result in a quick resolution. Scottish guidance advises that matters could also be resolved by telephone, and any resolution should be made to the satisfaction of the complainant. Similarly in Wales, guidance for state-funded social services suggests that staff involved should be aiming to achieve a satisfactory outcome for residents and their representatives, rather than simply trying to avoid a formal investigation.

It is important that you are aware of, and follow, the sector-specific rules set out by your own nation. However, to help you understand the principles of the frontline resolution stage, the CMA says:

"You should have a frontline resolution stage, which aims to resolve straightforward concerns quickly at the earliest opportunity. This is suitable for complaints that are easily resolved and require little or no investigation.

"You should explain how concerns raised at the frontline resolution stage can be escalated to the investigation stage if the matter is not satisfactorily resolved, or if the resident does not want to take part in the frontline resolution process."

It also points out that it would not be appropriate for 'concerns that relate to complex, serious, or high-risk issues' to be dealt with at this stage.

There will be times when issues cannot be resolved at the frontline resolution stage. These may occur when:

- a resident remains dissatisfied at the end of the frontline resolution stage
- a resident has asked that their complaint be progressed immediately to the investigation stage
- if the issue was so serious it could only be adequately resolved at the investigation stage

2. Investigation stage

For issues that fail to be resolved at the frontline resolution stage, or those that are considered too complex, serious or high risk, an investigation should be opened.

All investigations should be fair and consistent. In Northern Ireland, for example, guidance for health and social care services suggests that investigations should aim to discover:

- what happened, or what those involved perceive to have happened
- the facts of the complaint
- what can be learned from the situation to help improve services and performance in the future
- any misconduct or poor practice
- a satisfactory resolution

In Scotland, guidance for social services suggests that 'day one' of an investigation should be considered the day upon which the complaint was received, not the day it was recorded on your complaints system, meaning investigations should start immediately. The CMA considers that, "within a maximum of 28 calendar days ... a response should be provided, either in writing or by arranging a meeting with the individuals concerned". However, some complaints are so complex that they require more time to deal with. In these circumstances, the resident or representative who has made the complaint should be made aware of the delay, and given a revised timetable for completing the investigation.

In its latest guidance, the CMA gives the following compliance advice on what time limits may be appropriate: "You should set out clear and reasonable timescales within which residents can expect to hear back about their complaint, at each stage of the procedure. For example:

"Investigations into complaints should be launched immediately upon receipt and within a maximum of 28 calendar days a response - giving a full explanation of the investigative process, outcome and action (if any) that is to be taken - should be provided, either in writing or by arranging a meeting with the individuals concerned.

"Where the complaint relates to a time-sensitive issue, such as a decision to ask a resident to leave the home, the investigation should be concluded as quickly as possible.

"If the issues are too complex to complete the investigation within 28 calendar days, the complainant should be informed of any delays and the timetable for completing the investigation."

As well as being fair and consistent, guidance for health and social care in Northern Ireland, for example, suggests that investigations should be conducted without bias and in an impartial and objective manner, and in a way that makes all parties involved feel supported. It must not be an adversarial process. The process should ultimately be about listening, learning and improving, and those involved should be kept informed of developments as a complaint progresses through the different stages of your complaints procedure.

At the end of the investigation, your decision should be recorded in writing and it should give details of the outcome and any action taken.

On the importance of keeping complainants informed and recording your decision in writing, the CMA has published the following compliance advice: "You should ensure that residents are kept regularly updated on the progress of the investigation and provided with any meeting dates well in advance (rather than having to request a meeting themselves).

"You should clearly explain your decision in writing (so there is a record), giving details of the outcome of the complaint and any action taken. If a resident has special needs, or where the subject matter to be communicated is sensitive, the use of telephone or face-to-face contact may be appropriate."

Examples of serious incidents It is important that you and your staff understand what can, and what

cannot, be dealt with by your complaints handling procedure (CHP). Serious incidents, for example, should not be dealt with by your CHP. Some examples of what serious incidents may involve, taken from NHS Wales guidance, include:

- self-harm incidents categorised as severe
- ambulance delays that may contribute to the death / severe harm of a patient
- grade 3 or 4 pressure ulcers

Care home owners and registered managers should ensure they are aware of what constitutes a serious incident in their region and how these should be dealt with Source: *Putting Things Right: Guidance on Dealing with Concerns About the NHS from 1 April 2011 Version 2 April 2012*

Other more specific factors to consider are:

The independence of investigators. This means that the person tasked with investigating a complaint at your care home should not be involved with the complaint in any way, or worse, be the subject of it. It is also important that those involved in the complaints process feel that they have been listened to and their points of view understood. In Wales, Government guidance for state-funded social services suggests that, while performing their role, independent investigators should be objective and open about their methods, and about how they have reached their conclusions.

To help all care homes understand their responsibilities under consumer law more generally, the CMA has issued the following compliance advice: "You should ensure that any investigation of a complaint is carried out by someone who is independent of (and not the direct subject of) the concerns raised, so as to avoid conflicts of interest where managers or staff investigate complaints about themselves. For example, people should be able to complain directly to your head office or area manager if their complaint is about the registered manager at the care home."

Dealing with serious or sensitive complaints. These could relate to a resident being asked to leave your home, or where you impose a visitor ban. While these areas will always be difficult to deal with, the CMA has provided the following compliance advice:

"Where you identify complaints that are considered to be significant, serious or present issues of a sensitive nature (including, for example, in relation to a resident being asked to leave the home or the imposition of a visitor ban), you should ensure that there is a process for rapid and effective notification to senior management and that someone at a senior level has direct input and oversight of the investigation. Overall responsibility and accountability for the management of complaints lies with senior staff."

Protecting a complainant's anonymity. Whenever possible, any information that could identify a resident shouldn't be revealed. There are times when this won't be possible - for example, in incidents involving safeguarding/adult support and protection issues. The CMA has offered the following compliance advice about anonymising a resident's personal data: "You should protect the complainant's anonymity as far as reasonably possible. Any personally identifiable information concerning the resident should only be used for the purposes of addressing their complaint and should be actively protected from disclosure unless they have expressly consented to it being disclosed or there are statutory obligations that make this necessary, such as safeguarding."

Complaints involving more than one body. Where a complaint involves more than one organisation, you should work together to resolve it where possible, appointing someone to lead the investigation. For example, guidance for public services in Wales and Northern Ireland recommends that, where possible, this effort should involve a coordinated response. In Northern Ireland, published guidance for health and social care says that, "this general duty to cooperate includes answering questions, providing information

and attending any meeting reasonably requested by those investigating the complaint". There will also be times when your care home's investigation of a complaint is put on hold while other authorities investigate - for example, if a situation involves a safeguarding / adult support and protection issue or a criminal offence.

The CMA has issued guidance on this particular issue, too. It advises: "You should fully investigate all complaints and (where relevant) work with other organisations where the complaint is of a joint nature to address the issues raised (telling the complainant who will take the lead in dealing with their complaint) or refer it to the appropriate authorities for investigation (this may include sector regulators or the local authority safeguarding teams)."

3. Escalating a complaint within your organisation

If a complaint or concern still remains unresolved after an investigation, the CMA's advice states that the complainant should be able to escalate the matter to someone more senior within your organisation; if the regulatory framework in your country allows for that (see the 'Key points of note' sections for each nation to find out what sector guidance in your country advises). The CMA's compliance advice for this particular stage of their suggested process is:

- "if the complainant is not satisfied with how you have handled their complaint, you should tell them about the further forms of action that are available to them under your internal complaints handling procedure (as well as explaining how they can escalate the complaint to relevant independent external bodies)
- "you should ensure that residents and people acting on their behalf can, and know how to escalate their complaint to someone at a more senior level in your organisation to review if the matter has not been satisfactorily resolved [if the relevant regulatory framework for complaints handling allows it]. In such circumstances you should inform the complainant of the next steps in the process and the timescale within which it is likely to be completed
- "where appropriate, you should also consider the use of external ADR where complaints cannot be easily resolved, such as where the matter is particularly acrimonious and those involved have become entrenched in their positions ...
- "you should make clear that engaging in ADR is voluntary and there is no need for residents to take part in ADR before they are able to seek independent redress through the relevant Ombudsman service"

To view the CMA's full compliance advice on how to handle complaints internally, read their chapter on complaints in their latest guide, *UK Care Home Providers for Older People - Advice on Consumer Law: Helping Care Homes Comply with Their Consumer Law Obligations*, which begins on page 111. Visit gov.uk/government/publications/care-homes-consumer-law-advice-for-providers

Key points of note

England

Time limits to complete investigations

Investigations must be completed 'speedily and efficiently', and within six months of the day on which the complaint was received. However, if you know a complaint will not be resolved within this time frame, you must write to the parties involved and explain the reason for the delay. Furthermore, the CMA's advice considers that within a maximum of 28 calendar days "a response should be provided,

either in writing or by arranging a meeting with the individuals concerned. However, some complaints are so complex that they require more time to deal with. In these circumstances, the resident or representative who has made the complaint should be made aware of the delay and given a revised timetable."

How much time your residents have to make a complaint

A resident or their representatives usually have 12 months to make a complaint from when the action occurred or, if later, the date on which the matter came to the notice of the complainant. Each case should always be considered on an individual basis.

Unless otherwise marked, information in this section was taken from [The Local Authority Social Services and National Health Service Complaints \(England\) Regulations 2009](#), and is intended for state-funded social services only.

Scotland

High-risk or high-profile complaints

In Scotland's model CHP for social work, some examples of high-risk or high-profile complaints are defined as:

- involving a death or terminal illness
- generating significant and ongoing press interest
- presenting issues of a highly sensitive nature, for example, concerning:
 - immediate homelessness
 - a particularly vulnerable person
 - adult protection

Source: *The Social Work Model Complaints Handling Procedure December 2016*

Timescales at the investigation stage

Guidance suggests the following timescales should be followed at the investigation stage:

- complaints should be acknowledged within three working days
- a full response to the complaint should be provided as soon as possible, but not later than 20 working days from the time you received the complaint for investigation

Scotland's two-stage process for internal complaints and time limits

The Ombudsman's *Social Work Model Complaints Handling Procedure* sets out two opportunities for complaints to be resolved internally (which differs from the CMA's advice for care homes) during what it terms 'frontline resolution stage' and 'investigation stage'. It describes frontline resolution as an opportunity to resolve issues that are straightforward and easily resolved, requiring little or no investigation.

For example, this might involve an 'on-the-spot' apology, explanation or other action that would result in a quick resolution 'in five working days or less, unless there are exceptional circumstances'. In

exceptional circumstances, an extension of up to 10 working days may be agreed with a resident or their representative. This should only happen when this makes it more likely that the complaint will be resolved at the frontline resolution stage.

At this stage, it suggests that complaints could be resolved by any member of staff, or essentially referred to a designated person to be solved. It also advises that complaint details, the outcome and action taken be recorded and 'used for service improvement'. At the investigation stage, all outcomes must be signed off by senior management.

At the end of the investigation stage in Scotland, if the matter still isn't resolved it progresses to an independent external review by the ombudsman or other body.

Unless otherwise marked, information in this section was taken from the Scottish Ombudsman's [Social Work Model Complaints Handling Procedure](#). While this guidance was written for state-funded social services, parts of it can act as an excellent best practice guide, where the guidance complements existing legal requirements and relevant consumer law, for private, independent, charitable, and voluntary and not-for-profit care homes to follow, in conjunction with the CMA's compliance advice.

Wales

A two-stage internal process

Guidance written to support legislation introduced in 2014 by the Welsh government advises that if a complaint is not resolved either at the local resolution stage (equivalent to the CMA's frontline resolution stage) or the formal investigation stage, then residents and their representatives can take their complaint straight to the Public Services Ombudsman for Wales.

Timescales at frontline resolution stage

When resolving complaints at the local resolution stage (equivalent to the CMA's frontline resolution stage), Welsh government guidance advises that discussions to resolve the issue should take place within 10 working days of the date the complaint was acknowledged. This is known as the 'date of acknowledgment'.

Once the matter has been resolved, the decision should be put in writing and sent to the complainant and their advocate, if they have one, 'within five working days of the date on which the complaint was resolved'.

Start date of formal investigations

Welsh guidance advises that, before a formal investigation begins, a 'written record' containing the substance of the complaint should be agreed. This means that, in Wales, a formal investigation starts on the date upon which 'the written record of the subject matter of the complaint is agreed in writing'.

Welsh guidance goes on to advise that the investigation stage must be complete (and a full written response sent to the complainant) within 25 working days of the start date. If a complaint is complex and it is not possible to complete the process within this time period, the Welsh guidance states: 'This full response must be issued as soon as possible and no later than six months from the date on which the

complaint was received.'

Unless otherwise marked, information in this section was taken from A Guide to Handling Complaints and Representations by Local Authority Social Services. While this guidance was written for local authority social services, parts of it can act as an excellent best practice guide, where the guidance complements existing legal requirements and relevant consumer law, for private, independent, charitable, and voluntary and not-for-profit care homes to follow, in conjunction with the CMA's compliance advice.

Northern Ireland

Formalising verbal complaints in writing

Complaints can be made in a number of ways, including verbally, electronically or in writing. However, if a verbal complaint is made, the complainant should be asked to formalise it in writing. If they are unable to do this, they should be given assistance or directed to the Patient and Client Council.

What information you should include on your complaints system

Guidance suggests that information recorded on your complaints system need not be long or detailed, but some examples of what information should be included are:

- who or what is being complained about, including the names of staff if known
- where and when the events of the complaint happened
- where possible, what remedy is being sought - for example, an apology or an explanation, or changes to services

Allowing oversight of your CHP by a HSC Trust

If your care home is contracted to provide services to residents by a Health and Social Care Trust (HSC Trust), your care home's complaints handling procedure (CHP) should follow certain principles defined in guidance for the Health and Social Care Complaints Procedure, as well as sector-specific laws and guidance. You should also have an agreement with any HSC Trust you work with to regularly share information relating to all the complaints you receive and respond to. Your record of complaints should include information about any subsequent investigation, its outcome and any actions taken. This record must be submitted to the HSC Trust no longer than 10 working days after the end of each quarter for complaints closed in that period.

You must also review your complaints procedure on an annual basis, and as part of that include a review of any investigations carried out during the preceding year, to make sure that lessons have been learned, with any necessary changes made to practice and procedure. This annual review must be available for inspection by HSC Trust staff on request.

Informing complainants about your complaints process

When a complaint is made at your care home, you should have a nominated complaints manager who should give the complainant more information about your complaints process, which may include locally produced information leaflets or those provided by the ombudsman's office or Regulation and Quality Improvement Authority.

Time limits within which residents should complain

There are time limits within which your residents or their representatives can make a complaint about a service they receive at your care home. If they were not originally aware that they had cause for concern, they have six months from becoming aware of it to make their complaint, or 12 months from the date of the event, whichever is earlier.

If your complaints manager decides not to pursue a complaint because it falls outside of the time limit set, the complainant can ask the ombudsman to consider it.

Timescales for acknowledging and responding to complaints

When you first receive a complaint, you must acknowledge it in writing within two working days of receipt. A full response should be provided within 20 working days. If complaints relate to family practitioner services, such as opticians or GP services, these should be acknowledged within three working days, and a full response given within 10 working days. The guidance goes on to add: "A copy of the complaint and its acknowledgement should be sent to any person involved in the complaint, unless there are reasonable grounds to believe that to do so would be detrimental to that person's health or wellbeing."

If an extension to the time limit is required, the complainant must be updated every 20 working days on their complaint's progress.

When you are trying to conclude complaints at the local resolution stage (that is, at your home using your CHP) guidance suggests that you should give the complainant one month to come back to you if they remain dissatisfied or require further clarity.

Unless otherwise marked, information in this section was taken from [Guidance in Relation to the HSC Complaints Procedure](#). While this guidance was written for health and social care services, parts of it can act as an excellent best practice guide, where the guidance complements existing legal requirements and relevant consumer law, for private, independent, charitable, and voluntary and not-for-profit care homes to follow, in conjunction with the CMA's compliance advice.

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