

Factsheet 59

How to resolve problems and complain about social care

February 2018

About this factsheet

This factsheet explains what to do if you are not satisfied with any aspect of the service you receive from your local authority.

Some problems or issues can be resolved informally, for example via discussion with the professional concerned or their manager. If this is not possible, you can make a formal complaint, triggering a procedure that must be followed by the local authority.

We also cover other ways of asserting your rights, challenging decisions and complaining about the quality of services.

This factsheet can be read in conjunction with other ones on social care, for example, factsheet 41, *How to get care and support*. Factsheet 66, *Resolving problems and making a complaint about NHS care*, may also be relevant.

The information given in this factsheet is applicable in England. If you are in Wales, Scotland or Northern Ireland, contact Age Cymru, Age Scotland or Age NI for information. Contact details can be found at the back of this factsheet.

The information in this factsheet is correct for the period February 2018 to January 2019. However, rules and guidance sometimes change during the year.

Contact details for any organisations mentioned in this factsheet can be found in the *Useful Organisations* section.

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1 Recent developments

The *Care Act 2014*, supporting regulations and the *Care and Support Statutory Guidance 2014* ('*the statutory guidance*') were introduced in April 2015. This is the law on which adult social care in England is based and your local authority must adhere to it when it works with you.

2 Sources and terms used in this factsheet

The complaints regulations

The health and social care complaints systems are based on the *Local Authority Social Services and National Health Services Complaints (England) Regulations 2009* ('*the complaints regulations*'), made under powers in sections 113 to 115 of the *Health and Social Care (Community Health and Standards) Act 2003*. The first section of this factsheet is based on the social care-related part of these regulations.

Terminology

The terms '*community care*', '*social services*' and '*social care*' can be used interchangeably to describe the broad range of services provided by local authority social services departments, for example home care services or care home provision. The term '*local authority*' is used in this factsheet to describe all these service areas.

The body responsible for responding to a complaint is called the '*responsible body*' in the complaints regulations. This can be the local authority or another body such as the local Clinical Commissioning Group if health needs to take the lead. We generally refer to '*your local authority*' in this factsheet. Factsheet 66, *Resolving problems and making a complaint about NHS care*, covers health complaints.

3 Introduction

Your local authority is there to serve you in your time of need. You have the right to complain if they do not treat you in a professional and caring way. As a public body, they must adhere to a range of laws and standards when working with you, for example they must protect your human rights, make sure you are not discriminated against (see section 10) and must seek to maximise your wellbeing as defined by the *Care Act 2014*.

Most problems that arise should be able to be dealt with informally through conversations, e-mails, letters or meetings. However, you may feel it necessary to make a formal complaint if you cannot resolve a particular issue. Your complaint should be valued by your local authority and seen as a way to potentially improve service provision.

The complaints regulations require your local authority to have a complaints procedure. You should be given a copy of 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. For example, it may be printed in different languages.

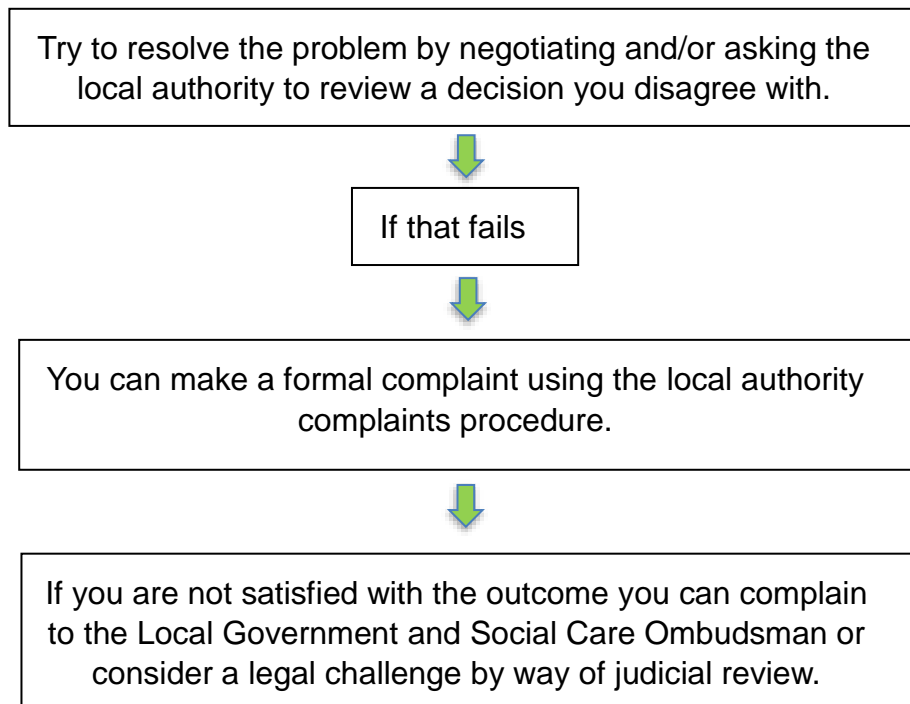
If your care is provided by an independent agency on behalf of your local authority, you can still complain to the local authority because they remain responsible for ensuring you receive appropriate care and support.

The Local Government and Social Care Ombudsman (LGO) service exists to deal with complaints that cannot be resolved to your satisfaction by your local authority. They look at how it has acted regarding your case. They also act as a complaints service if you privately arrange and fund your own care and support (see section 5) and have not sought local authority assistance.

Judicial review may be another legal option (see section 7).

4 The complaints procedure

The main routes to resolving problems with your local authority are:



Once it receives your complaint, your local authority must respond to you based on its complaints procedure. It can design its own scheme, but it must meet the requirements of the complaints regulations.

4.1 What can you complain about?

A complaint has been described as being an expression of dissatisfaction or disquiet about the actions, decisions or apparent failings of a local authority's adult social services provision which requires a response.

You have a right to complain about any aspect of a service being provided by your local authority apart from in a few circumstances. Your local authority must understand its legal powers and administer them in line with relevant laws, regulations and statutory guidance.

The following are examples of situations that might lead to a complaint:

- you have been inappropriately refused an assessment of your needs

- there have been excessive delays in dealing with your case
- your dignity and wellbeing have not been valued in your assessment
- your assessment has not considered all of your needs and related risks
- you have been told you are ineligible for a service but you disagree
- your allocated personal budget is insufficient to meet your eligible needs
- the services arranged for you are not satisfactory or adequate
- your local authority has not followed relevant legislation or regulations
- you have not been properly informed of your rights and options
- you have not been told about services such as advocacy or reablement
- your right to NHS continuing health care has not been explained to you
- the charging procedures have not been properly administered
- you have not been told about funding options such as deferred payments
- you have been wrongly asked to pay a top-up fee for a service
- poor communication between responsible professionals
- your service has been cut at a review due to funding pressures
- you have been treated in a discriminatory way or your human rights have not been respected.

Limitations on what you can complain about

The complaints regulations state your local authority does not have to deal with:

- complaints that are resolved to the complainant's satisfaction by the next working day
- complaints that were resolved or investigated under previous complaints regulations

- complaints that relate to the *Freedom of Information Act 2002*, which are dealt with by the Information Commissioner's Office.

4.2 How to make a complaint

A complaint to a local authority can be made verbally, in writing or electronically, for example by e-mail. The complaints regulations state your local authority must make a written record of a verbal complaint and provide you with a copy. It is advisable to make a formal complaint in writing or electronically, if possible, so you can be sure that it covers everything you want to say.

Clearly state that it is a formal complaint as this triggers the statutory response procedure. Try not to delay making the complaint if this is what you have decided to do as this can help you to remember relevant details. Make sure you are complaining to the right department. The senior manager is often a good person to address the complaint to.

Set out clearly the points you want to make and why you are complaining. For example, you could provide a time-line showing how things developed through various stages.

It may be useful to include something about the effect of the issue on you. For example, if you complain about the local authority reviewing your case and reducing your services, explain the practical difficulties you face, the emotional and/or financial impact; or you could include expert opinion, for example from a medical practitioner.

Your local authority should ask you what outcomes you want to achieve from your complaint. Basically, what it is that you would like to happen as a result of your complaint? Think about this prior to starting the complaints process and state these in your complaint.

4.3 Who can make a complaint?

If you are the service user, you can make the complaint. That is, if you are the person who receives the care and support from the local authority.

You can complain if you are not the service user but you are affected, or likely to be affected, by an action or decision of the service user's local authority. You could be a carer or partner of the service user.

A complaint can be made by your representative if you want this to happen. See section 4.6 for advocacy support rights under the *Care Act 2014*.

If you lack mental capacity, someone acting under the *Mental Capacity Act 2005* can complain on your behalf, for example if they have a lasting power of attorney. See factsheet 22, *Arranging for someone to make decisions on your behalf* for more information.

4.4 What to expect when you make a complaint

The complaints regulations are designed to promote a person-centred approach, meaning the response to your complaint should be tailored to your specific needs and wishes and the outcomes you want to achieve. This should see a flexible, prompt, response aimed at resolving your issue and dealing with your concerns.

You should be treated with respect and courtesy and should receive any necessary advice or assistance to understand and make use of the complaints procedure. You should be informed of the outcome of the investigation of your complaint and your local authority should ensure they take appropriate action, if necessary, in the light of the findings.

The complaints department

Your local authority has a complaints department, which deals with your complaint. When the complaint is received, it is sent to a manager in the department and then allocated to a worker for a response. The person who investigates your complaint may be employed by your local authority or may be an independent investigator. They must not be involved in any of the matters complained about.

Your local authority is called the '*responsible body*' in the complaints regulations.

Local authority duties when a complaint is made

Your complaint must be acknowledged by the local authority within three working days of its receipt. This can be verbally or in writing.

When a complaint is sent to a local authority but it seems that another body such as the local NHS Clinical Commissioning Group should take the lead in responding to it, they must respond to you within three working days once they receive the actual complaint. This may result in a slightly longer response time.

Your local authority must offer to discuss, at a time agreed with you, the way in which the complaint should be handled, how long the investigation is likely to take and what response you should expect.

If you do not want to meet to discuss the complaint, the local authority must still determine the response period and let you know in writing.

This means you should be provided with an opportunity to explain what you hope to achieve from the complaint and receive an initial response as to what is realistically achievable by the local authority.

The investigation of the complaint

The complaints regulations require your local authority to investigate your complaint as speedily and efficiently as possible and to keep you informed about its progress. After completing the investigation, they should send you a response, in writing, signed by the responsible person, which includes:

- an explanation of how your complaint has been considered
- the conclusions reached, including any action proposed
- confirmation of whether they are satisfied any action needed has been taken or is proposed to be taken
- details of your right to take your complaint to the Local Government and Social Care Ombudsman if you are not satisfied with the investigation outcome.

Your local authority must discuss their findings with you and what actions they think they should take to resolve the issue. They should seek your agreement about the planned actions before carrying them out.

An example could be where poor practice has been identified leading to an inappropriate decision about the care services necessary to meet your needs after an assessment. As a result of your complaint, your local authority apologise to you, promptly provide the appropriate service and reassure you that extra training has been put in place to ensure the workers involved are sufficiently skilled to carry out their professional duties in future.

4.5 Time limits for the complaint and response

Generally, you need to make a complaint within **12 months** of the date of the subject of the complaint, or if later, the date on which the matter came to your notice.

An exception may be made if you have good reason for not making the complaint within the time limit and it is still possible to investigate the complaint effectively and fairly.

There is a maximum time limit of **six months** for the complaint response, beginning on the day on which it is received. A longer response time is allowed if this is agreed by all concerned. If the six month time limit is not met, your local authority must send an explanation of the reason in writing and send the response as soon as possible.

If your local authority delays the process without a good reason, the Local Government and Social Care Ombudsman may agree to investigate. They have complaint time limits (see section 5).

4.6 Information, advice and advocacy duties

Your local authority is required to provide an information and advice service for all those with needs in its area under the *Care Act 2014*. This includes information on how to make a complaint or where to obtain assistance to do this.

It requires your local authority to provide an independent advocacy service, where needed, to assist you to make a complaint. This is if you struggle to understand or engage with the complaints procedure to communicate your views and have no one to support or help you. This builds on a separate but similar scheme under the *Mental Capacity Act 2005* for people who have significant mental impairment.

4.7 Co-operation and co-ordination duties

One of the reasons for linking health and social care in the complaints regulations is to create a joint-working duty where necessary. This is because a complaint may relate to both organisations, for example a hospital discharge where there are ongoing social care needs.

Your local authority must co-operate with other responsible bodies (such as the Clinical Commissioning Group) in handling a complaint affecting both of them. They have a duty to co-ordinate handling the complaint response.

The duty to co-operate includes a duty to agree which body takes the lead in handling your complaint and communicating with you. They must provide relevant information to the other body to assist in the consideration of the complaint and must attend, or ensure they are represented at, any related meetings.

There may be a requirement for a co-ordinated response between your local authority, a body such as a care home and the Care Quality Commission (CQC). This may be where a complaint is about the care received when a person was placed by the local authority. Care homes are service providers registered with and monitored by the CQC.

Your consent is required for the provision of information between the responsible bodies.

There are similar *Care Act 2014* co-operation duties requiring organisations to work together where necessary, for example in relation to safeguarding.

5 The Local Government and Social Care Ombudsman

If a complaint is not resolved to your satisfaction by the local authority, you may want to take it further. The most common way to do this is to complain to the Local Government and Social Care Ombudsman (LGO). They can decide whether to investigate the case.

Ombudsman services oversee how public bodies, such as local authorities, meet their legal duties and ensure accountability. For example, there is also a Parliamentary and Health Service Ombudsman.

The LGO has a website with a range of leaflets you can download or order. They also have a telephone advice line and you can ask for recent investigation reports, which may assist a complaint you plan to make.

5.1 How and when to make the complaint

The general time limit for making a complaint is **12 months**. The time starts to run from the date the issue you are complaining about took place or the date that you first became aware of it. One reason for the rule is because the longer the delay, the harder it is to gather evidence.

The LGO may investigate your complaint about events that occurred more than 12 months ago, but only if there is a good reason for the delay, which is not your fault. For example, you may have been prevented from complaining due to ill health, an inability to read or write English, or a mistaken belief that action had already been taken to resolve the issue. If your complaint is late, it is important to explain why and to show that the delay was not your fault.

You can phone the LGO for advice about making a complaint. There is an on-line complaint form. Whether you use that form, your complaint should generally be in writing and should set out both the issue you are complaining about and the injustice you have suffered. You can make your complaint by phone if this is easier for you.

Friends, relatives and voluntary sector advisers can complain on your behalf, with your permission. You can use a solicitor, but it is very unlikely you will get costs back, even if the LGO upholds your complaint. This is because it is not necessary to go through a solicitor to make a complaint.

If you lack mental capacity, someone empowered to act on your behalf can make the complaint. More information is in factsheet 22, *Arranging for someone to make decisions on your behalf*.

Practical tip: Keep your complaint as concise and clear as possible. If it has a long history, a chronology of the main events, with dates, can help the LGO investigator to understand what has happened. Provide copies of important relevant documents, for instance the complaint you made to the local authority and their response.

Note

The LGO expect you to have made a complaint to your local authority first, so they have had a chance to put things right.

If there is unreasonable delay in dealing with your complaint, or you have good reason for losing faith in the local authority's ability or willingness to deal with your complaint, they may agree to investigate your complaint even though you have not completed the local authority procedure.

5.2 How the LGO deals with complaints

The LGO generally cannot investigate your complaint until the local authority has been given the chance to resolve it first through its own complaints procedure. They cannot investigate a complaint if you are taking other legal proceedings relating to the issue. According to the LGO website, complaints are usually resolved within 3 months to a year, depending on the complexity.

The LGO decides whether to carry out an investigation. If they agree the complaint is one that is within their remit, they allocate an investigator who contacts you. The investigator also contacts your local authority to consider their views on the issue.

The LGO decides whether to take on your case based on the presenting facts and circumstances. Their focus is on whether your local authority acted legally, reasonably and fairly towards you and whether you experienced any injustice as a result. It may find there has been maladministration leading to injustice and make recommendation to remedy this.

5.3 What is maladministration?

Maladministration involves failings in the way an action or decision has been taken by your local authority, or where it has not taken action when it ought to have done. This is in relation to the statutory powers under which it acts. It is a broad term and can relate to issues such as:

- unjustified delay
- unfair discrimination
- failure to abide by agreed procedures
- failure to have proper procedures in place
- failure to understand or carry out legal duties
- treatment that does not have regard to wellbeing or dignity
- failure to respect human rights.

This is not a complete list, more examples are on the LGO website.

Note

The LGO do not investigate a decision simply because you disagree with it. You must show there has been maladministration in the way the local authority has acted, or failed to act, leading to injustice

5.4 What level of injustice is required?

The LGO only investigate maladministration leading to injustice. This means the local authority actions or omissions have had a harmful impact on you.

You have to show the negative impact on you in your complaint and link this to maladministration. The LGO take your views into account when deciding whether to investigate.

The harm might be financial, psychological or practical in terms of your ability to lead the life you want to lead, or it could affect your carer if you have one. It can relate to distress you experienced in pursuing your complaint. Whatever it is it must be caused by the local authority's maladministration.

Practical tip: It is useful to include any evidence you have to show the injustice you have experienced. For example, if you paid for services the local authority should have provided for you, include copies of the bills.

5.5 Types of decision

An LGO investigation leads to one of the following outcomes or findings.

Fault

This means the complaint against the local authority is upheld by the LGO. It meets the maladministration leading to injustice threshold.

No fault

The decision might be there has been no fault by the local authority. For example, it may be found the local authority has followed the correct procedure in reaching a decision even though you disagree with it.

Insufficient injustice

The decision may be that even if the local authority is at fault, the effect on you is not serious enough to justify continuing to investigate the complaint.

Local settlement

If it is found that the local authority has done something wrong that has caused problems for you, the LGO often try to resolve complaints without the need for a full investigation and report.

Instead the investigator tries to agree with the local authority the steps needed to put things right. If these can be agreed in principle, they take your views about settlement into account, but usually stop the investigation once a local settlement has been reached. This can happen at any stage of the investigation.

Report

Most decisions are made by letter, but sometimes the LGO needs to write a formal report about a complaint if it is against a local authority.

This can happen, for example, if the local authority does not agree to the suggested settlement or if the LGO thinks the issue is of particular interest to the public.

If so, they send you and the local authority a draft report setting out the main facts and asking for suggested changes or comments. Unless there are special reasons, the report is made available to the public and includes the LGO's recommendations to put the injustice right. They do not publish your name.

If a local authority does not follow the recommendations set out in the report, the LGO may produce a second report dealing with the non-compliance, but this is rare. Many cases are dealt with without the need for a full investigation or the publication of a report.

5.6 What powers does the LGO have?

The LGO has the power to insist on seeing information held by your local authority to help its investigation. They can make recommendations about what your local authority should do to put things right. This can include:

- a written apology to you
- reviewing policies to make changes in line with LGO recommendations
- payment of compensation to you for injustice suffered.

5.7 Self-funders' right to complain to the LGO

If you arrange and fund your own care and support without support from a local authority, the LGO acts as a complaints service for you. This is because you would not have access to a local authority complaints service. This could, for example, be related to care in a care home or home care services in your own home.

Each service provider of this type must be registered with the Care Quality Commission and work within its *Fundamental Standards* (see section 9). One of the *Standards'* requirements is they must operate their own, easily accessible, complaints procedure. It may be advisable to try to resolve your issue via this mechanism before complaining to the LGO.

6 The Local Government Monitoring Officer

Your local authority must appoint a monitoring officer under *the Local Government Act 1989*. Often, the chief executive or head of legal services fulfils this role. They have a duty to report any new proposals or decisions which are, or could be, in contravention of existing law and therefore unlawful; or could be a matter of maladministration or injustice in a Local Government and Social Care Ombudsman investigation.

In preparing the report, the monitoring officer must consult, as far as possible, the local authority chief executive (except where the chief executive is also the monitoring officer) and the chief finance officer.

Once prepared, the report must be sent to all the local authority members (elected councillors) who have responsibility for the decision or proposal. For social care matters, this includes all the councillors who sit on the Social Services Committee.

Once the monitoring officer has reported, local authority members must call a meeting to consider the report within 21 days. In the meantime, before the monitoring officer's report has been considered by members, the local authority must not proceed with the proposal or decision in question.

Note

If you think a decision or policy proposal by your local authority is, or could be, unlawful, or a matter of maladministration or injustice, you can contact the monitoring officer and ask them to set out their view.

It is not necessary to use a solicitor to do this, although some people find it helpful.

The local authority legal department or unit should be able to tell you how to contact the monitoring officer. Contact can be made by a telephone call, or by letter, fax or other recorded form.

7 Judicial review

If you are unhappy with the way your local authority has dealt with your case and your complaint has not resolved the problem, one option is to consider making an application to the High Court for a judicial review.

Note

You cannot complain to the Local Government and Social Care Ombudsman and also undertake a judicial review, so it is important to decide which route is the best option for your situation.

What is judicial review?

The High Court reviews a decision, act or omission by a public body, such as a local authority, to decide whether it has acted unlawfully. Parliament gives public bodies legal duties and discretionary powers (choices) to carry out their functions. They must fulfil those legal duties and exercise discretionary powers in line with statute, regulations and binding guidance. If they fail to do so, they may be challenged via judicial review. The duty to observe human rights and equality laws is also relevant in each case (see section 10).

The court does not consider the merits of the decision, only whether it has been reached lawfully. If not, the court can make a range of orders, with the most common one being a '*quashing order*'. This means the court overturns the decision made and the public body has to look at the case again and make a fresh and lawful decision. There is also provision for injunctions and other emergency procedures where needed.

An example of this could be if a local authority proposes to introduce a blanket policy that says they will not provide home care services to anyone aged over 70 years of age. This would '*fetter their discretion*' to treat each resident according to their individual circumstances and might be found to be unlawful if challenged through judicial review.

In *Sefton Care Association & Ors, R (on the application of) v Sefton Council [2011] EWHC 2676 (Admin) (9 November 2011)* the High Court quashed a decision to freeze care home fees because the Council had not considered the actual cost of providing care, which was required by statutory guidance.

Important points to consider – time and cost

There is a strict **3-month** time limit for bringing a judicial review. The time runs from the decision, act or omission complained about until the date the application is lodged in court. It is a potentially expensive process and is probably unrealistic unless you are eligible for Legal Aid and your case has sufficient merit to meet the merits test for funding. You need advice from a solicitor with appropriate expertise and experience before taking a judicial review.

The basic process

The judicial review process consists of these stages:

- A '*letter before action*' is sent to the public body. This sets out the relevant facts, why it is said that the public body has acted unlawfully and what needs to happen to put things right. This is usually written by a specialist solicitor.
- If the public body does not agree to resolve the problem, an application for judicial review is made. This is done with documents setting out the facts and legal arguments.

- A judge reads the documents and decides whether to grant permission for the case to go ahead. This does not usually involve any court hearing. (There is a right of appeal if permission is refused).
- If a judge grants permission, the public body has the chance to produce a written defence and the applicant must respond. A court date is set for the final hearing. After the court hearing the judge issues a written judgment setting out reasons for the court's decision.

At any stage, the public body can settle the case and/or the applicant can withdraw it, subject to consideration of who should pay any costs. In practice, many judicial review cases do not proceed, because the public body settles on receipt of the letter before action.

Where a case does go to a court hearing, the evidence is usually all in writing. If you make a judicial review application, you are extremely unlikely to be expected to attend court and give evidence. The judge reads the documents, listens to the arguments put forward by your barrister and by the barrister appointed by the public authority, and makes a decision.

What are the grounds for judicial review?

There are three types of grounds for judicial review: illegality, unreasonableness/irrationality and procedural unfairness.

Illegality – this can be a failure to carry out a statutory (legal) duty (for example, an assessment) or a breach of a human right (for example, not considering your right to home and family life). Your local authority must understand its legal duties and powers and act within them.

Illegal decision-making includes a local authority not following regulations or statutory guidance for eligibility criteria; operating a blanket policy and not genuinely considering each case on its own merits, or carrying out an assessment without taking account of all relevant factors such as social, psychological and cultural needs, which may be vital to a person's wellbeing, as defined by the *Care Act 2014*.

Unreasonableness/irrationality – this can be difficult to show in practice. A decision has to be very perverse before a court decides it is unreasonable or irrational.

A local charging policy that acted as a disincentive to claim disability benefits might be described as irrational. In *R (on the application of Carton and another) v Coventry City Council (2001) 4 CCLR for Community Care Law Review 41* a proposed charging policy was found to be ‘irrational, unlawful and unfair’.

Associated Provincial Picture Houses v Wednesbury Corporation [1948] 1 KB 223 set out helpful guidance on what actions may be considered. This can be summarised as: acting unlawfully, fettering (restricting) discretion (choice), bad faith or dishonesty, failing to consider relevant information, failing to exclude irrelevant information, or reaching a decision no reasonable person could make.

Procedurally unfair – your local authority must act fairly and give reasons for decisions that have a significant effect on your life.

For example, it is unlawful to reduce an existing care service at a review assessment without providing you with reasons. In *R (Savva) v Kensington and Chelsea Council RLBC [2010] EWCA Civ 120*, the court held that fairness required the local authority explain how it reached its final personal budget figure.

A local authority must seek the views of those affected by significant planned policy changes by public consultation, particularly if there will be a reduction in an existing benefit or level of support, for example introducing charging for carers’ services for the first time.

In *R v Brent London Borough Council, ex p Gunning (1985) 84 LGR 168*, a lawful consultation was held to require: consultation at a formative stage of a new proposal; sufficient reasons given to allow proper consideration and responses; adequate response time given; and responses to be genuinely taken into account when finalising the proposal.

In the *Sefton* case, the court held there was no meaningful consultation about a proposal to freeze care home fees paid by the local authority. When the care providers did express concerns about the proposal their views were not taken into account.

A local authority planning a significant local policy change must also take account of the Public Sector Equality Duty under section 149 of the *Equality Act 2010* (see section 10.2).

Note

Judicial Review is a specialised area of the law. If considering Judicial Review proceedings, it is important to act quickly and to make sure you consult a solicitor with the relevant expertise and experience. You must ensure you take advice about the potential costs which can be significant.

8 Other avenues of complaint and protection

Write to your local councillor or MP

It may be helpful to seek support from your local councillor or MP in dealing with a problem or where you feel that the formal complaints process has not dealt appropriately with your issue.

Safeguarding from abuse

Safeguarding issues may be part of a complaint to a local authority, for example regarding care standards in a care home. These may be identified following notification of concerns to the Care Quality Commission, which triggers a local authority safeguarding procedure and also possibly contact with the police.

These bodies must co-operate, act promptly, and share relevant information in an appropriate manner, with lawful consents provided by those concerned. For more information, see factsheet 78, *Safeguarding older people from abuse and neglect*.

Mental Capacity Act 2005 standards and rights

Where a complainant lacks the mental capacity to express their views, wishes and feelings or make specific decisions, all those concerned must work to the 'best interests' standards set out in the *Mental Capacity Act 2005* and Code of Practice. For more information, see factsheet 22, *Arranging for someone to make decisions on your behalf*.

9 Care Quality Commission

The Care Quality Commission (CQC) is the body responsible for regulating, monitoring and maintaining standards in health and adult social care in England.

The Fundamental Standards and complaints

A care home or home care agency providing your service must be registered with the CQC and meet a wide range of standards, known as the Fundamental Standards, based on the *Health and Social Care Act 2008 (Regulated Activities) Regulations 2014*.

The Fundamental Standards include a requirement that your care must be safe and appropriate to your needs and reflect your wishes and preferences. You must also be treated with dignity and respect.

People employed to care for you must be of good character, have the necessary qualifications, skills and experience and be able to perform the work for which they are employed (fit and proper persons requirement). Registered service providers must be open and transparent with service users about their care and treatment (the duty of candour), for example reporting incidents appropriately.

Regulation 16 requires all registered service providers to have an easily accessible complaints procedure, stating that:

any complaint received must be investigated and necessary and proportionate action must be taken in response to any failure identified by the complaint or investigation.

Explanatory CQC guidance states that *'people's care and treatment must not be affected if they make a complaint, or if somebody complains on their behalf'*.

The inspection regime and ratings system

The CQC has a four-tier rating system for each service provider, for example care homes. This rates services as: outstanding, good, requires improvement or inadequate. A team of specialist local inspectors monitor services against five key questions before giving a rating. They ask if the service is:

- safe
- caring

- effective
- responsive to a person's needs
- well-led

You can view detailed inspection reports on the CQC website.

Register a concern with the CQC

If you are not satisfied with any aspect of the service you receive from a CQC registered body, you can inform the CQC, by phone, letter or via the CQC's website. The CQC decide the level and type of response to take. They have a wide range of powers to investigate and enforce changes on the service provider and to carry out subsequent reviews.

An example could be reporting poor standards of care in a care home. This action can be made in conjunction with informal discussions with the managers of the service provider or while making a formal complaint to your local authority if they are involved with the provision of the service. If you feel it is not in your interests to liaise directly with the management of the organisation, you can contact the CQC and make a complaint to the local authority.

Note

The CQC does not have a general duty to respond to you individually in the same way as a local authority complaint. If you register a concern, this adds to the local inspector's knowledge of the services they are responsible for.

Urgent response

In certain circumstances the CQC has a duty to act urgently, for example where the information it receives leads it to believe that there is a risk to individuals or where criminal activity has taken place. CQC actions may include liaising with your local authority or the police, and involvement in local safeguarding and complaints procedures.

10 Human rights and equality

Note

Your local authority must not act in a way that is incompatible with human rights and equality laws and all staff must understand them.

10.1 Human rights

The *Human Rights Act 1998* sets out a number of basic rights that cover issues such as: a right to life, a right to privacy, and rights to home and family life. Most of these rights are qualified and not absolute. This means some rights can be interfered with in certain circumstances set out in the Article itself. Any such interference must be legal, necessary and proportionate to your individual circumstances.

It is useful to be aware how these rights may relate to issues such as: poor treatment by your home carer or in a care home; whether you can be supported to stay at home or need to be moved to a care home; and being placed in a care home a long way from other social support.

Practical tip: In the context of local authority or LGO complaints, it can be useful to show you are aware of human rights laws and principles in terms of your local authority's duties and, if appropriate, relate your situation to one or more of the Articles in the Act.

Commonly used articles in the Act include:

- Article 2 – the right to life
- Article 3 – the prohibition on inhuman and degrading treatment
- Article 5 – the right to liberty
- Article 8 – the right to respect for private, family and home life
- Article 14 – prohibition on discrimination (in relation to the enjoyment of other Convention rights).

The *Health and Social Care Act 2008* confirms that a private or voluntary sector run care home contracted by a local authority to provide accommodation is subject to the *Human Rights Act 1998*.

The Care Act 2014

Section 73 of the *Care Act 2014* provides *Human Rights Act 1998* protections to those receiving personal care at home or cared for in a care home regardless of the service provider, as long as it is arranged and funded by the local authority. This includes services funded through direct payments.

It applies to all care providers regulated by the Care Quality Commission and its equivalents elsewhere in the UK who are carrying out a '*public function*' on behalf of the local authority to meet assessed needs.

These protections do not extend to buying completely private care provision where the State is not involved in the arrangement in any way.

The Care Quality Commission and human rights

The Care Quality Commission assesses its health and social care registered service providers under various standards including how they uphold human rights and equalities. For further information see:

www.cqc.org.uk/content/equality-and-human-rights

10.2 Equality and discrimination

The *Equality Act 2010* prohibits discrimination relating to certain '*protected characteristics*' that people may have.

What is discrimination?

The Equality and Human Rights Commission describes discrimination as:

- treating one person worse than another because of a protected characteristic (known as direct discrimination), or
- putting in place a rule or policy or way of doing things that has a worse impact on someone with a protected characteristic than someone without one, when this cannot be objectively justified (known as indirect discrimination).

Protected characteristics

The protected characteristics under the 2010 Act are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation. Two that sometimes relate to older people in social care are age and disability.

Disability and 'reasonable adjustments'

The 2010 Act says that service providers, such as care homes, must take reasonable steps to remove any barriers you might face to accessing their services because of your disability. This can relate to policies or practices or the physical environment if this causes a barrier to access.

You may need particular adaptations or equipment to help you or additional services such as extra staff assistance.

There may be a requirement for an auxiliary aid and services, for example: a portable induction loop with hearing aids, a British Sign Language interpreter or provision of information in an alternative format, such as Braille or audio CD's.

These requirements should inform all local authority and health service plans and procedures. Whether an adjustment is reasonable depends on the size and resources of the organisation and type of service they provide.

It also depends on what changes or adjustments are needed and how practicable or easy it is to do them. Whether something is reasonable or not is decided in court cases brought under the 2010 Act.

Public Sector Equality Duty

The Public Sector Equality Duty requires all public bodies, such as local authorities, to have due regard to the need to: eliminate discrimination, advance equality of opportunity and foster good relations between protected groups.

This can relate to a policy that appears to apply to everyone in the same way, but, because you have one of the protected characteristics, it puts you at a particular disadvantage.

The Equality and Human Rights Commission

The Equality and Human Rights Commission has a range of general enforcement and investigation powers. They can provide assistance to individual litigants in legal proceedings concerning equalities legislation. See the Equality Advisory and Support Service website for more information.

For further information see factsheet 79, *Equality, discrimination and the Public Sector Equality Duty*.

Useful organisations

Care Quality Commission

www.cqc.org.uk/

Telephone: 03000 616 161 (free call)

The independent regulator of adult health and social care services in England, whether provided by the NHS, local authorities, private companies or voluntary organisations.

Citizens Advice

www.citizensadvice.org.uk

Telephone 0344 411 1444

National network of advice centres offering free, confidential, independent advice, face to face or by telephone.

Disability Rights UK

www.disabilityrightsuk.org

Telephone 0203 687 0779

Offers advice and information on access, housing, holidays, mobility, education, employment benefits and social service provision.

Equality Advisory Support Service

www.equalityadvisoryservice.com

Telephone helpline 0808 800 0082 Mon-Fri 9am-7pm,
Sat 10am-2pm

Funded by the Equality and Human Rights Commission, the EASS Helpline provides information and advice about the *Equality Act 2010*.

Local Government and Social Care Ombudsman

www.lgo.org.uk

Telephone 0300 061 0614

The Local Government and Social Care Ombudsman looks at complaints about councils and some other authorities. It is a free service; their job is to investigate complaints in a fair and independent way.

Age UK

Age UK provides advice and information for people in later life through our Age UK Advice line, publications and online. Call Age UK Advice or Age Cymru Advice to find out whether there is a local Age UK near you, and to order free copies of our information guides and factsheets.

Age UK Advice

www.ageuk.org.uk

0800 169 65 65

Lines are open seven days a week from 8.00am to 7.00pm

In Wales contact

Age Cymru Advice

www.agecymru.org.uk

0800 022 3444

In Northern Ireland contact

Age NI

www.ageni.org

0808 808 7575

In Scotland contact

Age Scotland

www.agescotland.org.uk

0800 124 4222

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