

Factsheet 59w ● January 2020

How to resolve problems and make a complaint about social care in Wales



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1 Information about this factsheet and who can use the local authority social services complaints procedure

Note: The information given in this factsheet is applicable in Wales. Different rules may apply in England, Northern Ireland and Scotland. Contact Age UK, Age NI and Age Scotland respectively for further information – see section 20 for their contact details.

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.

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 18) and must seek to maximise your wellbeing, as defined in the *Social Services and Wellbeing (Wales) Act 2014* – see section 2 below.

There is also information in the factsheet on other ways that you may be able to assert your rights, challenge decisions or complain about the quality of services.

You may also find it helpful to refer to our other main resource on social care – Factsheet 41w *Social care assessments for older people with care needs in Wales* – in conjunction with this factsheet.

This factsheet is applicable to complaints in relation to all types of social care service – i.e. whether the services you are receiving are:

- within your own home, or at a day centre, for example; *or*
- if you have been provided with a placement in a residential care home or nursing care home.

As such, some of our other factsheets on homecare and care homes might also be useful to read in conjunction with this one, depending on your specific situation. A full list of the related titles can be found at the beginning of Factsheet 41w.

1.1 The remit of the local authority social services complaints procedure

The majority of this factsheet is written from the perspective of where you have the right to pursue an issue via the local authority complaints procedure – i.e. this is where:

- the authority directly provides the service (or has declined to, but you believe they should be providing it); *or*
- where you are getting your services from a separate, independent, provider, but it is the local authority that has *arranged and commissioned* this service (that is, they have contracted a service to an independent provider, but because the authority ultimately has the responsibility for assessing and meeting your needs, you can direct your complaints to them).

If you have arranged a social care service entirely privately, then you would not be able to access the complaints procedure, though other avenues may be open to you if you have a complaint about the service received – see section 17 below.

An added complexity with services in a care home

The above bullet points are especially clear cut in regard to homecare services. However, with care home accommodation, when you may be able to utilise the local authority complaints procedure is more complex due to the specific means testing rules, which mean that some people will entirely self fund their care, even though the authority will have initial involvement in terms of assessing their care needs (and may also need to reassess the person's needs periodically).

If you are a self funder in a care home and arranged the placement entirely privately, without any input from your local authority, see section 17 below.

If, however, you are a self funder and the local authority has been involved in assessing you and recommending the need for a care home placement, you should be able to utilise the social services complaints procedure in the following scenarios:

- you are a self funder, but you decided to arrange your care in a home that is owned by the local authority;
- where the local authority has had to arrange the placement for someone as they were not able to do so themselves (and there was no one else available to help); *or*
- where the authority has arranged the placement because they were requested to do so by the self funder (using their right under the *Social Services and Well-being (Wales) Act* – see Age Cymru’s Factsheet 10w *Paying for a permanent care home placement in Wales* for further information on this issue).

However, under the last two scenarios, you may only be able to complain in regard to how the local authority exercised this *initial function* of choosing and organising a suitable care home (*rather* than in regard to complaints about the care received in the care home following this; therefore, you may also wish to read section 17 below).

1.2 Definitions and terminology

Local authority social services departments

In this factsheet references to the ‘local authority’ or ‘council’ will refer to the *adult social services department of the local authority*. You might also see the relevant social services department referred to elsewhere using similar variations – for example:

- social care department;
- adult social services;
- older persons’ department; or
- older persons’ team.

Adult social services teams are responsible, among other duties, for assessing people’s need for ‘care and support’ or ‘social care’ services and deciding whether those needs meet the eligibility criteria.

Note: Finding contact details for your social services department

If you have internet access, you can search for your local authority using your postcode on the Welsh Government's website:

<https://gov.wales/find-your-local-authority>

Alternatively, contact details for your authority should be available in your local telephone directory, or our Age Cymru Advice line can provide them – see section 19 for contact details.

2 Background – care needs assessments by the local authority social services department and subsequent service provision

The assessment and service provision process will generally consist of four main parts:

- An assessment of all the presenting needs and circumstances of the person who may require social services assistance.
- A decision as to whether any of the assessed needs should be met by the local authority under the eligibility criteria (i.e. a decision to provide services).
- If so, the nature and extent of services to be provided (the care and support plan).
- Financial assessment as appropriate (to determine how much you will need to contribute towards the cost of the services).

These stages should be undertaken separately, although in practice this may be difficult to distinguish.

Legal duty to carry out an assessment

The local authority has a legal duty to carry out an assessment of anyone living in its area who *may* need community care services, once it becomes aware of this need. The assessment must take into account *all* aspects of your needs.

An older person would nearly always be entitled to a needs assessment itself (though note that this wouldn't necessarily mean they would be deemed eligible for services as a result – this would depend on the level or extent of their needs that are identified in the assessment).

The Social Services and Well-being (Wales) Act 2014

This Act was fully implemented in April 2016 and is the main legislation that covers the social care system in Wales, including:

- the social care assessment process;
- related rules in regard to arranging and paying for care (be it in a care home, or non-residential services); *and*
- the guidance documents that local authorities must use when assessing needs and means testing people who may need to pay towards their services.

Note: The rest of this factsheet will go on to look specifically at raising concerns or making a complaint if something goes wrong in the assessment and/or service provision process – however, for further background information on the assessments, service provision and means testing, see Age Cymru's Factsheet 41w *Social care assessments for older people with care needs in Wales* and/or our other relevant social care factsheet titles.

3 What can you complain about?

Generally, you will have a right to complain about any aspect of a service (or lack of service) being provided by your local authority¹. For example:

- It is possible that after a care needs assessment your local authority will decide that your needs do not meet its criteria, so you may wish to complain about services not being provided; **or**
- you may be offered assistance, but feel that it is inadequate or inappropriate for your needs; **or**
- the authority may have refused to assess you at all and you may want to complain about this.

Note: Your local authority must understand its legal powers and administer them in line with relevant laws, regulations and statutory guidance – see section 4 below.

The following are further examples of situations that someone could make a complaint about:

¹ Welsh Government regulations include a few examples of matters which are “excluded from consideration as complaints”. These are “a complaint which has previously been investigated” under the local authority’s complaints procedure; “a complaint which is being or has been investigated by the Public Services Ombudsman for Wales; a complaint about alleged failure to comply with a request under the Freedom of Information Act 2000”; or “a complaint that is made orally, and is resolved to the satisfaction of the person who made the complaint, by the end of the working day following the day on which the complaint was made” – ‘A guide to handling complaints and representations by local authority social services’, Welsh Government, August 2014.

- There have been excessive delays in dealing with your case;
- not all aspects of your needs have been valued in your assessment (in the *Social Services and Well-being (Wales) Act 2014*, the Welsh Government has placed a lot of emphasis on the role of social care services in preventing “escalating need”², preventative services and promoting wellbeing and a person-centred approach to the assessment process. As such, in addition to care services to make sure that people can function (i.e. get up, get dressed, keep clean etc), social needs (enabling people to still get out and about and prevent isolation at home) should also be important – see Age Cymru’s Factsheet 41w *Social care assessments for older people with care needs in Wales* for further information on this topic);
- you have been told you are ineligible for a service but you disagree;
- it appears that your local authority may not have followed relevant legislation or regulations;
- you feel you have not been properly informed of your rights (such as for advocacy), or different types of care options (such as reablement);
- the charging procedures have not been properly administered (for example someone has been wrongly asked to pay a top-up fee in relation to care home funding);
- poor communication between responsible professionals;
- your service has been changed, reduced or stopped following a review of your care needs;
- you are unhappy with the conduct of care staff;
- you feel you have been treated in a discriminatory way or your human rights have not been respected.

² Social Services and Well-being (Wales) Act 2014: The Essentials, Welsh Government, 2015

3.1 Using your assessment information from the local authority to help formulate your complaint

Where a needs assessment has taken place, the local authority should put its decision – and the reasons for it – in writing and make a copy available to you.

If you are not offered this, you can contact them and request they send it to you.

You could use this document to assist you, should you decide to make a complaint – for example, you could point out, with reference to your assessment document and/or care plan, where you believe needs have been missed, underestimated, or there are gaps in help provided.

Note: Even if the assessment determines that you won't be eligible for a formal care package from the authority – and instead the authority has signposted you to community based, charitable, or preventative services – you should still get a copy of the assessment which can help you formulate a complaint. This is confirmed in Welsh Government guidance:

The needs of many individuals “can be met without a formal care and support plan. In such instances...other preventative and community based services...third sector, and user-led services **must** be clearly signposted [to the person who has been assessed]. A record of how these needs will be met without a formal care and support plan **must** be made on the assessment and eligibility tool”³.

“The national assessment and eligibility tool comprises...a statement of how the practitioner assesses the identified action will contribute to the achievement of the personal outcome or otherwise meet needs identified by the assessment. This applies to those needs which are to be met through the provision of care and support **and** those met through community based or preventative services...or by any other means” – “a copy of this assessment must be offered to the person”⁴.

³ Social Services and Well-being (Wales) Act 2014: Part 4 Code of Practice (Meeting Needs), Welsh Government

⁴ Social Services and Well-being (Wales) Act 2014: Part 3 Code of Practice (assessing the needs of individuals), Welsh Government

4 Welsh Government guidance on the complaints procedure

Note: All local authority social services departments are required by law to have a complaints procedure⁵. You should be given a copy of it on request.

Their complaints procedure must comply with standards stipulated by the Welsh Government – see section 4.1 immediately below.

Your local authority should publicise their 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. So, for example, “service users have the right to choose to use the Welsh language to proceed through the complaints process within local authority social services in Wales”⁶.

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 (if you have organised your services entirely privately, this would not be the case; however, see section 17 below).

4.1 ‘A guide to handling complaints and representations by local authority social services’, Welsh Government

This Welsh Government guidance – published in August 2014 – must be used by all local authorities in Wales. A copy can be accessed on their website at:

www.gov.wales/social-services-complaints-procedure

⁵ The Social Services Complaints Procedure (Wales) Regulations 2014.

⁶ A guide to handling complaints and representations by local authority social services, Welsh Government, August 2014

Relationship between the complaints guidance and the Social Services and Well-being (Wales) Act 2014

As it was published in August 2014, the complaints guidance pre-dates the full implementation of the *Social Services and Well-being (Wales) Act 2014* in April 2016 (and the various Code of Practice guidance documents which accompany this act). **However**, the Codes of Practice confirm that the 2014 complaints guidance remains in use and is the most up to date guidance. For example:

- **Social Services and Well-being (Wales) Act 2014: Part 2 Code of Practice (General Functions)**

“Individuals have a right to make a complaint directly to a local authority if they feel that the local authority has not complied with the overarching duties when exercising their functions under the [Social Services and Well-being (Wales)] Act”. “*A guide to handling complaints and representations by local authority social services* published in August 2014 sets out details of the two stage process local authorities must follow in responding to any complaints about the exercise of any of its social services functions”.

- **Social Services and Well-being (Wales) Act 2014: Part 10 Code of Practice (Advocacy)**

The “Social Services Complaints Procedure (Wales) Regulations 2014 establish a procedure which local authorities must follow in the consideration of representations made to them...under...the 2014 [Social Services and Well-being (Wales)] Act”⁷. Again, confirmation is given that the “detailed guidance on the complaints...process including the roles and responsibilities of key individuals...is set out in *A guide to handling complaints and representations by local authority social services*”.

⁷ The Social Services Complaints Procedure (Wales) Regulations 2014 are the regulations upon which the complaints guidance – ‘A guide to handling complaints and representations by local authority social services’ – is based.

Statutory basis for the complaints guidance (and local authority social services complaints procedures)

A guide to handling complaints and representations by local authority social services was issued “under Section 7 of the Local Authority Social Services Act 1970. This means that local authorities must comply with it – unless they can show good reason to depart from it”⁸.

5 The two stage complaints process (plus the additional role of the Public Services Ombudsman for Wales)

Note: Key staff roles outlined in the complaints guidance

Senior officer responsible for complaints – “Each local authority must designate a senior officer to be responsible for ensuring compliance with the organisation’s social services complaints procedures”.

Complaints Officer – Authorities “must appoint a Complaints Officer to manage the procedures for handling...complaints”. A person may be appointed “who is not an employee of the local authority. A Complaints Officer may [also] be appointed [in this role] for more than one local authority”. “They must “be independent of both professional line management and direct service providers. If located within the [authority’s] Social Services Department, they should report to a Senior Management Team member who is not responsible for operational service delivery”.

Independent Investigator – Appointed at a Formal Investigation stage, the Independent Investigator must be: “*a person who is neither a member nor officer of the local authority to which complaints have been made, or the spouse or civil partner of such a person but does include a person with whom the local authority has entered into a contract for services in order to conduct an investigation*”. They “may be an employee of another local authority, an employee of a Local Health Board or an independent expert in the matter being investigated [and] should be skilled and knowledgeable in the field that they are investigating”.

⁸ A guide to handling complaints and representations by local authority social services, Welsh Government, August 2014

5.1 Stage One – Local Resolution

If you make a complaint to the local authority social services department, Stage One of the process will involve an attempt at *'Local Resolution'* with the same local authority that made the original decision.

This will be via either:

- a face-to-face meeting; *or*
- by telephone discussion.

The aim here will be to resolve matters in a manner that you are happy with and avoid a more time consuming formal investigation.

The meeting or discussion “**must take place within 10 working days of the ‘date of acknowledgment’**” of the complaint⁹.

If the Stage One ‘Local Resolution’ approach “leads to the mutually acceptable resolution of the matter, the local authority must write to the complainant...with details of the terms of the resolution”¹⁰. This should occur within 5 working days of the date on which the complaint was successfully resolved.

Note: As indicated above, the Local Resolution stage will not involve an ‘Independent Investigator’.

5.2 Stage Two – Formal Investigation

The complaints guidance advises that the *'Formal Investigation'* stage should commence if:

⁹ Ibid

¹⁰ Ibid

- **“the seriousness of the complaint means that it is inappropriate to deal with [it at a] Local Resolution Stage”** (presumably this decision is taken by the local authority itself, though the guidance doesn’t clarify this); or
- **“the complainant remains dissatisfied at the end of the Local Resolution Stage”**; or
- **“the complainant has asked that their complaint be progressed immediately to the Formal Investigation Stage (without consideration at the Local Resolution Stage)”** (the guidance doesn’t appear to clarify here whether the authority could refuse on the basis that they didn’t think the complainant was sufficiently serious to miss out the Local Resolution Stage; rather it advises that “the Complaints Officer will provide advice...and will help to determine, through discussion with the complainant, if and when the complaint should move from Local Resolution to Formal Investigation”¹¹).

Appointment of an ‘Independent Investigator’

At a Formal Investigation stage, an ‘Independent Investigator’ must be appointed – see the ‘*Note*’ at the beginning of section 5 for information on rules around who the ‘Independent Investigator’ can be.

Role of the Independent Investigator

The complaints guidance outlines their role as follows. They should:

- “Investigate the complaint by undertaking a fact finding exercise which is impartial, open and transparent and proportionate to the seriousness of the complaint”;
- work with the Complaints Officer – see below – to ensure that all parties are fully involved in the process and informed of progress;
- compile a plan for the investigation, from the beginning to the end of the process;
- “interview those concerned and find out the facts”;

¹¹ Ibid

- provide a record of these interviews to those interviewed “and to the Complaints Officer”;
- “make constructive, proportionate and achievable recommendations”; and
- “prepare a report of the investigation for the local authority to consider”.

Role of the Complaints Officer

“The Complaints Officer must compile a formal written record of the complaint...within **5 working days** of the date that it is received as a Formal Investigation or moves from the Local Resolution stage to a Formal Investigation” (emphasis added).

As well as covering the subject of the complaint, the formal written record should include the outcome that the complainant would like to achieve. “It must be sent to the complainant with an invitation for the complainant to comment on its accuracy”.

The Complaints Officer should also “give information about the Independent Investigator”¹².

Managing the Formal Investigation

- “The Independent Investigator and the Complaints Officer...will plan how the Formal Investigation is to be carried out. This must take full account of the needs and circumstances of the complainant and be focussed on enabling them to take a full and meaningful part in the process”.
- Interviews “conducted as part of the Formal Investigation must be recorded in writing and the record checked for accuracy with the interviewee. The record should be amended if necessary. If there are unresolved disagreements these should be recorded”¹³.

¹² Ibid

¹³ Ibid

Completion of the investigation

- The Formal Investigation stage must be completed, with a full written response provided to the complainant, **within 25 working days** of the start date.
- In exceptional circumstances, the authority may take longer to deal with the complaint, but if this is the case, it must write to the complainant and tell them the reasons for the delay and an estimated day for completing their investigation. Also, **all** instances of delay due to exceptional circumstances “must be agreed by the Director of Social Services” at the local authority concerned¹⁴.

The report of the Formal Investigation

The Independent Investigator’s completed report will form the basis of the local authority’s response. The report should:

- “be evidence based with contributions from all the people involved”;
- “be written concisely and clearly, avoiding jargon, and easily understandable”;
- reach and make clear conclusions and recommendations for resolving the complaint; and
- “make recommendations for improving the service so that other service users do not have cause to make the same complaint”¹⁵.

The local authority’s response following completion of the Formal Investigation

The local authority will ultimately determine whether or not the complaint is upheld “and the action to be taken as a consequence”. The response – which “must be signed by the Director of Social Services” – will need to:

¹⁴ Ibid

¹⁵ Ibid

- Confirm whether the complaint is upheld or not upheld;
- “explain what action will be taken, if any, in light of the complaint”;
- “contain, where appropriate, an apology to the complainant”; and
- “offer the complainant an opportunity to discuss the response and the Independent Investigator’s report with an appropriate officer, usually the Complaints Officer”¹⁶.

If a complaint is not resolved at the Formal Investigation stage

In situations where someone feels their complaint has not been properly resolved at the Formal Investigation stage the local authority must inform them that they have the right to escalate their complaint to the Public Services Ombudsman for Wales – see below.

5.3 The role of the Public Services Ombudsman for Wales

If you have used the two stage local authority complaints procedure, but remain unsatisfied with the outcome and/or handling of your complaint, you can escalate your case to the Ombudsman.

As indicated above, you should generally have given the authority a reasonable opportunity to investigate and respond to your complaint before approaching the Ombudsman. However, there may be *some* instances where you could take a case to the Ombudsman, even if you haven’t yet exhausted the authority’s complaints procedure – this might be appropriate if the case seemed particularly serious, or the authority was not carrying out an investigation in compliance with the two stage process outlined above (and as such you could consider approaching the Ombudsman sooner).

The Ombudsman is impartial and independent from government bodies.

Note: More detailed information about the Public Services Ombudsman for Wales can be found in section 11 below.

¹⁶ Ibid

6 Information, advice and advocacy duties on local authorities (including in relation to complaints)

Information and advice

Section 17 in Part 2 of the *Social Services and Well-being (Wales) Act 2014* places duties on local authorities to provide “information, advice and assistance...relating to care and support”, including – as a minimum – “publication of information...on how the care and support system operates in the local authority area...the types of care and support available [and] how to access [this]”¹⁷. This would include information and advice in regard to following the complaints procedure.

Advocacy

The *Social Services and Well-being (Wales) Act* also contains duties for local authorities in regard to advocacy services. If you have difficulty in expressing your views and needs and feel that this would be excessively difficult within the assessment process, then an advocacy service may be of help to you. In many instances, the requirement on the local authority will be to make people aware of the availability of advocacy support, should they wish to utilise this; in others the authority will have a *specific duty* to “arrange an independent professional advocate” for someone¹⁸:

¹⁷ Social Services and Well-being (Wales) Act 2014: Part 2 Code of Practice (General Functions), Welsh Government

¹⁸ Social Services and Well-being (Wales) Act 2014: Part 10 Code of Practice (Advocacy), Welsh Government

● General advocacy duty

The Welsh Government has produced a Code of Practice specifically on the subject of advocacy in the context of the *Social Services and Well-being (Wales) Act* which states that, in all cases:

“To have voice and control, an individual must be able to feel that they are a genuinely equal partner in their interactions with professionals. It is, therefore open to any individual to exercise choice and to invite any advocate to support them in expressing their views, wishes and feelings”¹⁹.

In this context, you could ask a family member or friend to act as an informal advocate for you, or you could contact an organisation that operates a formal advocacy service (Age Cymru Advice may be able to advise you of suitable advocacy schemes in your area – see section 19 for contact details).

● The appointment of an ‘independent professional advocate’

Local authorities are advised in the guidance that they “**must** arrange for the provision of an independent professional advocate when a person can only overcome the barrier(s) to **participate fully in the assessment, care and support planning, review and safeguarding processes** with assistance from an appropriate individual, ***but there is no appropriate individual available***”²⁰.

In other words, this would be where an individual is finding it difficult to express their views in the assessment – or complaints – process, but there are no immediate, or suitable, family or friends to help them, nor is the individual able to independently access an advocacy service.

Note: Age Cymru’s Factsheet 41w *Social care assessments for older people with care needs in Wales* has some further information on local authority advocacy duties.

¹⁹ Ibid

²⁰ Ibid

7 Making a complaint on behalf of someone else

As indicated previously in the factsheet, the standard route for making a complaint will be for the service user to submit it themselves (be this where someone has been assessed and refused services, or has been provided services, but is unhappy with them).

However, depending on circumstances, someone else may be able to complain on their behalf. The *Social Services Complaints Procedure (Wales) Regulations 2014* allow a representative to make a complaint on a person's behalf where the service user:

- has confirmed that they have requested the representative to act (unless the authority had reason to believe that the representative was an inappropriate person to act in this role – see section 7.1 below);
- lacks capacity within the meaning of the Mental Capacity Act 2005 to make the decision that they wish to make a complaint (see section 7.2 below);
- has died since the issue occurred.

7.1 Possible issues in regard to the suitability of a person complaining on someone else's behalf

The Welsh Government's complaints guidance advises that **“any representative making a complaint on a person's behalf must be considered by social services to have sufficient interest in that person's welfare and be a suitable person”**.

The *Social Services Complaints Procedure (Wales) Regulations 2014* (upon which the Welsh Government's social services complaints guidance is based) also provide additional information:

“If in any case the local authority is of the opinion that any person making the complaint...does not have sufficient interest in the person's welfare or is not a suitable person to act as representative, the authority must notify the person in writing, stating the reasons for that opinion”.

No further clarification is provided as to why someone wouldn't be considered 'suitable', but a clear example should be where there was a safeguarding concern in respect of the person seeking to represent the service user (perhaps because of previous or ongoing abuse, or motives that don't seem to be connected to the care and wellbeing of the person concerned – also see section 15 below on the issue of safeguarding).

7.2 Further information on the Mental Capacity Act 2005 in relation to complaints about social services provision

If there are issues to do with mental capacity regarding a care needs assessment and/or the subsequent arrangement of services by a local authority – including where a complaint is being made – it is necessary for all those supporting or working with an individual to adhere to the '**best interest**' standards set out in the *Mental Capacity Act 2005*.

This legislation aims to protect people who may not be able to make certain decisions for themselves and to empower them to make their own decisions when possible. Important principles about mental capacity have been established by the Act:

- **A presumption of capacity** – every adult has the right to make his or her own decisions and must be assumed to have capacity to do so unless it is proved otherwise.
- **The right to be supported to make their own decisions** – all practicable steps must be taken to help a person make their own decision before anyone concludes that they are unable to do so.
- **The right to make eccentric or unwise decisions** – a person is not to be treated as being unable to make a decision simply because the decision they make is seen as unwise.
- **Best interests** – any decision made or action taken on behalf of people without capacity must be made in their best interests.
- **Least restrictive intervention** – anyone making a decision for or on behalf of a person without capacity should consider all effective alternatives and choose the one that is the least restrictive of the person's basic rights and freedoms.

Note: Neither the complaints guidance, nor the regulations which they are based on, appear to specify whether a family member or friend seeking to make a complaint on a person's behalf must already be an attorney for them under a Lasting Power of Attorney (or, alternatively, a deputy for the person, as appointed by the Court of Protection) – however, this may be the case.

Age UK's Factsheet 22 *Arranging for someone else to make decisions on your behalf* has further information on the Mental Capacity Act 2005, Power of Attorney and the Court of Protection.

8 Continuation of services during a dispute

If you have already been receiving a service/s from your local authority, but they are proposing a change in regard to your care plan, placement, or services **“the authority may need to defer or freeze the decision until the complaint is resolved”**.

Local authorities “should always consider deferring a decision that will have a significant effect on the life of a service user until the complaint...has been resolved, taking into account the welfare and safety of the person concerned. The decision to defer should follow a careful assessment of the needs of the individual, including the different risks that might flow from deferring or not deferring”.

The guidance further stresses that decisions on this issue “should be made on a case-by-case basis. But there should be a general presumption in favour of freezing a decision, unless, there is a good reason against it”. If needed, the Director of Social Services at the authority “should make the final decision”²¹.

²¹ A guide to handling complaints and representations by local authority social services, Welsh Government, August 2014

9 Complaint time limits

9.1 Time limits for submitting a complaint

You may submit a complaint “**up to 12 months after the date**” of the event or issue that you wish to complain about (or 12 months since the matter which is the cause of the complaint first came to your notice).

The Welsh Government’s guidance does, however, go on to state that “the time limit will not apply if the local authority is satisfied that there are good reasons for a complaint...not being made within these time limits and despite the delay it is still possible to investigate [it] effectively and fairly”²².

9.2 Time limits for local authorities in responding to a complaint

Local Resolution	As indicated in section 5.1 above, the local authority must hold a discussion with you within 10 working days of the ‘Date of acknowledgement’ of the complaint and then if a successful resolution of the issue occurs, supply you with written confirmation within 5 working days .
Formal Investigation	As indicated in section 5.2 above, Formal Investigations should be completed within 25 working days . In exceptional circumstances – which must be agreed by the Director of Social Services – the investigation can take longer, but must not exceed “ six months from the date on which the complaint was received”.

²² Ibid

10 Complaints involving more than one organisation

10.1 Where more than one local authority is involved

The Welsh Government's complaints guidance advises that when someone's complaint involves the actions of more than one local authority, "the Complaints Officers will be central to ensuring that a full and meaningful investigation is undertaken and that the complainant is kept informed"²³.

The *Social Services Complaints Procedure (Wales) Regulations 2014* require that one local authority must take the lead "and that the complainant, as far as is practicable, receives one comprehensive response".

10.2 Complaints that also involve different public bodies

The Welsh Government's complaints guidance advises local authority social services departments that they must "co-ordinate their investigations and responses with the other public bodies involved".

Complaints that also involve the NHS

The complaints guidance for local authorities "**has been aligned, where appropriate, with the NHS complaints procedure Putting Things Right**" and, as such, the NHS complaints guidance confirms that local authorities and the NHS should co-operate fully where complaints involve them both²⁴.

Further information on 'Putting Things Right' and NHS complaints can be found in Age Cymru's Factsheet 66w *Resolving problems and making a complaint about NHS care in Wales*.

²³ Ibid

²⁴ Ibid

Other public bodies

The Welsh Government has also published *Model Concerns and Complaints Policy and Guidance*.

This is “guidance to which public service providers should have regard when developing arrangements for the delivery of the...complaints handling service within their organisations [and the] guidance will be suitable for most organisations”.

“Variations can be introduced to take account of the size or operational requirements of organisations, but must not impact on people’s experience of a common approach in complaint handling by public service providers”²⁵.

Further information on this can be found on the Public Services Ombudsman for Wales website at:

www.ombudsman.wales/model-concerns-and-complaints-policy-and-guidance

²⁵ Model Concerns and Complaints Policy and Guidance, Welsh Government, 2011.

11 Further information on taking a complaint to the Public Services Ombudsman for Wales if you are unhappy with the local authority's response

The Ombudsman “is independent and impartial”. The Public Ombudsman for Wales cannot order public bodies to do what they recommend “but, in practice, they almost always do”²⁶.

Note: Self funders and the Ombudsman

This particular section of the factsheet examines in more detail the role of the Ombudsman in terms of escalating a complaint to them following the two stage local authority social services department complaints process – i.e. services arranged or commissioned by the authority.

The Ombudsman does, however, also have a role in regard to complaints where someone has arranged their own care, independent of social services – this issue is covered in section 17.3 below.

11.1 When can a complaint be escalated to the Ombudsman?

Generally, this can occur in two scenarios:

²⁶ 'Social Services Factsheet', Public Services Ombudsman for Wales website: www.ombudsman.wales/fact-sheets/social-services-general-information (last accessed 15 January 2020)

- As indicated in section 5 above, the Welsh Government’s complaints guidance advises that where someone feels their complaint has not been resolved at the Formal Investigation stage, they have the right to take their complaint onto the Public Services Ombudsman for Wales (and the local authority must inform them of this fact); **or**
- if you haven’t yet fully completed the local authority’s process, but feel they are taking too long to deal with the issue (the Ombudsman suggests that “12 weeks is a reasonable time” within which the authority should “give you a final reply”²⁷).

Note: In terms of the time limit for taking a complaint to the Ombudsman, they have stated that normally you would be expected “to bring your complaint to [them] within 12 months of becoming aware of the problem. However, if you have already spent time complaining directly to the body concerned, [they] will take this into account”²⁸.

11.2 Background information on the types of cases the Ombudsman can look into

The Ombudsman will not necessarily be able to take on every complaint that is received. The following table provides an overview of the issues that the Ombudsman can – and cannot – look into²⁹:

²⁷ Want to complain about a public body? – You and the Ombudsman, Public Services Ombudsman for Wales, November 2019

²⁸ Ibid

²⁹ The information in the table is based on the ‘Social Services Factsheet’ page of the Public Services Ombudsman for Wales website at: www.ombudsman.wales/fact-sheets/social-services-general-information.

<p>The Ombudsman <u>can</u> look at the following social services actions</p>	<p>The Ombudsman <i>cannot</i> look at the following social services actions</p>
<ul style="list-style-type: none"> ● The actions – or lack of actions – by a social services department in carrying out their standard functions, such as care needs assessments; safeguarding; or financial assessments (to determine the contribution towards the cost of services by service users). ● Complaints relating to the professional judgement of social services staff (though it should be noted that even though someone “may disagree with a decision of a public body [if that body] had a right to make the decision and arrived at it properly”, then the complaint cannot be examined³⁰). ● Whether a care needs assessment and/or a financial assessment “have been properly carried out in good time”. ● How the local authority has handled a complaint so far. 	<ul style="list-style-type: none"> ● Get involved in staff disciplinary or personnel issues at a local authority or tell the authority to provide someone with a different social worker; or determine how someone’s social needs should be met. ● Request information from a local authority on someone’s behalf. ● “Look at complaints about matters that have been, or are going, before the courts”. ● <i>Directly</i> investigate complaints of abuse, as this is the responsibility of agencies involved in safeguarding (see section 15 below)³¹. ● <i>Directly</i> investigate a service provider who has been contracted by the local authority to carry out care on its behalf.

³⁰ Want to complain about a public body? – You and the Ombudsman, Public Services Ombudsman for Wales, November 2019

³¹ The Ombudsman may, however, be able to examine the way that the authority has exercised certain functions in relation to their safeguarding duties (as indicated in the column on the left). The Ombudsman advises that “local authorities have the lead responsibility for safeguarding...and often have to work very closely with other agencies, such as Local Health Boards and the Police to carry out this function. Complaints about the management of safeguarding cases may need to be responded to by more than one agency and should be made to each relevant agency to be dealt with under its own complaints procedure. If the Ombudsman receives a complaint which contains information about the possibility of abuse or neglect, he will disclose that information to the relevant agencies, if it is in the public interest to do so” (see: www.ombudsman.wales/fact-sheets/social-services-general-information).

11.3 Initial actions by the Ombudsman when they receive your complaint

When they receive your complaint, the Ombudsman will:

- explain if they are not able to examine your case (and give the reason why); *or*
- if your complaint is one that they can look into – and they believe that there may have been a failing on behalf of the local authority – **they will initially “see if it is possible to sort out the matter informally”**³² (known as ‘Early Resolution’ – see section 11.4 below).
- If it doesn’t prove possible to resolve a case informally, the Ombudsman will carry out a **Formal Investigation** – see section 11.5 below.

11.4 Early Resolution of a case

The Ombudsman may “take the view that there is action that the organisation being complained about could take quickly to resolve a complaint. In these cases, [they] will contact the organisation involved to explain what [they] think might be done and seek its agreement to take that forward”³³.

Once the Ombudsman is satisfied that this action has been, or will be, taken, they will write to you to confirm this.

³² Want to complain about a public body? – You and the Ombudsman, Public Services Ombudsman for Wales, November 2019

³³ ‘What we do when we get your complaint about a public body in Wales: Factsheet’, Public Services Ombudsman for Wales website: www.ombudsman.wales/fact-sheets/complaints-against-public-bodies-our-procedure (last accessed 16 January 2020)

11.5 Formal investigations by the Ombudsman

The Ombudsman advises that if they cannot “sort out your complaint informally, particularly if it appears that there may have been a serious failure” on the part of the local authority, they will begin a formal investigation³⁴.

Note: Timescale for the Public Services Ombudsman for Wales to complete an investigation

The Welsh Government advises that the Ombudsman’s office should aim “to complete all investigations within 12 months but most are concluded sooner”³⁵.

How the formal investigation will proceed

- Your complaint will be passed to one of the Ombudsman’s investigators. He or she may well contact you to discuss your case and explain the process in more detail.
- The Ombudsman “will always write to you and the organisation confirming [their] decision to investigate...and ask [the organisation] for its formal comments and all relevant documents”³⁶.
- The Ombudsman will listen to both sides of the story.
- If a complaint involves “issues of a specialist nature [the Ombudsman] may obtain independent professional advice” to help them consider the situation³⁷.
- Having gathered and considered all the evidence, the Ombudsman should weigh up all the facts and reach an objective decision.

³⁴ Want to complain about a public body? – You and the Ombudsman, Public Services Ombudsman for Wales, November 2019

³⁵ A guide to handling complaints and representations by local authority social services, Welsh Government, August 2014

³⁶ ‘What we do when we get your complaint about a public body in Wales: Factsheet’, Public Services Ombudsman for Wales website:
www.ombudsman.wales/fact-sheets/complaints-against-public-bodies-our-procedure
(last accessed 16 January 2020)

³⁷ Want to complain about a public body? – You and the Ombudsman, Public Services Ombudsman for Wales, November 2019

11.6 Decision and report of the Formal Investigation

As a result of a formal investigation, the Ombudsman may find that:

- the local authority “has treated you fairly [and/or] you have not been disadvantaged in the particular circumstances” (the Ombudsman should provide you with their reasoning for this – see below); **or**
- the local authority “is at fault and that you have suffered because of it”. If so, the Ombudsman will “make recommendations on what the body should do to put things right”³⁸.

The Ombudsman’s report

As part of their formal investigation, the Ombudsman “will write a report or a letter” summing up the evidence they considered and the subsequent conclusions.

They should send this to you and the local authority. Both you and the authority should then have an opportunity to comment, prior to the Ombudsman “completing and issuing the final version of the report or letter”.

Note: The Ombudsman has stated that where they make recommendations to an organisation they “will also check to see how and when these are implemented”³⁹.

³⁸ Ibid

³⁹ ‘What we do when we get your complaint about a public body in Wales: Factsheet’, Public Services Ombudsman for Wales website: www.ombudsman.wales/fact-sheets/complaints-against-public-bodies-our-procedure (last accessed 16 January 2020)

Financial compensation

The Ombudsman's remit does **not** include obtaining compensation for people. Rather, their aim is “to try to put you in the position you would have been in if the public body had treated you properly and fairly in the first place” and often the Ombudsman will consider that an apology is sufficient. However, having said this, in some cases they may recommend that the local authority should:

- offer “a consolatory payment”; *and/or*
- make “good any losses you have suffered”; *and/or*
- ensure “you receive payments you were entitled to”⁴⁰.

11.7 If you are dissatisfied with a decision by the Ombudsman

Your options are fairly limited if you have navigated through the local authority's complaints procedure and then also taken a case to the Public Services Ombudsman for Wales, but are unhappy with their response. The Ombudsman addresses this issue as follows:

“Once we have issued a decision not to intervene in your complaint or have reached our final conclusions following an investigation, our task is effectively ended and the file is closed. We will not reopen a case solely because you may disagree with our decision but you can ask in writing (within twenty working days) for us to review your case if”:

- “you have relevant new evidence to show us”; *or*
- “you are able to demonstrate that information we had was not properly taken into account in making our decision”.

⁴⁰ Want to complain about a public body? – You and the Ombudsman, Public Services Ombudsman for Wales, November 2019

If so, “the Ombudsman’s Review and Service Quality Officer will consider whether there are grounds to review your case and whether further action is required”⁴¹.

Note: Further information can be found on the Ombudsman’s website at:

www.ombudsman.wales/how-to-complain-about-us-or-request-a-review-of-a-decision-we-have-taken

12 Judicial review

12.1 Background information on 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. This process involves the High Court reviewing 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 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 18 below).

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.

⁴¹ ‘What we do when we get your complaint about a public body in Wales: Factsheet’, Public Services Ombudsman for Wales website: www.ombudsman.wales/fact-sheets/complaints-against-public-bodies-our-procedure (last accessed 16 January 2020)

12.2 Important information to bear in mind

If you undertake a judicial review, you will not be able to take the case to the Public Services Ombudsman for Wales at the same time⁴².

Also, judicial review is a specialised area of the law, so if considering this course, it is important to make sure you consult a solicitor with the relevant expertise and experience.

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 test for funding.

Further information on finding legal advice, including Legal Aid, is available in Age UK's Factsheet 43 *Getting legal advice*.

Note: 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.

12.3 What are the grounds for judicial review?

There are three types of grounds for judicial review – illegality; unreasonableness/irrationality; or procedural unfairness:

⁴² As indicated in section 11.2 above, the Ombudsman cannot “look at complaints about matters that have been, or are going, before the courts” (see the ‘Social Services Factsheet’ page of the Public Services Ombudsman for Wales website at: www.ombudsman.wales/fact-sheets/social-services-general-information)

Illegality

This can be a failure to carry out a statutory – legal – duty (for example, a care needs assessment⁴³), 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 could include an 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 *Social Services and Well-being (Wales) Act 2014*).

Unreasonableness or irrationality

This can be difficult to show in practice and a decision has to be very perverse before a court decides it is unreasonable or irrational.

Procedural unfairness

Local authorities 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. 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.

An 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* (also see section 18 below).

⁴³ As indicated in section 2 above, local authorities have a legal duty to carry out an assessment of anyone living in their area who may need community care services, once it becomes aware of this need.

12.4 Further information on judicial review

The Welsh Government's 'Law Wales' website has further information on judicial review. You can visit the website address below and type 'judicial review' into the search box to access the information:

<https://law.gov.wales>

13 The role of the regulator for social care – Care Inspectorate Wales

The Care Inspectorate Wales (CIW) is the body responsible for inspecting, regulating and maintaining standards in social care services in Wales. This includes services provided directly by a local authority social services department, or separate home care agencies or care home providers that the authority may have commissioned to provide the services they have assessed you as needing.

CIW have a range of powers to investigate, enforce changes on service providers and then to carry out subsequent reviews.

You may contact only the CIW in relation to your concerns, or at the same time as making a formal complaint to the local authority.

The CIW does not have a duty to respond to you individually in the same way as a local authority complaint. What they will do, however, is record your concerns which may then be used to inform their work of maintaining overall standards. Potentially, your evidence may be used – in addition to that from other sources and CIW's inspections – to decide whether or not a social care service is meeting minimum standards and, if not, whether CIW will need to use its powers to compel a local authority (or other service provider) to improve their service.

The CIW will have to act urgently in certain situations – for example, where the information it receives leads it to believe that there is a significant risk to individuals (i.e. a safeguarding concern – also see section 15 below), or where criminal activity has taken place.

See section 19 below for contact details for CIW.

14 Who else could you contact if you are unsatisfied with services provided or arranged by the local authority social services department?

14.1 Older People's Commissioner for Wales

You can contact the Older People's Commissioner for Wales in regard to any concerns you have about a local authority's assessment process, social care services provided by the local authority, or from another organisation.

The role of the Commissioner is to ensure that the interests of older people in Wales, aged 60 or over, are safeguarded and promoted – contact details can be found in section 19 below.

14.2 Contacting a political representative – local councillors or your Assembly Members (AMs)

You might wish to contact your local councillors, to see if they will support you in pursuing your case.

You could also contact your Assembly Members (AMs) if you feel that they should know that the system is not working for you. Contact details can be obtained from the National Assembly for Wales website at:

www.assemblywales.org/memhome.htm

15 Safeguarding concerns in relation to social care services

Safeguarding issues may be part of a complaint to a local authority, for example regarding:

- potential abuse perpetrated by a carer;
- repeated instances of poor care, be it through neglect or poor professional practice resulting from inadequate policies or processes within an organisation;
- staff not following care plans that are in place;
- people being given unnecessary medication (for example, what have been termed ‘chemical cosh’ medicines as an alternative to providing an appropriate level of care to manage complex needs); or
- dehumanising and/or abusive language.

In these types of scenario an adult protection case may need to be pursued. Age Cymru has detailed information on this topic in our Factsheet 78w *Safeguarding older people in Wales from abuse and neglect*.

16 Complaints about social care staff – regulation of the social care workforce

Certain members of the social care workforce in Wales must be registered with **Social Care Wales**, a body with responsibility for regulating and developing the social care workforce in Wales.

Part of this remit involves providing assurance to the public that social care workers will be of good character and competent to provide safe care.

Note: Social Care Wales (SCW) should not be confused with the Care Inspectorate Wales (CIW) discussed in section 13 above. Whilst SCW regulates certain *individual professionals and/or managers* working within the social care sector, CIW’s remit is different and regulates and inspects *services*, such as the companies who run care homes.

16.1 Who needs to register with Social Care Wales

The following people working in the social care sector must be registered with SCW:

- “All social workers and social care managers”⁴⁴ (plus “students studying approved social work degrees in Wales”⁴⁵);
- adult care home managers and domiciliary care managers⁴⁶; *and*
- **from April 2020**, “domiciliary care workers” as well as managers will need to be registered⁴⁷.

Note: It will also become mandatory for adult care home workers “to register from 2022”⁴⁸.

16.2 How to raise a concern about someone registered with Social Care Wales

Social Care Wales explain that they can investigate when there is a “doubt about whether a registered person is doing their work safely, effectively and in-line with the Code of Professional Practice [for Social Care]”⁴⁹.

Note: A copy of this code can be accessed at:

www.socialcare.wales/resources/code-of-professional-practice-for-social-care

⁴⁴ ‘Why we register’, Social Care Wales website: <https://socialcare.wales/registration/what-is-registration#section-33303-anchor> (last accessed 16 January 2020)

⁴⁵ Video on Social Care Wales website, entitled ‘What is registration?’ – available at: <https://socialcare.wales/registration/what-is-registration#section-33303-anchor>

⁴⁶ Ibid

⁴⁷ ‘Why we register’, Social Care Wales website: <https://socialcare.wales/registration/what-is-registration#section-33303-anchor> (last accessed 16 January 2020)

⁴⁸ ‘Consultation: Registration is changing, 21 October 2019 - 20 December 2019’, Social Care Wales website: <https://socialcare.wales/consultations/registration-is-changing> (last accessed 17 January 2020)

⁴⁹ ‘Dealing with concerns: How we deal with concerns’, Social Care Wales website: <https://socialcare.wales/fitness-to-practise/how-we-deal-with-concerns> (last accessed 17 January 2020)

Service users themselves, or other members of the public, can raise concerns with Social Care Wales (SCW) about registered workers. Contact details for SCW can be found in section 19 below.

Concerns might also be raised with SCW by the registered worker's employer; a local authority (including in a case involving a safeguarding alert – see section 15 above); the Care Inspectorate Wales; or the police.

16.3 Examples of issues that Social Care Wales might investigate

Social Care Wales may be able to investigate the following (this is not an exhaustive list):

- “failure to meet the expected standards”;
- “dishonesty or abuse of someone’s trust”;
- “committing fraud”;
- “trying to cover up mistakes or block an investigation”;
- “not following policy and procedures”;
- “inappropriate relationship with someone who uses services”;
- “exploiting a vulnerable person”;
- “not respecting the rights of individuals who use care and support services”;
- “behaviour that could harm others or undermine public confidence in the profession”.⁵⁰

⁵⁰ Ibid

17 Self funders and complaints about social care services

17.1 Homecare

If you have arranged homecare services entirely privately, you would need to make a complaint to the private care agency, or other organisation, providing your services.

You may also be able to:

- Take your case to the Public Services Ombudsman for Wales – see section 17.3 below.
- Raise your concerns with the social care regulator, Care Inspectorate Wales (or Social Care Wales if the case involves a ‘fitness to practice’ issue of a registered worker) – see sections 13 and 16 above.

Note: In Wales, there is a maximum weekly charge for non-residential social care services – see Age Cymru’s Factsheet 46w *Paying for care and support at home in Wales* for details.

As such, with homecare, there shouldn’t be a need for someone to fully self fund (unless they wish to remain independent of social services and arrange all their services themselves) – i.e. even if you have a high income and/or savings you can still ask the local authority to arrange your homecare services, albeit you may well be assessed as needing to pay the maximum charge for that service (up to the maximum overall charge imposed by the Welsh Government – again see Age Cymru’s Factsheet 46w for further information).

This is potentially relevant with situations where someone has a complaint, as if you are paying the maximum charge for homecare, but the local authority is *providing or has arranged* the services, you can make use of the local authority complaints procedure, as outlined in sections above.

17.2 Care homes

If you are fully self funding your care home placement, you would need to direct your complaint to that care provider and wouldn't usually have access to the local authority procedure (though there may sometimes be exceptions to this – see section 1.1 above).

As is the case with homecare, you may also be able to take your issue to the Public Services Ombudsman for Wales – see section 17.3 below. Or, you may wish to raise your concerns with the social care regulator, Care Inspectorate Wales (or Social Care Wales if the case involves a 'fitness to practice' issue of a registered worker) – see sections 13 and 16 above.

17.3 Your right to complain to the Public Services Ombudsman for Wales in regard to self funded homecare or care home services

People who fully self fund their care also have the right to escalate a complaint about those services to the Public Services Ombudsman for Wales.

As with cases involving the local authority, the Ombudsman will usually expect someone to have tried pursuing their complaint using the complaints procedure of the organisation concerned first (exceptions may sometimes be made, for example, if they “consider that your immediate safety is at risk”⁵¹).

In regard to self funded care, the Ombudsman can look into:

⁵¹ Want to complain about the care you pay for? – You and the Ombudsman, Public Services Ombudsman for Wales, November 2019

- “Self funded care – that is, services provided by a care home to an adult who pays for their own care”. They “can consider matters relating to both personal and nursing care”.
- “Domiciliary care – that is, where people have purchased their own personal care provided at their home”.
- “Independent palliative care services” (though only “if the service has received public funding in the three years before the issue being complained about arose”)⁵².

Time limit for you to take a case involving self funded care to the Ombudsman

The Ombudsman will usually expect you to bring your complaint to them within **12 months** of becoming aware of the problem. “However, if you have already spent time complaining directly to the service provider concerned [they] will take this into account”⁵³.

If you have been trying to solve your issue via the provider’s complaints procedure, but it is taking too long

The Ombudsman advises that, “if you have made a complaint but think the service provider is taking too long to deal with it (in general, we think 12 weeks is a reasonable time for them to give you a final reply) you can complain to [the Ombudsman]”⁵⁴.

You can also take the case to the Ombudsman if you have received a reply from the care provider, but are unhappy with the response.

Note: The Ombudsman’s booklet, *Want to complain about the care you pay for? - You and the Ombudsman (November 2019)*, can provide additional information about complaints regarding self funded care. A copy can be downloaded from their website at:

www.ombudsman.wales/making-a-complaint/complaints-about-independent-care-providers

⁵² Ibid

⁵³ Ibid

⁵⁴ Ibid

18 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.

18.1 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.

Note: In the context of local authority 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 **Equality Advisory & Support Service** can provide further information on this topic – see section 19 below for their contact details.

18.2 Case study: how a human rights approach can help to solve a social care complaint

The Welsh Government's 'Passing the Baton' (guidance on hospital discharge planning)⁵⁵, contains a section on human rights, including the following case study which is relevant to social care:

“A disabled woman was told by her occupational therapy department that she needed a special (‘profile’) bed. She was unable to leave her bed and this new arrangement would allow carers to give her bed baths. She requested a double bed so that she could continue to sleep next to her husband. The authority refused her request even though she offered to pay the difference in cost between a single and double bed. A stalemate ensued for eighteen months until the woman was advised by the disability law centre to invoke her right to respectful and private family life” (as per Article 8 – see section 18.1 above).

Outcome

“Within three hours of putting this argument to the authority it found enough money to buy the whole of her profile double bed”.

18.3 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:

⁵⁵ ‘Passing the Baton: A Practical Guide to Effective Discharge Planning’ is good practice guidance on discharging people from hospital, including making sure that appropriate services are in place from the local authority social services department, where these are needed. The guidance was published in 2008 by the National Leadership and Innovation Agency for Healthcare (NLIAH); a body that was subsequently closed in 2013, with its functions being transferred to NHS Wales and the Welsh Government.

- 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.

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 Braille or an audio format.

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; plus 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.

The Equality Advisory & Support Service website has further information – see section 19 below.

Also see Age UK's Factsheet 79 *Equality, discrimination and the Public Sector Equality Duty*.

19 Useful organisations

Age Cymru Advice

Free and confidential information and advice on matters affecting the over 50s in Wales.

Tel: 08000 223 444

E-mail: advice@agecymru.org.uk

Age Cymru organisations (local)

Your local Age Cymru may be able to provide advice and support on a range of issues. **Age Cymru Advice** can provide details of your local Age Cymru (see above), or visit the Age Cymru website at:

www.agecymru.org.uk

Care Inspectorate Wales (CIW)

CIW inspects and regulates care and social services in Wales.

Tel: 0300 7900 126

E-mail: ciw@gov.wales

Website: www.careinspectorate.wales

Carers UK

A national charity providing information and advice for carers.

Advice Line: 0808 808 7777

Website: www.carerswales.org

Citizens Advice Bureaus (CABs)

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

Tel: 03444 77 20 20

Details of your nearest CAB can be found at:

www.citizensadvice.org.uk/wales

Equality Advisory & Support Service

A helpline that can advise people on equality and human rights issues.

Tel: 0808 800 0082

Website: www.equalityadvisoryservice.com

Older People's Commissioner for Wales

Independent champion for older people across Wales.

Tel: 03442 640670

E-mail: ask@olderpeoplewales.com

Website: www.olderpeoplewales.com

Public Services Ombudsman for Wales

The Ombudsman looks to see whether people have been treated unfairly or have received a bad service from a public body, such as a local authority.

Tel: 0300 790 0203

E-mail: ask@ombudsman.wales

Website: www.ombudsman.wales

Social Care Wales

Social Care Wales is responsible for regulating and developing the social care workforce in Wales

Tel: 0300 30 33 444

E-mail: info@socialcare.wales

Website: www.socialcare.wales

Welsh Government

The devolved government for Wales.

Tel: 0300 060 4400

E-mail: customerhelp@gov.wales

Website: www.gov.wales

20 Further information about Age Cymru

Age Cymru is the leading charity for all older people in Wales. We campaign, we research and we fundraise to make sure we build a better life for all older people. We ensure older people's voices are heard, we challenge and change attitudes, we fight discrimination wherever we find it and we tackle elder abuse in all its forms. Together with our local Age Cymru partners we provide vital services in communities across Wales.

The Age UK family

Along with Age UK, Age Scotland and Age NI, Age Cymru is a member of the Age UK family.

Age UK (Age UK Advice: 0800 169 65 65; website: www.ageuk.org.uk)

Age NI (Age NI Advice: 0808 808 7575; website: www.ageuk.org.uk)

Age Scotland (Tel: 0845 833 0200; website: www.agescotland.org.uk)

Our information materials

Age Cymru and Age UK publish a large number of free Information Guides and Factsheets on a range of subjects, including money and benefits, health, social care and housing. Some resources, such as this factsheet, are produced 'in-house' by Age Cymru, whilst others are branded Age UK and – depending on the subject matter – contain either information which is applicable in England and Wales, or for the whole of the UK.

Contact details

Age Cymru Advice

Tel: 08000 223 444

E-mail: advice@agecymru.org.uk

Website: www.agecymru.org.uk





www.facebook.com/agecymru



www.twitter.com/agecymru



www.youtube.com/agecymru

Contact us if you would like:

- To order copies of any factsheets or information guides.
- Further advice if you cannot find the information you need in this factsheet.
- Details of your nearest local Age Cymru organisation.

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