

Adult Social Care Complaints and Feedback Annual Report 2019 - 2020

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1. Introduction

- 1.1 This report provides an overview and analysis of the handling of feedback received in the form of complaints, concerns, comments and compliments about adult social care services in Bath and North East Somerset for the period 1st April 2019 to 31st March 2020.

2 Legal Framework

- 2.1 The legal framework which sets out how the Council should respond to feedback, including complaints, is set out in the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009, which amended the Community Care Act 1990 statutory guidance. The Regulations apply to all organisations which provide, arrange or commission NHS care and adult social care services.
- 2.2 The Council handles the first stage of the process and must have systems in place to ensure complaints and related feedback are dealt with efficiently, investigated thoroughly and faults are corrected without delay. Where the complainant is dissatisfied with the response, they can move to the second stage and refer their complaint to the appropriate Ombudsman – the Local Government and Social Care Ombudsman (LGSCO) or Parliamentary and Health Services Ombudsman.

3 Local Arrangements

- 3.1 The post of Complaints and Data Protection Team Manager was based within the Safeguarding and Quality Assurance Team (Children's Services and Adult Social Care) until November 2019 when it transferred to One West to become part of a centralised team providing information governance, complaint and auditing services.
- 3.2 One West has a service level agreement with Adult Social Care, Children's Services and Public Health to manage the complaints and data protection functions on their behalf.
- 3.3 The Complaints and Data Protection Team deals directly with complaints and feedback about the following functions:
- The Council's safeguarding responsibilities
 - The Council's responsibilities for Deprivation of Liberties and Best Interest decisions.
 - Financial assessment and charging for care services
 - The Approved Mental Health (AMHP) service
 - The mental health social work service

- 3.4 Virgin Care delivers adult social care services in Bath and North East Somerset (excluding mental health). Complaints about services delivered by Virgin Care are dealt with in the first instance under the Virgin Care complaints procedures. These services include the Council's statutory social care function for adults who have care and support needs outlined in the Care Act 2014; services for older people (excluding those with mental health needs); the Learning Disabilities Service; Occupational Therapy; Supported Living Services; the Shared Lives Scheme and the Hearing and Vision Service.
- 3.5 Where Virgin Care is unable to resolve the complaint to the complainant's satisfaction, they are advised of their right to refer their complaint to the Council for a review of the response and outcome. If the complainant remains dissatisfied, they can refer their complaint to the LGSCO.
- 3.6 A Complaints Assurance Framework, which is part of the Council's quality assurance processes, sets out the expectations for the handling complaints, comments, concerns and compliments by Virgin Care. It also sets out how the Council will quality assure the complaint handling processes. This is included within the Virgin Care contractual arrangements.
- 3.7 The Council also has arrangements in place to work with partner agencies in health such as the Clinical Commissioning Group and Avon and Wiltshire Mental Health Partnership Trust (AWP) to address complaints which concern both service areas. The agencies must work together to agree a process which ensures that the complainant does not need to make their complaint more than once and, where appropriate, they receive will receive a joint response.

4 The Complaints and Feedback Procedure

- 4.1 The Department of Health Guidance 'Learning from Complaints' (2006) defines a complaint as:
- "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."
- 4.2 A person is eligible to make a complaint where the local authority has a power or duty to provide, or to secure the provision of, a service for them. An individual can make a complaint on someone else's behalf with the appropriate consent or authorisation. In these cases, the Local Authority will need to satisfy itself that the complaint is in the best interests of the person on whose behalf the complaint is made. The same would apply where the person lacks capacity to provide their consent.

4.3 The role of the Complaints and Data Protection Team is to be the first point of contact for complainants and to co-ordinate the response to the complaint. The Team will ensure that:

- The complaint has been understood and that there is a written record of the complaint;
- The complainant has been asked what they want to happen as a result of making the complaint;
- An assessment of the seriousness of the complaint has been made;
- A complaint which concerns a different agency is redirected within three working days;
- A plan is developed which is acceptable to both the complainant and manager of the service concerned to confirm the arrangements for the investigation of the complaint;
- The complainant is provided with information about the progress of a complaint investigation.

4.4 There are no prescribed time limits for dealing with complaints, although the legislation states that a complaint should be concluded within a maximum of six months. To ensure a consistent approach to complaint handling, the Council has introduced 15 working days for its standard response time. This is extended for more complex complaints or where a full investigation is required.

4.5 The response to the complaint will be in writing. This sometimes follows a face to face meeting or telephone call. The response will explain the outcome of investigations and any action to be taken to resolve the issues. If the complainant is unhappy with the final decision, or the handling of their complaint, they are advised that they can refer their complaint to the LGSCO.

4.6 Service users or their representatives might also want to give feedback in the form of a comment or concern. Comments and concerns provide an opportunity to quickly rectify a problem or mistake without the need for a formal process and they provide valuable information about the quality and effectiveness of the service. Compliments are always welcomed as a way of acknowledging good practice.

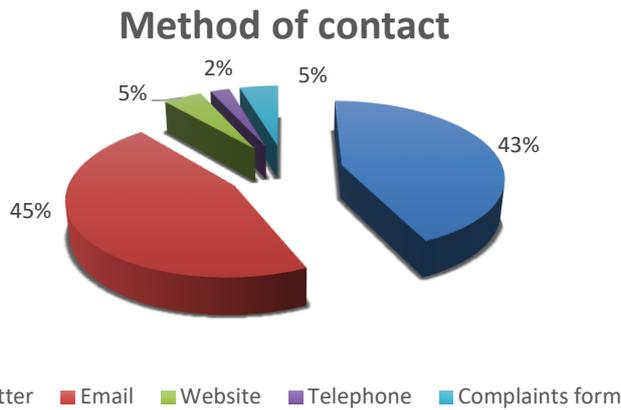
5. Access to the Complaints Procedure

5.1 **Information** – information about making a complaint is available on the Council's website. This is linked to the on-line complaint portal and the adult social care webpages. The Complaints Procedure is also promoted by organisations such as Healthwatch.

5.2 **Advocacy Support** – the Council commissions the Care Forum to provide an advocacy service for those needing help to pursue a complaint with the Council or Virgin Care about social care. Other organisations within the area which will also support people with a complaint, such as, Age UK and Swan Advocacy. Experience and

feedback has shown how beneficial it is for complainants to have support with letter writing and at meetings. During 2019 – 20, four people received assistance from an advocacy service with their complaint.

5.3 **Contact** – Although a complaint does not have to be in writing most complainants either email, write a letter or use the on-line form. Translation and interpretation services can be made available where needed.



5.4 **Making the complaints procedure more accessible** - it is important for Council to understand which groups of service users are either accessing the complaints procedure themselves or are having complaints made on their behalf. This helps when deciding where to publish information about the complaints procedure and what is needed to assist people with their complaint.

5.5 **Information about ethnicity, gender and disability** is collected where possible through the complaint form or from the service user electronic record held by the Council. There are gaps in this information as there is no means of collecting and storing information consistently about the complainant (if this is not the service user themselves hence the gaps below) at present. The information is used for monitoring purposes only and does not influence the response to the complaint.

| | Service User | Complainant |
|------------------|--------------|-------------|
| Age | | |
| 18 – 65 | 32% | |
| 65 and over | 65% | |
| Not known/ given | 3% | |
| Ethnicity | | |
| White British | 29% | |
| Not known/given | 71% | |
| Gender | | |
| Female | 55% | 57% |
| Male | 42% | 43% |

| | | |
|-------------------|-----|----|
| Not known/given | 3% | 0% |
| Disability | | |
| Disabled | 18% | |
| Not disabled | 0% | |
| Not known/given | 82% | |

(The above monitoring relates to 40 cases listed below including: concerns, local resolution, independent investigation and Corporate Complaints Procedure – please note the comparator information is not available in this format for 2018-19 however it will be for 2020-21).

6. Overview of Complaints and Compliments 2019 – 20

6.1 The table below provides a breakdown of the complaints received by the Council and provides a comparison with previous years. The shaded areas indicate the complaints that were dealt with directly by the Council.

6.2 The Council received 57 new complaints during the year and two complaints were carried over from the previous year. 12 of these complaints were referred to Virgin Care for a response.

6.3 Compliments are also recorded as they provide a good indication of what works well within a service and they balance the negative impact of complaints. Five compliments were recorded for 2019 – 20 and all related to mental health services (Complex Intervention Treatment Team CITT – 3, AMHP – 1, Primary Care Liaison Service – 1)

Examples include:

‘Without your kindness, consideration patience we would never had been able to settle Dad so well’ (CITT)

The caller thanks the Primary Care Liaison worker for ‘listening and never making me feel like I was wasting his time or a burden. He was very reassuring ...’ (Primary Care Liaison Service)

6.4 The total number of complaints is lower than the previous year however there is only a small variation in the number dealt with under the Local Resolution method and a higher number reported through for the Council’s Corporate Procedures – the data is set out below:

| Complaint type | 2017 -18 | 2018 -19 | 2019 – 20 |
|--|-----------------|-----------------|------------------|
| Carried forward from previous year | 1 | 5 | 2 |
| Concern | 0 | 8 | 1 |
| Local Resolution | 39 | 29 | 30 |
| Independent Investigation | 2 | 0 | 1 |
| Council's Corporate Procedure | 1 | 2 | 8 |
| Review of provider response by the Council | 1 | 3 | 1 |
| Total | 42 | 47 | 43 |

6.5 Complaints relating to adult social care services and client finance issues which are either referred to the Ombudsman or referred to Virgin Care or another agency are set out below:

| Complaint Type | Description | 2017 -18 | 2018 -19 | 2019 – 20 |
|---|---|-----------------|-----------------|------------------|
| Local Government & Social Care Ombudsman | Formal enquiry by the Ombudsman | 4 | 5 | 4 |
| Referred to Virgin Care for a response | Complaint to be dealt with under Virgin Care procedures | 6 | 18 | 12 |
| Referred to other provider for a response | Complaint to be dealt with by care home, support provider or home care agency | 0 | 0 | 0 |
| Total | | 54 | 70 | 59 |

- 6.6 Analysis of the data shows that the majority of complaints to the Council (25 of the 32 complaints under the category 'Local Resolution' including the two from the previous year) concerned disputes about the charge for residential care and to a lesser extent home care services. Many complainants dispute that the guidance on charging has been correctly applied. For example, not being allowed a Disability Related Expenditure (DRE) is often the subject of a complaint. Over time we would expect to see this number declining with the implementation of the Care and Support Charging and Financial Assessment Framework. Others complain that they were not told that a charge would be made and this affected their choice of home, service or their length of stay.
- 6.7 During 2019 – 20, seven complaints were raised about policy issues. These included a challenge to the withdrawal of support for the service user with a Direct Payment. This was not upheld and it was confirmed that the Policy was being applied appropriately. Two complaints concerned self-funders accessing extra care schemes. This resulted in a change of decision.
- 6.8 Most complaints are allocated to the manager of the service that has been complained about for a response. Occasionally, however, it is appropriate to commission an investigation by an independent investigator. This will be because the relationship between the service and the complainant has broken down or the seriousness of the issues raised require an in-depth and independent review.
- 6.9 One investigation was commissioned in 2019-20. The complaint concerned a dispute over requests for payment towards the cost of a social care package and the assessment of the service user's care and support needs. There was a thorough investigation into the eight elements of the complaint. None of these were upheld. The investigator made some minor recommendations for a change to processes and current arrangements.

7. Learning From the Complaints

- 7.1 The statutory guidance for dealing with complaints in adult social care 'Listening, Responding, Improving' places emphasis on the service learning from the complaints and feedback it receives. The guidance says:

Listening to feedback about your services can uncover new ideas to help improve the way in which you do things. This is increasingly important for health and social care organisations, who are expected to show how they use feedback to improve

- 7.2 Outcomes of the complaints highlighted in 6.4 above:

| Outcome | 2017 -18 | 2018 - 19 | 2019 – 20 |
|-------------------------------------|-----------------|------------------|------------------|
| Upheld | 9% | 32% | 16% (7) |
| Partially Upheld | 25% | 24% | 12% (5) |
| Not Upheld | 45% | 20% | 51% |
| Not Pursued | 5% | 7% | 7% |
| Outside Scope | 5% | 15% | 0 |
| Unresolved by the end of the period | 11% | 2% | 14% |
| Total | 100 | 100% | 100% |

- 7.3 In 2019 -20 of the seven complaints that were upheld and five that were partially upheld there were some key learning points. For example, a complaint about the Adult Safeguarding process led to a finding that Virgin Care and AWP staff in the course of supporting individuals through the Adult Safeguarding process needed to address why there may be a need to hold a meeting in two parts and work with individuals to understand this. The Council Chair of the Planning Meeting should also ensure that this is sufficiently addressed at the start of the meeting.
- 7.4 However; a complaint does not need to be upheld for learning to be identified and it is evident from the complaints that were not upheld that unclear or delayed communication with a complainant can lead to misunderstandings about a process. The service concerned must address this and ensure future communication is clear and timely.
- 7.5 One complaint was referred to the Council for review as the complainant was dissatisfied with the response from Virgin Care. The complaint concerned the charge for care at a residential home. The complainant said that he was unaware that his relative would need to contribute to the cost of his care and he disputed the level of contribution to be paid. The Review did not uphold the complaint that he was unaware of the charge, but it was agreed that the contribution should be recalculated. Feedback was provided to Virgin Care on the outcome of the Review.

8. Complaints to the Local Government and Social Care Ombudsman (LGSCO)

- 8.1 The Ombudsman investigates complaints about adult social care where the care has been arranged, funded, commissioned or provided by a Council, or by an individual using the own money. The Ombudsman publishes a report annually all the complaints received and the findings.
- 8.2 The most recent published Ombudsman Annual Report is for 2018 -19. It indicates that 16% of all complaints to the Ombudsman relate to adult social care. This is the service area with the second highest number of complaints after Children’s Services and Education. The average

'uphold' rate overall was 58% but for adult social care it was 66%. The Ombudsman also publishes Focus Reports when systemic problems in certain areas or useful learning for practitioners is identified. In March 2019 the Ombudsman published a focus report called *Caring about complaints: lessons from our independent care provider investigations.*

8.3 In 2019 – 20 the LGSCO accepted four complaints against Bath and North East Somerset. Not all complaints reach this stage. The complaint can be closed without enquiry or referred to the Council for investigation when it is deemed to be 'premature'.

8.4 The findings of the Ombudsman were as follows:

| Service Area | Outcome |
|--|--|
| Virgin Care/ Council Client Finance Team | <p>Upheld</p> <p>Ms X complained the Council failed to address the shortfall in her personal budget, first raised in August 2018, leaving her without enough money to pay her Personal Assistants properly.</p> <p>The Ombudsman found that the Council had failed to do this as the assessment it carried out would only address the way to meet Ms X's needs in the future.</p> <p>The Council were required to apologise, pay financial redress and increase Ms X's personal budget so it is enough to meet the legitimate commitments arising from her existing personal budget.</p> <p>The actions were completed as instructed.</p> |
| Council Adult Safeguarding Team Joint LGSCO and Health Services Ombudsman investigation | <p>Partly upheld</p> <p>Mrs L complained that the Nursing Home failed to care properly for her late husband. She also complained that there was fault in the Council's safeguarding investigation into Mr L's care and the events leading up to his death. The Ombudsmen have partly upheld Mrs L's complaints and made recommendations. The Ombudsmen have not found a link between poor care and Mr L's death.</p> <p>There was no action required of the Council services however there was of the provider agency which was actioned.</p> |
| Council - Direct Payment policy | <p>No investigation</p> <p>Mr A complained that the Direct Payment</p> |

| | |
|-----------------------------|---|
| | <p>support service had been withdrawn.</p> <p>The Ombudsman found there was no reason to investigate Mr A's complaint. This was because any further investigation by the Ombudsman could not add to the Council's response and they could not make a finding of the kind Mr A wanted.</p> <p>There was no action for the Council.</p> |
| Council Client Finance Team | <p>On-going investigation</p> <p>The complaint concerns the costs of care for applied to a service user. The investigation was on-going at the end of March 2020. The outcome will be included in the report for 2020 – 21.</p> |

9. Responding to Complaints

- 9.1 There are no timescales for responding to adult social care complaints in the Regulations. However, a local standard is in place to ensure a consistent response to complaints. The standard is for 90% of all complaints to receive a response within 15 working days. This will be varied according to the Complaint Plan drawn up when the complaint is first received. It is usual to set a timescale of 25 working days where the complaint is more complex or requires a formal investigation.
- 9.2 In 2019 -20, 24% of complaints which were dealt with at the local resolution stage by the Council were completed within the 15 working day time scale. This does not meet the target of 90% and is lower than the previous year when 58% of complaints fell within the standard. However, 56% were responded within 20 working days and there were fewer complaints that took an excessive time to respond to.
- 9.3 This improved performance is as a result of changes in the Client Finance Team and more resource in the Complaints and Data Protection Team allowing more monitoring and follow up.
- 9.4 The investigation was completed in the timescale that was given to the complainant at the start of the investigation although this was longer than the usual 25 working days.
- 9.5 Improving timescales will continue to be a target for 2019 -20.

10. Review and Forward Planning for the Complaints and Data Protection Team

- 10.1 The objectives set for 2019 – 20 were:

- **For the Complaints and Data Protection Team to continue to work closely with the Complaints Team in Virgin Care**
 - The Complaints and Data Protection Team works well with the Complaints Team in Virgin Care and the systems for sharing individual complaints between the two organisations and agreeing joint investigations have improved. In particular, there is better understanding of when to obtain consent to share information which no longer causes unnecessary delays.
- **To ensure Virgin Care is working to the requirements of the Complaints Quality Assurance Framework**
 - The meetings between the two organisations have not been held regularly in the past year. These will need to be reinstated in the coming year.
 - Issues to be addressed under the Quality Assurance Framework include:
 - the timescale for responding to a complaint. Virgin Care currently allows 30 working days for a complaint response. This is significantly longer than the Council's standard and can cause delays to joint responses;
 - the quarterly monitoring reports are not as clear or useful as they could be and this needs to be addressed;
 - the definition of 'complaint' and 'concern' should be revisited to ensure it is consistent with the Council's interpretation.
- **To continue to work with managers within the Council to address the issue of timescales for responding to complaints.**
 - Although the timescales for responses have improved over the past year, work will continue to bring the response times within the 15 working day standard.

10.2 Other work undertaken during 2019 – 20:

- A system for responding to MP and Councillor enquiries is now in place and managed by the Complaints and Data Protection Team. All enquiries are logged on the database allowing the Team to monitor responses and record outcomes.
- A protocol was drawn up in March 2020 to set out how the Council would respond to complaints in Adult Social Care and Children's Services during the Covid-19 pandemic. This protocol reflects the Ombudsman's decision to pause all case work and stop taking new

complaints. This recognised the fact the Councils would not have the capacity to respond to enquiries from the Ombudsman.

10.3 Proposals for work in 2020 – 21:

- To continue with the service improvements begun in 2019 – 20;
- To include the capture of the learning from the complaints and make this available to service areas on a regular basis;
- To review the procedures for handling adult social care complaints.

10.4 Data Protection Work

- The Complaints and Data Protection Team is responsible for responding to Subject Access Requests from service users and their representatives. In 2019 – 20, 6 subject access requests were completed in relation to adult social care records. Virgin Care responds to SARs for records generated after April 2017. The Council responds to SARs which pre-date this or for SARs in respect of functions retained by the Council.
- The Complaints and Data Protection Team Manager works with the Information Governance Manager to provide advice on recording data breaches and carry out the investigations. In 2019 – 20, two breaches were reported in relation to adult social care. Both were resolved locally and did not meet the threshold for referral to the Information Commissioners Office.