

Adult Social Care  
Complaints and Feedback  
Annual Report 2020 - 21

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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 1<sup>st</sup> April 2020 to 31<sup>st</sup> March 2021.

## **2 Legal Framework**

- 2.1 The legal framework which sets out how the Council should respond to feedback, including complaints, about Adult Social Care services 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 is responsible for 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. The second stage of the process is referral to the appropriate Ombudsman, either the Local Government and Social Care Ombudsman or Parliamentary and Health Services Ombudsman.
- 2.3 The Council is required to produce an annual report about complaints which summarises the complaints that have been received; any issues of importance arising out of the complaints or the handling of the complaints; and any matters where action has been or is to be taken to improve services as a result of the complaints.
- 2.4 Complaints which do not fall within the scope of the statutory complaints procedure but relate to Adult Social Care Services are dealt with under the Council's Corporate Complaints Procedure.

### **3 Local Arrangements**

- 3.1 The Complaints and Data Protection Team is based in the Information Assurance Service which is part of One West and provides complaint management and data protection support to Adult Social Care, Children's Services and Public Health under a Service Level Agreement.
- 3.2 The Complaints and Data Protection Team deals directly with complaints and feedback about the following functions under the Adult Social Care Complaints Procedure:
- 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 The arrangements for handling complaints about functions which have been delegated to Virgin Care by the Council have been made in accordance with the requirements of the Care Act 2014. Under the Care Act individuals must be able to make their complaint to the organisation to which the Council has delegated the function. Complaints relating to the delivery of adult social care services by Virgin Care are therefore dealt with in the first instance by Virgin Care. These services include the Council's statutory social care function for adults who have care and support needs as outlined in the Care Act 2014; the Learning Disabilities Service; Occupational Therapy; Supported Living Services; the Shared Lives Scheme and the Hearing and Vision Service.
- 3.5 At the conclusion of the complaint process, Virgin Care advises the complainant of their right to refer their complaint to the Council for a review of the response and outcome if the complainant is dissatisfied with the response. Following a review, if the complainant remains dissatisfied, they are advised they can refer their complaint to the Local Government and Social Care Ombudsman (LGSCO).
- 3.6 A Complaints Assurance Framework, which is part of the Council's quality assurance process, sets out the expectations for the handling of complaints, comments, concerns and compliments by Virgin Care. It also sets out how the Council will quality assure the complaint handling process.
- 3.7 The Council also has arrangements in place to work with partner agencies such as the BSW CCG and AWP to address complaints which concern both service areas, known as cross-boundary

complaints. The agencies must ensure that the complainant does not need to make their complaint more than once and, where possible, they 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."

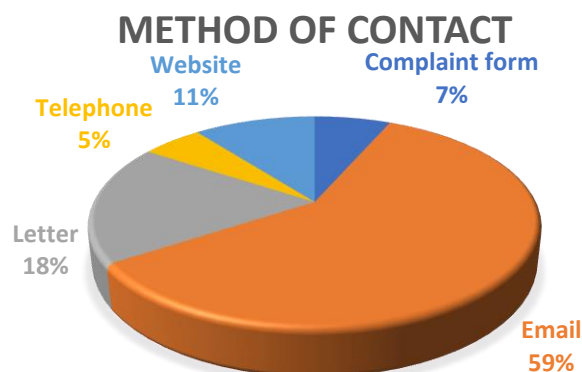
- 4.2 A complaint can be made by an individual who receives or has received services provided by or commissioned by the Council. The complaint can be made by a representative acting on behalf of the service user. The representative will either need to have appropriate consent or authorisation and the Council must satisfy itself that the complaint is in the best interests of the person on whose behalf it is made. The same applies where the person lacks capacity to provide their consent.
- 4.3 The Complaints and Data Protection Team is the first point of contact for complainants and co-ordinates 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 3 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 a complaint, although the legislation states that consideration of a complaint should be concluded within a maximum of 6 months. To ensure a consistent approach to complaint handling, the Council has introduced 15 working days as a 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 family/carers 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 and can be valuable in helping to identify the strengths of a service.

## 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 an on-line complaint form and the adult social care webpages. The complaints procedure is also promoted by organisations such as Healthwatch.
- 5.2 **Advocacy Support** – Advocacy support is available to those needing help to pursue a complaint with the Council or Virgin Care. POhWER currently provides this service. An advocate can support the complainant with writing letters, at meetings and interviews and with understanding the outcome of the complaint. Experience and feedback confirm how beneficial it is for complainants to have this support. During 2020 – 21, five complainants received assistance from an advocate.
- 5.3 **Contact** – Although a complaint does not have to be in writing most complainants in Adult Social Care will email, write a letter or use a complaint 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 what more the Council can do to assist people with their complaint.

- 5.5 **Information about ethnicity, gender and disability** is collected and used as a tool to monitor access to the complaints procedure. The information is not linked to the complaint and does not influence the response to the complaint.

	Service User	Complainant
<b>Age</b>		
Under 25	10%	0
25 – 65	28%	13%
65 and over	62%	24%
Not known/ given	0	63%
<b>Ethnicity</b>		
White British	100%	26%
Not known/given	0	74%
<b>Gender</b>		
Female	49%	66%
Male	51%	34%
Not known/given	0	0
<b>Disability</b>		
Disabled	10%	4%
Not disabled	0	28%
Not known/given	90%	68%

- 5.6 The information is obtained from the service user's record or information given at the time the complaint is made either on a complaint form or given voluntarily by the complainant.
- 5.7 This is acknowledged as an area that requires further work and the Complaints and Data Protection Team continues to look for ways to improve the collection of the data to ensure it can be used to improve access to the complaints procedure.

## 6. Overview of complaints 2020 – 21

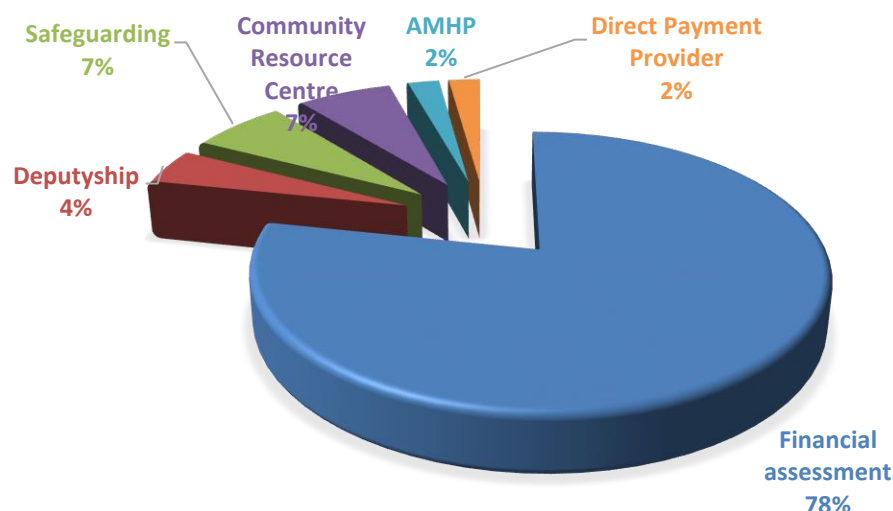
- 6.1 The tables below provide a breakdown of the complaints recorded in 2020 - 21 and a comparison with previous years. The number has increased compared with the previous two years, but the increase is not significant. It was anticipated that the impact of Covid-19 and the lockdowns that have happened during the year would have an impact on the volume of complaints, but this did not materialise.
- 6.2 Many issues and concerns are resolved informally by the service team or setting. Where the issue is not resolved locally or the person feels they would be disadvantaged if they were to make a complaint, the complainant is directed to the complaints team in the Council or in Virgin Care as appropriate.

- 6.3 On receipt of a complaint, the Council's Complaints and Data Protection team will undertake a risk assessment and make initial enquiries with the service. At this stage complaints will be redirected to Virgin Care, AWP or the CCG as appropriate. In 2020 – 21, 16 complaints were allocated for a response by Virgin Care. From time to time safeguarding concerns are detailed in the complaint and these will be referred directly to the appropriate team. This usually results in the complaints procedure being suspended until enquiries have been completed.
- 6.4 Complaints often include more than one issue and it is common for the complaint to concern both the delivery of the social care service and the assessed weekly charge for the service. Each case is dealt with on a case by case basis but in general Virgin Care will take the lead and liaise with the Client Finance Team in order to provide one comprehensive response.

Complaint type	Description	2018 - 19	2019 – 20	2020 - 21
Carried forward from previous year	Unresolved at the end of the previous year	5	2	10
Concern	Resolved without need for further investigation	8	1	2
Local Resolution (Statutory Complaints Procedure)	Response from the team/service manager	29	30	36
Independent investigation (Statutory Complaints Procedure)	Investigation by manager from another service or independent complaint investigator	0	1	0
Council's Corporate Procedure	Complaint outside the scope of the statutory procedure. Dealt with under the Council's Complaints Procedure	2	8	8
Review of Virgin Care response by the Council	Escalation to the Council for a review of the initial response	3	1	3

Referred to Virgin Care for a response	Complaint to be dealt with under Virgin Care procedures	18	12	16
Referred to other provider or partner agency for a response	Complaint to be dealt with by care home, support provider or home care agency	0	0	0
Local Government & Social Care Ombudsman	Formal enquiry by the Ombudsman	5	4	1
Total		67	59	76

6.5 Complaints about the assessed weekly charge account for the majority of complaints dealt with by the Council. The percentage remains the same as the previous year (78%) as 36 of the 46 complaints and concerns related to the assessed charge.



6.6 The complaints about the assessed weekly charge (financial assessment) mostly concern the calculation of the charge and are often about whether household costs or the sale of a property are included in the calculation. During 2020/21 a separate category was used to monitor complaints which arose from the implementation of the Charging Framework in April 2020. For some people this resulted in a change to their assessed charge, for example, there were changes to the way in which married couples are assessed. This resulted in 10 complaints in this category.

6.7 In October 2020 the Community Resource Centres (CRC) returned to being a council run service. It was anticipated this could result in an



increase in the number of complaints received; however, only 3 complaints were received which were all resolved swiftly.

- 6.8 Virgin Care responded to 16 formal complaints under its own complaint procedure. The Council had an opportunity to comment on the response that was sent to these complaints in 14 cases. Data about these complaints is also shared at the performance meetings that the Council has with Virgin Care. There is no pattern or trend to these complaints; issues raised included the outcome of an assessment; lack of support to manage a Direct Payment; application of the Disability Related Expenditure policy.
- 6.9 The Council undertook 3 Complaint Reviews where the complainant was dissatisfied with the response from Virgin Care. These concerned the support provided by the Community Wellbeing Hub during the first lockdown; a decision not to approve funding for a placement for a young man with a learning disability; and, the handling of the transfer from another authority for a young man with a learning disability. Two of the three complaints were upheld at the Review stage.

## **7. Overview of compliments 2020 - 21**

- 7.1 Compliments are also recorded as they provide evidence of what works well within a service and balance the negative impact of complaints. Four compliments were recorded for 2020 – 21 (Mental Capacity Act and AMHP Team – 2; Principal Mental Health Social Worker – 1; Adult Safeguarding Team – 1).

Examples include:

*DOLS Assessment: 'I would just like to say how impressed I am by the process itself and by all of the team that administer the system. I appreciate the system has to be robust and comprehensive because a person's liberty is involved but I do find the whole system hugely impressive. I also am really appreciative of the help and guidance I have been given when I have asked for help'.*

*Adult Safeguarding Chair:*

*I would also like to say a huge thank you to [the Chair] for your care and compassion shown to myself and my family during this incredibly difficult time and for showing true professionalism and fairness during the hearing.*

## **8. Learning from the complaints**

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

8.2 During 2020 – 21, 11 complaints to the Council were either upheld or partially upheld. Many of the actions agreed relate to the circumstances of the individual service user but wider learning can also be identified. For example:

- Systems will be reviewed to ensure letters relating to financial assessments are not sent to people who are deceased.
- Services to be reminded of funding arrangements for education placements when a young person transitions from Children's Services to Adult Social Care.
- Staff to be reminded about the use of the Whistleblowing Policy and the need to maintain the anonymity of the Whistleblower.

8.3 The learning identified is captured by the Complaints and Data Protection Team when the complaint is closed and shared with the Service. The service is asked for feedback about the actions taken and evidence of this.

## **9. Complaints to the Local Government and Social Care Ombudsman (LG&SCO)**

9.1 The Ombudsman investigates complaints about adult social care services which have either been provided or commissioned by the Council. Individuals who fund their own care or fund it using a Direct Payment can make a complaint direct to the Ombudsman. The Ombudsman publishes an annual Review of Adult Social Care Complaints. The most recent report was published in September 2020.

9.2 The report notes that the LGSCO paused all case work on complaints during the first lockdown in 2020 to allow time for frontline services to deliver crucial services. It began taking complaints again by September. The report indicates that 16% of all complaints to the LGSCO relate to adult social care. This is second highest to Children's Services and Education; however, the Ombudsman believes this rate should be higher as many people, particularly self-funders in residential care, do not know about the work of the LGSCO. The Ombudsman is calling for a statutory requirement to be placed on care providers to signpost people to the local complaints process and to their right to seek the independent view of the Ombudsman.

9.3 In 2020 – 21 the LGSCO investigated 2 complaints against Bath and North East Somerset (one complaint carried forward from the previous year). The findings were as follows:

Service Area	Outcome
Client Finance Team	<p>Mr X complained about the way the Council handled the costs of care provided to his father. He says an unexpected bill caused his father worry and stress. The Council was at fault for a delay in carrying out a financial assessment. It has already apologised and should reduce the debt to remedy the injustice caused.</p> <p><b>Fault leading to personal injustice Upheld</b></p> <p>The Council agreed to reduce the debt as agreed with the LGSCO and confirmed this with the service user.</p>
Client Finance Team	<p>Mr Y complained about Bath and North East Somerset Council's (the Council's) decision to stop his direct payment. He said the Council failed to take into account his communication difficulties.</p> <p><b>No fault</b></p> <p>There was no fault in the decision to stop Mr Y's direct payment. The decision was in line with relevant law and guidance and its direct payment policy and was because Mr X failed to pay his assessed weekly charge.</p>

## 10. Responding to complaints

- 10.1 The complaint regulations and statutory guidance do not specify a timescale for dealing with complaints. However, to ensure consistency across all complaints a local standard of 90% of complaints to receive a response within 15 working days has been set. This is extended to 25 working days for more complex complaints which require more detailed investigation. The due date for the response is confirmed when the complaint is acknowledged.
- 10.2 The average response time for complaints in 2020/21 was 17 working days and 80% of complaints received a response within the 15 working day time scale. Although this does not meet the target of 90% it is a significant improvement from the previous year when only 24% were responded to within 15 working days. This was also despite the challenges to the service caused by the pandemic.

- 10.3 Continuing to improve the response timescale will be a target for 2021 - 22.

## **11. MP and Councillor enquiries**

- 11.1 Since April 2020, the Complaints and Data Protection Team has been the contact point for all MP and Councillor enquiries relating to an individual service user. The recording and monitoring process is very similar to that for complaints.
- 11.2 During 2020 – 21, 26 MP enquiries and 2 Councillor enquiries were logged. The response time is 15 working days. Analysis shows that the issues raised by MPs and Councillors on behalf of constituents are very similar to those raised under the Complaints Procedure and there are some cases where the Team receives a complaint and an MP enquiry. For example, there was a cross over with complaints raised about the assessed weekly charge. Enquiries were also raised by the vaccine programme for carers.

## **12. Data Protection and Information Sharing**

- 12.1 The Complaints and Data Protection Team responds to Subject Access Requests made under the Data Protection Act 2018 from service users and their representatives. Virgin Care is a joint data controller with the Council for the Adult Social Care records and most requests are passed to Virgin Care for a response. The Council primarily responds to requests for safeguarding records and financial assessment records.
- 12.2 In 2020 - 21, four subject access requests were received and responded to in accordance with the Data Protection Act 2018.

## **13. Review and forward planning**

### **Review**

- 13.1 The beginning of the year was challenging as Adult Social Care adapted to respond to the impact of the first lockdown. The Ombudsman put a pause on all case work to take the pressure of investigations off Councils. The Service put in place a protocol for dealing with complaints during the pandemic. It was agreed that the service would continue to respond to complaints but with an extended timescale for the response. This affected very few complaints and the majority of complainants received a timely response.
- 13.2 The Complaints and Data Protection Team continued to work closely with the Customer Service Team in Virgin Care to ensure the best outcome for complainants.

13.3 Quarterly meetings were held between the Head of Adult Social Care & Learning Disabilities, the Customer Services Manager and Head of Information Governance for Virgin Care and the Principal Social Worker and Complaints and Data Protection Manager for the Council. Issues covered at the meetings included:

- a regular review of current complaints,
- reducing the timescales for complaint responses, and
- improvements to the quality of information in the Virgin Care quarterly monitoring reports.

13.4 A review of the Adult Social Care Complaints Procedure has been completed to ensure it is accurate and up to date.

### **Forward Planning**

13.5 The response time for complaints to the Council will be closely monitored. Response times have improved significantly during the year but there is room for further improvement. It is likely that improved response times have resulted in a reduced number of referrals to the LGSCO which fell from 4 to 1.

13.6 The Quality Assurance Framework for BANES Council's for Adult Social Care Duties is due to be reviewed. This will be completed by October 2021.

13.7 The Complaints and Data Protection Team Manager will work with the Council's Equalities Team to review and revise the collection of equalities data.

13.8 The Complaints and Data Protection Team Manager will be meeting with the manager of the newly commissioned advocacy service, POWhER, in order to develop closer links between the Council, Virgin Care and POWhER.

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June 2021