

# ADULT SOCIAL CARE

# COMPLAINTS AND REPRESENTATION Policy and PROCEDURE

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|  | Introduction |
|  | This policy sets out the Council’s duties when responding to complaints about Adult Social Care and is the policy setting out the procedures for managing service user complaints. |
|  | The policy does not cover complaints which fall outside of the definitions in section 1.2 Complaints which are not covered in Section 1.2, including those about Public Health and Schools, are covered by Bolton Council’s Corporate Complaints Policy and complaints about Children’s Social care are covered by the Children’s Complaints policy, both of which can be found at [www.bolton.gov.uk](http://www.bolton.gov.uk) by entering “complaints”. |
|  | This document also sets out the appeals procedure relating to Adult Social Care assessments. See section 2. |
|  | Background |
|  | Bolton Council is a learning organisation. This means that we value the feedback our service users give us as it helps us to continually improve the quality of our services. |
|  | All feedback from service users about our services are seen as an opportunity to learn and to improve the services we provide or commission. |
|  | Social care staff work very hard to get the job right first time but, with busy services, mistakes can happen. However, if services can get their responses to mistakes right, the people affected are less likely to be dissatisfied and future problems can be prevented. |
|  | When a mistake has happened, it is important to acknowledge it, put things right quickly and learn from the experience. |
|  | In every case, those who complain or appeal a decision should feel confident that they will be dealt with properly – in that our response will be handled efficiently and investigated and an outcome reached. |
|  | Bolton’s Adults Department is dedicated to the protection of service users and is committed to the ‘duty of candor’ which places a duty on all professionals to be open and honest with service users.  |
|  | We will ensure as far as practically possible, that:* Service users, or where appropriate, their next of kin, or those nominated to act on their behalf, will be fully informed of any incident in our care which is suspected of having caused or may result in harm to the service user in the future.
* That staff are provided support in reporting incidents.
 |
|  | Aims & Principles  |
|  | The aims of this policy and procedure are:* To ensure statutory Adult Social Care complaints are handled in the correct way.
* To ensure that appeals relating to adult social care assessment are handled in the correct way.
* To ensure the Department ‘learns lessons’ from the experiences of our service users and improves the quality of services as a result.
* To help create a culture that encourages people to share their experiences so that we can make services more effective, personal, and safe.
 |
|  | When someone makes a complaint or wishes to appeal a decision it is because they areunsatisfied with our service. |
|  | It is important to note that the Department supports a ‘no-blame’ culture. This means that whilst staff are accountable for their actions, the process of answering complaints orappeals is not about apportioning blame or being defensive but identifying where we can improve as an organisation. |
|  | We will focus on:  * Getting it right first time
* Being service user focused
* Listening
* Being open and accountable
* Acting fairly and proportionately
* Putting things right
* Seek continuous improvement and learn lessons.
 |
|  | Through this policy and associated procedures, we hope to make clear that we are committed to gathering service users’ views and to enabling service users to share theirexperiences about our services so that we can improve our approach as a result of those shared experiences.  |
|  | Section 1 - Complaints and Representation Policy and Procedure |
| 1. | Legislation  |
| 1.1.1 | The complaints policy and procedures are based on the content of the following statutory instruments and guidance issued as Section 7 Guidance under the Local Authority SocialServices Act 1970:* [The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009 (legislation.gov.uk)](https://www.legislation.gov.uk/uksi/2009/309/contents/made)
* [A guide to better customer care (iriss.org.uk)](https://lx.iriss.org.uk/sites/default/files/resources/Listening%2C%20responding.pdf)
* [The NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012 (legislation.gov.uk)](https://www.legislation.gov.uk/uksi/2012/3094/contents/made)
* [The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (legislation.gov.uk)](https://www.legislation.gov.uk/ukdsi/2014/9780111117613/regulation/16)
* [Data Protection Act 2018 (legislation.gov.uk)](https://www.legislation.gov.uk/ukpga/2018/12/contents/enacted)
* [Equality Act 2010 (legislation.gov.uk)](https://www.legislation.gov.uk/ukpga/2010/15/contents)
* [Care Act 2014 (legislation.gov.uk)](https://www.legislation.gov.uk/ukpga/2014/23/contents/enacted)
* [Human Rights Act 1998 (legislation.gov.uk)](https://www.legislation.gov.uk/ukpga/1998/42/contents)
 |
| 1.2 | Definitions |
| 1.2.11.2.2 | The Council’s definition of an Adult within the context of social care and the one which this Policy adopts is *“An Adult is defined as someone age 18 and over and has care and support needs (Care Act 2014)”* |
| 1.2.3 | The Council’s definition of **a complaint** and the one which this policy adopts is:*“A complaint is a way of letting the Council know that you are not happy with a particular service. A complaint may be about delay, lack of response, discourtesy or about the standard of service you have received.”* |
| 1.2.4 | A statutory social care complaint is set out in law and is anything which relates to thesocial care services that the Council either provides or commissions. |
| 1.2.5 | Complaints falling outside of this description are dealt with under the CorporateComplaints procedure (please refer to [www.bolton.gov.uk](http://www.bolton.gov.uk) entering “complaints”. |
| 1.2.6 | A complaint is not:* a routine first-time request for a service
* a claim for compensation only
* a disagreement with the outcome of a needs assessment – however please see section 16 regarding how the appeals procedure links in with the complaint’s procedure.
* a disagreement with decisions or conditions that are based upon social recommendations, but determined by a court or other statutory body, for example decisions made by a parole board or mental health tribunal.
* an attempt to re-open a previously concluded complaint or to have a complaint reconsidered where we have already given our final decision.
 |
| 1.2.7 | Service users can offer their comments at any time to any service that we provide or that we commission – we welcome feedback. Service users should be reassured that the service they are receiving will never be adversely affected by giving feedback and service users can comment anonymously if they wish. General comments do not form part of the formal complaints procedure and if service users wish to complain about social care services this policy will apply. Making general political comments about Social Care Services is also not part of this Policy or the complaints procedure. |
| 1.3 | Who can make a Complaint? |
| 1.3.1 | A complaint can be made by:* Any person who is receiving or has received services from Adult Social Care.
* Where arrangements have been made by the council for the provision of a service/services.
* Any person who is affected by the action, omission or decision of the responsible organisation which is the subject of the complaint e.g., a family carer.
 |
| 1.3.2 | A complaint may also be made by a representative of a person who:* Has died.
* Is unable to make the complaint themselves because of physical incapacity.
* Lacks capacity within the meaning of the [Mental Capacity Act 2005 (legislation.gov.uk)](https://www.legislation.gov.uk/ukpga/2005/9/contents).
* Has requested the representative to act on their behalf (i.e., Advocate, family member or friend,
* Has legal power to act on a person’s behalf, i.e., Enduring Power of Attorney (EPA) or Lasting Power of Attorney (LPA)

If a third party has raised a complaint on behalf of a person, Council Staff will ensure that the Council’s policies on gaining consent and on information sharing are followed. |
| 1.3.3 | A Bolton citizen can choose to raise a complaint via their Member of Parliament (MP) or Local Councillor. MPs raise case work via an electronic form which comes through to the Council’s Customer Relationship Management System: the response timescale for an MP query is14 days. |
| 1.3.4 | Where a group of adults or their representatives wishes to make a complaint, and the issues being raised are substantially the same or linked or they make the complainttogether as a group, then these can be treated as one complaint. |
| 1.4 | What/Who is Exempt from the Complaints Policy and Procedure? |
| 1.4.1 | The complaints part of this procedure does not apply when (please note this is not anexhaustive list other conditions may apply):* The person wishing to complain does not meet the requirements in section 1.3.
* Where the same complaint has already been dealt with at all stages of this procedure.
* The complaint is unclear, frivolous, or vexatious.
* The complaint should be dealt with under other proceedings such as:
* Disciplinary proceedings.
* Grievance procedure.
* Complaints from staff about personal issues.
* Complaints that should be considered under the Council’s Corporate Complaints Procedure.
* An alternative statutory appeals procedure already exists.
* Criminal investigation where court action is pending.
* Court proceedings.
 |
| 1.4.2 | The Council has discretion in deciding whether to consider/investigate complaints whereto do so would prejudice any of the following concurrent investigations:* Court proceedings.
* Tribunals.
* Disciplinary proceedings.
* Criminal proceedings.
* Local Government Ombudsman
 |
| 1.5 | How to make a complaint |
| 1.5.1 | Formal complaints should be submitted to the Quality Assurance & Improvement Teamusing the contact details below and if a complaint is made verbally, it will be confirmed inwriting by the Complaints officer. The Quality Assurance and Improvement Team1st FloorTown HallVictoria SquareBolton BL1 1RU By email to quality@bolton.gov.uk By telephone on 01204 334236 (duty number) |
| 1.5.2 | Alternatively, the complainant can lodge a complaint in any of the following ways:* By telling a staff member they want to complain.
* By telling a member of the Care Management team.
* By completing a feedback card given out by in-house services.
* Informing a member of staff in the Contact Centre on 01204 333333.
 |
| 1.6 | Managing Joint Complaints Between Health Services and Social Care Services |
| 1.6.1 | Support services provided by health and social care are often closely intertwined for our service users/patients. Therefore, it is essential that we (Bolton Council) alongside our health colleagues also provide a single effective response to complaints.  |
| 1.6.2 | Should the complainant however not consent to their complaint being shared with other responsible organisations they will be advised to raise their concerns with each organisation individually.  |
| 1.6.3 | Where a person raises a complaint which crosscuts both health and social care services, we want to ensure that the complainant only has to raise their concerns once so, to this end, we will identify a “lead organisation.”  |
| 1.6.4 | When deciding which organisation should take the lead in managing a complaint, complaints officers from the relevant organisations will consider the following factors: |
| 1.6.5 | * Which organisation has the larger number of issues raised against it.
* Which organisation holds the most serious elements of the complaint.
* Where the two above factors are balanced, which organisation originally received the complaint.
* Where there is an integrated service, which organisation manages the service
* Whether the complainant has a clear preference for which organisation takes the lead.
 |
| 1.6.6 | Where a lead organisation is identified they will appoint a point of contact for the complainant and confirm an indicative timescale for response. Organisations may have differing policy timescales for responding to complaints however it is expected that the timescales of the lead organisation will be adhered to wherever possible.  |
| 1.6.7 | See Appendix 2 for the “Process for Handling of Joint Complaints between Health Care and Social Care Services. |
| 1.7 | Managing Statutory Social Care Complaints |
| 1.7.1 | Bolton Council Quality Assurance & Improvement Team are responsible for facilitatingthe complaints procedure. For help with this policy or procedure please contactquality@bolton.gov.uk or phone the duty number 01204 334236. |
| 1.7.2 | Where possible, complaints should be resolved quickly and informally. Informal resolution is often what the service user wants and is a far more effective and efficient use of staff resources. |
| 1.7.3 | Where informal resolution is not possible, it must be considered whether this policy applies or whether it should be dealt with under an alternative procedure. |
| 1.7.4 | All formal complaints are recorded and monitored on an electronic monitoring system. |
| 1.7.5 | Statutory Adult social care complaints follow a multi-stage process which ensures formalcomplaints are investigated thoroughly, and complainants have a right to an appeal. |
| 1.7.6 | Complaints which fall into the definitions outlined in Section 5 of this policy should followthe following process: |

1.7.7 Process Flow:

1. **Acknowledgement**  - within 3 working days via the Complaints and Improvement Officer.

**2. Informal resolution:** Aims to resolve the problem as quickly as possible (within 24 hours if possible)

**3. Stage 1 Formal investigation:** If informal resolution cannot be achieved, a request can be made for the complaint to be investigated formally (within 20 working days or more if the case is complex).

**4. Stage 2:** If the complainant is still dissatisfied with the response at Stage 1, they can request a Stage 2 (within 20 working days) to be investigated a Head of Service.

**5. Ombudsman:** If dissatisfied with how the Council’s complaints procedure was implemented, the complainant has the right to refer to the Local Government Ombudsman.

Contact can be made using the below link or telephoning 0300 061 0614.

[Local Government and Social Care Ombudsman](https://www.lgo.org.uk/)

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| 1.7.8 | There may be occasion where a response to a complaint is delayed. In these instances, the complainant will be kept fully informed of progress. |
| 1.7.9 | Adult complainants will have a right of access to appeal to a Head of Service if they are not happy with the response provided at Stage 1. |
| 1.7.10 | Following completion of this process, the complainant has recourse to the Ombudsmanand may refer the matter to the Ombudsman if he/she is not satisfied with the outcome of the complaint (by the council).Usually, all stages of the Local Authority’s complaintsprocedure must be completed before the Ombudsman will look at any complaint. TheOmbudsman can look at complaints about things that have gone wrong in a way that aservice has been delivered; if the service has not been delivered at all; the way adecision has been made and has caused problems for you. The Ombudsman cannotquestion what a Council or Care Provider has done simply because the complainantdoesn’t agree with it. |
| 1.7.11 | Once complaints have been responded to, any additional learning is reviewed to identifywider organisational improvement practices. |
| 1.7.12 | Management will ensure that staff learn from complaints. This includes sharing learningwith staff as appropriate to support organisational development. |
| 1.7.13 | If the Council receives an anonymous complaint, this will be investigated following theprocess outlined above if there is enough information contained within the complaint toenable a thorough investigation. If the complaint does not include enough detail, we may decide not to pursue this further, the Head of Service for Quality Assurance &Improvement will make that decision. |
| 1.8 | Safeguarding  |
| 1.8.1 | Where the person involved in a complaint is an adult at risk and there is reason tobelieve that a person is deliberately or unknowingly causing them harm or has causedthem harm, then consideration must be given to the safeguarding implications, both tothe person at the center of the concerns and to other vulnerable adults who arepotentially at risk in relation to the concerns. |
| 1.8.2 | Safeguarding investigations will take precedence to the complaint’s investigation.  |
| 1.8.3 | Harm covers: * **Physical:** restraint, over medication, hitting or threatening to hurt someone
* **Financial:** Pressure to change a will, share PIN number, taking or borrowing possessions without the owner’s consent, over charging, pressure selling
* **Psychological:** name calling, discrimination, threats, humiliation, not listening to a person's wishes
* **Sexual:** touching, marriage or sexual acts without a person’s consent, professionals involved in intimate relationships with their clients
* **Domestic abuse:** controlling, coercive or threatening behaviour, violence, or abuse by someone who is or has been an intimate partner or family member
* **Organisation abuse:** including neglect or poor care within an institution or specific care setting
* **Self- neglect:** this covers a wide range of behaviour - neglecting to care for one’s personal hygiene, health or surroundings and includes behaviours such as hoarding
* **Modern slavery:** encompasses slavery, human trafficking, forced labour and domestic servitude
 |
| 1.8.4 | Harm can be caused by an act or omission or be passive or active in nature. Wherethere are any indications that there are safeguarding implications, the complaint will, atthe point of receipt, be discussed with the appropriate Head of Service. The complaintwill be logged by the Quality Assurance and Improvement Team pending the outcome of the safeguarding investigation. A letter confirming that the concerns are be investigated by the safeguarding process will be sent to the complainant informing them of this. |
| 1.8.5 | Further safeguarding guidance can be found via the Web page. [Safeguarding adults at risk – Bolton Council](https://www.bolton.gov.uk/safeguarding-protecting-adults/safeguarding-adults-risk) |
| 1.9 | Time Limit for Making a Complaint |
| 1.9.1 | In order for a complaint to be accepted under this policy, the complaint must be made no later than:1. Twelve months after the incident occurred.

OR:1. Twelve months after the complainant realised, they had reason to complain.
 |
| 1.9.2 | If a complaint is made outside of these time limits, the Department may decide to accept the complaint if the complainant had good reasons for not doing so within the stipulated time period, and it is still possible to investigate effectively. Each case will be considered individually and a decision made by the Head of Quality Assurance & Improvement or, in the case of appeals by the Principal Social Worker or relevant Head of Service.  |
| 1.10.  | Withdrawal of Complaints |
| 1.10.1 | Complaints may be withdrawn orally or in writing at any time. The Quality Complaint and Improvement Officer must be informed immediately if this happens. The QualityComplaint and Improvement Officer must then contact the person making the complaintConfirming their decision. |
| 1.10.2 | The Quality Complaint and Improvement Officer, Service Manager and Head of Servicemay review the issue of concern and consider whether further investigation is requiredthrough other internal management systems. |
| 1.11 | Supporting the Complainant and Making Reasonable Adjustments: |
| 1.11.1 | Regulation 3(2) (d) of the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009 prescribes that service users/complainantsreceive, so far as is reasonably practical have:* Assistance to enable them to understand the procedure in relation to complaints or;
* Advice on where they may obtain such assistance.
 |
| 1.11.2 | Complainants will be made aware by the Complaints Officer that they can request anadvocate to support them through the complaint’s procedure. |
| 1.11.3 | The Council is committed to taking action to ensure that the way we work does not place people with disabilities at a disadvantage. We want to remove the barriers some of our complainants have in making complaints. |
| 1.11.4 | We have a legal duty to consider adjustments if we find that there are barriers to people with disabilities in the way we do things. If those adjustments are reasonable, they must be made.  |
| 1.11.5 | The duty is ‘anticipatory’. This means that the Council cannot wait until a person with a disability wants to use the service. We must think in advance, and on an ongoing basis, about what people with a range of impairments, such as people who have a visual or hearing impairment, a mobility impairment, a learning disability, an acquired brain injury, might reasonably need.  |
| 1.11.6 | The Equality Act 2010 requires us to provide reasonable adjustments for people who are “disabled”. Under the Act this means they have a “physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day to day activities”.  |
| 1.11.7 | The duty is to make “reasonable adjustments” if the way that we carry out our functions places a disabled person at a “substantial disadvantage” compared to someone who does not have a disability.  |
| 1.11.8 | We will do our best accommodate requests even if you don’t have a disability as defined by the Equality Act 2010. |
| 1.11.9 | Reasonable adjustments are not defined by the Act, but there is a Code of Practice which gives guidance as to the kind of adjustments that could be made.  |
| 1.11.10 | Making a reasonable adjustment means making a change to our usual practices to avoid or correct a disadvantage to a person who has a disability in accessing our service. Depending on your needs, this could include: * Providing documents or correspondence in larger print, or with a specific colour contrast (which may help people with conditions such as dyslexia)
* Giving you more time than would usually be allowed to provide further information or comments on your complaint.
* Using the telephone rather than written communication (e.g., if you have a visual disability)
* Translating documents or correspondence into Braille
* Communicating with you through your representative or advocate
 |
| 1.11.11 | When you first contact us, we will ask you if you have a disability and whether you might need an adjustment to help you use our service, but you can also ask for Reasonable Adjustments at any time during our consideration of your complaint.  |
| 1.11.12 | We will also suggest new or additional adjustments if we feel it might help you continue to make the best use of our service.  |
| 1.11.13 | Before agreeing an adjustment, we will consider: * What the disadvantage would be if the adjustment were not made.
* Whether the adjustment will be effective in reducing the disadvantage
* How practical it is to make it.
* Whether it would disrupt our other activities unreasonably
* The cost and availability of resources, including external help and finance.
 |
| 1.11.14 | We will try to agree a reasonable adjustment with a minimum of delay, but in some cases, we may need to consider the request in more detail.  |
| 1.11.15 | There may be circumstances where we decide not to meet the request. The law says that an adjustment only has to be made if it is “reasonable”. We need to take account of the cost or resource implications of making the adjustment, whether the request itself is reasonable and whether there is a less expensive way of meeting the request. Where it is very difficult to provide the adjustment or meeting it would interfere with our ability to meet our legal obligations, we may decide it is not “reasonable”.  |
| 1.11.16 | We will look at each request individually and will aim to agree any adjustments with you to avoid us making incorrect assumptions about your needs. Where we do not agree an adjustment, we will explain why. When we agree a reasonable adjustment, we will let you know in writing.  |
| 1.12 | Complaints involving other agencies: |
| 1.12.1 | **Complaints made about Health and Social Care**When a complaint is received about health *and* social care we will liaise with our partners in please see [section 1.6](#_1.6) above and [Appendix 2](#_Process_for_Handling) for more information.  |
| 1.12.2 | **Complaints about residential facilities.**  |
|  | Complaints made by adults or their representative about the service they have received in an adults’ residential care facility run by Bolton Council will be handled under this policy. |
| 1.12.3 | Complaints from members of the public or from those not listed above, about Care Homes run by Bolton Council will be dealt with under the Corporate Complaints Procedure. |
| 1.12.4 | Complaints about Care Homes run by other organisations and commissioned by Bolton Council must be made to the organisation concerned in the first instance. However, as part of their contract, organisations must make Bolton Council aware of all complaints received so that responses, learning and improvement can be monitored. If the complainant is not satisfied, they may choose to formally complain to the Council via this policy. |
| 1.12.5 | **Complaints made by adults in receipt of a Direct Payment.**Adults who pay for their services with a Direct Payment should complain directly to their care provider. Direct Payment recipients have their own contract with the providers of care and therefore must make their complaint directly to their care provider.  |
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| 1.12.6 | **Complaints about Independent / commissioned Social Care Providers** |
|  | Independent social care providers have their own complaints procedures and complaints about their services should be directed to the organisation providing the care. Bolton Council will ensure the provider has in place a complaints procedure that complies in all respects with any applicable legislation. |
| 1.12.7 | However, as part of their contract the Provider should send the Council’s Quality Assurance & Improvement Team a copy of any complaint response in relation to any individual who receives a directly commissioned council service. If the complainant is not satisfied, they may choose to formally complain to the Council via this policy. |
| 1.13 | Unreasonably Persistent Complainants |
| 1.13.1 | Features of a ‘persistent complainant’ may include:* A person who makes the same complaint repeatedly (with minor differences), but never accepts the outcome.
* A person who seeks an unrealistic outcome and persists until it is reached; or
* A person with a history of making other unreasonably persistent complaints.
 |
| 1.13.2 | An unreasonably persistent complaint is likely to include some or all of the following:* An historic and irreversible decision or incident
* Frequent, lengthy, complicated and stressful contact with the local authority staff.
* The complainant behaving in an aggressive manner to staff or being verbally abusive or threatening.
* The complainant changing aspects of the complaint partway through the investigation.
* The complainant making and breaking contact with the local authority on an ongoing basis; and
* The complainant persistently approaching the local authority through different routes about the same issue in the hope of getting different responses.
 |
| 1.13.3 | On most occasions when we consider someone’s behaviour unreasonable, we will explain why and ask them to change it. We will also warn them that if the behaviour persists, we will take action to restrict their contact with our services. |
| 1.13.4 | If the behavior is so extreme that it threatens the immediate safety and welfare of our staff, we may report the matter to the police or consider taking legal action. On such occasions we may not give any warnings. |
| 1.13.5 | The Council will not tolerate deceitful, abusive, threatening, violent or other forms of unacceptable behavior from complainants. When it occurs, we will take proportionate action to protect the well-being of our staff and the integrity of our processes. |
| 1.13.6 | In line with the “Management of Unreasonable Complainant Behaviour” policy the Monitoring Officer will decide whether the circumstances justify any restriction to services. |
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|  | Section 2 - Appeals Relating to the Adult Social Care Assessment Procedure (Including Financial Assessments) |
| **2.1**2.1.1 | Why have an appeals procedure?The Government amended the Care Act [2014] to include powers to introduce an appeals system under which decisions taken by a local authority under Part 1 of the Care Act might be challenged. |
| 2.1.2 | Care and Support decisions have a large impact on people’s quality of life. It is therefore important that where people feel an incorrect decision may have been made in relation to their care and support, they have an effective means to have the decision reviewed. |
| 2.1.3 | The appeals procedure is part of the Complaints Policy so that we can ensure learning from appeals, complaints and compliments is closely linked. |
| 2.1.4 | The following sections in the above Complaints and Representation Policy and Procedure are also applicable within the Appeals Procedure[[1]](#footnote-2): * [Aims & Principles](#_Aims_&_Principles)
* [Safeguarding](#_Safeguarding)
* [Withdrawal of Complaints](#_Withdrawal_of_Complaints)
* [Supporting the Complainant and Making Reasonable Adjustments.](#_Supporting_the_Complainant)
* [Unreasonably Persistent Complainants](#_Unreasonably_Persistent_Complainant)
 |
| **2.2**2.2.1 | What is an appeal?This is where a relevant person (see point 2.3 below) wishes to appeal either:* An eligibility decision
* The decision not to approve a support plan
* The decision not to approve a Personal Budget
 |
| 2.2.2 | Before starting the appeals procedure, it should be clear if the query is a complaint or an appeal. Where it is a complaint the Adult Social Care Complaints and Reparation Policy and Procedure will be followed. |
| **2.3** | Who can lodge an appeal?  |
| 2.3.1 | An appeal may be made directly by the service user or, where the service user has substantial difficulty (see glossary for explanation of substantial difficulty) in advocating for themselves, an appeal may be made by an advocate i.e., Enduring Power of Attorney (EPA) or a Lasting Power of Attorney (LPS) or family member or friend.  |
| 2.3.2 | An appeal may also be made by an independent advocate appointed under section 67 of the Care Act 2014 again this applies to service users who have substantial difficulty in being involved with assessments, care planning or care reviews; it may be an independent advocate appointed under the Mental Capacity Act, or any other independent advocate. |
| **2.4**2.4.1 | How to lodge an appealThe request for an appeal can be given in writing or verbally to the allocated social worker, social care officer or their team manager. Alternatively, an email can be sent to the Complaints and Improvement Officer on quality@bolton.gov.uk  |
| 2.4.2 | For help with this this procedure please use the above email or phone 01204 334236 (duty number). |
|  |  |
| **2.5**2.5.1 | The Procedure Explained On receipt of the appeal request an acknowledgement of receipt will be sent by the Complaints and Improvement Officer within 3 working days**.**  |
| 2.5.2 | The appeals procedure consists of 3 stages. Where there is delay in any of the stages i.e., due to the complexity of the case, the appellant will be kept informed by the Complaints and Improvement Officer. If however the appellant wishes to delay the process they must inform the Complaints and Improvement Officer as soon as possible.  |
| 2.5.3 | 1. Informal resolution Wherever possible we will try to resolve queries around our assessment procedure quickly and with as little inconvenience to the appellant as possible. This first stage will involve contact between the appellant and the social work or social care officer who are involved in supporting the service user.  |
| 2.5.4 | If informal resolution cannot be achieved at this stage, the appellant can request the appeal moves to the Formal Consideration Stage by contacting the Complaints and Improvement Officer (see “How to lodge an appeal above”) or again requesting via the social worker or social care officer.  |
| 2.5.5 | 2. Formal Consideration The manager of the team supporting the service user will be in charge of this stage of the appeal and will converse with the appellant to:* Confirm that the appeals procedure is the correct procedure. Where another procedure is more appropriate the Team Manager will signpost to appellant to the correct procedure.
* Understand the appellant’s reasons for wishing to appeal.
* Gather evidence and information from the appellant and other interested parties.
* Understand the appellants desired outcome.
 |
| 2.5.6 | The Team Manager will then consider all the available information and will respond to the appellant in writing within 20 working days.  |
| 2.5.7 | If resolution cannot be achieved at this stage the appellant can request that the appeal moves to an Independent Appeals Hearing by contacting the Complaints and Improvement Officer (see “How to lodge an appeal above”).  |
| 2.5.8 | A request for the appeals hearing should be made in writing by the appellant **within 1 month** from receipt of the Team Manager’s response. The appellant will need to advise the reasons why they wish to escalate to an appeal hearing and provide, where possible, any additional evidence or information which will support their appeal.  |
| 2.5.9 | 3. Appeals HearingThe Complaints and Improvement Officer will advise the Assistant Director of Adult Social Care that an appeals hearing has been requested. The Assistant Director will then assign the hearing to a Head of Care Management within Bolton Council, this senior officer will be independent of the team who are supporting the service user and will Chair the Appeals Hearing. The Head of Quality Assurance & Improvement or their nominated Principal Officer will act as Deputy Chair on the Hearing. |
| 2.5.10 | The Head of Care Management will then arrange an Appeals Hearing, writing to the appellant to advise them of the date, time and venue. The Hearing will take place within 20 days from receipt of the appellant’s request.  |
| 2.5.11 | Following the conclusion of the Hearing the Head of Care Management will consider all the supplied information and will write to the appellant within 10 working days, outlining their decision and rationale. |
| 2.5.12 | Local Government OmbudsmanShould the appellant still be dissatisfied with how the appeals procedure was implemented they then have the right to have their case considered by the Local Government Ombudsman.  |
| 2.5.13 | The Ombudsman will ask the appellant and Bolton Council to supply documentation relating to the case, they will consider this information and make a decision based on the information given.  |
| 2.5.14 | Contact can be made using the below link or telephoning 0300 061 0614.[Local Government and Social Care Ombudsman](https://www.lgo.org.uk/) |
| 2.5.15 | The below flow diagram illustrates the Appeals procedure:  |
| 1 | **Informal resolution:** The Social Worker of Social Care Officer will aim to resolve the problem as quickly as possible (within 24 hours if possible) |
|  |  |
| 2 | **Formal consideration:** If informal resolution cannot be achieved, a request can be made for the appeal to be formally considered, by the Team Manager (within 20 working days or more if the case is complex).  |
|  |  |
| 3 | **Independent Appeals Hearing -**  If the appellant is not satisfied with the response following Formal Consideration, they can request an Appeals Hearing (the hearing will be held within 20 working days or more if the case is complex). |
|  |  |
|  | **Ombudsman:** If dissatisfied with how the procedure was implemented, the appellant has the right to refer to the Local Government Ombudsman. |
|  |  |
| **2.6** | What happens at the Appeal Hearing? * The appellant(s) will be given the opportunity and encouraged to attend the appeals hearing.
* The appeals hearing will be Chaired by a Senior Officer who is independent of the case.
* The Chair will explain the process. This explanation will include:
	+ Introducing the appeal attendees and explaining their roles
	+ Explaining who makes the decisions
	+ Detailing who will take minutes
* If a Social Worker, Social Care Officer or Team Manager is asked to attend they will be asked to speak first and will outline the case history, this is so the appellant can hear the information and provide subsequent comment.
* If the appellant has chosen to attend the Chair will then ask the appellant to comment or present any information or evidence. Any evidence provided will be recorded and fully considered before a decision is made.
* After appeal hearing the Chair has the following options:
	+ Determine that there should be no change to the original decision.
	+ Request that another social care assessment is carried out.
	+ Consider a transitional payment in exceptional circumstances for a maximum of three months whilst an alternative plan is developed.
* The appeal decision will be sent in writing to the appellant within 10 days of the hearing and will give a full rationale for how the decision was reached.
 |
| **2.7** | Timescales  |
| 2.7.1 | In order for a appeal to be accepted under this policy, the appellant must be made no later than:1. Twelve months after the decision was made.

OR:1. Twelve months after the appellant realised, they had reason to raise an appeal.
 |
| 2.7.2 | If an appeal is made outside of these time limits, the Department may decide to accept the appeal if the appellant had good reasons for not doing so within the stipulated time period, and it is still possible to consider the case effectively and efficiently. Each instance will be considered on its own merit and a decision made by either the Head of Quality Assurance & Improvement or their Principal Officer. |
| 2.7.3 | If at any time the appellant wishes to stop and put the process on hold they can do so by contacting the Complaints & Improvement Officer (quality@bolton.gov.uk) or 01204 334236) or advising the officer who is their key contact for the appeal. |
| 2.7.4 | Where there is delay in any of the stages i.e., due to the complexity of the case, the appellant will be kept informed by the Complaints and Improvement Officer. |
| **2.8**2.8.1 | Can I/the person I advocate for receive services during the appeal?Whilst the appeal is in process various options will be considered, these are:* The Council will take reasonable steps to provide a service which will meet the service user needs
* That the service which has been allocated is accepted by the appellant as an interim arrangement pending the outcome of a review.
* That a service is not immediately required i.e., if the service users is receiving enablement services or family support.
 |
|  | Glossary

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| --- | --- |
| Advocate | An advocate will support a person to ensure their rights are being up held or their views and wishes are being represented.Advocates can be informal i.e. a family member of friend, or they can be appointed from an independent advocacy agency where needed.  |
| Appellant | Person who is requesting an appeal.  |
| Care Management | This is a term we used to describe the officers within Bolton Council who are involved in caring for services users, these are our social work teams.  |
| Complainant | Person who is making a complaint.  |
| Service User | The person who is in receipt of services provided by or through Adult Social Care.  |
| Social Care Providers | These are organisations, very often private businesses, who provide social care for vulnerable adults for example residential care or nursing homes, supporting living services, homecare/domiciliary care services.  |
| Statutory | This is a law made by Parliament.  |
| Substantial Difficulty | Having a “substantial difficulty” means that, without support, the person will ﻿find it very hard to do one or more of these:* understand relevant information
* retain that information
* use or weigh up that information
* communicate their wishes and views
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**Appendix 1**

## A picture containing text, font, graphics, logo  Description automatically generatedAppeal Request Form (A1)

**Please return this form to:** **quality@bolton.gov.uk**

|  |
| --- |
| **Details of the person the appeal relates to:** |
| Name: |  |
| Address: |  |
| Date of Birth: |  |
| Telephone Number:(if available) |  |
| Email:(if available) |  |
| **Details of the person requesting the appeal – if different to the above:** |
| Name: |  |
| Address: |  |
| Telephone Number:(if available) |  |
| Email:(if available) |  |
| Relationship to the person the appeal relates to: |  |
| Does this person know you are making this appeal on their behalf: |  |
| What authority do you have to make an appeal on this persons behalf? |  |
| **Please tell advise below which information or decision you are appealing and the date of the decision?**  |
|  |

**Appendix 2**

## Process for Handling of Joint Complaints between Health Care and Social Care Services.

**Aim:** To provide a single agreed process for responding to complaints, which involve both Adult Social Care Services and our NHS colleagues.

**Scope:** This protocol will apply when an organisation receives a complaint, which makes reference to an adult social care service provided by Bolton Council and a health service provided by a NHS body.

[The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009](https://www.legislation.gov.uk/uksi/2009/309/contents/made)  make provision for the joint handling of complaints between local authorities and NHS bodies.

**Information Sharing:**

Information Sharing Acceptance of this protocol implies agreement to information sharing between organisations within the constraints of the Data Protection Act (2018). Issues of confidentiality will be the responsibility of all complaints managers/officers and consent from a complainant will be required to ensure joint complaints can be effectively investigated.

**Identifying the Lead Organisation:**

The lead organisation will normally be the organisation against which the major component of the complaint is made.

However, the consideration should be given to the following factors:

* Which organisation has the larger number of issues raised against it?
* Which organisation holds the most serious elements of the complaint?
* Where the two above factors are balanced, which organisation originally received the complaint?
* Where there is an integrated service, which organisation manages the service?
* Whether the complainant has a clear preference for which organisation takes the lead.

**Roles and responsibilities:**

Processing of any complaint will generally sit within an organisation’s complaints team and, should follow individual organisational escalation procedures where needed.

The Receiving Organisation will:

* Acknowledge receipt of the complaint.
* Gain consent from the complainant to share information with the other associated organisations.
* Share the complaint details with the other associated organisations and identify who will act as the lead organisation.

The Lead Organisation will:

* Clarify with the complainant the nature of their complaint, ensuring that the complainant’s desired outcomes are clearly recorded and shared with relevant parties.
* Notify the complainant of how the joint arrangements will work and provide an indicative timescale for completion.
* Supply the complainant with point of contact details.
* Supply each organisation party to the complaint with contact details and agree the method for sharing updates/information.
* Communicate with the complainant in a timely manner including updating the complainant regarding any delays in the process.
* Obtain any additional consent to share information.
* Draft the response letter, seeking approval from all other parties involved before a final copy is sent to the complainant.
* Where other concerns arise as part of the process (i.e. disciplinary, safeguarding, fraud etc) the complaints officer will facilitate a discussion between the other organisations to agree a way forward.
* Monitor and record the outcome of any required actions which arise because of the complaint.
* Where a complainant is dissatisfied with the response process to the next stage of the complaints process.

Organisations party to the complaint will:

* Fully investigate their respective elements of the complaint.
* Update and provide responses to the lead organisation in a timely manner.
* Ensure that response to the complaint is agreed in accordance with their own internal governance procedures.
* Update the lead organisation on the outcome of actions which have arisen as a result of the complaint.

Delays to a Joint Response

On occasion one or more of the organisations involved in the complaint may not be able to meet response timescales. For example, where the investigation within one of the organisations is complex. In these circumstances the lead organisation will:

* Contact the complainant to discuss whether the complainant would wish to wait until a joint response is completed.
* Where the complainant agrees to wait until the joint response if completed, the led organisation will continue to provide oversight around progress and, will ensure the complainant is regularly updated.
* Where the complaint is happy to receive a separate response from each organisation the lead organisation will facilitate this, continue to provide updates to the complainant and oversight of the complaint until its completion.
1. Note when reading these sections in the complaint’s procedure - for appeals where “complaint” is referred this will relate to an appeal, and where “complainant” is referred to this will relate to an appellant for an appeal. [↑](#footnote-ref-2)