

REPORT TO:	ADULT SERVICES REVIEW PANEL 14 APRIL 2015
AGENDA ITEM:	7
SUBJECT:	ADULT SOCIAL CARE ANNUAL COMPLAINTS REPORT FOR 2013/2014
LEAD OFFICER:	EXECUTIVE DIRECTOR FOR PEOPLE
CABINET MEMBER:	COUNCILLOR LOUISA WOODLEY CABINET MEMBER FOR PEOPLE & COMMUNITIES
WARDS:	ALL
CORPORATE PRIORITY/POLICY CONTEXT: Supports Council aims of “Good quality, accessible and joined-up services and information” and “Better prevention and early intervention for people who are vulnerable.”	
FINANCIAL SUMMARY: No implications	
FORWARD PLAN KEY DECISION REFERENCE NO: None	

For general release

1. RECOMMENDATION

Members are asked to note the content of this report

2. EXECUTIVE SUMMARY

- 2.1** As part of the requirements of the Local Authority Social Services and National Health Complaints Regulations (England) 2009 to make arrangements for dealing with complaints, Regulation 18 requires local authorities to produce an annual report specifying the number of complaints received, the number of complaints that were well-founded, the number of complaints referred to a local commissioner, and a summary of the nature of complaints and service improvements arising.
- 2.2** This report summarises the department’s management of complaints considered in the 20013/14 financial year under the 2009 Regulations, as well as complaints about adult social care considered through the council’s local complaints procedure (also known as the corporate complaints procedure).
- 2.3** In general, the data should not be relied upon to provide a sole indicator on the quality of the service, but it can highlight specific concerns at particular times and give a guide to remedial action.

- 2.4 The total number of complaints (statutory and non-statutory) has increased from 102 in 2012/13 to 111 in 2013/14, an increase of approximately 9% compared with the previous financial year.
- 2.5 After consideration by the Panel, this report will be published on the council's website as part of the Council's Publication Scheme maintained under the Freedom of Information Act 2000.

3 **DETAIL**

3.1 **STATUTORY COMPLAINTS PROCEDURE**

- 3.1.1 A single approach for dealing with complaints about adult social care and health was introduced on 1 April 2009, derived from the Department of Health's guidance, 'Listening, Responding, Improving.'
- 3.1.2 This approach affords organisations greater flexibility to respond to complaints and encourages a culture that seeks and then uses customer experience to drive service delivery and improve quality.
- 3.1.3 This is achieved by focusing on the needs of the customer rather than the process of managing their complaint.
- 3.1.4 The procedure is based around a single-level process whereby the department investigates and responds to the customer. It is worth noting that the Regulations do not prescriptively set out how councils or health care trusts should manage their complaints but do require the arrangements to ensure that:
- Complaints are dealt with efficiently
 - Complaints are properly investigated
 - Complainants are treated with respect and courtesy
 - Complainants receive, so far as is reasonably practical:
 - Assistance to enable them to understand the procedure in relation to complaints; or
 - Advice on where they may obtain such assistance
 - Complainants receive a timely and appropriate response
 - Complainants are told the outcome of the investigation of their complaint; and
 - Action is taken, if necessary, in the light of the outcome of a complaint
- 3.1.5 Their approach is based around six principles which should underpin how complaints are managed:
- Getting it right
 - Being customer focused
 - Being open and accountable
 - Acting fairly and proportionately
 - Putting things right
 - Seeking continuous improvement

- 3.1.6 There is currently only one stage to the complaints procedure. Complaints are investigated by the departments and responded to by the Complaint Resolution Team on behalf of the Executive Director. However, under the arrangements, where the council receives a more complex and/or high-risk complaint, an external investigator will be appointed to investigate the complaint. There were no instances of this happening in 2013/14.
- 3.1.7 During the 2015 calendar year, the council will adopt a two-stage procedure for managing adult social care complaints. First stage complaints will be dealt with by the operational service being complained about while stage 2 will be a review by the Complaint Resolution Team on behalf of the Executive Director. This approach will mirror the council's procedure for managing corporate complaints and it is anticipated that introducing a second stage will afford the council a greater opportunity to resolve complaints locally, thereby reducing the number of referrals to the Local Government Ombudsman. It is also considered that this approach will add consistency and benefit service users and staff.
- 3.1.8 The Department of Health are currently conducting a consultation exercise with a view to creating an appeals process to consider specific areas of grievance (instead of the complaints procedure) as part of the Care Act 2014. If enacted, this appeals process will come into effect from April 2016. The council has responded to the consultation, outlining its concerns about the potential impact for service users and the likely cost burden to the council.
- 3.1.9 During 2014, the council, in partnership with Croydon Health Services, adopted a joint-working protocol for managing complaints which span health and adult social care. This protocol requires engagement between both organisations when cross-organisational complaints are received. The protocol will be reviewed during 2015 to ensure it remains fit for purpose and also to ascertain if other local partner organisations (i.e. South London and Maudsley NHS Foundation Trust and Croydon Clinical Commissioning Group) would be willing to join the protocol..

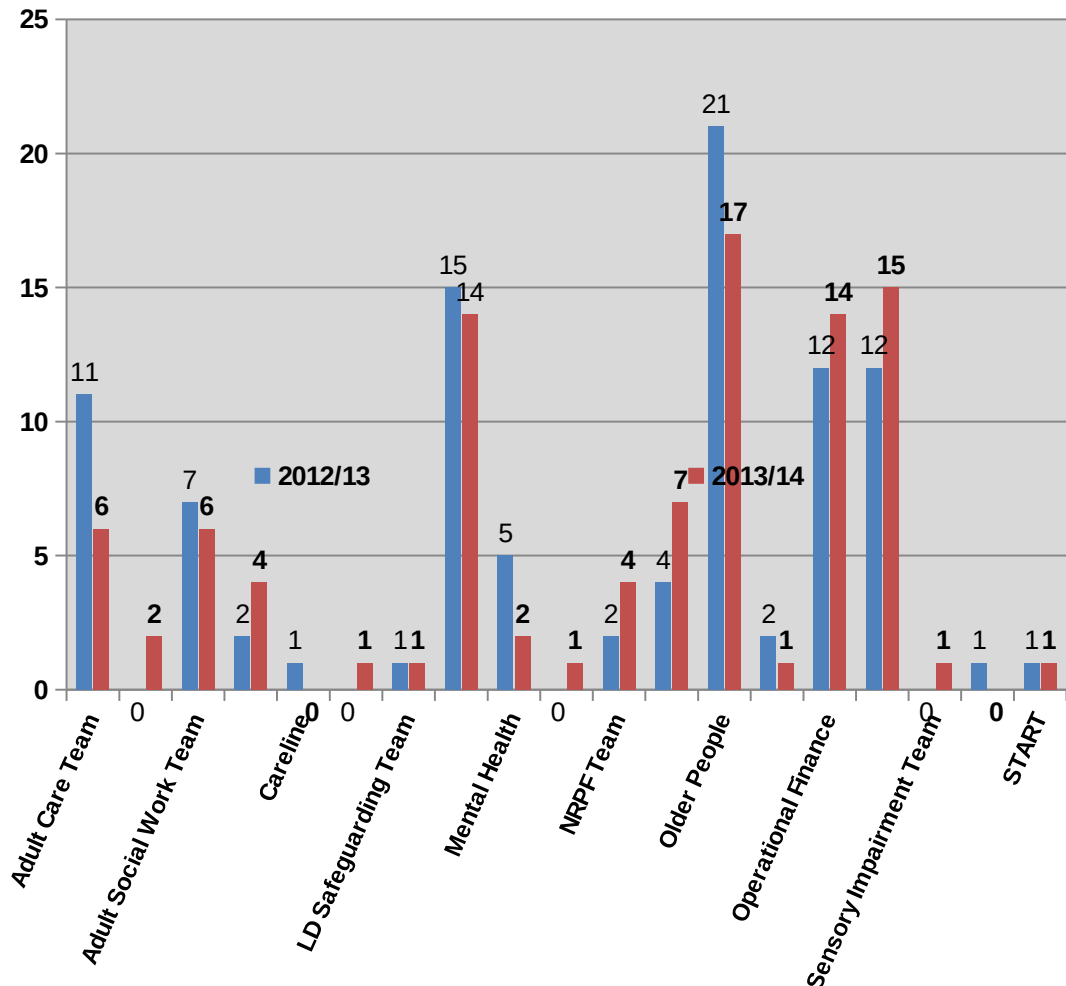
3.2 STATUTORY COMPLAINTS COMMENTARY

- 3.2.1 The number of statutory complaints received during 2013/14 was 97, the same as 2012/13. This is first occasion in the past four years where the number of statutory complaints has not increased.

Complaints received 2012/13	Complaints received 2013/14	Percentage Increase
97	97	0%

- 3.2.2 The graph below shows the breakdown of statutory complaints by team. The Older People care management teams received the highest number of

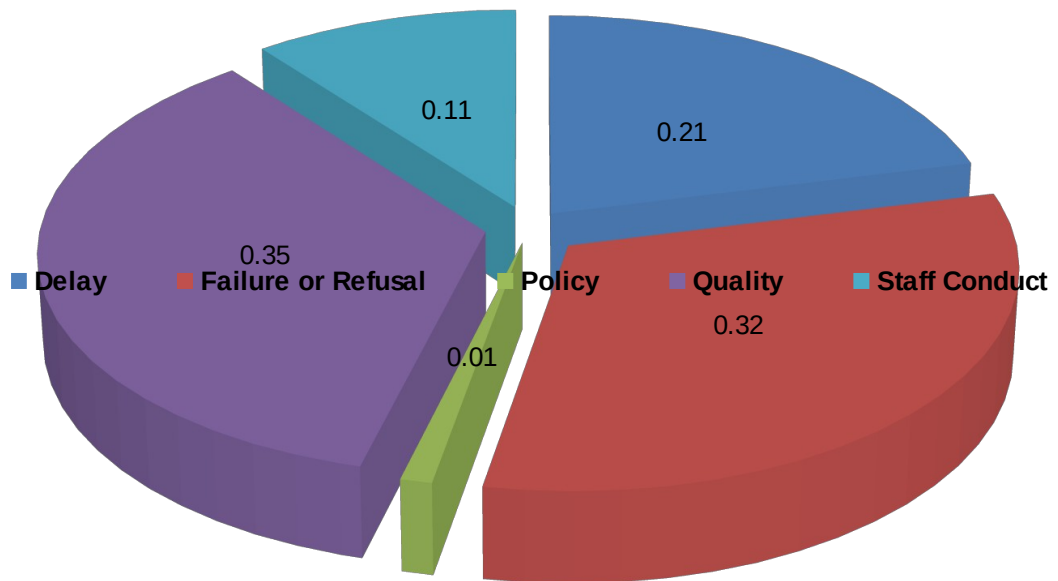
complaints (17). Physical Disabilities received 15 complaints while Learning Disabilities and Operational Finance both received 14 complaints.



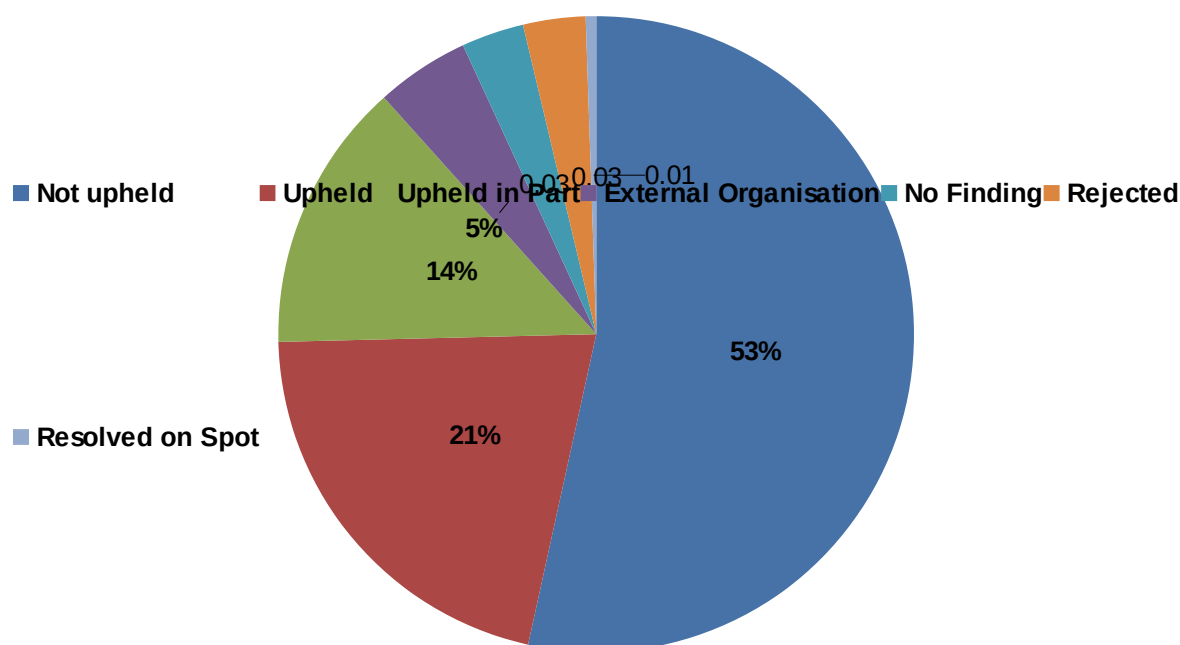
3.2.3 The only notable changes compared with 2012/13 (i.e. increases or decreases of four or more) were reductions for Adult Care Team (5) and Older People Care Management (4). There were modest increases for Physical Disabilities (3), Occupational Therapy (3) and Operational Finance (2).

3.2.4 Of the 97 complaints received, there were 189 individual areas of complaint which were categorised. The pie chart below breaks down the categorisation of complaints received. For the fifth consecutive year, the most common cause for complaint was dissatisfaction about the quality of service (35%) and service failures/refusals (32%).

3.2.5 More detailed information about the types of complaints received can be found at Appendix A.



- 3.2.6 For the second consecutive year, the average time taken to respond to adult care complaints has decreased (19.5 working days compared with 21.1 working days in 2012/13). The percentage of complaints responded to within the 20 working day deadline has also improved from 51.5% in 2012/13 to 61.9% in 2013/14.
- 3.2.7 The percentage of complaints that were either upheld or upheld in part was 35%, a reduction of 5% compared with 2012/13.



3.2.8 There were 13 complaints referred to the Local Government Ombudsman for investigation during 2013/14, compared with 11 in 2012/13. There were no findings of maladministration in any of the cases.

3.2.9 Six referrals to the Local Government Ombudsman related to adult safeguarding investigations while a further four referrals were about care management. Three referrals were disputes about financial assessment decisions.

3.2.10 A sample of cases referred to the Local Government Ombudsman can be found at Appendix 2.

3.2.11 As reflected above, using complaints as a source of constant improvement to service delivery is an important theme of the 2009 Regulations. As one would expect, complaints made over the course of the year have resulted in remedial action to address an individual situation: for example, carrying out an assessment, providing information or making an apology.

3.2.12 However, there were examples where complaints resulted in service improvements, ranging from improving customer care, reviewing training and guidance for staff, reviewing of policy and procedure, and changes to service delivery. The table below lists examples of service improvements arising from complaints received during the 2013/14 financial year.

Team/Service	Action Taken
Adult Care Team	Reminders to care managers of the importance of ensuring the recommencement of care for discharged clients who were receiving care prior to a

	hospital admission.
Adult Care Team	Review of the hospital discharge process, including the letters that are provided to clients (and their families) to ensure that they more clearly outline the support that will be provided after discharge and the reablement support process.
Adult Care Team	Guidance given to care managers to remind them of the responsibility to ensure that funding authorisation is in place before services are arranged. Guidance has also been given to ensure that care managers are aware that they must ensure that service users (and their families) understand the potential funding implications and discussions are followed up in writing.
Adult Care Team	Guidance/reminder to care managers to ensure that they are adequately communicating what the financial responsibilities of clients are after the six-week waived-care period has ended.
Adult Social Work Team	Review how concepts of natural justice relate to the safeguarding investigation process, with particular regard to the rights of an alleged harmer to be advised what allegation is and the right to defend such an allegation.
AIN & Substance Misuse	Guidance/reminder from the Head of Service to re-iterate the importance of keeping electronic diaries up to date to avoid any double-booking appointment slots.
Operational Finance	Review literature issued by the Financial Assessment Team to ensure that officers are including the potential full weekly cost of the service provided and when the charging will commence.
Operational Finance	Develop a departmental billing system for social care invoices to reduce turnaround time for invoices.
Learning Disabilities	Guidance/reminder to care managers to ensure that if meetings/visits are re-arranged that there is adequate communication/notification to all parties attending the meeting/visit.
Older People	Carry out, with support from Brokerage, quality monitoring check of care agency in light of concerns raised about the quality/standard of care provided.
OP/LTC Commissioning	Ensure that any agencies acting on the council's behalf receiving complaints or correspondence which require a response from the council immediately forward this to the instructing officer to manage.
Occupational Therapy	Creation of additional procedures when the Equipment Service receive orders from the OT service, including chasing outstanding orders and informing the prescriber of any updates so that they

	can in turn advise their client of any issues.
Occupational Therapy	Guidance given to OT staff that when ordering a specialist item of equipment that they monitor its progress and follow up with the Equipment Service on any queries or concerns.
Physical Disabilities	Guidance given to care managers about the importance of clear communication when liaising with service users and their family.
Physical Disabilities	Review the process for arranging respite provision after concerns raised about delays and financial approval.

3.3 NON-STATUTORY COMPLAINTS COMMENTARY

- 3.3.1 Complaints received which do not relate directly to social care provision are considered through the council's local (or corporate) complaints procedure.
- 3.3.2 The local complaints procedure has two stages; the first stage is an investigation by the service being complained about. If complainants are not satisfied they can request a review by the Complaint Resolutions Team who will investigate the complaint on behalf of the Chief Executive
- 3.3.3 There were 14 non-statutory complaints received in 2013/14, compared with five in 2012/13. This is in line with a general increase in the number of corporate complaints received across the council in 2013/14.

Complaints received 2012/13	Complaints received 2013/14	Percentage Increase
5	14	180%

- 3.3.4 The table below details the distribution of complaints.

Service	Number of Complaints
Learning Disabilities	2
NRPF Team	4
Occupational Therapy	2
Older People	2
Operational Finance	2
Reablement Resources Centres	1
Sensory Impairment	1

- 3.3.5 The average length of time taken to respond at stage 1 was 17.86 working days (compared with 18.2 working days in 2012/13).
- 3.3.6 64.2% of the complaints were responded to within the 20 working day deadline (compared with 80% in 2012/13).

3.3.7 The percentage of stage 1 complaints that were either upheld or upheld in part was 85.7% (compared with 20% in 2012/13).

3.3.8 Eight of the complaints related to staff conduct, four were about the quality of service provided, while there was one complaint each about delays and failure/refusal to provide a service.

3.3.9 There were no stage 2 complaints relating adult social care during 2013/14.

3.4 PLANNED IMPROVEMENTS FOR 2015

3.4.1 The following have been identified as planned improvements for 2015 as part of the council's overall strategy for managing statutory (and non-statutory) complaints.

- As part of the adoption of the two-stage procedure for adult social care complaints, update all relevant literature (complaint forms, website etc.) to ensure all information in the public domain is up to date.
- Review the joint-working protocol for managing health and social care complaints in the Croydon borough area.
- Review the adult social care complaints policy.
- Resume quarterly performance reporting for senior management and explore how this information can be published on the council website.
- Commission training from the Local Government Ombudsman for investigating social care complaints for tier three and four managers.
- Explore how the learning from adult social care complaints can be used to feed into the council's People Gateway project.

3.4.2 These actions are by no means exhaustive and improvements for the management of complaints are very much ongoing.

4 CONSULTATION

4.1 Although not consultation as such, complaints are an excellent source of customer feedback that can be used to improve and change service delivery.

5 FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

5.1 Complaints should be resolved quickly, effectively and used to identify, drive and monitor service performance. If this does not consistently happen, there is a real risk that customers can remain or become dissatisfied with the organisation.

6 COMMENTS OF THE COUNCIL SOLICITOR AND MONITORING OFFICER

6.1 The Council Solicitor comments that there are no direct legal implications beyond the requirements of the Regulations already detailed in the body of the report

6.2 Approved by: Jacqueline Harris-Baker, Head of Social Care and Education Law on behalf of Julie Belvir, Director of Democratic and Legal Services.

7 HUMAN RESOURCES IMPACT

7.1 Where complaints are investigated and upheld in relation to Council employees, this will be addressed through the relevant normal HR practice, policy and procedure. There are no other immediate HR considerations that arise from this report for LBC staff.

7.2 Approved by: Deborah Calliste, HR Business Partner on behalf of Heather Daley, Director of Workforce And Community Relations

8 EQUALITIES IMPACT ASSESSMENT

8.1 The Complaint Resolution Team ensure that data is collected for age, disability and gender, as recommended by Department for Health guidance, and it is used to identify an accurate picture of users, highlight where take-up of services could be improved and ensure that the complaints procedure is fully accessible.

9 ENVIRONMENTAL IMPACT

9.1 There are no environment impacts.

10 CRIME AND DISORDER REDUCTION IMPACT

10.1 There is no implication for the reduction of crime and disorder.

CONTACT OFFICER:

Darren Shuster, Senior Complaints Resolution Officer (statutory) Ext. 65685

BACKGROUND DOCUMENTS: None

Appendix 1 – Complaint Categorisation Breakdown

Complaint Categorisation Value	Complaint Categorisation Sub-Value	No of Complaints
Delay	Delay in Delivering a Service	10
	Delay in Giving Advice	1
	Delay in Making a Decision	1
	Delay in Providing Information	2
	Delay in Responding to Letters or Emails	2
	Delay in Returning Phone Calls	2
	Delay in Taking Action	22
Failure or Refusal	Failure or Refusal to Deliver a Service	13
	Failure or Refusal to Give Advice	4
	Failure or Refusal to Make a Decision	1
	Failure or Refusal to Meet with Customer	8
	Failure or Refusal to Provide Information	7
	Failure or Refusal to Respond to Letters or Emails	9
	Failure or Refusal to Return Phone Calls	3
	Failure or Refusal to Take Action	14
	Other Failure or Refusal Problem	1
Policy	Council Policy	2
Quality of Service	Cost of Service	2
	Disagree with Assessment	6
	Inadequate or Incorrect Advice Given	2
	Inappropriate Action Taken	5
	Incorrect Action Taken	2
	Incorrect Decision	7
	No Answer from Individual or Department	1
	Poor Communication	2
	Poor or Misleading Information Given	3
	Service Provided but then Changed or Withdrawn	2
	Unclear Information Provided	2
	Unreasonable Decision	25
	Other Quality Issue	8
	Staff Conduct	Discriminatory Behaviour
Lack of Customer Care		1
Lack of Knowledge or Training		1
Poor Customer Care		2
Rude or Aggressive Behaviour		6
Unhelpful Attitude		5
Other Staff Conduct Issue		4
TOTAL		189

Appendix 2 – Complaint Case Studies

Case Study 1

Grounds for complaint

Mr A raised the following concerns on behalf of his grandmother, Mrs B, in relation to her placement in a residential care home outside of the borough:

- The council failed to put a contract in place before Mrs B moved into the care home.
- The council was at fault in how it assessed Mrs B's financial contribution toward the cost of her care.

Circumstances of the case

At the time of the complaint, Mrs B was 95 years old. In July 2012, her family contacted the council because they felt she was not coping well living on her own. The council undertook an assessment and decided that Mrs B should be living in care home.

Mrs B wanted to move to a care home that was approximately 150 miles away, to be closer to her family. The family found a home with an available place and in September 2012, the council advised Mrs B and her family that Mrs B could move there.

The fees for the home were above the council's "normal rates". Where this is the case and the family do not want a home within the council's usual rates, the family are required to pay the difference between the council's funding limit and the cost of the home. This is known as a 'third party top up'. But the council failed to draw up a contract and obtain an undertaking from the family that they would pay the third party top up before Mrs B moved.

Mr A claimed that he was first made aware of the third party top up in November 2012. He says that the council's Care Manager told him that she would speak to the care home and the third party top up would not need to be paid.

The council asked Mr A to sign a contract agreeing to pay the third party top up fee from 1 June 2013. He refused to do so. The council told Mr A that it would have to look at alternative homes within the council's usual rates if nobody was willing to pay the third party top up fee.

In April 2013, Mr A discovered that some of the benefits Mrs B was receiving should have stopped when she went into residential care. Mr A had provided details of the benefits Mrs B was receiving to the council before she moved into the care home. He believed that the council should have told him that Mrs B would no longer be entitled to Attendance Allowance and Disability Allowance after she moved into the care home.

Mrs B contributes to the cost of her residential care. Mr A believed the council wrongly assessed Mrs B's financial contribution on the basis of the full amount she was receiving, including the benefits she was not entitled to. He asked the council to

undertake another financial assessment on the basis of the amount she was receiving each week after Department for Works and Pensions (DWP) stopped paying Attendance Allowance and Disability Allowance. The council determined that she should continue to pay the same amount towards the cost of her care. Mr A complained that Mrs B only had around £1.80 to live on after she had paid her assessed contribution.

In August 2013, Mrs B moved to a different care home. Mr A says this was because Mrs B was not happy in the first care home and the family found a more suitable and cheaper home. A contract was in place before Mrs B moved and the family agreed to pay a third party top up fee.

Analysis

The council accepted that a contract should have been in place before Mrs B moved and the family should have been told that it would be required to pay a third party top up fee. As a result of this, the family were asked to pay around £60 a week which they had not anticipated. They were also concerned about the arrears that had built up.

If the fault had not occurred, it is likely that the family would have either agreed to pay the top up fee, or Mrs B would have moved into a cheaper care home. To remedy the injustice, the council paid the third party top up fee for the period September 2012 to 31 May 2013. This equated to approximately £2,200.

The council wrote to Mr A on 20 February 2013 about the amount Mrs B would need to contribute to the cost of her care. It provided a breakdown showing that the only income it had used to calculate her contribution was her pension. It did not calculate her contribution on the basis of benefits she should not have been receiving.

The letter also advised Mr A that if Mrs B was still receiving Attendance Allowance or Disability Allowance he should contact the DWP. It said that Mrs B was no longer entitled to these benefits and failure to inform DWP would result in a recoverable overpayment as it was her responsibility (or that of her financial agent) to notify the DWP of any change in circumstances.

At no point was Mrs B left with only £1.80 a week to live on. The financial assessments ensured that Mrs B was left with an amount for personal expenses. The figure allowed was as laid down each year by the National Assistance (Sums for Personal Requirements and Assessment of Resources) Regulations.

Remedial Action

The only area of fault identified was the failure to draw up a contract with the first home Mrs A moved to, which the council remedied by paying the third party top up until 31 May 2013, at which point it sought to regularise the placement.

Case Study 2

Grounds for complaint

Mr C, a solicitor, complained on behalf of Mrs D about how the council dealt with a safeguarding investigation in relation to Mrs D's mother, Mrs E, about the following:

- The council commenced a safeguarding investigation without justification and then used that to put pressure on Mrs D in relation to a court case.
- The council delayed deciding to drop the investigation.
- The council wrongly concluded that Mrs D did not have the authority to act on Mrs E's behalf.
- The council denied Mr C and Mrs D admission to a meeting to which the council had originally invited Mrs D to attend.
- The council failed to follow its complaints procedure

Circumstances of the case

On 7 June 2004, Mrs E moved into a nursing home. At that point, Mrs E owned her own home. The council contributed funding during a 12 week property disregard as Mrs E was the sole owner of the property.

In January 2005, Mrs E sold her property. Mrs E received approximately £220,000 from the sale and is believed to have paid £64,000 to her son and £65,000 to Mrs D.

On 14 August 2008, Mrs D requested funding assistance from the council as Mrs E's assets were below the threshold. The Council provided Mrs D with a financial assessment form. Mrs D returned the completed form to the council on 20 October 2008. That identified that Mrs D and her brother had received a substantial sum from the sale of Mrs E's property. This prompted the council to seek legal advice about possible deprivation of capital.

On 30 January 2009, Mr C wrote to the council to advise that Mrs E had held one half of the value of the house in trust for her children since her husband's death.

The council wrote to Mr C on 16 February 2009 to advise of its view that the sums given to Mrs D and her brother amounted to a deliberate intention to avoid paying care home fees. The council wrote to Mr C on 16 May 2009 to advise that Mrs E was not eligible for financial assistance from the Council as a result of the sums given to her children.

On 21 September 2009, the council completed a safeguarding vulnerable adult referral for possible financial abuse. At that point Mrs E owed the nursing home a significant amount of money and was at risk of losing her placement.

The council held a safeguarding strategy meeting on 1 October 2009 and made a referral to the police on 8 October 2009.

On 4 December 2009, the Office of the Public Guardian confirmed there was no record of an enduring power of attorney in respect of Mrs E.

The Council held a safeguarding strategy meeting on 21 January 2010. One of the actions arising from the strategy meeting was to arrange for officers to interview Mrs E. This took place on 9 February 2010. The council held a safeguarding strategy meeting on 17 February.

In August 2010, the council received confirmation that Mrs D and her brother had held joint enduring power of attorney in respect of Mrs E since May 2004.

On 10 December 2010, the council advised Mrs D that it would financially contribute to Mrs E's placement on a temporary basis from 1 April 2010 pending further investigation.

On 26 January 2012, the council arranged a safeguarding case conference. Mrs D advised the council on 31 January 2012 that she would not be attending the case conference.

The case conference was due to take place on 7 February 2012. On the morning of 7 February 2012, Mrs D contacted the council to advise that she would be attending the case conference with Mr C who would be providing her with legal advice. The council advised Mrs D that it was not appropriate for Mr C to attend in a legal capacity.

Although Mr C and Mrs D arrived at the case conference, the council refused to allow Mr C to attend. Mrs D decided not to attend on her own. Mr C provided the council with a letter from Mrs E, confirming that she had not been subject to financial abuse and stating her view that the investigation should cease.

On 4 May 2012, the council decided to cancel the safeguarding investigation as legal proceedings and an out-of-court settlement had superseded it. The council informed Mrs D of this on 30 May 2012.

Analysis

The Council commenced a safeguarding investigation due to the large transfer of funds out of Mrs E's account, for which no verification had been provided. The council was also concerned that Mrs E's care home fees were not being paid and she was therefore at risk of losing her placement. In these circumstances, it was reasonable for the council to investigate these concerns.

Mr C indicated that Mrs E had made clear throughout the case that she had not been financially abused by Mrs D or her son. However, there was no documentary evidence to support this claim until February 2012. The only evidence of contact with Mrs E prior to February 2012 was in 2009, at which point Mrs E stated that she did not know where the money from the sale of her property had gone. She stated that she did not know who had authorised the payments to her son and daughter.

There was no evidence to indicate that the safeguarding investigation was instigated in order to put pressure on Mrs D in court proceedings. Legal proceedings did not commence until after the safeguarding investigation had begun.

Although neither Mr C nor Mrs D complained specifically about the length of time to conclude the safeguarding investigation, there was unquestionably a significant delay in finalising the investigation. In addition, there was no evidence that the council kept Mrs D or Mrs E abreast of what was happening with the investigation.

A further consideration is whether or not the council was in a position to terminate the investigation in 2011. The council was arguably in a position to do so but there is no evidence to suggest that it did.

There was no evidence submitted by Mr C or Mrs D to support the claim that Mrs D held an enduring power of attorney for Mrs E. Moreover, the Office of the Public Guardian was unable to provide any verification to corroborate Mrs D's claim.

There is also no evidence that the council refused to allow Mrs D to attend the case conference in February 2012. Mrs D decided not to attend after the council had advised Mr C that he could not attend in a legal capacity, which he was seeking to do.

Mr C submitted a complaint about the council in 2010 to the external firm of solicitors receiving instruction from the council. The solicitors did not respond to the complaint, nor did they forward the complaint to the council for consideration. There was, therefore, unquestionably a delay in dealing with Mr C's complaint.

Remedial Action

The council was asked to apologise to Mr C and Mrs D for the failure to advise what was happening in relation to the safeguarding investigation in 2011 and the failure to consider the complaint Mr C submitted in 2010.

Case Study 3

Grounds for complaint

Mrs F complained on behalf of her mother, Mrs G that the council refused to disregard the value of Mrs G's property when assessing her financial contribution towards care charges. Mrs F argued that Mrs G intended to split her time between Mrs F's property in Croydon and her own home in West Sussex.

Circumstances of the case

Mrs G has dementia. Until September 2013, Mrs G lived in her own property in West Sussex. On 11 September 2013, the council received a referral from West Sussex County Council for Mrs G. Mrs G was to be discharged from hospital to live with Mrs F in Croydon.

On 16 September 2013, Mrs F advised the council that Mrs G was living with her. A care manager visited on 19 September and completed an assessment of need. The council put a care package into place from 20 September 2013 and began a financial assessment of Mrs G.

Mrs G completed a financial assessment form, which the council received on 27 November 2013. Mrs G declared on the form that she owned a property but was currently living with Mrs F. Mrs G said on the form that she aimed to be at home sometimes.

On 6 December 2013, the council advised Mrs F that as Mrs G owned her own property in West Sussex she would be responsible for funding her own care. That was because the value of the property could not be disregarded as Mrs G was now permanently living in Croydon. On 10 December 2013, Mrs F raised concerns about that decision and told the council Mrs G intended to divide her time between Croydon and West Sussex. The council responded on 6 January 2014 stating that as Mrs G was now permanently resident in Croydon, the value of her property in West Sussex could not be disregarded. Mrs F raised concerns about this decision and the council agreed to carry out a review to establish Mrs G's current and future intentions in relation to where she would live.

Mrs F submitted a complaint to the council on 15 January 2014. Mrs F reiterated that Mrs G intended to spend time both in Croydon and at her home in West Sussex. The council responded on 21 January 2014 and again offered to carry out a review to establish Mrs G's intentions with regard to her living situation.

On 12 February 2014, the council undertook a review. Mrs G advised the care manager undertaking the review that during the warmer months she intended to return to her own home. On the basis of this statement, the council agreed to disregard the value of Mrs G's property in West Sussex.

Analysis

The substance of this complaint is whether the council was at fault in December 2013 for deciding that Mrs G's home in West Sussex could not be disregarded. Mrs F's view was that it was always Mrs G's intention to split her time between Croydon and West Sussex.

There were two pieces of documentary evidence which supported the council's decision to not disregard Mrs G's property in West Sussex.

The first piece of documentary evidence is the discharge summary from the hospital, which set out that Mrs G would be discharged to live with Mrs F and her family. The discharge summary went on to say that Mrs G will require constant supervision and is unable to maintain her own safety if unsupervised between care visits. It also refers to Mrs F's plan to convert part of the property for Mrs G's use. There is no reference in the discharge summary to Mrs G spending part of her time in her own home.

The second piece of documentary evidence is the referral from West Sussex County Council in September 2013. This referral stated that Mrs G was now resident in Croydon. There was no mention that Mrs G would split her time between Croydon and West Sussex.

On that basis, the council decided Mrs G's main residence from September 2013 was in Croydon and took the value of her property in West Sussex into account.

However, the council had another piece of information available to it in December 2013. In paragraph 6 of the financial assessment completed by Mrs G, there was a reference to Mrs G living with Mrs F but she intended to be at home sometimes. It is likely that if the council had made enquiries in December 2013 upon receipt of the financial assessment form, it is likely it would have disregarded the value of Mrs G's property at that point. The failure to take into consideration all relevant documentary evidence was fault.

Remedial Action

The council was asked to apologise to Mrs F and Mrs G for the failure to clarify Mrs G's long term intentions in light of the information she provided on the financial assessment form.

Case Study 4

Grounds for complaint

Miss H has made the following complaint on behalf of her son, Mr J:

- The council has delayed in agreeing and implementing a support plan for Mr J.
- The council has failed to provide support or access to enable Mr J to attend day centre provision for two years.
- The council has failed to respond to correspondence
- The council has not kept Miss H informed regarding the progress of Mr J's support plan or direct payments.

Circumstances of the case

Direct Payments are cash payments made to an individual directly. This provides service users with the choice to buy and arrange their own social care services that would otherwise be provided directly by a local authority via commissioned care. Direct Payments can only be used to buy the services agreed in the service user's care plan.

Mr J lives at home with his mother, Miss H. He has a severe learning disability, autistic spectrum disorder and challenging needs. Mr J attended Day Centre 1 five days a week until April 2011. Since that time Miss H has supported Mr J herself at home.

In June 2011, Miss H completed a Supported Self-Assessment Questionnaire on behalf of Mr J. Miss H was reluctant to consider other day centres for Mr J but instead wanted a personal budget for sensory activities for Mr J at home. This included:

- Evening out the ground in the rear garden to make it safe for Mr J to use;
- Purchasing a circular lie down swing for the garden;
- Boxing in the television in Mr J's room to prevent him from damaging it; and
- Purchasing a ball pit for use in the garden.

Officer X assessed Mr J's level of need as critical in the following areas:

- Communication;
- Personal Care;
- Practical Living;
- Community Life;
- Staying Safe; and
- Support for Carer.

The council did not agree to a personal budget for the items Miss H wanted at home. Instead, Miss H agreed to Mr J attending Day Centre 2 five days a week. The council identified two care workers to work with Mr J on a 1:1 basis and in October 2011 approved funding for this package. This placement was due to begin in December 2011.

Mr J did not attend Day Centre 2 as the care workers chose not to take up the role, and Day Centre 2 subsequently closed.

In January 2012, Officer X discussed the day care options for Mr J with Miss H. According to the council's records, Miss H did not want Mr J to attend any of the identified day centres, and did not want home support or outreach. Officer X also discussed respite care with Miss H, but she did not want to pursue this. On this basis Officer X closed Mr J's case and invited Miss H to contact her again if she changed her mind.

Miss H changed her mind two days later and confirmed she would like support. However, there is no evidence the council took any action until April 2012, when Miss B chased Officer X.

As Day Centre 2 was closing, the council asked Day Centre 3 to confirm whether it would be able to support Mr J. The council also identified two care workers to support Mr J. Miss H agreed to accept support from the female care worker, but not the male. She felt that as Mr J spent a lot of time in the company of women, he preferred their company. Miss H did not however want any workers supporting Mr J at home. She wanted to wait until he attended the day centre.

In May 2012, Officer X chased Day Centre 3 for confirmation it could support Mr J. In June 2012, Day Centre 3 confirmed it could offer Mr J a place two days a week. This could increase as soon a space became available on other days. Miss H rejected this offer as she wanted Mr J to attend a day centre five days a week. The council's records state that Miss H was not prepared to accept a placement of anything less than five days a week. The records also note Officer X suggested alternative day centres, but Miss H declined each one. Miss H also declined home support. Instead, Miss H asked the council to for funding for landscaping her garden, and replacing Mr J's windows and bed.

Miss H also questioned the amount of funding in Mr J's direct payment account. The council had started making direct payments in April 2012. But as Miss H had declined the placement at Day Centre 3 and support at home, the money had accumulated. The council, rather than Miss H managed this fund. The council suspended Mr J's Direct Payment account and asked Company Z to prepare a support plan.

Company Z met with Miss H in July 2012 and prepared a support plan proposing:

- Installing a window in Mr J's room he would not be able to break;
- Install a cover for the heater in Mr J's room;
- Landscape the garden and install a disability swing; and
- Purchase a hospital bed and new mattress cover.

Company Z submitted the support plan to the council in August 2012. However, the council did not consider this plan until October 2012. Officer X was away from the office for an extended period and the council did not re-allocate the case until early October 2012. Officer Y considered the support plan and contacted Miss H to arrange a home visit. The council's records show Miss H advised Officer Y that she did not want any service from the council, or for anyone to visit her and Mr J. Officer Y therefore cancelled the visit and confirmed the council would review Mr J's case on a yearly basis.

Miss H made a formal complaint to the council about the way it had handled Mr J's Direct Payments and support plan. The council responded in November 2012. The council apologised for the delay in following up on Company Z's support plan. It also advised there were aspects of the plan that could not be funded by a Direct Payment as the support plan did not directly reflect the assessed substantial needs identified in Mr J's self-assessment questionnaire. The council therefore asked Miss H to reconsider meeting Officer Y to discuss the support plan.

In addition, the council responded to Miss H's concerns about Mr J's Direct Payment account. The council confirmed Direct Payments started in April 2012 and were suspended in June 2012 as there was £11,433.60 in the account. The money was then transferred back to the council.

The council's records show that Officer Y contacted Miss H again in November 2012 to arrange a visit. Officer Y advised Miss H she needed to re-assess Mr J's needs, but Miss H did not consider this necessary.

There is no evidence of further contact between Miss H and the council regarding the provision of any support for Mr J. Miss H later confirmed (to the Local Government Ombudsman) that she no longer wanted Mr J to attend a day centre. Instead Miss H wanted the council to make a one-off payment for the items set out in Company Z's support plan and an explanation for what has happened to the Direct Payments awarded to Mr J.

Analysis

There is clear evidence of Mr J's critical needs, but a difference of opinion between the council and Miss H in terms of how to meet these needs. Miss H does not want Mr J to attend a day centre or to receive support from care workers at home. She believes she and her family would be able to support Mr J themselves if the council agreed to the items set out in Company Z's support plan.

The council does not consider the plan meets Mr J's assessed needs and is therefore unable to agree to Miss B using Mr J's Direct Payments to fund this. This is a decision the council is entitled to make. Direct payments are not extra money to spend as the service user (or their family) wishes. The money must be used to meet assessed needs. Officer X identified these needs in 2011. She considered that Mr J would benefit from attending a day centre or some other form of support.

Officer Y's view that Company Z's proposed support plan does not meet Mr J's assessed needs is a matter of professional judgement. There is no evidence of fault in the way she reached this decision

It is also clear that there were delays in agreeing and implementing a support plan and Direct Payments for Mr J. The council was partly, but not solely, responsible for these delays. The first period of delay is between January and April 2012. Miss H notified Officer X that she had changed her mind and would like support for Mr J in early January 2012. There is no explanation to explain why it took four months to follow this matter up, which is fault.

There were further delays in arranging a day centre placement for Mr J between April and July 2012, but the council was not at fault for this period as the council could not control Day Centre 2 closing or Day Centre 3 not being able to offer Mr J a place for five days a week. A further complication was Miss H's very specific about what she wanted for Mr J.

There was a third period of delay between the council receiving Company Z's support plan in July 2012 and contacting Miss H in October 2012. Had the council reallocated Mr J's case promptly, it could have addressed the deficiencies with the support plan sooner, albeit, as Miss H had decided she did not wish Mr C to attend a day centre or receive support at home, it is unlikely the outcome would have been different.

The council responded to Miss H's formal complaint and confirmed officers are keen to meet with her to find a way forward. It also explained why it suspended Direct Payments and recovered the money..

Remedial Action

The council was asked to apologise for the delay in dealing with Mr J's Direct Payments and support plan.