

## Factsheet 59

# How to resolve problems and complain about social care

February 2020

### About this factsheet

This factsheet explains what to do if you are not satisfied with any aspect of the service you receive from the local authority or you want to challenge a decision they have made.

Some problems or issues can be resolved informally, for example via discussion with the professional concerned or their manager. If this is not possible, you can make a formal complaint, triggering a procedure that must be followed by the local authority.

We also cover your options if you have made private, self-funded care arrangements and other ways of asserting your rights, challenging decisions, and complaining about the quality of services.

This factsheet can be read in conjunction with others on social care, for example, factsheet 41, *How to get care and support*. Factsheet 66, *Resolving problems and making a complaint about NHS care*, may also be relevant.

The information given in this factsheet is applicable in England. If you are in Wales, Scotland or Northern Ireland, contact Age Cymru, Age Scotland or Age NI for information. Contact details can be found at the back of this factsheet.

The information in this factsheet is correct for the period February 2020 to January 2021. However, rules and guidance sometimes change during the year.

Contact details for any organisations mentioned in this factsheet can be found in the *Useful organisations* section.

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# 1 Sources and terms used in this factsheet

## Care Act 2014

The *Care Act 2014* (*the Act*), supporting regulations and the *Care and Support Statutory Guidance* (*the statutory guidance*) were introduced in April 2015. This is the law on which adult social care in England is based and the local authority must adhere to it when it works with you.

## The complaints regulations

The social care complaints process is based on the *Local Authority Social Services and National Health Service Complaints (England) Regulations 2009* (*the complaints regulations*), made under powers in sections 113 to 115 of the *Health and Social Care (Community Health and Standards) Act 2003*.

## Terminology

The terms '*community care*' and '*social care*' can be used interchangeably to describe the broad range of care and support services provided or arranged by local authority social services departments, for example home care services or care home provision.

The body responsible for responding to a complaint is called the '*responsible body*' in the complaints regulations. This can be the local authority or another body such as the local Clinical Commissioning Group if health needs to take the lead. We generally refer to '*the local authority*' in this factsheet. Factsheet 66, *Resolving problems and making a complaint about NHS care*, covers health complaints.

# 2 Introduction

If you have needs for care and support, a local authority has certain duties towards you under the Act. In most cases, they must assess your needs and may have a duty to provide or arrange care and support services for you. You may be entitled to financial support with the cost of services, subject to a financial assessment. Similar duties apply to carers.

The local authority's general duty under the Act is to promote your wellbeing and it must take account wider legal duties, such as those applying to human rights, equality and discrimination.

Seeking care and support services from a local authority may not pose problems, but it is important to know what to do if things go wrong. Problems can often be dealt with informally through conversations, e-mails, letters or meetings.

However, you may want to make a formal complaint if you cannot resolve a particular issue. Your complaint should be valued by the local authority and seen as a way to potentially improve service provision.

The complaints regulations require the local authority to have a complaints procedure. You should be given a copy of it on request. It should publicise the procedure on its website and it should be easily available in various formats and through a range of channels reflecting the needs of the local population. For example, it may be printed in different languages.

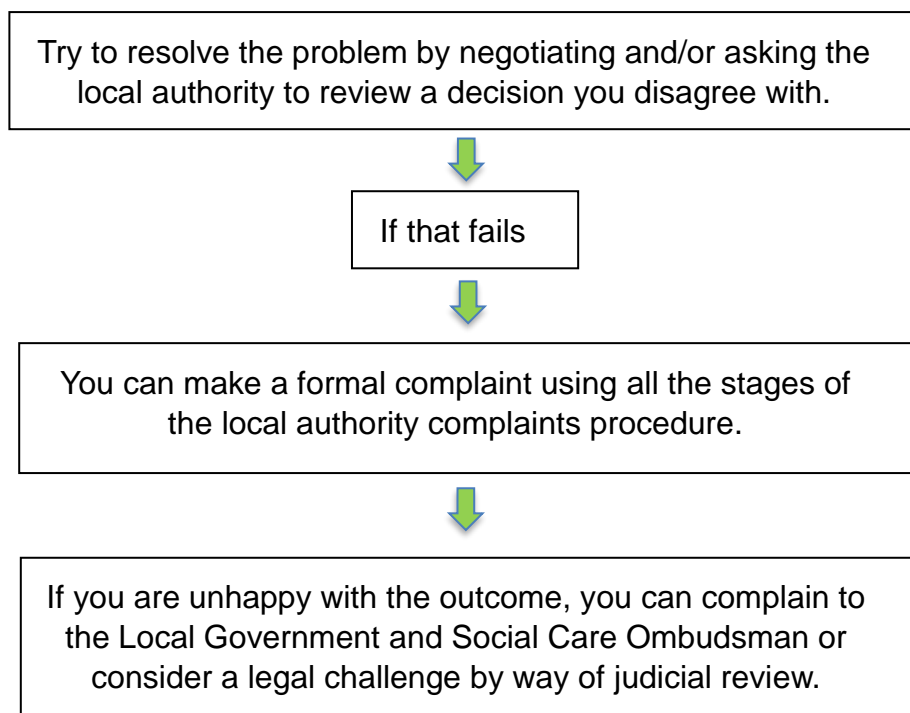
If care is provided by an independent agency, for example a private care home or domiciliary care provider, on behalf of a local authority, you can complain to the local authority because they remain responsible for your care and support.

The Local Government and Social Care Ombudsman (LGO) deals with complaints that cannot be resolved to your satisfaction by the local authority. They look at how it has acted regarding your case. They also act as a complaints service if you privately arrange and fund your own care and support and cannot resolve the complaint using the provider's complaints procedure.

Judicial review may be another legal option (see section 7).

### 3 The local authority complaints procedure

The main routes to resolving problems with the local authority are:



Once it receives your complaint, the local authority must respond to you based on its complaints procedure. It can design its own scheme, but it must meet the requirements of the complaints regulations.

### 3.1 What can you complain about?

A complaint has been described as being 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.

You have a right to complain about any aspect of a service being provided by a local authority under the *Care Act 2014*, apart from in a few circumstances. The local authority must understand its legal duties under the Act, regulations and statutory guidance.

The following are examples of situations that might lead to a complaint:

- you have been inappropriately refused an assessment of your needs
- there have been excessive delays in dealing with your case
- your dignity and wellbeing have not been valued in your assessment
- your assessment has not considered all of your needs and related risks
- you have been told that your needs do not meet the eligibility criteria for care and support and you disagree
- your allocated personal budget is insufficient to meet your eligible needs
- the services arranged for you are not satisfactory or adequate
- the local authority has not followed relevant legislation or regulations
- you have not been properly informed of your rights and options
- you have not been told about services such as advocacy or reablement
- you were not referred for an NHS continuing healthcare assessment when this was appropriate
- the charging procedures have not been properly administered
- you have not been told about funding options such as deferred payments
- you have been wrongly asked to pay a top-up fee for a service
- poor communication between responsible professionals
- your service has been cut at a review and your needs are no longer met
- you have been treated in a discriminatory way or your human rights have not been respected.

#### Limitations on what you can complain about

The complaints regulations state the local authority does not have to deal with:

- complaints orally made that are resolved to the complainant's satisfaction by the next working day
- complaints that were resolved or investigated under previous complaints regulations
- complaints that relate to the *Freedom of Information Act 2002*, which are dealt with by the Information Commissioner's Office.

## 3.2 Who can make a complaint?

If you are the person who receives care and support from the local authority, you can make the complaint. If you want someone to complain for you, such as a friend or relative, they can do so as long as you give permission.

You can complain if you are not the person receiving the care but you are affected, or likely to be affected, by an action or decision of the person's local authority. You could be a carer or partner of the person receiving care.

If you lack mental capacity, someone can complain on your behalf as long as the local authority is satisfied they are acting in your '*best interests*' in line with the *Mental Capacity Act 2005*. See factsheet 22, *Arranging for someone to make decisions on your behalf* for more information.

## 3.3 Making a complaint – useful tips

You may find these points useful when making a complaint.

**Be clear about what you want** – what do you want to achieve by making a complaint? For example, you might want the authority to apologise, change a decision, or to explain how it will ensure that problems do not reoccur. State this clearly in your complaint.

**Complain as soon as possible** – whilst you generally have 12 months to complain, it can help to do so sooner while events and important details are fresh in the minds of everyone involved.

**Complain in writing** – it is usually advisable to make your complaint by letter or email so you can be sure it covers everything you want to say. However, you can complain verbally if you want to.

**Say you are making a formal complaint** – state at the top of your letter or email that you are making a formal complaint. This makes it clear that you expect the authority to respond in line with the complaint regulations.

**Be clear what your complaint is about** – set out what went wrong and how you have been affected, providing specific details, such as when and where incidents occurred, and the names of staff involved.

**Be concise** – avoid giving details that may distract from the main issues and the outcome you want to achieve.

**Include evidence** – for example, emails or letters you have received from the local authority or copy of your needs assessment.

**Seek help if needed** – consider whether you need help to put what you want to say in writing, or to work out what is important and relevant to your complaint. You might seek help from a friend or relative, or staff from a local Age UK. The local authority may have a duty to provide you with an independent advocate, whose role includes supporting you to make a complaint. See section 3.6 for more information.

### 3.4 What to expect when you make a complaint

The regulations state the local authority must ensure that:

- complaints are dealt with efficiently, are properly investigated, and receive an appropriate response
- you are treated with respect and courtesy and told the outcome of your complaint
- action is taken if necessary following your complaint

The authority should make sure you are provided with assistance to help you understand the complaints procedure, or provided with advice about where to find such assistance.

#### The complaints department

The local authority has a complaints department that deals with your complaint. When the complaint is received, it is sent to a manager in the department and then allocated to a worker for a response.

The person who investigates your complaint may be employed by the local authority or may be an independent investigator. They must not be directly involved in any of the matters complained about.

The local authority is called the '*responsible body*' in the complaints regulations.

#### Local authority duties when a complaint is made

Your complaint must be acknowledged by the local authority within three working days of its receipt. This can be verbally or in writing.

If a complaint is sent to a local authority but it seems that another body, such as the local NHS Clinical Commissioning Group, should take the lead in responding to it, the other body must respond to you within three working days once they receive the actual complaint. This may result in a slightly longer response time.

The local authority must offer to discuss, at a time agreed with you, how the complaint will be handled and how long the investigation is likely to take and when you will receive a response.

If you do not want to meet to discuss the complaint, the local authority must still determine the response period and let you know in writing.

#### The investigation of the complaint

The complaints regulations require the local authority to investigate your complaint as speedily and efficiently as possible and to keep you informed about its progress.

After completing the investigation, they should send you a response, in writing, signed by the responsible person.

Their response should include:

- an explanation of how your complaint has been considered
- the conclusions reached, including any action proposed
- confirmation of whether they are satisfied any action needed has been taken or is proposed to be taken
- details of your right to take your complaint to the Local Government and Social Care Ombudsman if you are not satisfied with the investigation outcome.

The local authority must discuss their findings with you and what actions they think they should take to resolve the issue. They should seek your agreement about the planned actions before carrying them out.

### Case study

An example could be where poor practice has been identified leading to an inappropriate decision about the care services necessary to meet your eligible needs after an assessment.

As a result of your complaint, the local authority apologise to you, promptly provide the appropriate service and reassure you that extra training has been put in place to ensure the workers involved are sufficiently skilled to carry out their professional duties in future.

## 3.5 Time limits for the complaint and response

Generally, you need to make a complaint within **12 months** of the date of the subject of the complaint, or if later, the date on which the matter came to your notice.

An exception may be made if you have good reason for not making the complaint within the time limit and it is still possible to investigate the complaint effectively and fairly.

There is a maximum time limit of **six months** for the complaint response to be sent, beginning on the day on which it is received. An extended time limit is allowed if this is agreed by all concerned.

If the six month or agreed extended time limit is not met, the local authority must send an explanation of the reason in writing and send the response as soon as possible.

If the local authority delays the process without a good reason, the Local Government and Social Care Ombudsman may agree to investigate. They also have complaint time limits (see section 5).



### 3.6 Information, advice and advocacy duties

The regulations require the local authority to provide information about its complaints procedure and how further information can be obtained. A similar information and advice duty applies under the Act.

#### Advocate

The local authority has a duty to appoint an independent advocate if you would have substantial difficulty in being involved in the care and support process and have no one appropriate to help you.

The role of the advocate includes supporting you to challenge the local authority's decisions if this is what you want to do. This should involve support to make a formal complaint if needed.

This builds on a separate but similar scheme under the *Mental Capacity Act 2005* for people who lack mental capacity.

### 3.7 Co-operation and co-ordination duties

One of the reasons for linking health and social care in the complaints regulations is to create a joint-working duty where necessary. This is because a complaint may relate to both organisations, for example a hospital discharge where there are ongoing social care needs.

The local authority must co-operate with other responsible bodies, such as the Clinical Commissioning Group, in handling a complaint affecting both of them. They have a duty to co-ordinate handling the complaint response.

The duty to co-operate includes a duty to agree which body takes the lead in handling your complaint and communicating with you. They must provide relevant information to the other body to assist in the consideration of the complaint and must attend, or ensure they are represented at, any related meetings.

There may be a requirement for a co-ordinated response between the local authority, a body such as a care home, and the Care Quality Commission (CQC). This may be where a complaint is about the care received when a person was placed by the local authority. Care homes are service providers registered with and monitored by the CQC.

Your consent is required for the provision and sharing of information relevant to the complaint between the responsible bodies.

## 4 Complaining as a self-funder

If you arrange and fund your own care and support without help from the local authority, you can complain using the care provider's complaints procedure.

The provider must register with the Care Quality Commission and comply with its *Fundamental Standards* (see section 9). One of the *Standards'* requirements is they must operate their own, easily accessible, complaints procedure.

If you cannot resolve the issue using the provider's procedure, you can ask the Local Government and Social Care Ombudsman to consider your complaint. See section 5 for more information.

### Consumer law protection for self-funding care home residents

If you make self-funded, private arrangements with a care home, you have certain protections under consumer law.

In advice for care home providers, the Competition and Markets Authority (CMA), the public body responsible for consumer protection, sets out four key areas of consumer law that all care homes must comply with:

- **Information** – you must be given clear, accurate information allowing you to make an informed decision about the care home before moving in
- **Fair treatment** – you have the right to be treated fairly and the care home's contract must not put you at unfair disadvantage
- **Quality of service** – services provided to you must be carried out with reasonable care and skill
- **Complaints** – the care home must provide a fair, accessible and easy to use complaints procedure

You can refer to the CMA advice when making a complaint using the care home's complaints procedure. If you escalate your complaint to the Local Government and Social Care Ombudsman, you can ask them to take account of the CMA advice in relation to your case.

The CMA and local authority Trading Standards can also take action if a care home fails to comply with consumer law. Get advice from Citizens Advice consumer helpline if you feel a care home has not met its obligations.

For more information, see the CMA guide to consumer law and care homes at [www.gov.uk/government/publications/care-homes-consumer-law-advice-for-providers/care-homes-and-consumer-law-short-guide-for-businesses](http://www.gov.uk/government/publications/care-homes-consumer-law-advice-for-providers/care-homes-and-consumer-law-short-guide-for-businesses).

## 5 The Local Government and Social Care Ombudsman

If a complaint is not resolved to your satisfaction by the local authority, you can complain to the Local Government and Social Care Ombudsman (LGO). The LGO is independent of the local authority and has the power to make recommendations to put things right if it upholds your complaint. The LGO also investigates complaints about privately arranged care services.

The LGO do not investigate a decision simply because you disagree with it. There must be maladministration in the way the local authority has acted, or failed to act, leading to injustice.

### 5.1 What is maladministration?

Maladministration involves failings in the way an action or decision has been taken by the local authority, or where it has not taken action when it ought to have done. This is in relation to the statutory powers under which it acts. It is a broad term and can relate to issues such as:

- unjustified delay
- unfair discrimination
- failure to abide by agreed procedures or not having
- failure to have proper procedures in place
- failure to understand or carry out legal duties
- treatment that does not have regard to wellbeing or dignity
- failure to respect human rights.

This is not a complete list, more examples are on the LGO website.

### 5.2 What level of injustice is required?

The LGO only investigate maladministration leading to injustice. This means the local authority actions or omissions have had a harmful impact on you. The harm can be financial, psychological or practical in terms of your ability to lead the life you want to lead, or it may affect your carer if you have one. It can relate to distress you experienced in pursuing your complaint. Whatever it is it must be caused by the local authority's maladministration.

The LGO expect you to make clear what you believe the local authority has done wrong, the harmful impact this has had on you and what you want to be done to put things right.

**Practical tip:** It is useful to include any evidence you have to show the injustice you have experienced. For example, if you paid for services the local authority should have provided for you, include copies of the bills.

### 5.3 How and when to make the complaint

The general time limit for making a complaint is **12 months**. The time starts to run from the date you first became aware of the issue you are complaining about. One reason for the rule is because the longer the delay, the harder it is to gather evidence.

You can phone the LGO for advice about making a complaint. There is an on-line complaint form. Whether you use that form, your complaint should generally be in writing and should set out both the issue you are complaining about and the injustice you have suffered. You can make your complaint by phone if this is easier for you.

**Practical tip:** Keep your complaint as concise and clear as possible. If it has a long history, a chronology of the main events with dates can help the LGO investigator to understand what has happened. Provide copies of important relevant documents, for instance the complaint you made to the local authority and their response.

Friends, relatives and independent advisers can complain on your behalf, with your permission. If you use a solicitor, it is very unlikely you will get costs back, even if the LGO upholds your complaint. This is because it is not necessary to go through a solicitor to make a complaint.

If you lack mental capacity, someone can make the complaint on your behalf as long as the LGO is satisfied they will act in your best interests. See factsheet 22, *Arranging for someone to make decisions on your behalf* for more information.

The LGO may investigate your complaint about events that occurred more than 12 months ago, but only if there is a good reason for the delay, which is not your fault. For example, if you were prevented from complaining due to ill health, were taking the complaint through the local authority's procedure, or had a mistaken belief that action had already been taken to resolve the issue.

If your complaint is late, it is important to explain why and to show that the delay was not your fault.

#### Note

The LGO expect you to have followed the local authority complaints procedure first, so they have had a chance to put things right.

If there is unreasonable delay in dealing with your complaint, or you have good reason for losing faith in the local authority's ability or willingness to deal with your complaint, they may agree to investigate your complaint even though you have not completed the local authority procedure.

The LGO website has a range of leaflets you can download or order. They have a telephone advice line and you can ask for recent investigation reports, which may assist a complaint you plan to make.

## 5.4 How the LGO deals with complaints

The LGO generally cannot investigate your complaint until the local authority has been given the chance to resolve it first through its own complaints procedure. They cannot investigate a complaint if you are taking other legal proceedings relating to the issue. According to the LGO website, complaints are usually resolved within 6 months, but complex cases may take longer.

The LGO decides whether to carry out an investigation. If they agree the complaint is within their remit, they allocate an investigator who contacts you. The investigator also contacts the local authority to consider their views on the issue.

The LGO decides whether to take on your case based on the facts and circumstances. Their focus is on whether the local authority acted legally, reasonably and fairly towards you, and whether you experienced any injustice. It may find there has been maladministration leading to injustice and make recommendations to remedy this.

## 5.5 Types of decision

An LGO investigation leads to one of the following outcomes or findings.

### **Fault**

This means the complaint against the local authority is upheld by the LGO. It meets the maladministration leading to injustice threshold.

### **No fault**

The decision might be there has been no fault by the local authority. For example, it may be found the local authority has followed the correct procedure in reaching a decision, even though you disagree with it.

### **Insufficient injustice**

The decision may be that even if the local authority is at fault, the effect on you is not serious enough to justify continuing to investigate the complaint.

### **Local settlement**

If it is found that the local authority has done something wrong that has caused problems for you, the LGO often try to resolve complaints without the need for a full investigation and report.

Instead, the investigator tries to agree with the local authority the steps needed to put things right.

If these can be agreed in principle, they take your views about settlement into account, but usually stop the investigation once a local settlement has been reached. This can happen at any stage of the investigation.

## **Publishing decisions and reports**

The LGO publishes a summary of the investigation on their website three months after the date of the decision, unless they decide it is not in your best interests to do so. This will not reveal your name or that of the people involved. The local authority and other organisations involved are named.

Sometimes the LGO needs to write a formal report about a complaint if it is against a local authority. This can happen, for example, if the local authority does not agree to the suggested settlement, or if the LGO thinks the issue is of particular interest to the public.

Unless there are special reasons, the report is made available to the public and includes the LGO's recommendations to put the injustice right. They do not publish your name.

If a local authority does not follow the recommendations set out in the report, the LGO may produce a second report dealing with the non-compliance, but this is rare.

## **5.6 What powers does the LGO have to put things right?**

They can make recommendations about what the local authority should do to put things right. This can include:

- a written apology to you
- reviewing policies to make changes in line with LGO recommendations
- payment of compensation to you for injustice suffered.

The power to make recommendations is not the same as being able to force the local authority to put things right. However, in almost all cases, the local authority agrees to comply with the recommendations made.

## **6 The Local Government Monitoring Officer**

Each local authority must appoint a monitoring officer. Often, the chief executive or head of legal services fulfils this role. They have a duty to prepare a report on any new proposals or decisions which are, or could be, in contravention of existing law and therefore unlawful.

They must also prepare a report on a matter that could be maladministration or injustice, but only after the Local Government and Social Care Ombudsman has conducted an investigation.

In preparing the report, the monitoring officer must consult, as far as possible, the local authority chief executive (except where the chief executive is also the monitoring officer) and the chief finance officer.

Once prepared, the report must be sent to all the local authority members (elected councillors) who have responsibility for the decision or proposal. For social care matters, this includes all the councillors who sit on the Social Services Committee.

Once the monitoring officer has reported, local authority members must call a meeting to consider the report within 21 days. In the meantime, before the monitoring officer's report has been considered by members, the local authority must not proceed with the proposal or decision in question.

### Note

If you think a decision or policy proposal by the local authority is, or could be, unlawful, or a matter of maladministration or injustice, you can contact the monitoring officer and ask them to set out their view.

It is not necessary to use a solicitor to do this, although some people find it helpful.

The local authority legal department or unit should be able to tell you how to contact the monitoring officer.

## 7 Judicial review

If you are unhappy with the way the local authority has dealt with your case and your complaint has not resolved the problem, one option to consider is making an application to the High Court for a judicial review.

### Note

You cannot complain to the Local Government and Social Care Ombudsman and also undertake a judicial review, so it is important to decide which route is the best option for your situation.

### What is judicial review?

The High Court reviews a decision, act or omission by a public body, such as a local authority, to decide whether it has acted unlawfully. Parliament gives public bodies legal duties and discretionary powers (choices) to carry out their functions.

They must fulfil their legal duties and exercise discretionary powers in line with statute, regulations and binding guidance. If they fail to do so, they may be challenged via judicial review. The duty to observe human rights and equality laws is also relevant in each case (see section 10).

The court does not consider the merits of the decision, only whether it has been reached lawfully. If not, the court can make a range of orders, with the most common one being a '*quashing order*'. This means the court overturns the decision made and the public body has to look at the case again and make a fresh and lawful decision. There is also provision for injunctions and other emergency procedures where needed.

An example would be if a local authority proposed to introduce a blanket policy to not provide home care services to anyone aged over 70 years of age. This would '*fetter their discretion*' to treat each resident according to their individual circumstances and might be found to be unlawful.

### Important points to consider – time and cost

There is a strict **3-month** time limit for bringing a judicial review. The time runs from the decision, act or omission complained about. It is a potentially expensive process and is probably unrealistic unless you are eligible for Legal Aid and your case has sufficient merit to meet the merits test for funding.

You need advice from a community care or public law solicitor with appropriate expertise and experience before taking a judicial review. For information about Legal Aid, see factsheet 43, *Getting legal advice*.

### The basic process

The judicial review process consists of these stages:

- A '*letter before action*' is sent to the public body. This sets out the relevant facts, why it is said that the public body has acted unlawfully and what needs to happen to put things right. This is usually written by a specialist solicitor.
- If the public body does not agree to resolve the problem, an application to the High Court for judicial review is made. This is done with documents setting out the facts and legal arguments.
- A judge reads the documents and decides whether to grant permission for the case to go ahead. This does not usually involve any court hearing. There is a right of appeal if permission is refused.
- If a judge grants permission, the public body has the chance to produce a written defence and the applicant must respond. A court date is set for the final hearing. After the court hearing, the judge issues a written judgment setting out reasons for the court's decision.

At any stage, the public body can settle the case or the applicant can withdraw it, subject to consideration of who should pay any costs. In practice, many judicial review cases do not proceed, because the public body settles on receipt of the letter before action.

Where a case does go to a court hearing, the evidence is usually all in writing. If you make a judicial review application, you are extremely unlikely to be expected to attend court and give evidence.

The judge reads the documents, listens to the arguments put forward by your barrister and by the barrister appointed by the public authority and makes a decision.



## What are the grounds for judicial review?

There are three types of grounds for judicial review:

**Illegality** – this can be a failure to carry out a statutory duty, for example, a needs assessment, or a breach of a human right, for example, not considering your right to home and family life.

Illegal decision-making includes a local authority not following regulations or statutory guidance; operating a blanket policy and not genuinely considering each case on its own merits, or carrying out an assessment without taking account of all relevant factors relating to wellbeing, as defined by the Act.

**Unreasonableness/irrationality** – this can be difficult to show in practice. A decision has to be very perverse before a court decides it is unreasonable or irrational.

*Associated Provincial Picture Houses v Wednesbury Corporation [1948] 1 KB 223* set out helpful guidance on what actions may be considered.

These can be summarised as: acting unlawfully, fettering or restricting discretion, bad faith or dishonesty, failing to consider relevant information, failing to exclude irrelevant information, or reaching a decision no reasonable person could make.

**Procedurally unfair** – the local authority must act fairly and give reasons for decisions that have a significant effect on your life. For example, it is unlawful to reduce an existing care service at a review assessment without providing you with reasons.

A local authority must seek the views of those affected by significant planned policy changes by public consultation. A local authority planning a significant local policy change must also take account of the Public Sector Equality Duty under section 149 of the *Equality Act 2010* (see section 10.2).

### Note

Judicial Review is a specialised area of the law. If considering proceedings, it is important to act quickly and to make sure you consult a solicitor with relevant expertise and experience. You must take advice about potential costs which can be significant.

## 8 Other avenues of complaint and safeguarding

### Write to your local councillor or MP

It may be helpful to seek support from your local councillor or MP in dealing with a problem, or if you feel the formal complaints process has not dealt appropriately with your issue.

### Safeguarding from abuse and neglect

If you, or someone you know, is experiencing, or is at risk of, abuse or neglect, you should raise a safeguarding concern with the local authority. For more information, see factsheet 78, *Safeguarding older people from abuse and neglect*.

### Mental Capacity Act 2005 standards and rights

Where a complainant lacks mental capacity, any decision or action taken on their behalf must be in their 'best interests', in line with the *Mental Capacity Act 2005* and its Code of Practice. For more information, see factsheet 22, *Arranging for someone to make decisions on your behalf*.

## 9 Care Quality Commission

The Care Quality Commission (CQC) is the body responsible for regulating, monitoring and maintaining standards in health and adult social care in England.

### The Fundamental Standards and complaints

A care home or home care agency providing care services must be registered with the CQC and meet a wide range of standards, known as the Fundamental Standards, based on the *Health and Social Care Act 2008 (Regulated Activities) Regulations 2014*.

The Fundamental Standards include a requirement that your care must be safe and appropriate to your needs and reflect your wishes and preferences. You must also be treated with dignity and respect.

People employed to care for you must be of good character, have the necessary qualifications, skills and experience, and be able to perform the work for which they are employed – the 'fit and proper persons requirement'.

Registered service providers must be open and transparent with service users about their care and treatment, 'the duty of candour', for example reporting incidents appropriately.

Regulation 16 requires all registered service providers to have an easily accessible complaints procedure, stating:

*any complaint received must be investigated and necessary and proportionate action must be taken in response to any failure identified by the complaint or investigation.*

Explanatory CQC guidance states *'people's care and treatment must not be affected if they make a complaint, or if somebody complains on their behalf'*.

### **The inspection regime and ratings system**

The CQC has a four-tier rating system for each service provider. This rates services as: outstanding, good, requires improvement or inadequate.

A team of specialist local inspectors monitor services against five key questions before giving a rating. They ask if the service is:

- safe
- caring
- effective
- responsive to a person's needs
- well-led.

You can view detailed inspection reports on the CQC website.

### **Register a concern with the CQC**

If you are not satisfied with any aspect of the service you receive from a CQC registered body, you can inform the CQC, by phone, letter or via the CQC website. The CQC decide the level and type of response to take. They have a wide range of powers to investigate and enforce changes on the service provider and to carry out subsequent reviews.

An example could be reporting poor standards of care in a care home. This action can be made in conjunction with informal discussions with the managers of the service provider or while making a formal complaint to the local authority if they are involved with the provision of the service.

If you feel it is not in your interests to liaise directly with the management of the organisation, you can contact the CQC and make a complaint to the local authority.

#### **Note**

The CQC does not have a general duty to respond to you individually in the same way as a local authority complaint. If you register a concern, this adds to the local inspector's knowledge of the services they are responsible for.

## Urgent response

In certain circumstances the CQC has a duty to act urgently, for example where the information it receives leads it to believe that there is a risk to individuals or where criminal activity has taken place.

CQC actions may include liaising with the local authority or the police, and involvement in local safeguarding and complaints procedures.

## 10 Human rights and equality

The local authority must not act in a way that is incompatible with human rights and equality laws and all staff must understand them.

### 10.1 Human rights

The *Human Rights Act 1998* sets out a number of basic rights covering issues such as: a right to life, a right to privacy, and rights to home and family life. Some rights are absolute, which means they must be followed in all cases, but most rights can be interfered with in certain circumstances. Any such interference must be legal, necessary and proportionate to your individual circumstances.

It is useful to be aware how these rights may relate to issues such as: poor treatment by your home carer or in a care home; whether you can be supported to stay at home or need to be moved to a care home; and being placed in a care home a long way from other social support.

**Practical tip:** In the context of local authority or LGO complaints, it can be useful to show you are aware of human rights laws and principles in terms of the local authority's duties and, if appropriate, relate your situation to one or more of the Articles in the Act.

Commonly used articles in the Act include:

- Article 2 – the right to life
- Article 3 – the prohibition on inhuman and degrading treatment
- Article 5 – the right to liberty
- Article 8 – the right to respect for private, family and home life
- Article 14 – prohibition on discrimination (in relation to the enjoyment of other Convention rights).

The *Health and Social Care Act 2008* confirms that a private or voluntary sector run care home contracted by a local authority to provide accommodation is subject to the *Human Rights Act 1998*.

## The Care Act 2014

Section 73 of the *Care Act 2014* provides *Human Rights Act 1998* protections if you receive personal care at home or care in a care home regardless of the service provider, as long as it is arranged or funded by the local authority. This includes services funded by direct payments.

It applies to all care providers regulated by the CQC and its equivalents elsewhere in the UK who carry out a '*public function*' on behalf of the local authority to meet assessed needs.

These protections do not extend to buying completely private care provision where the State is not involved in the arrangement in any way.

## The Care Quality Commission and human rights

The CQC assesses its health and social care registered service providers under various standards including how they uphold human rights and equalities. For further information see: [www.cqc.org.uk/content/equality-and-human-rights](http://www.cqc.org.uk/content/equality-and-human-rights).

## 10.2 Equality and discrimination

The *Equality Act 2010* prohibits discrimination relating to certain '*protected characteristics*' that people may have.

### Protected characteristics

The protected characteristics under the 2010 Act are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation.

Two that can relate to older people in social care are age and disability.

### What is discrimination?

The Equality and Human Rights Commission describes discrimination as:

- treating one person worse than another because of a protected characteristic – '*direct discrimination*', or
- putting in place a rule or policy or way of doing things that has a worse impact on someone with a protected characteristic than someone without one, when this cannot be objectively justified – '*indirect discrimination*'.

### Disability and '*reasonable adjustments*'

The 2010 Act says service providers, such as care homes, must take reasonable steps to remove any barriers you might face to accessing their services because of your disability. This can relate to policies or practices, or the physical environment if this causes a barrier to access. You may need particular adaptations or equipment to help you or additional services such as extra staff assistance.

There may be a requirement for an auxiliary aid and services, for example: a portable induction loop with hearing aids, a British Sign Language interpreter or provision of information in an alternative format, such as Braille or audio CDs.

These requirements should inform all local authority and health service plans and procedures. Whether an adjustment is reasonable depends on the size and resources of the organisation and type of service they provide.

It also depends on what changes or adjustments are needed and how practicable or easy it is to do them. Whether something is reasonable or not has been the subject of court cases brought under the 2010 Act.

### **Public Sector Equality Duty**

The Public Sector Equality Duty requires all public bodies, such as local authorities, to have due regard to the need to:

- eliminate discrimination,
- advance equality of opportunity, and
- foster good relations between people who share a relevant protected characteristic and people who do not.

This can relate to a policy that appears to apply to everyone in the same way, but, because you have one of the protected characteristics, it puts you at a particular disadvantage.

### **The Equality and Human Rights Commission**

The Equality and Human Rights Commission has a range of general enforcement and investigation powers. They can provide assistance to individual litigants in legal proceedings concerning equalities legislation. See the Equality Advisory and Support Service website for more information.

For further information see factsheet 79, *Equality, discrimination and the Public Sector Equality Duty*.

## Useful organisations

### Care Quality Commission

[www.cqc.org.uk/](http://www.cqc.org.uk/)

Telephone 03000 616 161

The independent regulator of adult health and social care services in England, whether provided by the NHS, local authorities, private companies or voluntary organisations.

### Competition and Markets Authority

[www.gov.uk/government/organisations/competition-and-markets-authority](http://www.gov.uk/government/organisations/competition-and-markets-authority)

Telephone 020 3738 6000

The public body responsible for consumer protection. It has published guidance for care home providers on complying with consumer law.

### Citizens Advice

[www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)

Telephone 0344 411 1444

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

### Citizens Advice consumer helpline

[www.citizensadvice.org.uk/about-us/contact-us/contact-us/consumer-service](http://www.citizensadvice.org.uk/about-us/contact-us/contact-us/consumer-service)

Telephone 03454 04 05 06

Consumer advice over the phone and online.

### Disability Rights UK

[www.disabilityrightsuk.org](http://www.disabilityrightsuk.org)

Telephone 0330 995 0400

Offers advice and information on access, housing, holidays, mobility, education, benefits and care and support.

### Equality Advisory Support Service

[www.equalityadvisoryservice.com](http://www.equalityadvisoryservice.com)

Telephone helpline 0808 800 0082 Mon-Fri 9am-7pm, Sat 10am-2pm

Helpline provides information and advice about the *Equality Act 2010* and human rights.

### Equality and Human Rights Commission (EHRC)

[www.equalityhumanrights.com/en](http://www.equalityhumanrights.com/en)

Independent statutory body with the responsibility to encourage equality and diversity, eliminate unlawful discrimination, and protect and promote the human rights of everyone in Britain.

**Law Centres Network**

[www.lawcentres.org.uk](http://www.lawcentres.org.uk)

Telephone 020 3637 1330

Find if there is a Law Centre near you via the website. Law Centres Network does not give advice directly to the public.

**Law Society**

<http://solicitors.lawsociety.org.uk>

Telephone 020 7320 5757

Searchable database of regulated solicitors in England and Wales.

**Legal Aid Agency (LAA)**

[www.gov.uk/government/organisations/legal-aid-agency](http://www.gov.uk/government/organisations/legal-aid-agency)

Telephone 0300 200 2020

The LAA runs the legal aid schemes in England and Wales.

**Local Government and Social Care Ombudsman**

[www.lgo.org.uk](http://www.lgo.org.uk)

Telephone 0300 061 0614

Investigates complaints about local authorities and social care providers. It is a free service.

**Relatives & Residents Association (The)**

[www.relres.org](http://www.relres.org)

Telephone 020 7359 8136

The Relatives & Residents Association gives advice and support to older people in care homes, their relatives and friends.



## Age UK

Age UK provides advice and information for people in later life through our Age UK Advice line, publications and online. Call Age UK Advice to find out whether there is a local Age UK near you, and to order free copies of our information guides and factsheets.

### Age UK Advice

[www.ageuk.org.uk](http://www.ageuk.org.uk)

0800 169 65 65

Lines are open seven days a week from 8.00am to 7.00pm

### In Wales contact

#### Age Cymru Advice

[www.agecymru.org.uk](http://www.agecymru.org.uk)

0800 022 3444

### In Northern Ireland contact

#### Age NI

[www.ageni.org](http://www.ageni.org)

0808 808 7575

### In Scotland contact

#### Age Scotland

[www.agescotland.org.uk](http://www.agescotland.org.uk)

0800 124 4222

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