

By: Graham Gibbens – Cabinet Member, Adult Social Services
Oliver Mills – Managing Director, Kent Adult Social Services

To: Adult Social Services Policy Overview & Scrutiny Committee –
21 September 2010

Subject: **ADULT SOCIAL SERVICES ANNUAL COMPLAINTS REPORT**

Classification: Unrestricted

Summary: This report provides Members with information about the operation of the Adult Social Services complaints and representations procedure between 1 April 2009 and 31 March 2010.

Introduction

1. (1) It is a statutory requirement within for local authorities to have in place a complaints and representations procedure for Adult Social Services. Each local authority that has a responsibility to provide social services is required to publish an annual report relating to the operation of its complaints and representations procedure.

(2) The annual report detailing complaints and representations activity across adult social services is presented to Members each year. This Annual Report provides Members with information about the operation of the Adult Social Services complaints procedure between 1 April 2009 and 31 March 2010.

(3) The report provides a brief overview of the complaints procedure, including information on the number and type of complaints received by the Directorate. It also includes some examples of the lessons learned from complaints and more importantly, how these are used to inform, influence and improve service design and delivery. The appendices numbered 1 – 5 provide a more detailed breakdown of the complaints received including a comparison against previous years. The data includes analysis by originator and method of contact, together with details of the number of complaints upheld.

Policy Context

2. (1) The Local Authority Social Services and National Health Service Complaints (England) Regulations were published in February 2009 and came into force with effect from 1 April 2009. This procedure introduced a single approach to dealing with complaints for both the National Health Service and Adult Social Care.

(2) The legislation requires local authorities to appoint a complaints manager to oversee the operation of the complaints procedure. This role encompasses all aspects of complaint management, including managing, developing and administering the complaints procedure, training staff and monitoring and reporting on complaints activity.

The complaints procedure

3. (1) The introduction, in April 2009, of a single complaints process across health and social care reflected several reviews of the complaints process during the course of recent years. The key aim of the new arrangements was to create a consistent approach to complaints handling across both health and social care.

(2) One of the main changes is the expectation that the local authority will respond to the complaint on a proportionate basis depending on the nature of the complaint. This is completely different to the previous procedure, where a complainant could request a formal investigation and even proceed through to a Review Panel if they requested one. The form of response may include a simple explanation of the circumstances surrounding the complaint or it may be necessary to conduct an offline investigation. However, before any course of action is taken, a discussion with and subsequent agreement, is obtained from the complainant. This forms part of the 'complaints plan.'

(3) The new procedures introduced a one step process and once the complaint is completed and the final response is sent, the complaints file should reflect the reasons why the final response is deemed, 'proportionate'. This will be referred to should the complainant remain dissatisfied with the response and subsequently exercise their right to take recourse to the Local Government Ombudsman.

a) Key Principles of the process

(i) The new approach to complaints handling is structured around three main components: listening, responding and improving.

Listening to the individual raising the complaint is key to establishing the facts, ensuring the substance of the complaint is understood and finding out what outcome the individual expects. From the initial discussions, the complaint plan is drawn up and agreed with the parties involved.

Responding in the most appropriate way, depending on the nature of the complaint, is facilitated by gathering the necessary facts and information, judging the seriousness of the complaint and making a reasoned decision on the steps required to resolve the complaint. It is also important to ensure the individual raising the complaint feels supported throughout the process.

Improving the services provided for the benefit of all is the desired outcome from the complaints received. This data provides an insight into peoples' experiences and is fed into commissioning and business planning processes.

(ii) Cross boundary complaints, which involve both health and social care organisations, are now dealt with via a single, co-ordinated response. Following the initial discussions with the complainant, one of the organisations is nominated as the lead and has responsibility for facilitating the joint response. The joint protocol, endorsing and promoting these obligations was developed by the Complaints Managers in Kent and Medway, was circulated with last years annual report. It is pleasing to report that these protocols are working well.

b) **Recording complaints**

(i) The Respond database is used to record all complaints, comments and compliments. This enables the customer care teams to log the specific details relating to each individual complaint and includes diary functions to assist with the monitoring of progress, to ensure statutory and local deadline are met. The system enables the customer care teams to register all statutory and non-statutory complaints, MP and Member enquiries, together with compliments. The database is used to produce quarterly Area reports, which provide valuable data on any identifiable trends and other opportunities for learning lessons.

(ii) During the last year the Area reports have been produced using a standardised template, which was presented in last years report. This has resulted in a more consistent approach and reflects the statutory requirements for reporting. It also facilitates easier analysis and comparison of data within the Areas.

(iii) There is only one statutory timescale within the new complaints process and this is the acknowledgement of the complaint, which must be provided to the complainant within three working days of receipt. The period for responding to the complaint is agreed with the complainant on a case by case basis depending on the nature and complexity of the complaint and the desired outcome.

(iv) To ensure consistency of recording and data quality, HQ Customer Care undertakes regular monitoring of data input. This enables Areas to not only correct any errors, but also acts as a learning opportunity. In addition, it results in more accurate recording and reporting of complaints.

(v) Each complaint is risk assessed at the outset, in terms of the level of risk to both the individual and the organisation. This is recorded on the database with the reasons for the assessed risk. Having this information readily available meets with the Ombudsman's requirements, as this is one of the first aspects of the complaint that the Ombudsman will review if a case is referred to them.

c) **Publicising the complaints process**

(i) To meet its obligations within the regulations, the complaints procedures are widely publicised. The complaints leaflet, "Comments, Complaints and Compliments", is available in hard copy and on the website and copies are held in all offices and Gateways across the county. The leaflet is also available in alternative formats, by request.

d) **Accountability**

(i) As advised previously, under the regulations, accountability for "organisational sign off" rests with the Managing Director, but may be delegated to a designated senior manager. The Senior Management Team (SMT) has agreed that this responsibility will be delegated to the relevant Head of Service for each locality/function. In cases where a full investigation is undertaken or where a complaint has MP or Member involvement, the final response letter will be signed off by the relevant Director of Commissioning and Provision.

(ii) The final response letter to the complainant must include information on whether the complaint was upheld (well-founded), partially upheld or not upheld. This analysis is included for the first time this year and is shown in Appendix 4. The letter must also make reference to the complainant's right to pursue their complaint with the Local Government Ombudsman, should they remain dissatisfied.

(ii) A letter template has been developed and circulated to managers to use when responding to complaints. The aim of which is to ensure consistency in approach across the county, but also to ensure that the letters meet the requirements set out in the regulations, mentioned in 3.4 (2).

e) **Staff Training**

(i) Good practice suggests that people who complain should have their complaints resolved as quickly as possible and by the people who provide the services locally. To assist staff with achieving this, it is important that they are trained in good customer care practices, together with knowledge of the statutory process underpinning complaints handling.

(ii) Following endorsement from SMT last year, the rolling programme of customer care training commenced during 2009/10. HQ customer care staff have been delivering training utilising the "Complaints Made Easy" training tool to both HQ and Area teams. The feedback received so far on this training has been very positive, not only evidenced by the evaluation forms received, but in terms of requests to deliver the training at team awaydays. The Area customer care teams will also deliver this training in earnest during 2010/11.

(iii) Within the KASS Induction Day, a presentation on complaints and customer care is provided to new staff. This is further enhanced by more detailed complaints and public involvement training which is available as part of the core induction programme.

(iv) During the year, six sessions on "Effective Complaints Handling" have been delivered by investigators from the Local Government Ombudsman's office. Staff, at Team Leader level and above, were targeted for this training. Some of the sessions had a significant number of non-attendees and as places were limited and some staff did not gain a place due to lack of available spaces, this was particularly disappointing. Further sessions have been commissioned for 2010/11 and staff who have not received the training will be encouraged to attend.

(v) Tips on letter writing have been developed and included on KNet, alongside guidance for staff on dealing with complaints, to assist staff in writing their responses. Additional training is to be commissioned during 2010/11 specifically on letter writing skills and the interface with the complaints procedure. This will be a bespoke training programme and will not only deal with the practicalities of writing a letter, but also the emotional intelligence that surrounds complaints and how drafting the response letter should reflect this.

The Number of Complaints and Compliments Received

4. (1) In 2009/10, 436 complaints were received; this represents an overall 21.5% increase from the previous year when 359 complaints were recorded. Of these, 340 were logged as statutory complaints and in comparison to the 297 reported in the previous year, this reflects a 14.4% increase in the number of statutory complaints received. The

corresponding analysis of non statutory complaints shows a 60% increase, with 96 complaints record during 2009/10 as opposed to 60 in the previous year. These complaints are from “non-qualifying individuals”, meaning they are not service users or carers and although they do not fall within the statutory process, the complaints are responded to. The Blue Badge scheme falls within this category and account for 7 of these complaints; 4 were not upheld and 3 were upheld. 502 merits (or letters of compliment) were received during the year, indicating an 8.4% increase on the previous year.

(2) Complaints should be considered in the context of the number of people who access services. In relative terms, the number of complaints received represents a small proportion of people who have contact with Kent Adult Social Services. The number of people who were referred to Adult Social Services was 33, 172 and those in receipt of services 34, 796 as at 31 March 2010. This compares with 2008/09 where 31, 300 referrals were made and 34, 400 people received a service. Analysis of these figures indicates that complaints represent approximately 1% of those people who have contact with our services.

Whatever the number of complaints received, it is important to learn lessons from these and improve services for the benefit of others.

(3) Analysing complaints is not as straightforward as it may seem. It is easy to assume that an increase in complaints highlights service problems or poor practice, when in may well be as a result of people being made aware of their right to complain. One of the requirements in the current regulations is that the complaints process is advertised and this is something that customer care teams have aimed to promote during the year. People are able to lodge their complaints in a range of ways that suits them. This includes writing a letter, making a telephone call or completing an online complaint form. Kent Adult Social Services has continued to welcome complaints as a valuable tool for improving services. The critical aim in analysing complaints is to identify any trends or an increase in the number of complaints received in respect of a particular service.

(4) Further details about the number of complaints and representations received are shown in Appendices 1 - 4, together with equalities data which is provided in Appendix 5, attached to this report. It is worth noting that following the restructure that was implemented in October 2009, services that previously fell within specialist services (Direct Provision services) and OT and sensory loss now fall within other service areas including the sub categories of assessment and enablement.

Services for Adults with a Disability

5. (1) During the period, 44 complaints representing 13% of the total number of statutory complaints received, related to learning disability. This figure is static when compared to the previous year and the majority of complaints fall within the case management category – 80%.

(2) Those complaints about services for adults with physical disabilities total 29 or 8.5% of the total number of complaints logged. Within this category, case management and domiciliary care complaints account for the majority of this total – 70%. It is difficult to make a comparison against the figure for the previous year because by looking purely at the figures, it appears that there has been a significant rise in the number of complaints. However, as mentioned in paragraph 4 (4) above, changes within the

Directorate during the period and reclassification of services can, at least, partly explain the reason for the apparent increase.

(3) The common themes falling within these areas of complaint include people who are dissatisfied with either the outcome of their assessment in terms of insufficient service provision, the quality of care or poor communication. When comparing the complaint issues with those from the previous year, it is apparent that these themes are recurring ones. Quality assurance sampling is to take place during 2010/11 specifically to look at poor communication and will be reviewed by the Area and County Good Practice Groups.

Customer care will continue to monitor these complaints in the coming year for continuing patterns.

Services for Older People

6. (1) In 2009/10, 185 complaints were received in respect of services for older people. This accounts for 54% of the total number of statutory complaints received. The case management category accounts for half of this total. The comments in 5 (2) above also pertain to the apparent increase in complaints for older people services. In broad terms the numbers of complaints received within the categories of older people services do not show significant fluctuations from those received the previous year, as services previously detailed within specialist services now fall within this category.

(2) Further analysis within this broad category illustrates that 23 or 12% of complaints relate to domiciliary care, 19 or 10% fall within residential and 18 or 9.7% within day care. An analysis of these complaints indicates that similar themes are replicated as stated in 5 (3) above.

Finance

7. (1) 36 complaints were received in respect of finance during 2009/10. This represents an 89% increase on the previous year when 19 complaints were recorded. 11 or 30% were attributable to payments and typically incorrect billing. A further 17 or 47% fell within the financial assessment for either residential or domiciliary care, where people disagree with the assessment that has been carried out.

Complaints to the Local Government Ombudsman

8. (1) In 2009/10, 5 people contacted the Ombudsman's office to complain about Kent Adult Social Services. Two of these were not upheld, one was partially upheld, one was upheld and compensation of £1,000 was paid to the complainant, as recommended by the Ombudsman. One complaint was deemed premature and therefore outside the jurisdiction of the Ombudsman. Those complaints considered premature were referred back to the adult social services complaints procedure. Comparable figures from last year showed 3 referrals to the Ombudsman, one was not upheld and two were deemed premature. Customer Care teams will continue to monitor the number of referrals to the Ombudsman's office to determine whether the new complaints process has any significant impact on these.

Learning the Lessons from Complaints

9. (1) A key principle of an excellent complaints procedure is providing people with the opportunities and confidence to share their experiences, whether they are good or bad. Although there is a statutory duty to respond to complaints, the Directorate adopts a positive view and realises that complaints brings about many benefits by highlighting areas for improvement and learning lessons.

(2) Given the number of people who have contact with Kent Adult Social Services, it is not unexpected that there will be occasions when an individual believes the service they have received did not meet their expectations. It is important to respond to complaints as quickly as possible as this tends to increase the satisfaction level of the complainant. However, high satisfaction levels also pertain to addressing all the issues, taking the complaint seriously and being kept fully informed during the process.

(3) The area customer care managers provide information on complaints on a quarterly basis and include a detailed analysis by locality, which highlights any themes and trends. These reports are presented to the Area Management Teams and the data is shared with operational managers to ensure lessons learned are acted upon and good practice is promoted. Lessons learned from complaints are fed into the business planning process as a means of improving services.

(4) Themes identified during the period with a brief summary, include:

- **Communication:**

- Difficulties encountered in contacting staff; teams; Kent Contact & Assessment Service; messages not passed on; lack of response to email/telephone messages
- Complainant not notified of outcome of safeguarding investigation
- Financial Assessment and top-up charges should be clearly communicated
- Inadequate explanation of charging policy; direct payments

- **Behaviour of staff:**

- Not communicating effectively (see above)
- Complete breakdown of communication resulting in change of case manager
- Complainants perception of staff attitude, particularly when dealing with complex matters
- Inflexibility of KASS system and staff resulting in inappropriate care package

- **Record keeping:**

- Clear notes with identifiable signatures should be adopted for client files
- Appropriateness of contents of client files
- SWIFT should be updated with changes quickly

- **Information:**

- Clear information should be available on the charging of residential placement upon discharge from hospital
- Respite information should be clear in terms of intention, length and charges

- **Process:**

- Client reviews not taking place on a regular basis
- Allocation of cases within Assessment & Enablement Teams taking too long
- Responding to queries for clients without a named case worker

- **Disputed Decisions:**
 - Disputing cost of respite care due to lack of information about the process
 - Refusal of Blue Badge application
 - Refusal of Disabled Facilities Grant
 - Delayed invoices resulting in accrual of debts
 - Not meeting criteria for residential care

- **In House Service:**
 - Review of assessment practices following complaint about staff not being able to deal with service user with challenging behaviour
 - Quality of care
 - Confidentiality procedures not followed
 - Inconsistency of care in relation to family's wishes
 - Staff did not follow through instructions highlighted in client's assessment
 - No staff on duty during handover which jeopardises safety and welfare of clients
 - Concerns about numbers of staff on duty

- **External Services:**
 - Time keeping of carers and communication between Agency and staff
 - Incorrect costs incurred
 - Quality of care provided for clients with dementia
 - Home not notifying KASS and family of service user's falls
 - Concerns around travelling time between clients

(5) The following examples illustrate some of the lessons learned from complaints received during the year.

i) As a result of complaints received during the year, the issue of Mental Capacity and Power of Attorney was highlighted. In one particular case, staff accepted the family's verbal assertions that they were decision makers, when in fact, no legal authority existed. It is important for staff to check the validity of Lasting Power of Attorney, Enduring Power of Attorney or Deputyship and not to rely on the word of family members or friends. A Practice Memorandum was issued to all staff in March 2010 and is attached as Appendix 6.

ii) Previous complaints have raised issues where families have stated that they had not been fully informed about the likely charge for care. Since the introduction of the Financial and Benefits Officers the volume of this type of complaint has reduced. However, the Maidstone Hospital Team implemented a system to obtain a signature from the service user/family to agree that the charging booklet had been received and explained to them. This practice has been discussed at the Area Good Practice Group and will be cascaded throughout the Area.

iii) As a direct result from a complaint made by a relative of a client in a residential home and as a means of promoting good practice, all residential & nursing care homes have been asked via their Trade Associations to consider updating their laundry policies. This is to ensure that there is a reference to only disposing of clients' clothing or other belongings once they have received confirmation from the client themselves (if they have capacity) or their representative (family members etc) that this is acceptable.

Other Developments

10. (1) **Adult Protection** – The process for dealing with the interface between the Safeguarding Vulnerable Adults Procedure and the complaints process was introduced during 2009/10. The flow chart is re-produced as Appendix 7. The briefing note for staff, together with the flow chart, were circulated to staff during the year and in June 2010 to reinforce the process as part of Safeguarding Week.

(2) **Unreasonably Persistent and Vexatious Complainants** – The majority of complainants are reasonable and do not present any difficulties for staff when handling their complaints. However, some people may exhibit challenging behaviour which can have a detrimental impact on the complaints process. Kent County Council has introduced a policy for handling complainants who are considered to be either vexatious or unreasonably persistent – this is annexed as Appendix 8. In such cases where a complainant is deemed as falling within this category, it is important that a management plan is discussed and implemented in an attempt to manage the situation. The decision to label someone as vexatious or unreasonably persistent should not be undertaken lightly and should be considered at a senior manager level within the Areas or HQ and should include the relevant Customer Care Manager.

(3) **Guidelines for staff being interviewed** – It is understandable that staff often feel anxious when being interviewed as part of a complaints investigation. Support has always been available by the respective line manager and also the Customer Care team. However, it was decided that developing guidelines would be helpful to staff in these circumstances. These are annexed as Appendix 9.

(4) **“You said, we did”** – During 2009/10, lessons learned from complaints have been published in this format on the kent.gov website to illustrate the changes that are made as a direct result of complaints. It is anticipated that this will encourage people to make a complaint as it can be seen that actions are implemented to improve services. In addition, complaints figures are produced on a quarterly basis by all Directorates and are published on the website.

(5) **Kent Health Watch** – This service has been active since for nearly two years. In that time, calls to the service have been monitored for both health and social care organisations in Kent. The service was developed to enhance existing feedback mechanisms, with the overall aim of improving services and identifying trends. The service signposts callers who wish to register a compliment, comment or complaint to the appropriate health or social care organisation. In the reporting period, one Adult Social Care statutory complaint was registered via Kent Health Watch.

(6) **Adult Social Care Self-Funders** – The Health Act 2009 extended the Local Government Ombudsman’s powers to investigate complaints about privately arranged and funded adult social care, where the provider is registered with the Care Quality Commission. These powers come into effect from 1 October 2010. Provision of care that is arranged by an individual and funded from direct payments also falls within this jurisdiction. Each Ombudsman has set up a team to deal with all adult social care complaints. The Ombudsman is currently developing information sharing agreements with both the Care Quality Commission and local authorities in their roles as adult safeguarding leads and service commissioners.

Conclusion

11. (1) Kent Adult Social Services utilises complaints feedback as one mechanism for developing and improving services. It is important the people feel confident that by making a complaint, their issues will be taken seriously and where necessary, changes will be implemented to benefit others who use those services.

(2) During 2009/10 the Directorate has continued to operate a robust and effective complaints procedure in line with its statutory requirements.

Recommendations

12. Members are asked to **NOTE** and **COMMENT** on the contents of this report.

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Background documents: None

Appendix 1

Comparison between 2008/09 and 2009/10

Type of Record	2008/09	2009/10
Enquiry	212	212
Merit	463	502
Non Statutory Complaints	60	96
Statutory Complaints	299	340
Total	1,034	1,150

Comparison of Statutory Complaints between Areas

(1 April 2009 to 31 March 2010)

Area	Number of Statutory Complaints
East Kent	188
West Kent	148
HQ	4
Total	340

Number of Statutory Complaints by Originator

(1 April 2009 to 31 March 2010)

Originator	Number	%
Advocate	8	2.3%
Anonymous	-	0.0%
Carer	2	0.6%
Central Government Dept	-	0.0%
Client	77	22.6%
Close Relative	239	70.3%
Contractor	1	0.3%
County Councillor	-	0.0%
Health Representative	2	0.6%
Homeowner	-	0.0%
Housing Association/Landlord	-	0.0%
Investigator	-	0.0%
Kent Health Watch*	1	0.3%
Legal Representative	2	0.6%
MP	4	1.2%
Neighbour/client/establishment	-	0.0%
Ombudsman	1	0.3%
Other	2	0.6%
Other Kent County Council Directorate	-	0.0%
Other Local Authority	-	0.0%
Police	-	0.0%
Religious Body	-	0.0%
School	-	0.0%
Service Provider	1	0.3%
Staff	-	0.0%
Voluntary Organisation	-	0.0%
Total	340	100%

* New field added to the database to capture referrals and monitor statistics

Appendix 2

Number of Records by Contact Method

(Complaints, enquiries and merits received between 1 April 2009 and 31 March 2010)

Contact Method	Number	%
Email	156	13.6%
Fax	5	0.4%
Letter	826	71.8%
Other	2	0.2%
Telephone	145	12.6%
Text	-	0.0%
Visit	8	0.7%
Website	8	0.7%
Total	1,150	100%

Number of Records Received by Type of Record

(1 April 2009 to 31 March 2010)

Type of Record	Number	%
Enquiry	212	18.4%
Merit	502	43.7%
Non Statutory Complaint	96	8.3%
Statutory Complaint	340	29.6%
Total	1,150	100%

Outcomes of Statutory Complaints

(1 April 2009 to 31 March 2010)

Outcome	Number
Advice	10
Apology	146
Complaint Withdrawn	9
Customer Care Resolved	-
Explanation	214
Financial Adjustment	43
Financial Settlement	3
Financial Settlement offered but declined	-
Issue Resolved	16
No Reply Sent	5
Other	-
Other Agency Issue	8
Other ASD Procedural Issue	8
Policy Changes	2
Policy Issue Raised	2
Service Changes	3
Total	469

(There can be more than one outcome for a complaint – therefore the total will not match the number of complaints)

Appendix 3

Statutory Complaints by subject

(1 April 2009 to 31 March 2010)

Subject	Number	%
Allegation of Racism	-	0.0%
Application of Eligibility/Assessment Criteria	3	0.5%
Assessment/Review	40	7.0%
Behaviour of Staff	82	14.3%
Carers Assessment	-	0.0%
Carers needs	2	0.3%
Change/Closure	-	0.0%
Claim for Compensation	4	0.7%
Communication Difficulties	-	0.0%
Delay in Decision Making	11	1.9%
Delay in Provision of Service	23	4.0%
Direct Payment	10	1.7%
Disputed Decision	94	16.4%
Diversity Issues	1	0.2%
External Service:	-	
Behaviour of external staff	33	5.7%
Lack of carer continuity	9	1.6%
Management issues	26	4.5%
Time-keeping/missed visits	11	1.9%
Financial Assessment	8	1.4%
Funding Voluntary Organisations	1	0.2%
Housing	3	0.5%
Impact of Application of Policy	4	0.7%
In-house Service	28	4.9%
Incorrect Billing	33	5.7%
Kent Card	1	0.2%
Lack of Information	25	4.4%
Meal Service	2	0.3%
Mental Capacity issues	-	0.0%
More Service Wanted	8	1.4%
Non Delivery of Service	5	0.9%
Ombudsman Enquiry	-	0.0%
Other/Unknown	1	0.2%
Personal Information	8	1.4%
Poor Communication	61	10.6%
Problems contacting Adult Services	2	0.3%
Publicity/Information	2	0.3%
Request for Service	21	3.7%
Resource Issue	1	0.2%
Safeguarding	5	0.9%
Self Directed Support Process	1	0.2%
Transport	5	0.9%
Total	574	100%

(Some people complain about more than one issue. Therefore, the total adds up to more than the total number of complaints)

Appendix 4

Comparison of Statutory Complaints by Service for 2008/9 & 2009/10

Service Area	08/09	09/10
Contracting	14	7
County Benefits	1	
County Duty Service/KCAS	1	6
Customer Care	-	1
Deaf Services	-	1
Direct Payments	-	4
Finance:	19	
CFAO	-	5
Debt Recovery	-	3
Financial Ass - Residential	-	8
Financial Ass - Domiciliary	-	9
Payments	-	<u>11</u> =(total 36)
Gypsy Unit	-	
Hospitals	10	11
Learning Disability:	44	
Assessment	-	2
Case Management	-	35
Day Care	-	2
Domiciliary Care	-	
Enablement	-	
Residential	-	2
Respite	-	<u>3</u> = (total 44)
Transition arrangements	-	
Learning Disability Policy	-	
Management Support	-	
Mental Health	3	
Older People:	133	
Assessment	-	9
Case Management	-	101
Day Care	-	18
Domiciliary Care	-	23
Enablement	-	3
Residential	-	19
Respite	-	<u>12</u> (total 185)
*OT and Sensory Loss:	29	3
Blue Badges	-	
Out of Hours	-	4
Physical Disability:	8	
Assessment	-	2
Case Management	-	10
Day Care	-	1
Domiciliary Care	-	13
Enablement	-	2
Residential	-	<u>1</u> = (total 29)
Respite	-	-

Transition Arrangements	-	-
Kent Supported Employment	-	1
PP Partnerships and Property Team	-	2
Planning	3	2
*Specialist Services	30	-
Telecare	1	2
Telehealth	-	1
Voluntary Escorts	1	1
Total	297	340

*Complaints falling within these categories are now included within other service areas following the restructure which took place in October 2009 – Section 4 (4) of the report refers.

Final Complaint Outcome

Outcome	Number
Not Resolved	5
Not Upheld	74
Partially Upheld	91
Upheld	147
Withdrawn	11
Total	328
12 complaints still active at time of reporting	

**Appendix 5
Complaints by Ethnic Origin**

Ethnicity	Number	%
African	-	0.0%
Any Other Ethnic Group	1	0.3%
Asian Other	-	0.0%
Bangladeshi	-	0.0%
Black Other	-	0.0%
Chinese	-	0.0%
Indian	1	0.3%
*Information Declined or Not Known	30	9.0%
Mixed Other	-	0.0%
Pakistani	1	0.3%
White and Asian	-	0.0%
White and Black African	-	0.0%
White and Black Caribbean	1	0.3%
White British	300	88.0%
White Irish	1	0.3%
White Other	5	1.5%
Total	340	100%

*Complainants either do not complete this section of the monitoring form that is sent to them or choose not to return the form at all.

Appendix 6

PRACTICE MEMORANDUM

Title: Practice memo on Mental Capacity and Power of Attorney

To: Co-ordination Team Managers, Assessment Team Managers, WK & EK Safeguarding leads, Sensory Services, KAB.

cc: Heads of Locality, Annie Ho, Cathy Shannon, Jo French, Area Customer Care Officers, Area finance teams and ALRT.

Issued by: Margaret Howard on behalf of County Good Practice Group
Michael Thomas-Sam on behalf of Policy and Service Standards Team

Date: 29th March 2010

1. What is the Practice Issue:

Lasting Power of Attorneys and Enduring Power of Attorneys **can only be applied for when the donor has capacity to do so. They can be used at a later date when they are registered and only for the particular decisions** that the LPA or EPA covers. However in some cases this is not always happening.

2. Evidence found on this practice issue:

Evidence from complaint investigations have shown staff are not checking the status of LPA, EPA or Deputyship, and an assumption that family members or friends are decision makers where they have no legal authority.

There are several such cases being currently investigated by the Ombudsman's office. Therefore it is essential that staff are aware of their role and duties when working with clients who lack capacity to make the specific decisions in question.

3. Actions for team managers and teams

- All KASSD staff are **strongly advised to read and have a working knowledge of Chapter 7 of The Mental Capacity Act 2005 Code of Practice.** The website of the Office of the Public Guardian (OPG) also contains helpful information with regard to LPA and EPA: www.publicguardian.gov.uk
- All Team Managers should use the "good practice matters" slot at their team meeting to **ensure teams have a clear understanding of how each legal power (listed below under section 4) differs in level of legal responsibility granted.**
- All KASSD staff **must check the original EPA documentation** and make a copy for the client file.
- All KASSD staff **must see original LPA documentation, check what specific decision-making powers and limitations it covers,** and take a copy for the client file.

- When staff are informed an EPA, LPA or Deputyship power is in force they must check the relevant papers and take a copy for the client file. **If documentation is not forthcoming then an application can be made to the OPG requesting a search** on the register for EPAs, LPAs or Deputies. Application form OPG100 can be found on the OPG website.
- In an emergency situation where a search needs to be made immediately, staff should ring OPG on 0845 330 2900 or e-mail customerservices@publicguardian.gsi.gov.uk
- If it is suspected that the **client lacks capacity** to make a specific decision, staff must **refer back to the MCA 2005; the MCA Code of Practice and Directorate Guidance and Procedures.**
- Where there is no EPA, LPA or Deputyship in force, **all who are interested or engaged in the person's welfare must be consulted,** and the person lacking in capacity still involved in the decision-making process, and this must be recorded in the client file.
- If there are **any safeguarding concerns, they must be recorded and discussed with the line manager and/or Safeguarding co-ordinator.** Any ensuing decision to exclude an individual family member from the decision-making process must be recorded within the Best Interests decision-making process and placed on the client file, and an Independent Mental Capacity Advocate (IMCA) instructed where relevant.

4. Relevant and most up to date knowledge/learning for staff

• Enduring Power of Attorney

- It is no longer possible to make an EPA, but any that have been made remain valid.
- EPA only covers decisions to be made with regard to property and financial affairs.
- When the donor can no longer manage their own affairs or when they start to lose capacity, the EPA **must be registered** with the Office of the Public Guardian and authority is then given to the attorney by the Court of Protection (COP) to manage the donor's affairs.
- The EPA documentation will then bear the official dated stamp of the COP.

• Lasting Power of Attorney

- Only adults aged 18 years or over can make an LPA.
- LPA can cover property and finances and/or personal welfare, with powers and limitations for specific decisions as set out by the donor.
- Attorneys holding an LPA for property and financial affairs have no legal authority to make decisions on personal welfare matters, and vice versa (unless they have been appointed to carry out both roles).
- Personal welfare LPAs can only be used once the donor lacks capacity to make the welfare decision in question.
- Attorneys acting under an LPA have a legal duty to follow the principles of the Mental Capacity Act 2005 and to have regard to the Code of Practice.
- LPAs can be registered at any time before they are used - before or after the donor loses capacity.
- If the LPA is not registered, it cannot be used.
- If an LPA has been registered but not used for some time, the attorney must inform the OPG when they begin to act under the LPA.

- **Deputies**

- Information on the role of Deputies can be found in Chapter 8 of the MCA 2005 Code of Practice.
- Deputies are appointed by the COP to act and make decisions on behalf of someone who lacks capacity to make those decisions.
- Deputies can only make decisions under the specific powers authorised by the COP. This can be for property and finance and/or personal welfare matters.

The OPG's Compliance and Regulation Unit (0207 664 7734) deals with complaints in relation to registered LPAs, EPAs and Deputies.

5. Further resources/training:

Mental Capacity Act 2005 Code of Practice

LPA109 Office of the Public Guardian Registers (booklet available from www.publicguardian.gov.uk)

http://www.kent.gov.uk/adult_social_services/social_services_professionals/advice_and_information/mental_capacity_act.aspx for **KASS information on MCA**

http://www.kent.gov.uk/adult_social_services/social_services_professionals/advice_and_information/mental_capacity_act/mca_documents.aspx for **MCA documents:**

- Mental Capacity Assessment form for complex decisions
- Mental Capacity Assessment form for less complex decisions
- Best Interests Meeting form

Enquiries on MCA training - alrttemp03@kent.gov.uk: □

Mental Capacity Act Training Level 1 Basic Awareness

Mental Capacity Act Training Level 2 in Practice

6. Contacts:

For policy queries - Annie Ho, Policy Manager, Lead for Mental Capacity Act and Deprivation of Liberty Safeguards, 01622 694182, e-mail: annie.ho@kent.gov.uk

For good practice queries: -

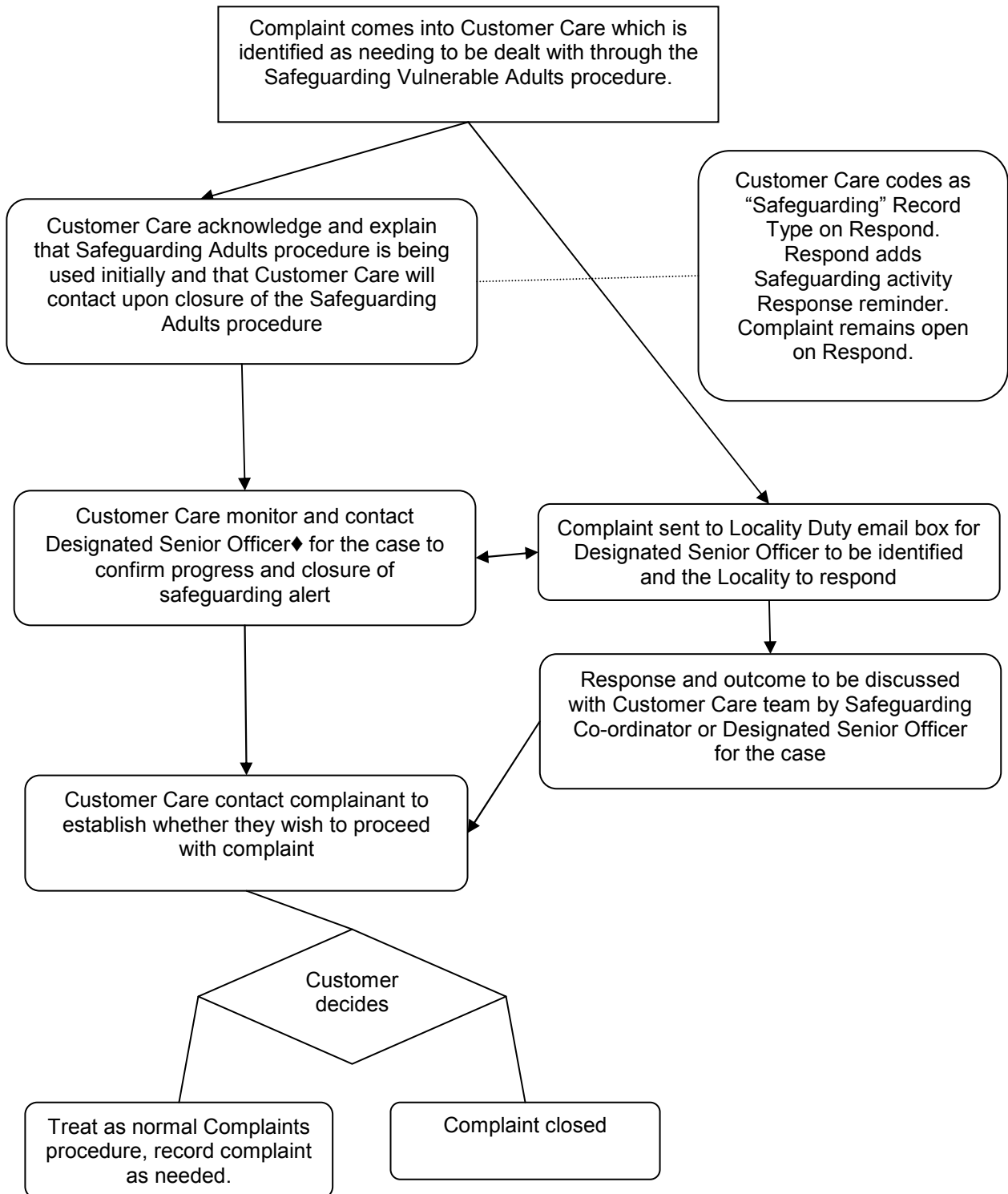
East Kent - Cathy Shannon, EK Quality Assurance and Practice Development lead, 7015 8704.

West Kent - Jo French, WK Quality Assurance and Practice Development lead.

Appendix 7

Safeguarding Vulnerable Adults Procedure and the Complaints Process

Flow Chart of Procedure:



◆ Where Designated Senior Officer is not known, refer to the Safeguarding Vulnerable Adults Co-ordinator or in their absence the Locality Support Manager / Disability Support Manager, or Head of Service for action.

Appendix 8

GUIDANCE ON UNREASONABLY PERSISTENT AND VEXATIOUS COMPLAINANTS

Introduction

Dealing with a complaint is generally a straightforward process. In a small number of cases, people pursue their complaints in a way which can either impede the investigation of their complaint or can have significant resource issues for the Council. This can happen either while their complaint is being investigated, or once the Council has finished dealing with the complaint.

It is important to distinguish between:

- people who make a number of complaints because they really think things have gone wrong
- people who make unreasonably persistent complaints.

If the complainant is persisting because his complaints have not been considered in full then we must address this (normally by invoking the next stage of the complaints procedure). However, if the Council has considered that matter fully and has demonstrated this to the complainant, then we need to consider whether the complainant is now unreasonably persistent.

Principles

The Council is committed to dealing with all complaints equitably, comprehensively and in a timely manner. It does not normally limit the contact which complainants have with Council staff and offices. The Council does not expect staff to tolerate behaviour which is abusive, offensive or threatening and will take action to protect staff from such situations.

Aim of guidance

The aim of this guidance is to contribute to the Council's overall aim of dealing with all complainants in ways which are consistent and equitable. It sets out how the Council will decide which complainants will be treated as vexatious or unreasonably persistent, and what the Council will do in those circumstances. This guidance runs alongside existing corporate policies and guidance relating to equalities, health & safety, and dignity and respect at work, and should only be pursued where absolutely necessary.

Definition of unreasonably persistent and vexatious complainants

The Council defines unreasonably persistent and vexatious complainants as those complainants who, because of the frequency or nature of their contacts with the Council, hinder the Council's consideration of their or other people's complaints. The descriptions 'unreasonably persistent' and 'vexatious' may apply separately or jointly to a particular complainant.

There is a difference between 'unreasonably persistent' and 'vexatious' complainants.

A vexatious person in this context is someone who is not seeking to resolve a dispute between themselves and the Council but is seeking to cause unnecessary aggravation or annoyance to the Council.

Unreasonably persistent complainants or vexatious complainants may have justified complaints or grievances but are pursuing them in inappropriate ways. Alternatively, they may be intent on pursuing complaints which appear to have no substance or which have already been investigated and settled. Their contacts with the Council may be amicable but still place very heavy demands on staff time, or they may be distressing for all involved. Demands on staff time need to be assessed appropriately - on occasion, a little more time up front to understand the issue may actually lead to less time being spent on the issue in total.

Actions and Behaviours

Below are some of the actions and behaviours of unreasonably persistent complainants and vexatious complainants which the Council may experience. This policy is to be invoked if one or more of the following triggers occur and depending on the individual merit of the case. This list is not exhaustive and one single feature on its own will not necessarily imply that a person will be considered persistent and/or vexatious:

1. refusing to specify the grounds of a complaint, despite offers of assistance with this from staff
2. refusing to co-operate with the complaints investigation process while still wishing their complaint to be resolved
3. refusing to accept that issues are not within the remit of a complaints procedure despite having been provided with information about the procedure's scope
4. refusing to accept that issues are not within the power of the Council to investigate, change or influence (examples could be something that is the responsibility of another organisation
5. making what appear to be groundless complaints about the staff dealing with the complaints, and seeking to have them replaced
6. changing the basis of a complaint as the investigation proceeds and/or denying statements he or she made at an earlier stage
7. introducing trivial or irrelevant new information which the complainant expects to be taken into account and commented on, or raising large numbers of detailed but unimportant questions and insisting they are all fully answered
8. electronically recording meetings and conversations without the prior knowledge and consent of the other persons involved
9. persistently approaching the Council through different routes about the same issue
10. adopting a 'scattergun' approach; pursuing a complaint(s) with the Council and at the same time with a department, the Chief Executive, an M.P., Councillor, Auditor, Standards Board, Police, Solicitors or the Local Government Ombudsman

11. making unnecessarily excessive demands on the time and resources of staff whilst a complaint is being looked into, by for example excessive telephoning or sending emails to numerous council staff, writing lengthy complex letters every few days and expecting immediate responses
12. submitting repeat complaints after the complaints process has been completed, essentially about the same issues, with additions/variations which the complainant insists make these 'new' complaints which should be put through the full complaints procedure
13. refusing to accept the decision – repeatedly arguing the point and complaining about the decision.

Being reasonable

Raising legitimate queries or criticisms of a complaints procedure as it progresses, for example if agreed timescales are not met, should not in itself lead to someone being regarded as a vexatious or an unreasonably persistent complainant. Similarly, the fact that a complainant is unhappy with the outcome of a complaint and seeks to challenge it once, or more than once, should not necessarily cause him or her to be labelled vexatious or unreasonably persistent. The Council will offer the complainant appropriate support, as it would any other customer.

It may be helpful to both parties if the complainant has an advocate. If the complainant feels that they would like an advocate, the Council must consider offering to help find an independent one. If the complainant has specific needs, the Council will offer relevant support. Specialist bodies such as the Royal National Institute for the Blind and Age Concern provide help and advice.

The decision

Before making the decision, some or all of the following steps need to be taken:

- The Council will ensure that the complaint is being, or has been, investigated properly according to the Council's complaints procedure
- Although each complaint is unique, the Council will deal with the complaint in line with other complaints of a similar nature in order to apply a consistent approach
- The Council will contact the complainant to:
 - discuss his or her behaviour
 - explain why this behaviour is causing the Council concern
 - ask him or her to change this behaviour
 - explain about the actions that the Council may take if his or her behaviour does not change.

- If the complainant has not already had a meeting about the complaint with a member or members of staff, and provided that the Council knows nothing about the complainant which would make this inadvisable, the Council will consider offering the complainant a meeting with a senior member of staff. Sometimes such meetings can dispel misunderstandings and move matters towards a resolution.

The decision to declare a complainant as unreasonably persistent and/or vexatious will be an exceptional step, and should be made by the Resource Director/ Monitoring Officer/ Head of Service who has not been directly involved in the complaint or with the complainant. They should make a written note of the considerations and decisions.

The complainant should be told in writing:

- why we believe their behaviour falls into that category
- what action we are taking
- the duration of that action
- how the complainant can challenge the decision if they disagree with it (this should normally include information regarding the Local Government Ombudsman, see Appendix A).

Taking Action

The precise nature of the action should be appropriate and proportionate to the nature and frequency of the complainant's contacts with the Council at that time.

The following is a list of possible options:

- placing time limits on telephone conversations and personal contacts
- restricting the number of telephone calls that will be taken (for example, one call on one specified morning/afternoon of any week)
- limiting the complainant to one medium of contact (telephone, letter, email etc.)and/ or requiring the complainant to communicate only with one named member of staff
- requiring any personal contacts to take place in the presence of a witness
- refusing to register and process further complaints about the same matter
- banning a complainant from one or more Council premises
- where a decision on the complaint has been made, informing the complainant that future correspondence will be read and placed on the file but not acknowledged. A designated officer should be identified who will read future correspondence
- where a complaint is closed and the complainant persists in communicating about the same issue, it may be decided to terminate contact with that complainant.

These options are not exhaustive and there may be other factors that will be relevant in deciding what might be appropriate action. For instance, any arrangements for limiting a complainant's contact must take account of the complainant's individual circumstances, bearing in mind such issues as age, disability, gender, race and religion or belief.

Where the behaviour is so extreme that it threatens the immediate safety and welfare of staff, the Council will consider other options, for example reporting the matter to the police or taking legal action. In such cases, the Council may not give the complainant prior warning of that action.

Further actions

Detailed records of all contacts with unreasonable persistent and vexatious complainants must be kept. Information should only be shared with staff who need this information in order to carry out their role at work.

Personal details about the complainant and about the complaint will be managed and stored appropriately in line with the Data Protection Act and records management principles and procedures.

When unreasonable complainants make complaints about new issues, these should be treated on their merits and decisions should be taken on whether any restrictions that have been applied before are still appropriate and necessary. Reviews of decisions to restrict a complainant's contacts or the Council's responses to them, should be taken by the Complaints Manager/ Resource Director/ Monitoring Officer/ Head of Service

Source documents:

LGO Guidance on persistent and unreasonably persistent complainants

Information Commissioner's guidance on vexatious requests

Hantsnet – corporate policy on dealing with difficult/vexatious complainant

Referring unreasonable and unreasonably persistent complainants to the Local Government Ombudsmen

In some cases, relations with unreasonable complainants while complaints are under investigation and there is little prospect of achieving a satisfactory outcome. In these circumstances there is often little purpose in following through all stages of the Council's complaints procedure. Where this occurs the Ombudsman may be prepared to consider complaints before the Council's complaints procedures have been exhausted.

This is the case even in respect of statutory complaints procedures.

A complainant who has been designated an unreasonably complainant may make a complaint to the Ombudsman about the way in which he or she has been treated. The Ombudsman is unlikely to be critical of the Council's action if it can show that its policy has been operated properly and fairly.

In extreme cases the Council may consider the following actions:

- referring the complaint to the Local Government Ombudsman before the complaints procedure has been exhausted
- advising the complainant that it cannot assist further and informing them of their right to approach the Local Government Ombudsman.

The distinction between the two options above is that early referral to the Local Government Ombudsman is a positive action that can only be undertaken in agreement between the KCC and the complainant. This is therefore the less likely option with persistent complainants.

The second option may arise where Kent County Council does not agree with the complainant that the complaints are substantively valid and the two parties disagree on the way forward. This is more likely with an unreasonable persistent complainant.

The authorised manager should not contact the Local Government Ombudsman directly, but indicate to the complainant that he may make this approach. He should also confirm to the complainant that the Council is not responding to the complaint further.

The Local Government Ombudsman is likely to apply the test of reasonableness to the Council's response in a similar manner to an early referral and will have a range of options open to him.

Appendix 9

Guidelines for staff being interviewed as part of an off-line Investigation

- When a complaint is received about Adult Services which due to its nature, complexity and through discussion with the complainant, the Customer Care team identify should be investigated by an independent (offline or external) person, the Customer Care team will arrange for an Offline and/or Independent Investigator to investigate the complaint.
- Offline refers to an Investigating Officer who has no prior knowledge of the client and no line management of the staff involved. Often this is a Manager or Senior Practitioner from another Locality team.
- When a complaint is registered, the Head of Locality and relevant team managers will be informed. This will include information of who the investigator is and who they wish to interview.
- The investigator will firstly visit the complainant and agree the numbered list of complaints to be investigated; this is called the 'Terms of Reference'.
- The Terms of Reference form the parameters of the investigation and the investigator will seek to ensure that these are realistic and can be covered as part of the investigation. The Terms of Reference need to be specific in terms of the allegations or issues of complaint in order for the investigator to uphold or not uphold each one as part of the investigation. These are the issues that the complainant feels are justified.
- Customer Care will ensure that the list of agreed complaints (Terms of Reference) and the original complaint letter/telephone notes are made available to all staff prior to their interview in order that they are able to prepare appropriately. This will be done via your Line Manager.
- The Investigating Officer will make direct contact with you early on in their investigation (Customer Care may do this if an external investigator has been appointed). When you are approached to be interviewed you should make yourself available at the earliest possible date, as complaints have to be dealt with promptly and to an agreed timescale.
- Even if you are named personally in a complaint, please understand that complaints are viewed as a complaint against Kent Adult Social Services Directorate. It is acknowledged, however, that it can be a difficult and worrying time for staff.
- If you wish you may have a friend to support you and protect your interests at the interview with the investigator. They must be employed by KCC and there must be no conflict of interest, thus they can not be your line manager. Please seek advice from the Customer Care Manager if you are unsure whether someone is suitable to support you.
- You are entitled to have the relevant files with you when being interviewed in order to assist you and the investigators. However, it may be that the main client file has already been provided to the investigator. In this case, you will still have access to view these files during the interview.

- The Investigating Officer will lead the interview.
- You are entitled to be treated courteously and with respect throughout the process. If you feel this has not been the case, please inform your Head of Locality or the Customer Care Manager for the Area. We ask that you extend the same courtesies to the investigators.
- Once the investigator has completed all the interviews and viewed the files, he/she will prepare a report for the Head of Locality and the complaint will be discussed at an adjudication meeting.
- You are entitled to receive feedback regarding the complaint and the outcome via your Line Manager as part of the Supervision process.
- Once the complaint has been investigated it may be appropriate, depending on the outcome and the circumstances, to commence an investigation in line with an Employment Procedure such as Performance and Capability or Disciplinary.

If you have any problems or feel uncertain over any of the above process do not hesitate to contact the Customer Care Manager for help & advice.

See KNet for the full KASS Complaints policy:

<http://knet2/directorates/adult-services/policies-and-procedures/complaints/complaints>