

Report of the Cabinet Member for Transformation and Performance

Cabinet – 17 March 2015

INTRODUCTION OF A NEW SOCIAL SERVICES COMPLAINTS POLICY

Purpose:	To replace the existing Social Services Complaints Policy with a revised policy in line with new legislative requirements.
Policy Framework:	None
Reason for Decision:	To comply with legislative changes
Consultation:	Legal, Finance, Access to Services, Cabinet Member.
Recommendation:	It is recommended that: - 1. The new Social Services Complaints Policy as set out in Appendix A be approved. 2. The new policy be adopted with immediate effect.
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1. Introduction

- 1.1 The Social Services and Well-being (Wales) Act ('the Act') received Royal Assent and became law on 1 May 2014. Part of this Act deals with how local authorities handle complaints and representations relating to social care and palliative care.
- 1.2 As a result of the Act, Council will need to revise its current Social Services Complaints Policy, aligning it to the *Welsh Government Model Concerns and Complaints Policy & Guidance* (which also covers Health & Local Authority Corporate complaints).
- 1.3 New regulations, issued mid July 2014, stated that the new Social Services Complaints Procedure would come into force on 1 August 2014. Although Social Services complaints have been administered in

line with the new regulations since 1 August 2014, due to the late publication of regulations there has been a delay in the drafting of a new policy, which was also subject to public consultation prior to completion.

- 1.4 A new CCS Social Services Complaints Policy has been drafted to reflect the new legislative requirements and is shown at **Appendix A**.

2. Consultation

- 2.1 The appended Policy has been put out to public consultation and the feedback from that consultation has been analysed. Questions were asked as shown below and a summary of the results obtained are shown alongside in brackets:

Is the policy easy to read? (91% of people who responded to this question agreed it was)

Is the policy easy to understand? (80% of people who responded to this question agreed it was)

Is the policy well laid out? (92% of people who responded to this question agreed it was)

Is the policy an appropriate length? (82% of people who responded to this question agreed it was)

Is the policy informative? (91% of people who responded to this question agreed it was)

[n = 14]

- 2.2 It is considered that the response to all the questions asked in the consultation exercise was very positive.

- 2.3 An Equality Impact Assessment has also been conducted in order to ensure that individuals with protected characteristics are not disadvantaged by the introduction of the new policy.

3. Financial implications

- 3.1 Administration of the Policy will be contained within existing budgets.

4. Legal Implications

- 4.1 The new policy has been written to comply with all legislative requirements as set out in the Social Services Complaints Procedure (Wales) Regulations 2014 and the Representations Procedure (Wales) Regulations 2014.

Background Papers: Equality Impact Assessment Report
completed 13 October 2014

Appendices: Appendix A – Social Services Complaints Policy

**City and County of Swansea
Social Services Complaints Policy**

1. Introduction

- 1.1 The City and County of Swansea (the council) is committed to dealing effectively with any concerns or complaints about Social Services. In this document, the term 'complaint' refers to a concern, a representation or a complaint.
- 1.2 We aim to clarify any issues about which service users or complainants are not sure. We will aim to provide any service to which a person was entitled where we have failed to do so previously without good reason. We will apologise if we get something wrong, and where possible try to put things right. We also aim to learn from our mistakes and use the information we gain to improve our services.
- 1.3 This policy has been established in accordance with The Social Services Complaints Procedure (Wales) Regulations 2014 and The Representations Procedure (Wales) Regulations 2014. This policy takes effect from 1 August 2014 as prescribed.
- 1.4 The above regulations are made under the Social Services and Well-being (Wales) Act 2014. They bring the complaints handling process for Social Services in line with the *Welsh Government Model Concerns and Complaints Policy and Guidance*, and the NHS Complaints Procedure *Putting Things Right*.
- 1.5 This policy also encompasses the requirements of the Children Act 1989, the Adoption Of Children Act 2002, the Community Care Act 2014 and is in accordance with guidance issued under Section 7 of the Local Authority Social Services Act 1970.

2. Our commitment

- 2.1 The Social Services Directorate (Social Services) aims to provide high quality services to eligible residents of Swansea.
- 2.2 There will be times when people using or wanting to use its services will want to make comments or complaints about the service they receive. When we receive a complaint, we will usually respond in the way we explain below.
- 2.3 We have developed our Social Services complaints policy to ensure we resolve complaints quickly and effectively.
- 2.4 We recognise that a robust complaints framework allows service users to become empowered. Outcomes from complaints are used by Social Services to ensure that lessons are learned where things have gone wrong, in order that continuous improvement can be made to service delivery.
- 2.5 We will deal with complaints in an open and honest way.

- 2.6 We will make sure that complainants' dealings with us in the future do not suffer just because they have expressed a concern or made a complaint.
- 2.7 We would normally communicate with a complainant in the same way they have contacted us, unless they request we respond differently or we have good reason not to do so. Where a complainant has contacted us by email, we will ask for written consent to respond electronically. Should such consent not be given, outgoing correspondence will be sent by post.

3. Officer Roles

- 3.1 The Director of Social Services should have formal oversight of the complaints process and should report annually on complaints in the Director's Annual Report. The Director of Social Services for these purposes is the Chief Social Services Officer.
- 3.2 The Authority must designate a Senior Officer responsible for ensuring compliance with the Authority's Social Services complaints and representations procedures. This function is designated to the Complaints Manager.
- 3.3 The Authority also has a Social Services Complaints Officer, responsible for managing the procedures for handling and considering complaints and representations.
- 3.4 The specific roles and duties of these officers are set out in the Welsh Government guidance document "A guide to handling complaints and representations by local authority social services" (2014).

4. Service Requests

- 4.1 If a person is approaching the council for a service for the first time, this will be classified as a service request. In such cases this policy will not apply.

5. Use of this policy: Who can complain, and when can a complaint be made?

- 5.1 This policy applies to both adults and children. A person may be eligible to make a complaint about Social Services under this policy, if they:
- 5.1.1 Have received (or were entitled to receive) a service from Social Services and have suffered due to the inappropriate actions of Social Services.
- 5.1.2 A complaint may be brought forward in respect of a child (i.e. a person under the age of 18):
- (a) By a child either being looked after by Social Services, or not being looked after by them but is in need
 - (b) By a parent of such a child
 - (c) By a person with parental responsibility for such a child
 - (d) By a local authority foster carer

(e) Where the council considers that the complainant has a sufficient interest in a person's welfare to warrant it considering their representations

- 5.2 Children in need, looked after children and care leavers have a right to receive assistance from an independent advocate to support them when making a complaint. In these circumstances, we will provide an advocate if asked to do so.
- 5.3 If a person is unable to make a complaint or representation themselves, they can have someone (a representative) to make a complaint on their behalf.
- 5.4 A representative may make a complaint on another person's behalf where that person:
 - is a child; or
 - has requested the representative to act for them; or
 - lacks capacity (within the meaning of the Mental Capacity Act 2005) to make their own complaint; or
 - has died.
- 5.5 Any representative making a complaint on another person's behalf without their expressed permission must be considered to have sufficient interest in that person's welfare and be a suitable person. The Complaints Officer will determine the eligibility of a complainant.
- 5.6 If an individual intends expressing a concern on behalf of another person who satisfies the criteria set out in paragraph 5.1, we may require confirmation of their agreement to that person acting on their behalf.
- 5.7 Normally, we will only be able to look at complaints if we are told about them within 12 months. This is because it's better to look into complaints while the issues are still fresh in everyone's mind.
- 5.8 In exceptional circumstances the council may be able to look at concerns which are brought to our attention later than this. However, we will need strong reasons why the matter has not been brought to our attention earlier and we will need to have sufficient information about the issue to allow us to consider it properly.
- 5.9 There may be reasons why the council will not, or cannot consider a complaint under this policy (e.g. if there are court proceedings, Care and Social Services Wales/police investigations in relation to those matters, or if the complaint identifies a safeguarding issue). If this is the case, the Complaints Officer will explain why the complaint cannot be considered and confirm the decision in writing.
- 5.10 Furthermore, a complaint cannot be considered under this policy where:
 - a) The complaint relates to a matter that has previously been investigated under this or the former complaints procedure;
 - b) The complaint is being or has been investigated by the Public Services Ombudsman for Wales;
 - c) The matter relates to a Freedom of Information request;

- d) The complaint has previously been made orally, and resolved to the satisfaction of the person making complaint by the end of the working day following the day on which the complaint was made.

6. How to complain

6.1 Complaints can be made in any of the ways below:

6.1.1 By contacting the Complaints Team by telephone on 01792 637345

6.1.2 Via our website at www.swansea.gov.uk/complaints

6.1.3 By e-mail at complaints@swansea.gov.uk

6.1.4 In writing, at the following address:

The Complaints Team
Third Floor, Civic Centre
Oystermouth Road
Swansea SA1 3SN

6.2 We aim to have complaint information available at all of our service outlets and public areas and also at appropriate locations in the community (e.g. libraries and housing offices).

6.3 Copies of this policy and the complaint form can be made available in other formats if required (e.g. audio, large print etc).

7. Stage 1 of the complaints process – informal/local resolution

7.1 If possible, we believe it's best to deal with things straight away rather than try to sort them out later. Ideally, complainants should raise their complaint with the person they are dealing with. He or she will try to resolve it there and then.

7.2 If we are unable to resolve a complaint as outlined in 7.1 above, we will acknowledge the complaint within 2 working days of receipt of the complaint and tell the complainant who we have asked to look into the matter. Details of our complaints procedure will be enclosed with the acknowledgement. We will also offer advice and guidance on the complaints process if this is required.

7.3 We will set out our understanding of the complainant's concerns and ask them to confirm that we have got it right. We will also ask them to tell us what outcome they are hoping for.

7.4 We will offer the complainant a discussion with a Social Services Officer or the Complaints Officer (as appropriate). Arrangements will be made for this to take place within 10 working days of the date of acknowledgement.

- 7.5 In the case of a Representation, arrangements will be made for any required discussion to take place within 10 working days of the complaint start date as defined in Regulation 17(4) of The Representations Procedure (Wales) Regulations 2014.
- 7.6 If a complainant refuses the offer of a discussion, the complaint may proceed to the formal investigation stage.
- 7.7 Where the approach set out in 7.4 or 7.5 above leads to a mutually acceptable resolution to the complaint, we will provide a substantive response to the complainant in writing within 5 working days of the date of resolution.
- 7.8 If it is not possible to provide the complainant with a response within the timescales set out in 7.4 or 7.5 above, we will contact the complainant to discuss the reason for the delay.
- 7.9 Occasionally, we might suggest mediation or another method to try to resolve disputes. It is hoped that all concerns can be resolved by Social Services without a need for further action.

8. Stage 2 of the complaints process - formal investigation

- 8.1 If a complaint has been considered at the first stage of the complaints process and the complainant remains aggrieved with the outcome, they may ask for the complaint to be investigated by a person who is independent of the council.
- 8.2 We will compile a formal written record of the complaint (as we understand it) within 5 working days of the date it is received.
- 8.3 Before the investigation starts, the complainant will be required to confirm that our understanding of the issues to be investigated is comprehensive and correct. They will also be asked to specify (or confirm) their required outcomes from the investigation. If these issues have not been clearly set out in our summary of the complaint, the complainant will need to speak to the Complaints Officer to clarify matters.
- 8.4 The date on which the content of the complaint is agreed by both the council and the complainant will be the start date for the complaint.
- 8.5 We will commission someone from outside the council to conduct the investigation. This person is referred to as an Independent Investigator.
- 8.6 The Independent Investigator will interview all relevant parties and produce a report of their findings which will be provided to the person making the complaint and principal parties to the complaint.
- 8.7 As a consequence of this report the Director of Social Services will provide the complainant with a written response to the report which will include their summary, stating whether or not the complaint is upheld. The response will provide details of any action to be taken, together with an apology where appropriate. The response

will also explain the complainant's right to go to the Public Services Ombudsman for Wales should they remain dissatisfied.

- 8.8 The complainant will be offered an opportunity to discuss the investigator's report and our response, and this discussion will normally be with the Complaints Officer.
- 8.9 In the case of a child, at this stage an Independent Person will also be appointed to take part in the formal consideration and any discussion about the action the council should take (in accordance with the Children' Act 1989). The Independent Person is not an advocate for the complainant; their role is to oversee the handling of the complaint. This person may be an employee of the council but must not be associated with Social Services in any way.
- 8.10 A response to a Stage 2 complaint must be issued within 25 working days of the start date, unless there are exceptional circumstances where this is not possible. If a response cannot be issued within this timescale we will inform the complainant and explain why, giving an indication when they can expect to receive a response. Delays due to exceptional circumstances must be agreed by the Director of Social Services and recorded in an Annual Report. In any event, a response to a complaint must be provided within 6 months.
- 8.11 Whilst it is recommended that a complainant tries to resolve their complaint informally at first, they have the right to ask for a complaint to be considered formally from the outset.
- 8.12 A formal investigation may be initiated where the complaint is deemed to be so serious that it would be inappropriate to deal with the matter by local/informal resolution.

9. Outcomes of investigations

- 9.1 Following the investigation of a complaint, we will let the complainant know the outcome of the investigation using their preferred form of communication (e.g. by letter or email). We will explain how and why we came to our conclusions.
- 9.2 If we find that we got it wrong, we will explain what errors were made and how it happened. In complex cases, we may invite the complainant to attend a further meeting to discuss the outcomes and future actions
- 9.3 If we find there is a fault in our systems or the way we do things, we will explain what it is and how we plan to change things to stop it happening again. If we got it wrong, we will always apologise.

10. Putting things right - when we get things wrong

- 10.1 If we didn't provide a service that should have been given, we will aim to provide it if that's possible. If we didn't do something well, we will aim to put it right. If a person

has lost out as a result of a mistake on our part we will try to put them back in the position they would have been in if we had got it right.

- 10.2 If a person had to pay for a service themselves when they should have received that service from us, or if they were entitled to funding they did not receive, we will usually aim to make good what they have lost.

11. Learning lessons

- 11.1 We take complaints seriously and try to learn from any mistakes we have made. Our senior management team considers a periodic summary of all complaints. Details of lessons learned from complaints are also included in an Annual Report.
- 11.2 Where there is a need for change, we will develop an action plan setting out what we will do, who will do it and when we plan to do it by. If it is appropriate, we will let complainants know when the changes we have promised to make have been implemented.

12. Confidentiality

- 12.1 Should a complainant request sight of any part of the complaint investigation, such a request will be dealt with in accordance with the Data Protection Act 1998. Written information on complaints is kept separately from care management records.
- 12.2 Requesting an investigation gives permission for the Investigating Officer to look at the personal data contained in care management records for the scope of the complaint.
- 12.3 All council staff, including those commissioned for a specific piece of work, are bound by the rules of confidentiality.
- 12.4 Information gathered and processed during the complaint procedure will only be shared with parties subject to, directly involved with or who have a professional interest in the outcome of the complaint.

13. Concurrent investigations

- 13.1 Where other investigations are in progress/under consideration in relation to issues raised by the complainant (e.g. court matters, Care and Social Services Wales/police investigations, disciplinary or other legal proceedings), no concurrent investigation will be undertaken in line with this policy where such an investigation would prejudice the conduct of those proceedings/investigations.
- 13.2 No complaint investigation will be made under this policy where it is considered that such action may compromise any adult or child protection process. Complainants will be informed if the complaint is being treated as a safeguarding issue.

- 13.3 Should this occur, we will notify the complainant in writing to explain why and invite them to re-submit their complaint within 6 months of those other matters being concluded.

14. What if there is more than one public body involved?

- 14.1 If a complaint covers more than one body (e.g. if the complaint is about both the council and health board) we will usually work with them to decide who should take the lead in dealing with the matter. In such cases, the name of the person responsible for communicating with the complainant will be provided.

- 14.2 If the complaint is about a body working on our behalf (e.g. agency care workers or private residential homes) the matter may be raised informally with, and handled by, that body first. However, if the complainant wants to complain formally, we will look into this ourselves and respond.

15. Deferring or freezing decisions

- 15.1 If a complaint is about a proposed change to a care plan, a placement or a service, the council may consider deferring or freezing the decision until the complaint is resolved.

- 15.2 Decisions to defer/freeze such changes will normally be made following discussion between the Complaints Officer and Social Services, and each case will be considered on its own merit.

- 15.3 Should it be required, the decision of the Director of Social Services on such matters will be final.

16. Public Services Ombudsman for Wales

- 16.1 If we do not succeed in resolving a complaint, the complainant may refer the matter to the Public Services Ombudsman for Wales. The Ombudsman is independent of all government bodies and can look into complaints where the complainant or service user -

- a) has been treated unfairly or received a poor service through some failure on the part of the body providing it
- b) has been disadvantaged personally by a service failure or has been treated unfairly.

- 16.2 The Ombudsman expects complainants to bring concerns to our attention first and to give us an opportunity to put things right.

- 16.3 The Ombudsman can be contacted in the following ways:

- By e-mail: ask@ombudsman-wales.org.uk
- Via the Ombudsman website: www.ombudsman-wales.org.uk
- In writing, or by telephone, at:

Public Services Ombudsman for Wales
1 Ffordd yr Hen Gae
Pencoed CF35 5LJ
Tel: 0300 790 0203

16.4 There are also other organisations that consider complaints. For example, the Welsh Language Commissioner can deal with issues about services in Welsh. We can provide advice about such organisations.

17. What if a complaint is withdrawn?

17.1 A complainant may withdraw a complaint at any time. If this happens we will write to the complainant to confirm their withdrawal of the complaint, however we may decide to continue with our investigations if we deem such action is necessary.

18. What if a complainant needs help?

18.1 Our staff will aim to help complainants to make their concerns known to us. If extra assistance is needed, we will try to put complainants in touch with someone who can help.

18.2 Older People

18.2.1 Age Cymru provides advice for all older people in Wales. They can be contacted in any of the ways below:

- Using their Online Form: <http://www.ageuk.org.uk/cymru/contact-us/>
- Via the Age Cymru website: <http://www.ageuk.org.uk/cymru/>
- In writing, or by telephone, at:

Age Cymru
Tŷ John Pathy
13/14 Neptune Court
Vanguard Way
Cardiff CF24 5PJ
Tel: 0300 790 0203

18.2.2 Advocacy services for adults can also be found by contacting:

South Wales Advocacy (Mental Health)
Cefn Coed Hospital
Cockett
Swansea SA2 0GH
Tel: 01792 516665

18.3 Children and young people

18.3.1 This policy includes complaints made by people under the age of 18. If a young person wishing to complain needs help, they can speak to someone on the Meic Helpline (phone 080880 23456, www.meiccymru.org).

18.3.2 They can also contact the Children's Commissioner for Wales:

- By email, at: post@childcomwales.org.uk
- In writing, or by telephone, as shown below:

South Wales Office:

Oystermouth House
Phoenix Way
Llansamlet
Swansea SA7 9FS
Tel: 01792 765600

North Wales Office:

Penrhos Manor
Oak Drive
Colwyn Bay
Conwy LL29 7YW
Tel: 01492 523333

18.3.3 Advocacy services for children and young people can also be provided by Tros Gynnal, who can be contacted in the following ways:

- By email, at: leo@trosgynnal.org.uk
- In writing, or by telephone, as shown below:

Tros Gynnal
4 Dunraven Place
Bridgend CF31 1JD
Tel: 01656 669354

19. What we expect from complainants

19.1 In times of trouble or distress, some people may act out of character. There may have been upsetting or distressing circumstances leading up to a concern or a complaint. We do not view behaviour as unacceptable just because someone is forceful or determined.

19.2 We believe that all complainants have the right to be heard, understood and respected. However, we expect complainants to be polite and courteous in their dealings with us. We will not tolerate aggressive or abusive behaviour, unreasonable demands or unreasonable persistence.

19.3 We have a separate policy to manage situations where we find that someone's actions are unacceptable. Details of our Unreasonable Customer Behaviour Policy can be found at www.swansea.gov.uk/behaviour.