



**Caring about complaints:
*lessons from our
independent care provider
investigations***

**Focus report: learning lessons from complaints
March 2019**

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Ombudsman's Foreword



For nearly 10 years the Local Government and Social Care Ombudsman has investigated complaints about independent adult social care providers. We want to share the lessons from our casework experience to help the sector provide the best services possible.

The changes affecting the sector's workforce are well documented, and I understand the significant financial pressures that adult social care is facing. Nevertheless, people should still expect to receive good quality services. We base our decisions on the relevant law, guidance and providers' own policies – not the mitigating circumstances for any problems uncovered.

We know that even with the best will in the world, sometimes things will go wrong. When they do, a key trait of good leadership is the ability to learn from mistakes and make changes.

Complaints can be a cost-effective way to drive improvements. This report gives practical examples of where to look for them, based on the real experiences of people who have complained to us. I hope it will prove useful.

We also explain the differences between our role and that of the Care Quality Commission (CQC). This should be particularly helpful for providers reading about us for the first time.

For this audience, we include further information on our investigation process and how someone can use our service. The key thing I would recommend is to check people can locate and use your complaints procedures easily, and ensure you refer complainants to us. This report highlights how working collaboratively with us can help you resolve disputes in a constructive way.

One of the most important learning points we highlight in this report is the need to provide upfront, accurate information to care users, particularly about fees. People and their families are often choosing care at a time of crisis, and rely heavily on professionals to help them navigate a complex system.

We also cover the issue of fair notice terms and relative disputes. Our advice echoes findings from the Competition and Markets Authority (CMA) when it recently published guidance



for care homes on their responsibilities under consumer law. I was pleased to see the CMA reiterating the importance of well-managed complaints processes. We also give examples of where care plans did not meet assessed needs or were out of date.

However, in many of these case studies, we see good examples of care providers agreeing to make simple changes to improve procedures and practice. By caring about complaints, together we can try to make the system better for everyone.



Michael King

**Local Government and
Social Care Ombudsman**

March 2019



Background

Our role as social care ombudsman

Since our inception, the Local Government and Social Care Ombudsman has investigated councils' adult social care departments and the services they commission. Following the extension of our jurisdiction in 2010 to cover all registered adult social care providers, we became the sole independent means to redress for any type of unresolved adult social care complaint.

Where a complaint involves elements of health and social care services, we can carry out a single joint investigation, with one person investigating across all areas of the complaint, in tandem with the Parliamentary & Health Service Ombudsman.

The Ombudsman and the Care Quality Commission

As the Ombudsman, we look at complaints from individuals where something has gone wrong that personally affects them. The CQC monitors, inspects and regulates services to ensure they meet standards of quality and safety.

We have different roles, but we work closely together. This includes sharing our investigations to inform CQC's inspections.

If somebody approaches the Ombudsman or CQC for help, but their issue is best handled by the other organisation, our respective contact centres transfer the people to the right place. This avoids the need for people to lodge a separate enquiry and provide details for a second time.

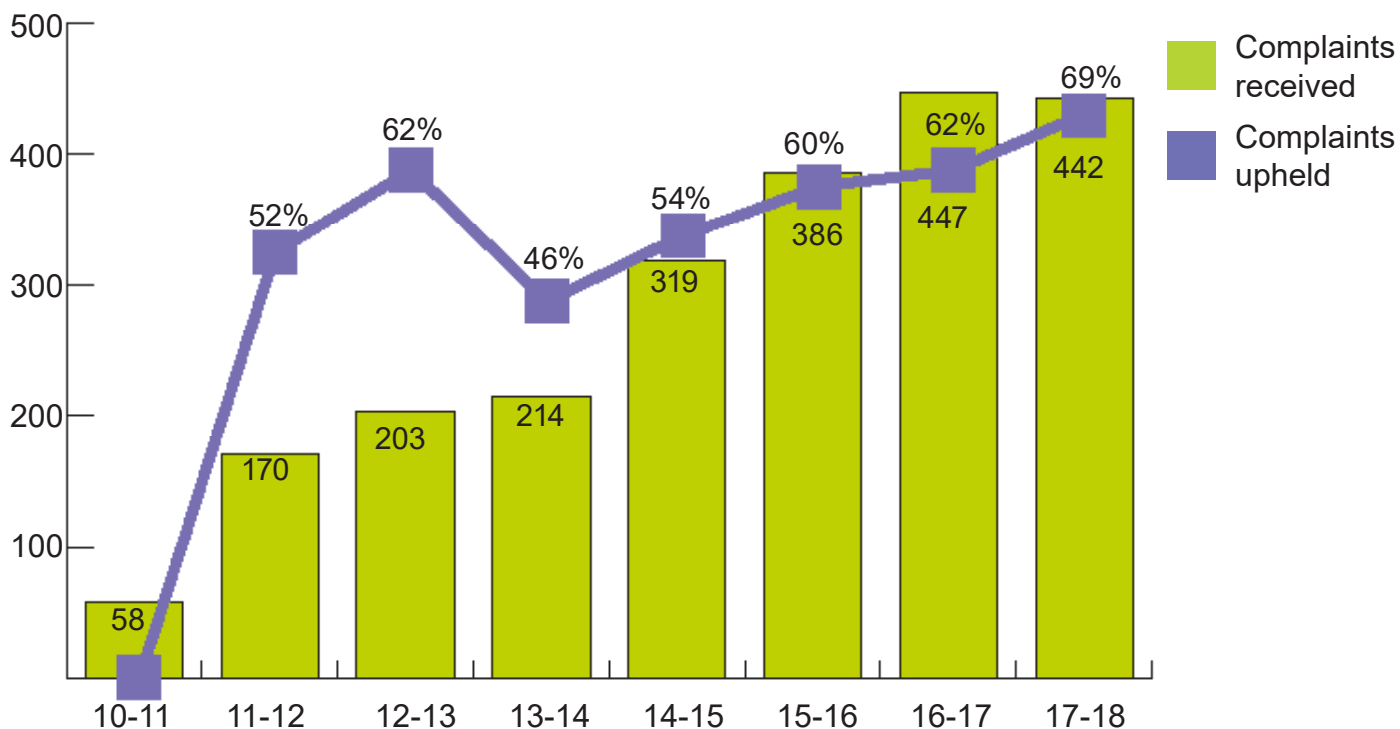
Last year, 3,503 people were transferred between CQC and the Ombudsman and quickly received advice and help from the right organisation. From the people that came across to the Ombudsman, 14 had a complaint considered by us and received closure on their issue. One person received a refund of fees and recognition of their distress suffered, while the care provider put in place staff training on mental capacity.

Complaint statistics and trends

Since 2010-11, we have seen a steady increase in the number of care provider complaints and enquiries we receive. This could be partly attributed to a growing awareness of our role, with care providers improving the way they signpost people to us in their complaints procedures.

However, of more concern is the steady increase in the uphold rate of the complaints we take on to investigate. Last year we received 442 complaints and enquiries, and upheld 69% of investigations about care providers. This compares with 3,106 received and 62% upheld, across all adult social care services including councils.





When we uphold a complaint, and make recommendations to put things right, in almost all cases care providers work proactively with us to do this.

It is extremely unusual for a care provider not to follow our recommendations. Out of more than 25,000 services provided by care providers in England, the 442 complaints and enquiries we received, and the 213 recommendations, we had only one instance of non-compliance last year. Further details can be found in our [Annual Review of Adult Social Care Complaints 2017-18](#).

In the very rare instance that a care provider refuses to follow recommendations, we use our powers to publish a notice holding the provider publicly to account and include it in our annual report laid in parliament.



Common issues and learning points

Clear, upfront information about fees, charges and contracts

The clarity of information given to care users is a key issue in many of the complaints we investigate about independent care providers.

For people to be able to make fully informed decisions about care, they must be given accessible, clear and honest information. This should be provided upfront – before a contract is agreed – so prospective care users know what to expect.

Once receiving care, users may switch between periods of self-funding and state funding, and ensuring the fee structures and funding arrangements for all scenarios are explained at the outset means any changes should not come as a surprise.

We receive complaints about issues where a care provider charges self-funders more than state-funded users. Care providers are entitled to do this, but we would expect them to be open about their charging policies, and for them to have clear information about what their fees cover, with indicative costs.

CMA findings on charging upfront fees:

The Competition and Markets Authority's (CMA) year-long examination of the care home sector recommended providers take action to avoid the risk of some residents being treated unfairly.

The [CMA's study](#) has resulted in some providers changing their approach to charging compulsory upfront fees or continued fees for extended periods after a resident's death.

The research led to the CMA producing guidance to help providers understand their obligations under consumer law.



Janet's story – confusing information about fee differentials

Case ref: [15017516](#)

When Janet's mum, Kim, was first diagnosed with dementia she continued to live at home, with support from care workers, which was partly funded by the council. A few years later, as her needs increased and she could no longer live safely there, she moved into a care home.

Janet managed her mum's finances, and at first the NHS paid for the care home placement through Continuing Healthcare (CHC). But over time, she received conflicting information from the care home about costs.

This confusion included being asked to sign a contract for £408 a week at the outset, but some years later being told the cost of Kim's care was £393 a week. And later, when NHS funding stopped, Janet was told the cost for privately-funded care was £735.

Janet told the home she could not afford £735. The care home then offered a revised rate of £625, which she accepted but complained about. Janet said she had never been given any indication the fee for privately-funded residents would be higher. Had she known, she would have acted in her mother's best interests by looking for a more affordable and sustainable alternative.

Our investigation found the care home gave Janet misleading information about the cost and potential future cost of care. Several figures were quoted for the same service with no explanation for the difference, so it was understandable Janet was taken aback when she was told the fee would be £735.

It also took the care home some eight months to confirm the new fee arrangement of £625 would be honoured and a further two months until the account was put right. This caused Janet additional worry and distress.

How we put things right

The care provider agreed to our recommendations to:

- > Apologise for the stress and anxiety caused
- > Make a token payment to Janet
- > Review the information it provides about fees when people receive state funding towards their care costs



Elsie's story: misleading statements to a husband and wife considering moving into a care home

Case study: [16013030](#)

When Elsie was diagnosed with dementia, both her and her husband, Ronald, who was fit and well, decided to move into a care home together. The care home they were considering had two different parts: a unit to care for people who have dementia and an assisted living unit for those without it.

Before accepting a room, they stressed how vital it was they remained together and said they would not move in if there was a chance they could be separated. Staff told the couple this was unlikely and there would be a full discussion with them first.

The care home decided Ronald and Elsie could both live in the assisted living unit and they moved in. Within three weeks, the care home said Elsie needed to move to the dementia unit, meaning they could no longer share a room. The couple decided to move back to their home.

Our investigation found the care home's decision to move Elsie to the dementia unit was not supported by any evidence her dementia had worsened in the three weeks she had been there. We criticised the care home for not completing risk assessments and not discussing their concerns with the couple before deciding Elsie had to move. This went against what staff had previously promised.

How we put things right

The care home agreed to our recommendations to:

- > Refund the upfront charge of £5,000
- > Reimburse removal costs
- > Pay the couple and their daughter £3,000 to reflect their avoidable distress
- > Review its procedures to ensure decisions are based on risk assessment and care plans developed in consultation with residents and their relatives



Common issues and learning points

Billing and invoices

Invoices for care services should be accurate, timely, and properly reflect the services provided. We have upheld complaints where people have been charged for services they did not receive. In such cases, we will recommend the provider refunds the amount.

If a care provider requires a cancellation period, this should be clearly stated in the contract and information provided at the start of the service. Care providers are entitled to alter their fees, but the terms for this should be set out in the contract, and providers must write to care users with fair warning if this was planned to take place.

Saira's story: Failure to provide invoices or receipts

Case study: [17014385](#)

The contract for Saira's care said the care provider could charge interest if the bill was not paid within 30 days. It did not mention administration or management fees if the care provider had to chase payments. Saira's solicitor looked after her finances and wrote to the care provider saying it had not sent proper invoices for Saira's care. The care provider had instead sent a copy of its ledger (an internal account).

The solicitor asked the care provider for proper invoices, receipts, and questioned administration charges of £300. The provider refused to provide receipts and attached another copy of its ledger instead of an invoice.

We upheld this complaint. Regulations require a care provider to give clear information about fees, contracts and terms and conditions. And it is standard business practice to present an invoice before payment, so we expect care providers to do this as a matter of course. Without an invoice, Saira's solicitor could not check the charge was correct. We were also concerned that the care provider was charging administration fees when these were not mentioned in the contract.

How we put things right

We recommended the care provider:

- > amend the contract to include administration charges for late payment
- > provide invoices and receipts so Saira's solicitor could check the charges were accurate
- > apologise for the inconvenience



Protecting belongings

The CQC's guidance says care providers need to protect personal property and money. It is good practice for care providers to have robust systems in place to safeguard care users' valuable items. Typically, they should keep an updated inventory of residents' valuables and offer a secure place, such as a safe, or a lockable drawer.

If belongings go missing, we expect providers to investigate matters properly to try to find out what happened. This could include interviewing care staff.

Care providers are also required to have suitable insurance and the contract with the care user should not attempt to exclude liability for negligence.

Doreen's story: Failure to keep an inventory

Case study: [17007654](#)

Doreen noticed her aunt's wedding ring and gold necklace were missing. She told the care home, who conducted a search and spoke to staff, but could not find out what happened.

Our investigation found the care home had not checked all its archived records, noting these might contain relevant information. And the care home also failed to keep an inventory of Doreen's aunt's belongings. After Doreen complained to us, the care home started to keep records of all residents' belongings.

How we put things right

The care home agreed to our recommendations to:

- > apologise
- > introduce a new procedure to log all items stored in the safe and update the log when items are removed, to minimise the risk of similar incidents happening again



Imtiaz's story: Poor procedure for safekeeping belongings

Case study: [16011196](#)

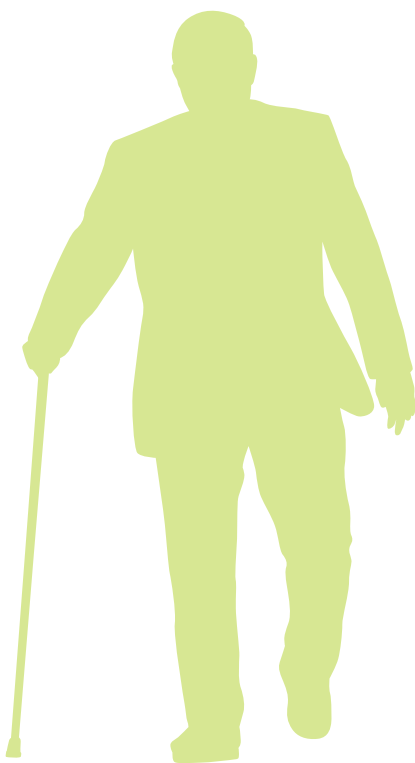
Imtiaz complained about his grandmother's missing rings. Our investigation found the care home stored valuable items informally, with no inventory, in a drawer in the manager's office.

We also found there was no system in place to monitor visitors. We found the care home at fault because it did not have appropriate procedures in place for the care of valuables and prevention of theft.

How we put things right

The care home agreed to our recommendations to:

- > apologise
- > introduce new procedures, including a new entry system, visitor book and CCTV
- > claim on its insurance for the loss of the rings



Common issues and learning points

Giving notice

Terms for giving notice to leave a care home are a standard part of the contract with the care user. We expect the contract to be clear about when the parties can give notice and how long the notice period is.

A care provider can give notice if it cannot meet a care user's needs. The contract should have a term that deals with this. If a care provider gives notice because it can no longer care for a person safely, the care records should show how a person's needs have changed, such that the setting is no longer suitable for them.

Sometimes a care provider gives notice because the relationship between staff and relatives of the care user has broken down. In this case, we expect there to have been discussions with relatives beforehand. Staff should also have a procedure or guidelines to follow when dealing with conflicts with family members.

Jenny and Delia's story: Dealing with conflict between staff and a relative

Case study: [17006582](#)

Jenny complained about how staff at a care home responded to her mother Delia's health needs. Jenny visited her mother frequently, often staying until after midnight.

Staff said they took action such as giving Delia medication that was not medically needed, but given in an attempt to manage Jenny's anxieties. The care home gave Delia notice. The care home said this was because Jenny's behaviour was affecting its ability to care for Delia.

We found there were no procedures for staff to follow when dealing with disputes with family members. We were concerned the care home gave notice without first telling Jenny about its expectations around her behaviour and giving her an opportunity to change.

How we put things right

The care home agreed to our recommendations to:

- > apologise
- > introduce a procedure for staff when faced with conflicts with family members, setting out the steps it will take before ending a contract



Wendy and Sharon's story: Failure to give contractual notice

Case study: [17012098](#)

Sharon complained that a care home tried to evict her mum, Wendy, while Wendy was in hospital. Before sending an email ending the contract, staff had already told Sharon that they would not be able to care for Wendy safely once she was ready to leave hospital, because Wendy needed nursing care, which it did not provide.

Our investigation found the care provider intended to end the contract immediately and without giving the four weeks' notice that was contractually required. When Sharon contacted the care home to object to ending the placement immediately, staff agreed to keep Wendy's place open.

How the care provider put things right

We were critical of the care home's email which did not give proper contractual notice, but we did not uphold this complaint overall, because the care home made amends promptly by keeping the place open and apologising for the distress caused.

We were satisfied with the care provider's reason for sending the email ending the contract which was to save Wendy fees while she was in hospital.

A care provider is entitled to end a contract if it cannot care for a person safely so we were not critical of the decision to end Wendy's contract because it could not meet her future nursing care needs.



Common issues and learning points

Care planning

A key part of good quality care is an up-to-date assessment and care plan, setting out a person's needs and preferences. Care plans should be reviewed regularly.

When investigating complaints about the quality of care, we are likely to find fault if care is not being delivered according to the care plan, or if care plans have not been reviewed and updated to address a person's needs.

Jerome's story: Out of date care plans, failure to complete a comprehensive assessment

Case study: [16012875](#)

Jerome had dementia and terminal cancer, and the care provider gave live-in care at his home.

His daughter complained about a number of issues about the quality of care he was provided.

Our investigation found the care provider did not keep comprehensive or up-to-date care plans for Jerome.

Jerome liked to walk around the house at night and his carers were concerned he may leave the house and place himself at risk due to poor road safety, so they locked the door.

Our investigation found Jerome's care plans did not say the door had to be locked, and they did not address all his needs, including safety issues around him leaving the house at night.

There should also have been an assessment of Jerome's mental capacity to leave the house. If he lacked capacity, there should have been a discussion with his family and a decision made about the best course of action.

How we put things right

The care provider agreed to our recommendation to:

- > review its care plans and add a section to address mental capacity
- > ensure carers reported changes to a person's condition so that a review of their care plan would take place



David's story: No risk assessments and failure to update continence care plan

Case study: [17007164](#)

David lived in a nursing home, and amongst other things, needed help to ensure he drank enough water. He had previously been hospitalised for dehydration while staying there.

David's daughter, Sandy, raised a number of concerns with the quality of her father's care, including there being no fluid chart. This escalated to a formal complaint after she then noticed signs of David not being checked on regularly enough.

Shortly afterwards David was hospitalised again with a suspected urinary tract infection.

The nursing home did not respond to Sandy's complaint, and forced her to chase it up with the home's group company. When the response came, it accepted the continence care plan had not been updated to reflect David's use of pads, and that other care plans had not been reviewed.

The home also accepted the hydration care plan identified a risk of urine infections, but did not set out full actions to minimise the risk.

We upheld the complaint because David's care plans were out of date and did not address his current needs. This put him at risk of harm and likely contributed to his latest hospital admission.

Sandy lost faith in the nursing home and moved her father to another placement.

How we put things right

The nursing home agreed to our recommendations to:

- > apologise
- > make payments to David and Sandy to recognise the poor care and time and trouble in pursuing the complaint with us
- > consider how it will deal with complaints in line with its procedures in future



Good practice in complaint handling

The best care providers encourage people to give their views about the service whether positive, negative or neutral.

We have created guidance on a good practice approach to managing compliments and complaints. This was developed with HealthWatch England in consultation with the sector under the ['Quality Matters' initiative](#).

The Quality Matters initiative is a shared commitment by everyone who uses, works in and supports adult social care. It brings everyone together around a shared pledge to improve adult social care, so that everyone can experience high-quality, person-centred adult social care.

The Key Principles are:

- > **Fairness**
- > **Leadership**
- > **Customer first**
- > **Valuing and encouraging feedback, compliments and complaints**
- > **Accepting something went wrong**
- > **One complaint, one response**
- > **Clear signposting to independent redress**

See the full document annexed to this report.

We have a similar guide aimed at service users and an easyread version available on our website.



Further resources

We have a host of resources on our website and a training programme to help improve complaint handling:

- > [Care provider resources](#) – an online resource including
 - Template complaint procedures
 - Template complaint letters
 - Posters of how to contact the Ombudsman
 - How to guides
- > [Complaint handling training courses](#) – available to book
- > [E-newsletters](#) - Including a dedicated care providers bulletin and our weekly adult social care decisions sent your inbox each week
- > [Our decisions](#) – published investigations that you can learn from
- > [Practitioner guidance](#) – how to handle Funded Nursing Care payments
- > [Annual Review of Adult Social Care Complaints](#)
- > [Quality Matters](#) – leaflets for both providers and care users



How to work with the Ombudsman in investigations

> **Your Complaints Process**

Ensure it is easy for service users to find and use. You should tell people about their right to come to us once you have responded to their complaint.

> **Complaining early**

If someone complains to us but hasn't given the care provider opportunity to respond, we will ask the complainant to go back to the care provider first to make an official complaint. We do not usually inform the care provider in this case.

> **Investigating a complaint**

Someone can come to us for an independent review if they are unhappy with a care provider's final response to their complaint. We can decide to investigate a complaint if the person has not had a response within a reasonable time from their care provider – each case will be evaluated on its own merits.

> **Making enquiries and asking for evidence**

If we investigate a complaint, we will make enquiries to the care provider and the complainant. We may ask for evidence, such as case records. We have the same powers as the High Court to obtain information. We will give timescales for responding to us.

> **Injustice and fault**

Somebody must be personally affected by an issue for us to investigate. We base our decisions on law, relevant guidance and the care provider's own policies. We will decide whether there has been fault.

> **Putting things right**

If there has been fault that led to an injustice to the person complaining, we will make recommendations to put things right. These could include actions to put things right for the individual, as well as procedural changes to avoid the same things happening again. Our recommendations are not compensatory – they aim to put people back in the position they were before the problem happened. However, we do recommend token amounts for additional distress caused and the time and trouble in having to complain to us. More information is in our [Guidance on Remedies](#).

> **Publishing decisions**

We publish our decisions on our [website](#) three months after the case is closed. We publish the name of the care provider but do not use real names of people involved. We may use job titles to refer some senior staff involved. We can choose to not publish a decision if the circumstances of the case put the anonymity of the complainant at risk.

> **Complaints about council commissioned care**

We will investigate against the council in cases where they are responsible for the service but have commissioned it to a care provider. We will usually name the care provider as well. We don't expect a complainant to have to go through both the council's and the care provider's complaints procedures.



Local Government and Social Care Ombudsman

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Acting on compliments, feedback and complaints about adult social care – a good practice guide for adult social care practitioners

Introduction

This is intended for adult social care practitioners and organisations that commission, arrange and provide social care. The purpose of this statement is to:

- > inform their approach for acting on compliments, feedback and complaints
- > set out what people who use services, their unpaid carers, family and their representatives can reasonably expect from organisations that provide and arrange adult social care when they leave compliments and feedback or complain about a service or member of staff; and
- > provide prompts or good practice in complaint handling for those organisations.

It is important that people give feedback about their experiences of adult social care, so that services know what they are doing well and where they need to improve. Everyone has the right to receive good quality care and support, and the right to say how they feel about the quality of care and support they receive.

Compliments, feedback and complaints

Services should encourage people to give their views about the service whether positive, negative or neutral. People may wish to comment on their experience of a service without making a formal complaint. We use the term 'feedback' to refer to these comments. Feedback and compliments are of equal importance to complaints. This can help you understand what you are doing well as well as identify areas for improvement.

It is important that feedback is encouraged and welcomed from all people and that none are disadvantaged because of their disability, communication, health or care need.

To build a positive culture around using feedback and complaints to improve care we need a shared understanding of what we mean when we talk about feedback and complaints. We use the term 'complaint' in its everyday sense, to mean any statement about a service or member of staff that has not met the standard that people could reasonably expect. This is how service users generally view complaints.