

## Derbyshire County Council Adult Care

### Complaints Policy and Procedure

#### 1. Approval and Authorisation

Name	Job Title	Date
Approved by: Dave Brown	Head of Quality Assurance	October 2007
Authored by: Sandy Bull	Complaints Administrator	March 2009
Approved by: John McElvaney	Deputy County Secretary	October 2009
Approved by: John McElvaney	Deputy County Secretary	July 2010
Authored by: Jenny Hudson	Service Manager	March 2011
Approved by: P&P Group	Policy and Procedures Group	March 2011
Approved by: P&P Group	Policy and Procedures Group	August 2014
Approved by: P&P group	Quality Assurance group	January 2017

#### 2. Change History

Version	Date	Reason	Name
Version: 1	June 2007	Amendments to previous drafts	Dave Brown
Version 2.0	March 2011	Change to reflect re-structuring of Adult Care	Jenny Hudson
Version 2.1	September 2012	Change to reflect introduction of Co-funding Financial Contribution Review Process and overall review of procedure	Sandy Bull
Version 2.3	December 2012	Change to the processing of service enquiries/representations from elected members	David Gurney
Version 2.4	February 2013	Change to MP flowchart to remove clerks' involvement	Kate Bedford
Version 2.5	June 2014	Re-structure of policy	Kate Bedford
Version 3	August 2014	Update to policy including section of unreasonably persistent complainant	Kate Bedford
Version 4	December 2016	Revised to include additional guidance on processes	Jenny Hudson
Version 5	June 2017	Removal of reference to Members Casework, and changes to MP process	Kate Bedford

## 1. Introduction

This policy and procedure seeks to address the responsibilities identified in:

- [Health and Social Care \(Community Health and Standards\) Act 2003](#)
- [The Care Act 2014](#)
- [Local Authority Social Services and NHS Complaints \(England\) Regulations 2009](#)
- [Local Authority Social Services and NHS Complaints \(England\) \(Amendment\) Regulations 2009](#)

It provides clients and their representatives with an accessible, effective and fair means of challenging decisions or complaining about the quality and nature of services provided by Adult Care. Complainants will be taken seriously, listened to and their desired outcomes heard. Feedback is encouraged and does not automatically suggest poor practice or blame on the part of the staff.

The Adult Care department tries to be open and accountable.

Staff at all levels have a responsibility to listen to customer feedback and learn from mistakes. The department will openly demonstrate learning and corrective actions made as a result. Staff and clients will use feedback to work together to improve the services provided and put things right.

Complainants will be kept informed of response timescales and where appropriate, what will be done as a result of their feedback.

Wherever possible, staff at a local level will actively seek to resolve a problem without the need for the more formal complaints process to be entered into. Prompt and sensitive responses should be given to expressions of dissatisfaction.

This complaints procedure does not affect the right of an individual or organisation to approach an elected member for advice or assistance.

Adult Care will work together with Health and other organisations to follow the joint protocol for dealing with complaints resulting in a clear, joint response on most occasions. This protocol is available here: [Joint Working Agreement](#).

## 2. The Complaints Process

Many queries and very minor disagreements are received daily by members of staff. Staff receiving a complaint should wherever possible attempt to resolve that problem within 24 hours. Where this occurs, it should be recorded as a Service Enquiry rather than a complaint.

If a complaint is made verbally, either in person or over the telephone, and cannot be resolved within one working day, the complaint should be acknowledged verbally with the offer of written confirmation of the complaint and the anticipated response timescale.

With all other means of complaint, written acknowledgement giving likely response timescale will be sent within 3 working days.

The managers involved are responsible for investigating the complaint. The complainant (that is, the person making the complaint) will, where appropriate, be contacted to discuss the details of a complaint and to agree the next steps.

The Group Manager (or their delegate) will be responsible for:

- Agreeing the details of the complaint and what the complainant's desired outcomes are, how the complaint will be investigated and by what timescale.
- Keeping the complainant informed of progress and any delays that occur.
- Ensuring that all aspects of the complaint are responded to.
- Acting as contact on behalf of all organisations (where agreed with them) if a joint response is required and ensuring any feedback from the complainant is shared following the final response.
- Ensuring that the response includes any lessons learnt and actions taken to improve standards.
- Informing the complainant of advocacy agencies able to help them
- Informing the complainant of their right to contact the Local Government Ombudsman if they are not happy that DCC have investigated and responded to their complaint properly.
- Ensuring that any changes required are acted on.

A written response will be sent within the agreed timescale given in the acknowledgement. The department's aspirational timescale is to respond within **10 working days** of the acknowledgement.

In more complex complaints where investigations require a longer period of time it is more appropriate to set a 20 working day timescale from the outset and to keep the complainant advised accordingly. Where it becomes clear that the response will take longer, the complainant will be informed of this in writing within the initial timescale and given the reason for the delay along with the revised timescale.

Responses will be courteous with the aim of finding solutions to problems. Jargon will be avoided. Where appropriate, mistakes will be acknowledged, apologies given, and learning points and improvements shared.

## **Time limit on making a complaint**

A person making a complaint must make their complaint no later than 12 months from the date of the matter causing concern or the date on which the matter being complained about came to the notice of the complainant. Any exception to this can be negotiated and agreed by the designated Complaints Manager.

## **Who can complain?**

A person is eligible to make a complaint when the Local Authority has a power or duty to provide or secure a service to or for them.

A complaint may be made by:

- A person who receives or has received services or
- A person who is affected, or is likely to be affected, by the action, omission or decision of the responsible body which is the subject of the complaint.

Some complaints may fall outside the scope of these regulations but may be considered under the authority's [Corporate Complaints Procedures](#).

## **Who can complain on behalf of someone else?**

A complaint may be made by a representative acting on behalf of an eligible person who:

- Has died
- Has requested the representative to act on their behalf, where there is evidence that consent has been given.
- Is unable to make the complaint themselves because of:
  - Physical incapacity, or
  - Lack of capacity within the meaning of the [Mental Capacity Act 2005](#)

This person is then referred to as the 'complainant'.

The authority has the discretion to decide whether or not the complainant is suitable to act as a representative in the individual's best interests. If the Complaints Manager considers them to be unsuitable, the complaint must not be further considered under these regulations; and the reasons for this decision given in writing.

## **How can a complaint be made?**

People are advised in the first instance to approach the appropriate member of staff with their concerns for local resolution. If they remain dissatisfied, the formal complaints procedure should be followed.

A complaint can be taken by any member of staff and may be made

- in person
- by phone
- by letter
- by email (to email address [your.views@derbyshire.gov.uk](mailto:your.views@derbyshire.gov.uk))
- by Putting People First Comments, Compliments and Complaints leaflet.

If the complaint is not received in writing, the details should be noted and confirmed with the complainant before passing to the appropriate worker for investigation and recording. Complaints should be acknowledged in writing within three working days unless the complainant is happy to accept acknowledgement over the phone.

The Putting People First leaflet should be available to all clients at all times and their feedback encouraged.

Information on advocacy advice is available to all complainants on our [website](#). Printed copies of information should be provided to complainants wherever required.

Complaints made relating to Adult Care, but which are not required to be dealt with under this procedure should be made in writing and addressed to the area office or the Complaints Administrator, Adult Care, County Hall, Matlock, Derbyshire, DE4 3AG.

### **Commissioned Services: Independent Social Care Provider/Care Standards Complaints**

It is the Council's responsibility to ensure that complaints relating to services provided by a regulated care agency on behalf of the Local Authority's Adult Care are dealt with satisfactorily as they remain responsible for the actions of those providers.

There is an expectation that, where a complaint is about an independent or voluntary sector service commissioned by Adult Care, initially the provider will be given the opportunity to investigate and respond directly to the complainant. Where the complainant remains dissatisfied, then Adult Care will consider the complaint within these procedures.

If the complaint relates to an individual client it will be investigated, managed and responded to by Adult Care Prevention and Personalisation services. On occasions when the complaint relates to a client but there are also general concerns regarding the agency/care home, then whilst Prevention and Personalisation services will lead on the response, the Adult Care Contracts Section may well input into the process.

Complaints from self-funded users of independent services cannot be considered under the local authority complaints procedures. The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 requires providers to have their own complaints procedure in place, and these people using their services can access that procedure. The Local Government Ombudsman has a responsibility to consider complaints in this category.

If the service is commissioned by a client with a **Direct Payment** then if they are dissatisfied with the outcome of the provider's response they should, as with self-funders, be directed to the LGO.

## **Self-Directed Support Adjudication Process for Complaints Challenging Professional Decisions in Self Directed Support (SDS)**

Where an individual challenges a professional decision made in the process of arranging Self Directed Support, this process can be used.

Initially a Service Manager will confirm that an assessment has been completed according to agreed policies and procedures. If necessary a second opinion assessment can be arranged by another officer of Adult Care. Other than exceptional circumstances, which should be discussed with the Complaints Manager, it must be confirmed that a serious attempt has been made to complete and implement a support plan using the budget provided. If this does not resolve the complaint, it may be referred to the SDS Adjudication Panel.

On agreement by the Complaints Manager, the Complaints Administrator will arrange a panel meeting to sit within 4 weeks of the receipt of the referral, or later if the complainant so wishes. The Panel will meet at an accessible location that is local to the individual and relevant documentation will be gathered. The Panel will consist of an Independent person and two independent Tier 3 Managers (usually Group Managers) from Adult Care. The individual and/or their representative/advocate will be invited to attend and state their case, in person or in writing. The Service Manager or worker from Adult Care will then respond.

The Service Manager, individual and/ or their representative/advocate will withdraw whilst the panel considers the following:

- Risk management issues around resource/budget allocation or Direct Payment
- Legality of resource/budget allocation or Direct Payment
- Precedent and principles of resource/budget allocation or Direct Payment.

The Chairperson for the Adjudication Panel will ensure that its decisions are confirmed in writing within five working days of the meeting and sent to the relevant Service Director (Senior Manager responsible for the relevant service) who may offer to meet with the individual before writing with his/her final decision and action plan as well as the Adjudication Panel's decision. The Service Director may or may not uphold the Panel's decision or may recommend an alternative complaint resolution. The Service Director's response will be put in writing within 20 working days of the Adjudication Panel. The complainant will be provided with contact details of the Local Government Ombudsman.

## **Complaints involving more than one organisation**

Where there is more than one organisation involved, Adult Care and Health bodies will co-operate to provide a joint response. Information on the protocol can be found here: [Joint Working Agreement](#).

## **Complaints and Service Enquiries from Members of Parliament and Elected Members**

Enquiries from Members of Parliament are answered by the Cabinet Member for Adult Care, or the Service Director for Adult Care, depending on who they are addressed to.

Service Enquiries sent to the Cabinet Member for Adult Care will be acknowledged and responded to by that same Cabinet Member. Those sent to the Strategic Director for Adult Care will be acknowledged by the Strategic Director and responded to by the Service Director on behalf of the Strategic Director.

Responses prepared by the appropriate Group Manager on behalf of the Cabinet Member for Adult Care will be approved by the Service Director and the Cabinet Member for Adult Care before being sent out. The Complaints Administrator will administrate this process and will circulate and record the response and complaint details.

If an Elected Member takes up a constituency matter through the Cabinet Member then the reply should follow the same route as a Member of Parliament letter.

Constituency matters raised by Elected Members can be responded to by the most appropriate manager.

## **The Role of the Cabinet Member in Dealing with Complaints**

The Cabinet Member will respond to all correspondence addressed to them within 10 days of the complaint or service enquiry being acknowledged. Should the complainant not be satisfied with this reply, then they should be advised to involve their local Elected Member, who is best placed to deal with constituency matters concerning the actions of staff and quality of service.

The Cabinet Member receives an annual report on complaints in line with national regulations and this is published on the Council website. In addition to this, a 6 monthly report is presented to the Adult Care Senior Management Team.

## **Independent investigation**

In very rare cases, it is not possible for the complainant to agree with the group manager for the service. In some instances it may be appropriate for the complainant to be asked to refer the matter directly to the LGO. In other instances, the Complaints Manager will consider alternative opportunities to resolve the complaint, such as mediation. One option is that an independent investigation would be the appropriate way forward.

Where a complainant cannot agree on a way forward in resolving the complaint, it may be appropriate for the complainant to be asked to refer the matter directly to the

LGO. Alternatively, the Complaints Manager may consider other options such as mediation or independent investigation. Where Independent Investigation is chosen, the Complaints Manager will:

- Where possible, meet with the complainant to agree the details of the complaint and explain fully the complaints process.
- Appoint an Investigating Officer from another service area. Complaints will involve an Independent Person at the discretion of the Complaints Manager.

The investigator(s) will provide a detailed report with recommendations. This will usually be within 25 working days, however, in exceptional circumstances, this can be extended to 65 working days. The Service Director should write to the complainant within 15 working days following receipt of the Investigation Report. The letter should explain how DCC propose to respond to the conclusions and recommendations of the Independent Report.

### **Adjudication process of Complaint Investigation Report**

Following receipt of the Investigation Report the Complaints Manager will meet with the Service Director to consider their response to the report and decisions on each point and action to be taken. The Service Director may offer to meet the Complainant as part of the adjudication process. At this point the complainant will be informed what action is intended by the authority and inform them that if they remain dissatisfied that they may go to the Ombudsman for further consideration.

### **Disputed Financial Assessments**

In all cases where the financial assessment is in dispute, the client and complainant will be sent an explanation of how the financial assessment has taken place. Any disputes about financial assessments must be registered with the Authority within 12 months of staff making that financial assessment. In some cases where there is a pre-placement dispute it may be appropriate to consider a funded residential placement for up to six weeks to resolve that dispute and facilitate appropriate placement/discharge from hospital. However, clients or their representatives questioning the assessment made by the Central Assessment Team will have the opportunity of having their case reviewed by the Principal Finance Officer, if initial investigations by Central Assessment Team are unable to resolve the issue.

### **Financial Contribution Review Procedure**

Where a client feels that either a mistake has been made in the determination of their contribution or that making the payment would be unreasonable or impracticable, they are entitled to request a review of the assessment under the [Financial Contribution Review Procedure](#).

### **Anonymous complaints**

Anonymous complaints will always be recorded in the same way as other complaints. However they do fall outside the statutory procedure and it is up to DCC to decide what follow up action should be taken. The anonymity does not in itself justify a decision not to investigate nor should it rule out referral to other procedures as appropriate.

## Unreasonably Persistent Complainants

DCC is committed to dealing with all complaints fairly and impartially and it would not normally limit contact that complainants have with its staff and its officers. However sometimes complainants can, due to the frequency of their contact, hinder the Authority's consideration of complaints. It is important for staff to distinguish between people who make a number of complaints because things have gone wrong and people who make unreasonably persistent complaints.

If a member of Adult Care staff believes that someone is an unreasonably persistent complainant then the Complaints Manager for Adult Care will need to consider whether or not the complainant is now inappropriately persistent. The Complaints Manager will liaise with the Group Manager and agree with staff what action is appropriate in the circumstances.

Adult Care will adhere to the [Corporate Complaints Procedure](#) on Unreasonably Persistent Complainants (please note section 9 does not apply to Adult Care).

### 3. Complaints not required to be dealt with under this procedure

**Direct Payments:** Complaints which are about support purchased with Direct Payments are excluded from the procedures once the client has:

- Taken full control of her/his finances and the management of her/his care provision; and
- Been told that s/he cannot use the statutory complaints procedure.

This does not apply where the complaint is about the processes involved in setting up the support; for example, assessment, allocation of funds, or the support available to enable people to manage the payments.

#### Alternative Policy and Procedures: Safeguarding and Human Resource Processes

1. If the complaint is only a safeguarding concern then the DCC Safeguarding Procedures should be followed. An acknowledgement should be sent to the complainant to confirm it will be considered as such. This should not be recorded as a complaint. If a complaint comes in specifically about the way the Safeguarding Procedure has been implemented, the complaints procedure should be used.
2. If the matter is both a safeguarding concern and a complaint about other issues, then an acknowledgement to the complainant should clarify that the complaint element will be considered as soon as reasonably possible but may need to await the outcome of safeguarding procedures. If there is no impact on safeguarding procedures the complaint can be investigated within a given timescale. This should be recorded and processed as a complaint.
3. It may be apparent at the outset, or become apparent during the complaint investigation, that the complaint may result in further action being taken within Human Resources policies and procedures. In this case, reassurance should be

given to the complainant that the matter has been looked into and that it is more appropriate for internal Human Resources procedures to be followed. The complaint should then be closed down.

4. If the matter is both a Human Resources related issue and a complaint about other issues, then an acknowledgement to the complainant should be sent to confirm it will be considered as soon as reasonably possible but may need to await the outcome of Human Resources procedures. If there is no impact on Human Resources procedures then the complaint can be investigated within a given timescale. This should be recorded and processed as a complaint.
5. If the matter raised is a mix of potential Human Resources matters, complaints and safeguarding, then safeguarding procedures take priority and a combination of the above approaches should occur.

It should be clear to the complainant how we are dealing with the concerns they have raised.

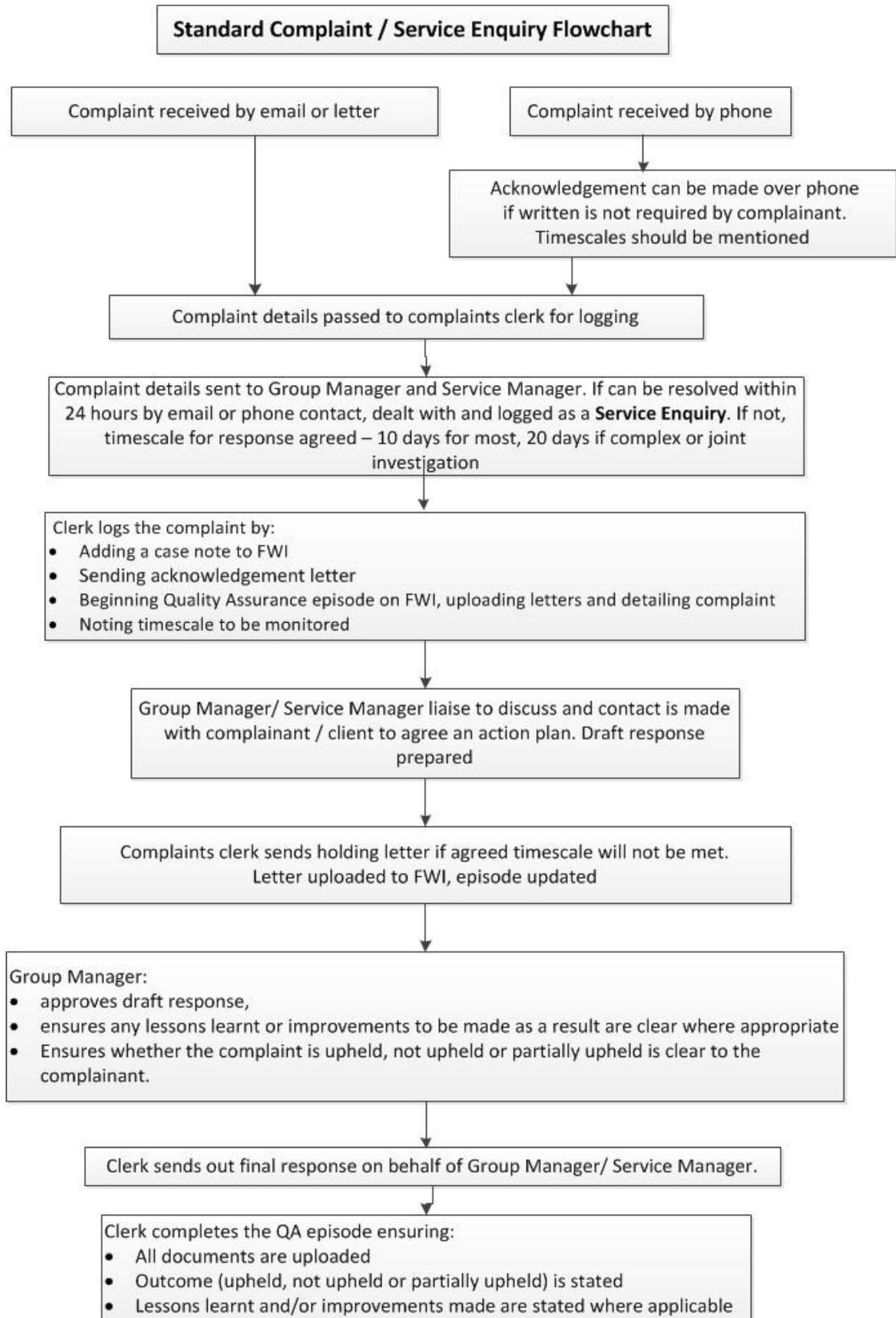
The following factors may also exclude a complaint from being dealt with under this procedure.

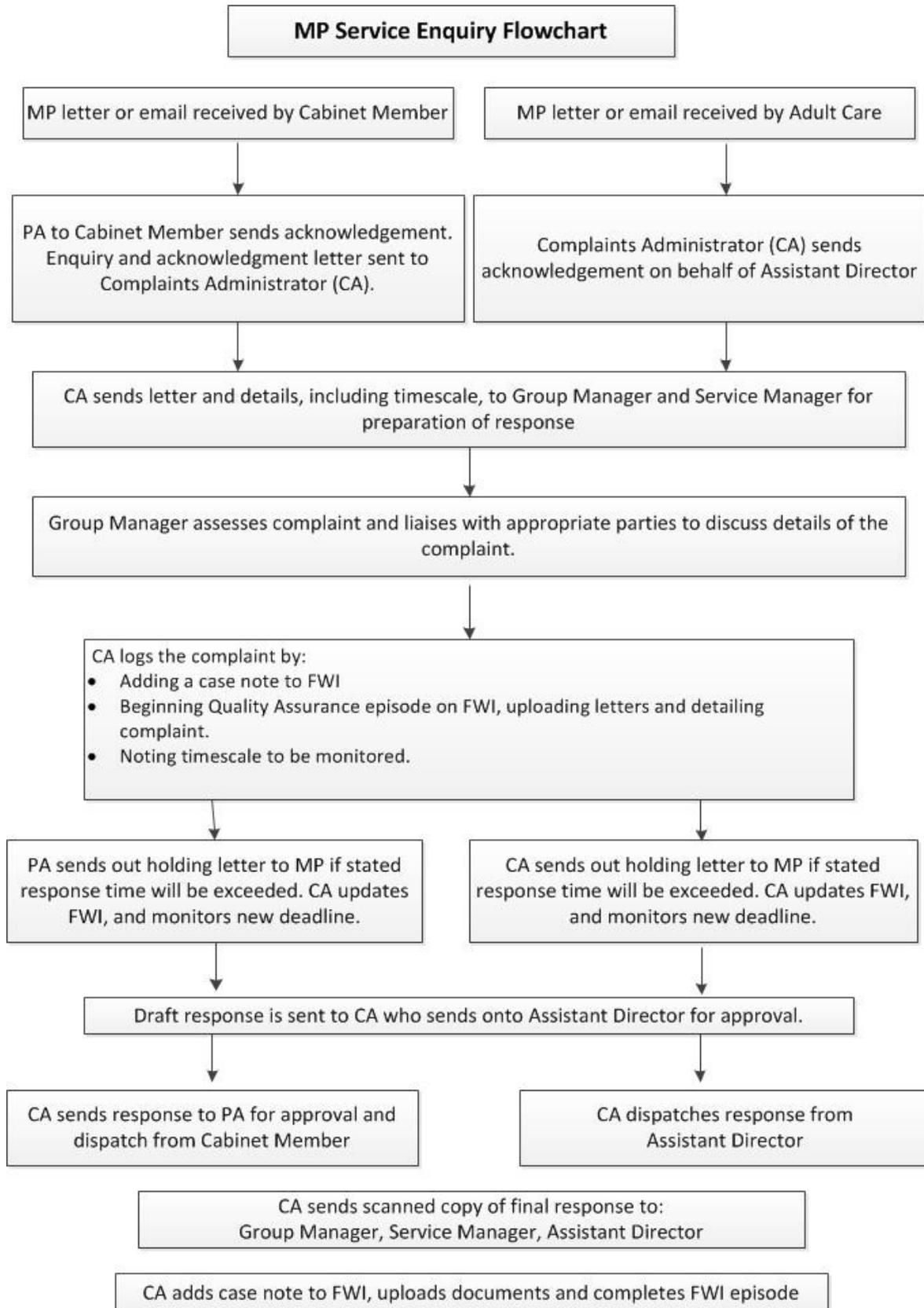
- A complaint made by a responsible body; e.g. another authority
- A complaint by an employee of a local authority or NHS body about any matter relating to that employment
- A complaint which:
  - is made orally; and
  - is resolved to the complainant's satisfaction not later than the next working day after the day on which the complaint was made.
- A complaint the subject matter of which is the same as that of a complaint that has previously been made and resolved in accordance with the above point
- A complaint the subject matter of which has previously been investigated
- A complaint the subject matter of which is being or has been investigated by:
  - a Local Commissioner under the Local Government Act 1974 or
  - a Health Service Commissioner under the 1993 Act
- A complaint arising out of the alleged failure by the authority to comply with a request for information under the Freedom of Information Act 2000
- A complaint which relates to any scheme established under section 10 (superannuation of persons engaged in health services, etc.) or section 24 (compensation for loss of office, etc.) of the Superannuation Act 1972, or to the administration of those schemes
- A complaint relating to the employment of a Personal Assistant i.e. services purchased through a Direct Payment.

## **Learning and Improving**

Any opportunities for learning gained from complaints and service enquiries will be shared across the department to maximise service improvements.

## 4. Process





## 5. Quality Assurance

The Complaints Administrator and Service Manager (Efficiency and Performance) are responsible for monitoring the quality and recording of complaints data. The designated Complaints Manager should ensure performance of this is monitored.

A record must be kept of each complaint received, the action taken, the outcome of each complaint and whether there was compliance with the specified response time limits.

Information about service enquiries and complaints resolved informally can be of equal value to the information about the number of formal complaints, and details of these should be available to the Complaints Administrator.

The operation and effectiveness of the complaints procedure is monitored and regular information about numbers and types of complaints received, time taken to deal with them and their outcome is presented to the Directorate.

Information collected during the monitoring process and during individual complaints investigations/reviews will provide feedback on management and operational matters such as how policies are interpreted by staff and clients, how effective communication is within the Authority and to the public, where staff training is needed and whether resources are correctly targeted.

An annual report dealing with the operation of the complaints procedure is presented to the Adult Care Cabinet member before being published on the Derbyshire County Council website. The report includes a summary of statistical and other information which may have been supplied at more frequent intervals as well as a review of the effectiveness of the procedure.

The annual report forms the basis of the department's action plan for reviewing both the complaints process and for the implementation of improvements and corrective action at a corporate level and across organisational boundaries.

This document will be reviewed on a regular basis – if you would like to make any comments, amendments, additions etc. please contact the Adult Care Complaints Administrator.

## 6. Links to other resources

[DCC Complaints and Praise](#)

[DH Advice sheet 1: Investigating complaints](#)

[Local Government Ombudsman website](#)

[DCC Customer Care Charter](#)

[LGO My Expectations](#)