

**Equality and
Human Rights
Commission**

Challenging adult social care decisions in England and Wales

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Foreword

Good adult social care helps people to live their lives well, with dignity and independence, protecting their human rights.

But the social care system in England and Wales is struggling. Local authorities face huge pressures when making decisions about people's access to care, balancing people's needs and tight budgets.

If care needs are not met, the consequences can be significant. People may be left without the support they need to maintain their personal hygiene or good living conditions. Some may have to leave their home and receive care elsewhere.

That's why people must be able to challenge local authority decisions about adult social care if they have concerns.

In 2021, we launched an inquiry to examine social care decision making by local authorities. We found that the system for challenging decisions is confusing and subject to long delays. Local authority complaints processes are often complicated and stressful. People may not be given important information about how to challenge decisions. Some fear that, if they challenge a decision, they may lose their care. Too many people do not seek help or feel ignored, often when they are already vulnerable.

Our inquiry report recommends practical steps to address the concerns we have identified, so that local authorities, the governments in London and Cardiff, and others, can provide better social care support for people. An improved complaints system should be part of wider reforms to the sector.

Each of us, whether directly or on behalf of our loved ones, is likely to interact with the social care system, usually at a difficult time in our lives. We must be able to challenge decisions made about social care if we think that necessary, and we must be able to do so in a way that is responsive, clear and fair. We hope that the findings in our report can help make a difference.

Marcial Boo (Chief Executive Officer)
Equality and Human Rights Commission



1. Introduction

1.1 How we carried out our inquiry

Our inquiry covers England and Wales. It draws on nation-specific evidence from individuals and carers (who have challenged, or wanted to challenge, decisions about social care), professionals working in social care, and local authorities.

The primary evidence included the following:

- a detailed survey of 153 local authorities (out of an eligible 174) with responsibility for adult social care (133 in England and 20 in Wales); followed by in-depth interviews with 12 authorities, spread across different regions, to understand the processes and practices of local authorities
- a self-selecting survey of 332 individuals who are accessing adult social care, and their representatives and carers
- 41 in-depth interviews with those seeking or accessing care and their carers
- 54 in-depth interviews and 12 focus-group discussions with a wide range of individuals and organisations; including professionals working in social care, advocacy providers, older and disabled people's organisations, statutory bodies, professional associations and legal experts, and
- 15 written submissions from organisations and experts.

Separate reports documenting the survey and in-depth interviews are available from the [inquiry's page on our website](#).

We reviewed published research and policy documents to explore the existing evidence. We also reviewed complaints reports that were available from individual local authorities, to identify examples of learning.

Local authorities are legally responsible for managing adult social care and support in their area under the Care Act 2014 in England and the Social Services and Well-being (Wales) Act 2014 in Wales and associated regulations, statutory guidance and codes of practice.

There are five stages to accessing adult social care in England and Wales:

- assessment
- identifying eligible needs
- care and support planning
- financial assessments and charging, and
- review (care packages are reviewed periodically or when circumstances change).

People can challenge any decision made at these stages if they are unhappy about it.

1.2 Why people challenge decisions in adult social care

While our inquiry did not look at whether individual complaints were well-founded, we learnt from respondents about a variety of common complaints.

1.2.1 People's care fell short of expectations and did not meet their needs

Some social care users were unhappy that decisions ignored their views and wishes. Many felt their involvement in assessments and care and support planning was tokenistic, frustrating and disempowering, culminating in care and support that did not meet their needs properly.

Experts and advocates told us that maintaining social connections or continuing education or work were given less consideration by local authorities than meeting personal care needs.

1.2.2 Some health conditions and disabilities were not taken into account

We heard from social care users, disabled people's organisations and other expert organisations that some health conditions and disabilities that are less visible, or which fluctuate, may not be taken into account in local authority decision making.

1.2.3 A care plan review had reduced their care

Experts, professionals, advocates and lawyers told us that, in a review local authorities sometimes reduce the cost and scope of care provided, even when the person's needs and circumstances haven't changed. They believe reviews sometimes take place without the person's knowledge, meaning they cannot participate in the process or have the support of an advocate to help them.

1.2.4 Charging decisions affected their finances

We heard from advice organisations and older people's groups about charging decisions that pushed people into more precarious financial situations, and some local authorities not discounting expenses for managing a disability or health condition (Disability Related Expenditure), even though they are required to do so, when doing financial assessments.

1.3 How people can challenge a decision about their care

This section sets out the current ways in which people can make a complaint or challenge adult social care decisions.

1.3.1 Informal complaint

An informal complaint can be a relatively quick way for someone to query an adult social care decision.

People can discuss an issue informally with frontline social workers or other local authority staff. They can also write directly to their local authority's director of adult social services or monitoring officer (usually the most senior lawyer in the organisation).

1.3.2 Formal complaint

The Local Authority Social Services and National Health Services Complaints (England) Regulations 2009 say all English local authorities must have a formal adult social care complaints system. But the law does not tell them exactly what form this should take.

In Wales, local authorities must follow Welsh Government guidance on handling complaints and a two-stage process set by the Social Services Complaints Procedure (Wales) Regulations 2014. The first stage is local resolution but people can go straight to the second stage, formal investigation, if they choose to do so or if they are dissatisfied with the response at the first stage.

1.3.3 Involving an ombudsman

In England, people can complain to the [Local Government and Social Care Ombudsman \(LGSCO\)](#) up to 12 months after a social care decision has been made. It is expected that all stages of the local authority's complaint process have been exhausted first. The ombudsman can disapply the 12-month time limit.¹

In Wales, the [Public Services Ombudsman for Wales \(PSOW\)](#) can consider adult social care complaints when a local authority's formal complaints process has not led to resolution. A complaint to the PSOW can be made up to 12 months after the social care decision was made.

1 The Local Government Act 1974, section 26B.

1.3.4 Appeals

The Care Act 2014 allows a system for appeals against social care decisions to be set up, but this has not happened yet. In 2021 the UK Government announced that an appeal system was 'under ongoing review as the new reforms are implemented and will continue to gather evidence to inform future thinking'.

However, we found a third of local authorities in England have established their own appeals system for some adult social care decisions.

There is no legal requirement for an appeals process under the Social Services and Well-being (Wales) Act 2014. But nearly half of Welsh local authorities say they have an appeals process for at least some social care decisions that is separate from their complaints process.

1.3.5 Judicial review

In England and Wales people who are unhappy with a social care decision can legally challenge their local authority's decisions or failures to act through a judicial review in the High Court, if there are grounds to do so. This looks at whether the decision was reached lawfully rather than looking at the merits of the local authority's decision.

A judicial review application must be lodged promptly and in any event within three months of the decision being challenged (though the High Court can extend the time limit at its discretion). The case goes through a 'permission stage', where a judge considers if the claim is 'arguable'. Then, if it is 'arguable', there is a 'substantive stage' where a judge hears the full legal arguments. The whole process will generally take a number of months to conclude.

A judicial review can proceed without someone going through the complaints process.

1.3.6 Pre-action protocol

The judicial review pre-action protocol is a good practice procedure setting out the steps the courts will expect someone to follow before making a judicial review claim. This protocol says a pre-action protocol letter must usually be sent to the local authority first. The letter explores what other ways of resolving the complaint there are and says what is required by the claimant to resolve the complaint without further (court) action.

2. Findings and recommendations

2.1 Information is not always clear and accessible

Under the Care Act 2014, local authorities in England must provide an accessible information and advice service about adult care and support and carer support, including how the system operates in the authority's area. Welsh local authorities must offer an accessible service for information, advice and assistance to comply with the Social Services and Well-being (Wales) Act 2014.

Local authorities must also give individuals a written record of their care needs assessments, decisions on their eligibility (including the reasons) for their care and support plan, and their financial assessment; under the Care Act 2014, the Care and Support (Assessment) Regulations 2014 and the Care and Support (Eligibility Criteria) Regulations 2015 in England, and the Care and Support (Assessment) (Wales) Regulations 2015 and Care and Support (Care Planning) (Wales) Regulations 2015 in Wales).

Local authorities also have duties under the Equality Act 2010 to make reasonable adjustments and provide information in an accessible format for disabled people.

2.1.1 What we found

Important information may not always reach people who need it

Most local authorities have procedures in place to make information available on how decisions are made and how to challenge them, but there are gaps.

84% of local authorities in England, and 85% in Wales (17 out of 20), have procedures for providing information to adults and carers about the national eligibility criteria for adult social care and support (a framework for determining whether any assessed need meets the threshold for local authorities to provide support).

89% of local authorities in England, and 100% in Wales, have procedures to tell social care users and carers how to challenge a decision by informal or formal complaint or appeal.



However, we do not know from the survey results whether the information provided by local authorities allows adults and carers to understand decisions and challenge them if necessary. Interviews with lawyers, advice and advocacy providers, and organisations representing older and disabled people, suggested that important information might not always reach people.

Advice providers and lawyers said local authority verbal and written information about social care rights can sometimes be wrong. For example, some people were led to believe that certain policies used by their local authority (for example, that night-time care is not provided) were what the law required and the only options available to them.

We heard concerns that information can be complex and hard to follow, especially if the social care user's first language is not English. There were also concerns that most information is now provided online, which can be a barrier for older and disabled people who have the highest rates of not using the internet.² While we did not determine the extent of these practices, they raise issues for local authorities on whether their provision of information is effective.

² [Office for National Statistics \(2021\), Dataset: Internet users](#) [accessed 30 January 2023]

Not all accessible formats are publicly available

Around **9 out of 10 local authorities in England and Wales** said they make information on how to challenge a decision available in accessible formats.

But, depending on the format, fewer than **3 out of 10 (3% to 29%) make the accessible formats publicly available**. Most people will need to take steps to request them.

For example, 29% of local authorities make this information in Easy Read publicly available, while only 3% make it publicly available in BSL.



Having to request the information in an accessible format may act as a barrier for those who need those formats. Our survey shows that this barrier would exist in the majority of local authorities.

Several interviewees stressed the importance of being able to speak to someone and receive tailored information and advice, including specialist legal advice.

Our survey found that **90% of local authorities in England and Wales** would, in at least some cases, signpost someone wishing to challenge a decision to advice or support that is independent of the local authority. **Only 42% reported that they do this in every case.**



“ . . . our experience is that people are not well informed as to what their statutory rights are . . . it can be quite difficult for people to find information.

”

Legal advice charity (England)

2.1.2 What needs to change

Recommendation 1

Local authorities should review their compliance with provisions under the Care Act 2014 in England or the Social Services and Well-being (Wales) Act 2014 in Wales in relation to accessible information.

They should ensure that:

- they find out if someone has any communication needs from their first contact with the authority, make a record of these and communicate with the person in accessible ways
- information is available in accessible and alternative formats online (meeting the public sector website accessibility regulations) and in hard copy if appropriate
- people are told how to access other formats and communication support
- they are meeting their obligations under the reasonable adjustments provisions of the Equality Act 2010 when providing information to social care users and carers.

This approach will support implementation of the Accessible Information Standard for local authorities in England.

Recommendation 2

Local authorities should always give care users and carers details of general and specialist local and national advice services in line with the Care Act 2014 in England and the Social Services and Well-being (Wales) Act 2014 in Wales (even if not specifically requested).

This information should be available in different accessible formats before and during needs or carer assessments, care and support planning and reviews, and financial assessments.

2.2 Confusion, inconsistency, and lengthy delays

Social care complaint regulations, particularly in England, allow a level of variation in how people can challenge decisions. This can help meet local need but can also lead to confusion and inconsistency.

Formal complaints in England

In England, local authorities must acknowledge the complaint within three working days. Local authorities also must offer to discuss how the complaint will be handled and in what timescale. They must investigate appropriately to resolve the complaint quickly and efficiently. The response should be sent as soon as is practicable and within six months, although this can be extended. The local authority must ensure the complainant has assistance, or been shown where to find advice, to understand the complaints procedure.

There is no legal requirement for local authorities to provide interim care while someone's complaint is being resolved. There is no legal requirement for an independent stage in formal complaints processes.

Formal complaints in Wales

In Wales, at stage 1 (local resolution) the local authority must offer to discuss the complaint within 10 days. If it's resolved at that discussion, the local authority must write to the complainant within five days to confirm what's been agreed. At stage 2 (formal investigation) the local authority should send a written response within 25 days, or at least write to explain any delay (up to six months is allowed in exceptional circumstances).

Welsh Government guidance on handling social care complaints states that the local authority complaints officer responsible for investigating 'must be independent of both professional line management and direct service providers'. An independent investigator should carry out any formal investigation before making written

recommendations to the local authority, which the complainant should also see. The independent investigator must not work for the same local authority that the complaint is about, but could work for a different one.

Judicial review, ombudsmen and appeals

A judicial review must be lodged with the court promptly and in any event within three months of the decision being challenged. The pre-action protocol process requires a formal response to a pre-action protocol letter from the local authority within 14 days; this can be shortened in more urgent matters.

Sometimes, in practice, several pre-action letters are needed to identify the issues or take account of developments in the individual's situation. Engaging in pre-action correspondence does not stop time running for the purpose of the deadline.

Complaints to the ombudsman (in England and Wales) must be made within 12 months (but an individual is usually unable to go to the ombudsman if they have been to court about their complaint).

There is currently no legal requirement for English and Welsh local authorities to have an appeals process for adult social care decisions.

Confidential: embargoed copy

2.2.1 What we found

Differences in options available

The variation allowed by the regulations means that social care users and carers across England and Wales cannot all challenge decisions in the same way.

Our survey found that most local authorities allow people to use informal complaints processes, which are usually quicker and less stressful than formal ones. In 3% of local authority areas neither an individual nor a carer can make a challenge in this way.

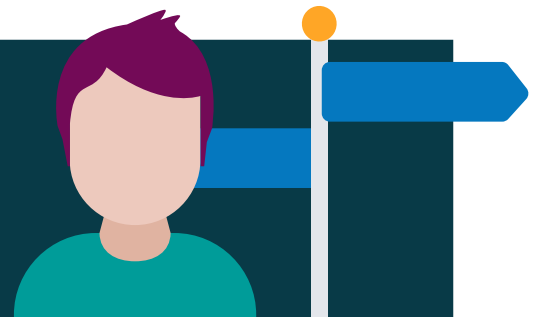
Just over a third (34%) of local authorities in England and Wales have some sort of appeals process as well as formal complaint processes. **This means that people in many local authority areas do not have access to this option.**



Complaints processes are complicated and stressful

Social care users, older and disabled people's organisations, carers' groups and lawyers said that complaints processes are too complicated. We heard that local authority complaint mechanisms are unclear, complex and energy-sapping, even with support from family members. Social care users and carers told us that they struggle to navigate processes for challenging decisions, particularly if they are already at crisis point.

Lawyers we interviewed also stressed **how difficult it could be for people to navigate complaints procedures** when they did not understand the law and were emotionally affected by the issues at stake.



Long delays

While compliance with timescales was not a focus of this inquiry, we heard examples of formal complaint processes that ran for up to two years before they reached a resolution. There's no legal requirement for local authorities to provide interim care while someone's complaint is being resolved (although there is a discretionary power to do so). A number of interviewees spoke about complaints being resolved months after the individual concerned had died.

Our findings suggest that these lengthy timescales – even when they comply with statutory requirements – **can make formal complaints processes unsuitable for resolving urgent issues for people in crisis or at the end of their life.**



Some of the legal professionals we spoke to said they often advise people not to make a complaint to avoid a long, drawn-out process. They suggest judicial review instead as a faster way to resolve challenges. They recognised that people often leave it too late to pursue a judicial review, mainly because the individual didn't know about this option, could not find a solicitor, or because the timescale of a formal complaints process pushed them beyond judicial review time limits. They also made the point that the cost of initiating a judicial review can be prohibitive.

“

They've tried to make a complaint. They've tried to do various things . . . By the time we've got the case, it's often really way too late.

”

Lawyer (England)

A perceived lack of independence

Independence when reviewing decisions is important to ensure an effective complaint process and also to inspire confidence in the revised decision. Most local authorities we surveyed do appear to take steps to consider the independence of the process.

The person responsible for considering formal complaints about adult social care decisions in England varies a lot.

In almost a quarter (23%) of cases, it's a member of the team that made the original decision, but not the original decision maker. In a third (34%) of cases, it's a person from a separate team. In 7% of local authorities it is the original decision maker.

A small number of social care users in England expressed concerns about a lack of independence. Some said that not involving an independent reviewer damaged their confidence in the process. They felt their local authority was 'marking its own homework' and they would not get a fair resolution to their challenge.

Local authority representatives in Wales told us that decision makers felt their decisions were being independently scrutinised, and some organisations we interviewed felt the current process was sufficiently independent. In contrast, social care users, advocates and advice organisations questioned the degree of independence and whether the independent investigators were impartial.

Challenging the substance of a decision

Challenging the substance of a decision – for example, disagreeing with the number of hours of care provided – should be possible through formal complaint mechanisms.

Local authorities in our survey said that, if a complaint involved a care user or carer disagreeing with the judgement of a social worker, assessor or panel, they would take action. These actions might include: allowing additional evidence to be submitted (93%) and considering whether a fresh assessment needs to be carried out in a different format (84%).

However, survey responses indicate that not all local authorities take these actions, and that one in six local authorities do not consider conducting a fresh assessment in these cases. Social care users, carers, disabled people's organisations and professionals also told us about challenges where they felt this was not an option. They felt that sometimes complaints processes focus only on whether the assessment or other processes were carried out correctly.

People are reluctant to challenge decisions

We found that some social care users and carers are put off from challenging decisions because they are afraid of negative repercussions; for example, losing their existing care. Advice providers told us the same thing.

In the 2022 State of Caring report,³ a self-selecting survey of 13,415 carers, **32% of carers said concerns about consequences were a barrier to raising a complaint or concern.**



We heard from many care users and carers that they had little confidence in existing local authority systems to acknowledge and respond to their concerns or change an existing

³ [Carers UK \(2022\), State of Caring 2022: a snapshot of unpaid care in the UK, London: Carers UK page 31](#). [accessed: 7 December 2022].

decision. Some shared experiences of their complaints being ignored and key points not being considered.

As a result, many regarded complaining as pointless and were reluctant to do so. According to the State of Caring report, the main barrier to carers raising a complaint or concern was the perception that doing so would make little difference, reported by 47% of respondents.

Advocacy providers, lawyers, charities and voluntary organisations pointed out that individuals often depend on local authority staff for support and want to stay on good terms with them.

“

... sometimes it can take quite a lot of courage to actually challenge the local authority in that sort of situation if you're dependent on them.

”

Older people's organisation (England)

Encouraging people to speak up

We heard from local authorities that recognise the importance of people speaking up when things are not right. One local authority told us it wants more people to talk to them. It has changed the language on complaints leaflets to 'tell us what you think' so it can act when it learns about problems.

Suggested improvements

There was some support from lawyers in England for bringing in an appeals process (made possible by section 72 of the Care Act 2014 and not yet in force). An academic, a lawyer and older people's organisations in Wales made similar calls for an appeals process for adult social care decisions in Wales.

Other lawyers and academics worried this could add to the confusion and complexity of challenging decisions, not reduce it. They said it must be clear how any appeals process would work alongside other processes and that it should not stop people pursuing other routes of redress, such as judicial review.

The UK Government did not publish the outcome of its 2015 consultation on the need for a new statutory appeals system for care and support. They have stated that the implementation of an appeals system will be kept under ongoing review and evidence will continue to be gathered.⁴ We support keeping this under review.

A few contributors – including lawyers and academics – suggested that adult social care decisions should be reviewed by a tribunal similar to the Special Educational Needs and Disability Tribunal, which has a panel with relevant specialist knowledge.

An expert in public services complaints handling suggested addressing the lack of a Complaints Standards Authority (CSA) in England. CSAs set up and monitor standardised complaint handling schemes, promote best practice and focus on service improvement.

We also heard suggestions for improving the formal complaints process in England. These included:

- a requirement to produce a 'terms of reference' document at the outset to ensure clarity
- shorter timescales
- better technical knowledge by people handling complaints, and
- more demanding requirements for independence.

⁴ [Department of Health and Social Care \(2021\), People at the heart of care: adult social care reform white paper](#) [accessed: 5 Jan 2023].

2.2.2 What needs to change

Recommendation 3

The UK Government should make the Local Government and Social Care Ombudsman the statutory complaints standards authority for adult social care in England.

The Local Government and Social Care Ombudsman and Public Services Ombudsman for Wales, as complaints standards authorities for adult social care, should take steps (for the PSOW, continue to take steps) to ensure that local authorities:

- consider and resolve complaints within well-defined timescales, particularly when someone may not have the right care and support
- consider the substance or outcome of decisions, as well as the processes followed
- require complaint decision makers to be robustly and visibly independent, to support trust and accountability, and
- provide clarity about the different routes of redress available to those using (or trying to use) adult social care, including early signposting to information on legal help, legal aid and legal specialists.

In the absence of a complaints standards authority for England, local authorities should be responsible for implementing the recommendation above.

2.3 Challenges to getting advocacy and legal support

Local authorities are legally required under the Care Act 2014 in England and the Social Services and Well-being (Wales) Act 2014 in Wales to commission advocacy services to help people be involved in decisions about their care and challenge them.

Local authorities may also commission 'non-statutory' or 'community' advocacy services beyond their legal requirements. Social care users and carers can also get help from specialist legal advisers and lawyers to:

- understand their rights in complex cases
- reach an informal resolution, or
- use complaints processes and legal routes to redress, particularly judicial review.

Local authorities in England must provide an independent advocate to people who need help to be involved in the processes for:

- needs assessment
- care and support planning and reviews, and
- safeguarding enquiries and reviews.

An advocate must be provided if people meet the criteria and there is no appropriate person who could support them otherwise. The criteria is met if the person has substantial difficulty understanding, retaining or weighing relevant information, or communicating their wishes, views and feelings.

People who do not meet these eligibility criteria aren't entitled to statutory advocacy support for any issues with social care (except in limited circumstances set out in regulations). This contrasts with local authorities' statutory duty to commission independent advocates to help people make NHS health service complaints.

In Wales, when a person cannot overcome barriers to participate fully in the assessment, care and support planning, review and safeguarding processes without assistance from an appropriate individual, but there is no appropriate individual available, local authorities must arrange for the provision of an independent professional advocate.

2.3.1 What we found

Advocates can provide valuable support

We heard from some social care users that advocates can have a positive impact on people's ability to participate in decisions and to challenge decisions they disagree with. Advocates also said that their support sometimes helped individuals to resolve issues swiftly and informally, without the need to pursue formal complaints. Other social care users said that advocates did not offer help with things they needed, such as completing paperwork.

Voluntary, legal, advice and advocacy sectors were concerned about the availability of advocacy to support people challenging decisions.

In our survey we found that **two-thirds (65%) of local authorities commission an advocacy service**. This can be accessed by social care users and carers to challenge a decision regardless of whether they meet thresholds set out in legislation.

But **20% of local authorities did not commission a service for adults or carers** beyond those thresholds, limiting referrals and creating gaps in access to advocacy.



Our inquiry also heard concerns about the following (though we do not know the extent of these):

- statutory advocacy referrals not being made at appropriate times and recommendations for referrals sometimes not being upheld
- not enough statutory or community advocacy
- the need for better skilled and knowledgeable advocates to meet diverse needs (including the needs of people with protected characteristics), and
- inconsistent independence (some lawyers and civil society experts highlighted instances where they believed individual advocates felt pressurised not to challenge decisions, or were inhibited from doing so, as a result of being commissioned by the local authority).

Many legal professionals, researchers, charities, voluntary organisations and statutory bodies want to see a statutory right to social care complaints advocacy for all. This would match people's entitlement to advocacy when making complaints about the NHS.

Legal support can help with complaints, but the system is failing those who need it

Our inquiry heard that the pre-action protocol that precedes a judicial review can be a quicker way to progress a challenge than making a complaint. But access to legal support to take that step is increasingly difficult. Legal professionals said, if people do not qualify for legal aid, the cost of initiating a judicial review is often prohibitive.

“Certainly many of the cases I do involve solicitors from England doing Welsh cases. I can only say that must be because there isn't enough provision in Wales.

”

Lawyer (Wales)

Legal professionals concluded that even when people get legal aid they can struggle to get the right help because there are so few community care legal aid solicitors; particularly in Wales where people might need to go to an expert in England for help.

A 2022 Law Society study⁵ found that community care legal aid provision was unavailable to over two-thirds of the population in England and Wales, with just three community care solicitors operating in Wales.

Professionals and social care users told us repeatedly that most of the legal professionals still available are unwilling to take on 'core community care' cases (concerning assessment, eligibility, care packages and related financial issues) or don't even specialise in this area.

This is because the way the legal aid scheme now operates means firms cannot take on this type of case without risking financial loss. We heard that such cases usually involve complex facts and histories that require many hours of exploratory work at the 'legal help' stage of legal aid. But legal help fixed fees rarely fully cover the costs involved.

Research by the charity Access Social Care⁶ concluded that the number of community care cases taken on during the **'legal help' stage of legal aid had dropped by three-quarters in the 10 years to 2022.**



We were also told that it's difficult to reach the next stage of legal aid – known as 'investigative help' – which could make these cases more financially viable.

5 [The Law Society \(2022\), Community care – legal aid deserts](#) [Accessed: 7 December 2022].

6 [Access Social Care \(2022\), Community Care Legal Career Pathways, Coventry: Access Social Care](#) [accessed: 7 December 2022].

2.3.2 What needs to change

Recommendation 4

The UK Government should bring advocacy for adult social care complaints in England in line with the existing statutory entitlement for the health sector ([the independent complaints advocacy service](#)).

The Welsh Government should ensure a similar entitlement through the new [Citizen Voice Body for Health and Social Care \(Llais\)](#).

Recommendation 5

Local authorities should review their compliance with provisions under the Care Act 2014 in England and the Social Services and Well-being (Wales) Act 2014 in Wales in relation to advocates supporting individuals to challenge decisions.

They should ensure that:

- staff who make decisions fully understand the role and importance of advocates, through training and supervision (where relevant)
- arrangements for effective advocacy commissioning, monitoring and scrutiny are in place that enable them to check whether advocates are challenging decisions appropriately.

Local organisations representing disabled and older people and carers should be involved in these processes to ensure independent advocacy responds to diverse needs.

Recommendation 6

Our inquiry findings support [recommendations from Access Social Care](#) who raise concerns about the way the legal aid scheme operates and the impact this has on an individual's ability to seek urgent specialist advice. The UK Government should urgently review the issues with legal aid for community care across England and Wales.

2.4 Collecting equality data and learning from challenges and complaints

Collecting and reporting data

All local authorities in England must produce an annual report about the numbers of social care complaints they've received during the year to comply with the Local Authority Social Services and National Health Services Complaints (England) Regulations 2009. This report should be available to anyone who asks for it but does not need to be published. The report should include a summary of the type of complaint and what has been done to improve services as a result.

Under the Social Services Complaints Procedure (Wales) Regulations 2014, Welsh local authorities must prepare, and should publish, an annual report that must include, but is not limited to, details of the complaints they receive, the outcome of each complaint and whether time limits have been complied with.

Local authorities do not have to collate and report on the number of pre-action protocol letters or judicial reviews they are involved in.

Complaints standards authority in Wales

The PSOW introduced a complaints standards authority (CSA) to set up and monitor standardised complaint handling schemes used by all public services. (The Scottish Public Services Ombudsman is also a CSA). The aim is to develop a more straightforward complaints procedure, promote best practice and focus on service improvement. Local authorities in Wales must provide the CSA with data to help identify trends in complaints and their outcomes.

2.4.1 What we found

Meaningful data collection and analysis is not happening often enough

Information on the numbers of complaints and legal challenges, the reasons for them and any trends provide important learning for local authorities and can be used to improve systems and services.

Most English and Welsh local authorities told us that they had changed their adult social care decision making processes, procedures or policies after reviewing challenges and ombudsman investigations. Examples included:

- creating a customer engagement team
- introducing an appeals policy
- training social care staff, and
- setting up practice governance boards and shared learning panels.

One in five (20%) of local authorities said they developed action plans to monitor whether learning from challenges was acted on, and 16% cited reviews of lessons learnt.

Two-thirds (65%) of those responding to our survey said that, even when challenges are withdrawn, or resolved outside the formal complaints process, they review records to identify improvements needed.



We heard from a large advocacy provider that is working with several local authorities to analyse complaints and use this shared learning to improve services. The Association of Directors of Adult Social Services (ADASS) has urged local authorities to meet advocacy providers regularly to discuss trends, concerns and solutions.

The LGSCO's 2020 guidance on effective complaint handling says the best local authorities 'use critical feedback to drive a sophisticated culture of learning, reflection, and improvement'.

The National Complaints Managers' Group (NCMG) and regional networks such as the North Wales Complaints Officer Group facilitate peer support and share learning from complaints between local authorities to influence and improve practice.

Collecting complaints data that can be disaggregated by protected characteristics under the Equality Act helps local authorities understand how well the needs of different groups are being met. It can help local authorities meet their Public Sector Equality Duty and supports specific actions being taken.

Few local authorities collect and analyse data on the protected characteristics of individuals who make either informal or formal complaints. When they do, it's mostly about age, sex and race.

Between 3% and 8% of local authorities collect and analyse data on the protected characteristics of people making informal complaints, and between 7% and 26% do the same for formal complaints.



Not having this information leaves local authorities unable to identify whether some protected characteristic groups are more or less likely to complain than others, and the reasons for this. Many local authorities agreed that they need to improve their collection and analysis of equality data about those who do – and just as importantly, do not – challenge adult social care decisions.

2.4.2. What needs to change

Recommendation 7

The UK and Welsh governments and relevant stakeholders should work with local authorities to improve the collection, analysis and reporting of social care users' equality data; including those who complain about or challenge decisions. This should be considered alongside other data around user satisfaction and used to identify and address poor outcomes experienced by people who share protected characteristics.

Recommendation 8

The UK and Welsh governments should amend the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009 and the Social Services Complaints Procedure (Wales) Regulations 2014 so local authorities must:

- report the number and type of legal challenges (as well as complaints) against an agreed framework, and
- publish annual adult social care complaints reports on their websites.

In the absence of a change to the regulations, local authorities should implement the recommendation above.

Recommendation 9

The UK and Welsh governments should lead and support key stakeholders involved in the sector-led improvement of adult social care in England and Wales to ensure complaints intelligence and learning is central to wider sector-led improvement.

2.5. The importance of proper scrutiny

Local authorities use a range of approaches to support and monitor good quality adult social care decision making. They are supported in effective decision making by inspectorates and ombudsmen.

Care inspectorates

Care Inspectorate Wales follows the principles of the Social Services and Well-being (Wales) Act 2014 in inspecting and evaluating how Welsh local authorities provide social care. From April 2023, the Citizen Voice Body (Llais) will represent the people of Wales in respect of health and social care services. Part of its role is to support local authorities in the improvement of services.

In England, the Health and Care Act 2022 gives the Care Quality Commission powers to make sure English local authorities meet their Care Act 2014 duties.

Ombudsmen

The LGSCO and PSOW guidance helps councillors hold their local authorities to account for the quality and consistency of decision making.

The PSOW can initiate investigations into areas of particular concern. The LGSCO reports on themes, such as improving access for disabled people⁷ and learning lessons from complaints about people's human rights.⁸ It cannot actively investigate and report on areas of concern identified outside individual complaints.

Both ombudsmen can use what they learn from their investigations and analysis to provide training for local authority staff and organisations that perform poorly.

7 [Local Government & Social Care Ombudsman \(2022\), Equal access: getting it right for people with disabilities, Coventry: Local Government & Social Care Ombudsman](#) [accessed 6 January 2023]

8 [Local Government & Social Care Ombudsman \(2022\), Equal justice: learning lessons from complaints about people's human rights', Coventry: Local Government & Social Care Ombudsman](#) [accessed 6 January 2023]

2.5.1. What we found

Experienced social workers can help with making the right decision first time round

Most local authorities in England and Wales monitor the quality and consistency of their decision making through:

- regular social worker supervision (94%)
- critical reflection in peer groups (82%), and
- audits of decisions and outcomes (78%).

We also heard about innovations such as the use of peer-review panels to strengthen decision making.

Local authorities took the same approach when checking their decisions complied with equality and human rights legislation, but in smaller numbers, including:

- regular social worker supervision (80%)
- critical reflection in peer groups (69%), and
- audits of decisions and outcomes (59%).

But 6% of local authorities reported not having any processes in place to monitor the compliance of decisions with equality and human rights legislation.

More than four in five local authorities told us that they provided legal training for frontline decision makers on their duties and service users' rights under the Equality Act 2010 (88%) and the Human Rights Act 1998 (82%).

Just 42% of local authorities reported training frontline decision makers on the UN Convention on the Rights of Persons with Disabilities (UNCRPD). In Wales, local authorities are required to show due regard to the UNCRPD (and the UN Principles for Older People) when exercising their social care functions.

Social care professionals highlighted concerns about the challenge of increasing complexity in cases where there are fewer experienced, registered social care workers to support good decision making. One local authority described being able to recruit newly qualified social workers but struggling to recruit more experienced ones.

Local authorities and local authority networks highlighted the value of councillors' scrutiny. They referenced the investment some local authorities are making in strengthening this role and councillors' importance to good accountability. The LGSCO⁹ and the Local Government Association¹⁰ in England have produced guidance that underlines the value of scrutiny in handling complaints.

“

I think the role of local politicians is important here. I think a number of cabinet members that I've met ... are very effective scrutineers.

”

Academic (Wales)

Practice coordinators in Wales

Some Welsh local authorities have appointed senior social workers as 'practice coordinators' to develop skills among less-experienced colleagues. They are also responsible for:

- reviewing cases
- monitoring compliance with equality and human rights duties
- identifying training needs, and
- providing a degree of scrutiny through peer review.

Workforce regulators and professional bodies in Wales are in favour of such roles because they offer social care workers opportunities for career progression and to retain expertise.

⁹ [Local Government and Social Care Ombudsman \(2018\), Under pressure – the impact of the changing environment on local government complaints](#) [accessed: 26 August 2022]

¹⁰ [Local Government Association \(2020\), 'A councillor's workbook on handling complaints for service improvement'](#) [accessed: 26 August 2022] and [Cardiff University \(2015\), 'Step by step to joint scrutiny: A handbook for scrutineers', Cardiff: Cardiff University](#) [accessed: 26 August 2022]

2.5.2. What needs to change

Recommendation 10

The Care Quality Commission (through its powers in the Health and Care Act 2022) and Care Inspectorate Wales should consider our findings in their approaches to assuring local authorities' delivery of their social care duties, particularly:

- the extent to which local authorities provide information about adult social care entitlements in accessible formats and put in place reasonable adjustments in information and advice service provision
- the extent to which local authorities collect and analyse equality data on social care users (including those who complain about or challenge decisions) and whether they use it to identify and address poor outcomes for those who share protected characteristics
- how well equality and human rights considerations are embedded in decision making in needs or carer assessments, care and support planning and reviews
- compliance with their duty to give people a written record of their assessment, eligibility decision, care plan and other key decisions
- compliance with their duty to give people information and advice about how to challenge or complain about a social care decision
- whether people are routinely referred to advocacy, and
- how much learning from complaints and legal challenges takes place.

Recommendation 11

The Citizen Voice Body for Health and Social Care in Wales (Llais) should consider our findings when determining its early and ongoing priorities.

Recommendation 12

The UK Government should give the Local Government and Social Care Ombudsman new powers to initiate investigations into areas of concern, even if people have not specifically complained about these, and to make recommendations.

Recommendation 13

The Welsh Government should update and strengthen part 2 of the code of practice for local authorities on meeting their duties to demonstrate due regard to the UN Principles for Older Persons and the UN Convention on the Rights of Persons with Disabilities when exercising functions under the Social Services and Well-being (Wales) Act 2014.

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Contacts

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