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| <b>Title:</b>                                  | <b>Complaints Policy and Procedure</b>  |
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| <b>Distribution:</b>                           | <b>All staff in line with PCT Policy on Policies</b>  |
| <b>Compliance:</b>                             | <b>Mandatory for all permanent &amp; temporary<br/>employees, contractors and sub-contractors<br/>of North Yorkshire and York PCT</b> |
| <b>Equality &amp; Diversity<br/>Statement:</b> | <b>This policy has been subject to a full Equality<br/>Impact Assessment</b>  |

**Please note that the intranet version is the only version that is maintained. Any printed copies should, therefore be viewed as 'uncontrolled' and as such may not necessarily contain the latest updates and amendments**



| Change Record |                                      |   |             |
|---------------|--------------------------------------|---|-------------|
| Date          | Author                               | Nature of Change  | Version No. |
| 15.1.10       | Jane Lister<br>Complaints<br>Manager | Policy amended to reflect the changes to<br>the PCT and CMHS                    | V 100.1     |
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| 19.1.10       | Jane Lister<br>Complaints<br>Manager | Policy amended to bring in line with the<br>Policy on Policies                  | V 100.1     |

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## NORTH YORKSHIRE AND YORK PRIMARY CARE TRUST COMPLAINTS PROCEDURE

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## 1. INTRODUCTION

The Primary Care Trust (PCT) is committed to working in partnership with independent contractors, the secondary sector, Social Services, the voluntary sector and other care agencies for the improvement of health in the local community.

With a population of approximately 765,000 people, the PCT acknowledges that at times, some people will be dissatisfied with services or the care they receive.

This policy is made between North Yorkshire and York Primary Care Trust (NYYPCT) and the recognised staff side organisations, using the mechanism of the JNCC and Local Negotiating Committee (LNC). It will remain in force until superseded by a replacement policy or until terminated by either management or staff side, giving no less than six months notice. The purpose of the notice to terminate the Policy is to provide the opportunity for both parties to renegotiate a replacement policy. Withdrawal by one party, giving no less than six months notice, will not of itself invalidate the agreement. If agreement cannot be reached on a revised policy, then the matter will be dealt with through the PCT's Grievance Procedure.

Throughout this document "the PCT" or "the Trust" should be taken to refer to both:

- NHS North Yorkshire and York (NHS NYY); and
- NHS North Yorkshire and York – Community and Mental Health Services (CMHS)

## 2. GENERAL POLICY STATEMENT

- 2.1 All complaints, suggestions and constructive criticism are taken seriously and used as a valuable aid the developing and maintaining standards of care, to actively demonstrate the intention to put the needs of the service users first.
- 2.2 Our primary objective is to provide the fullest possible opportunity for investigation and resolution of the complaint, as quickly and as is sensible in the circumstances, aiming to satisfy the complainant whilst being fair to staff.
- 2.3 Complaints and comments are useful means of identifying services that are in need of further development, identifying risks and ensuring systems are established for learning the lessons quickly and effectively across the organisations.  
  
Such complaints and comments are always welcome as are compliments as they help the PCT to share learning throughout the organisation and improve the services provided. The information will be incorporated into the risk management processes of the organisation.
- 2.4 The first responsibility of the recipient of the complaint is to ensure that – before doing anything else – the patient's immediate health care needs continue to be met. The PCT will ensure that all complaints are treated with fairness, sensitivity and confidentiality and follow the timescales and guidance as set out in the NHS Complaints Procedure where possible. Pursuing a complaint will not affect a complainant's standard of care.
- 2.5 Staff should always encourage complainants to be forthcoming in expressing their concern, apprehension and anxiety; particularly where they are dissatisfied with the care they have received and should reassure them that whatever they may say will be treated with appropriate confidence, sensitivity and confidentiality. If appropriate, information will be shared, on a need to know basis.

- 2.6 Many matters that concern service users can be dealt with as they arise. Staff and managers are encouraged to be aware of and deal with these in a way that will satisfy the complainant on the spot.
- 2.7 All complainants and prospective complainants will be advised of the role of the Patient and Liaison Service (PALS), the Independent Complaints Advocacy Service (ICAS) and other independent organisations who can advise and assist in resolving concerns.

### **3. SCOPE OF POLICY**

- 3.1 This policy applies to all complaints received by the Primary Care Trust relating to either a concern or dissatisfaction about a service commissioned or provided by the PCT.
- 3.2 In relation to services provided by independent contractors (GPs, dentists, pharmacists and optometrists) within the PCT area, any person who complains about the service/treatment provided by the general practitioner, dentist, pharmacist or optician will be referred to the Practice concerned in the first instance. If the patient does not wish to complain direct to the practice, the PCT can act as “honest broker” and in handling their complaint on their behalf.
- 3.3 Complaints can be received by any member of the PCT staff, or independent contractor staff, who should be aware of the actions they will be required to take if they are in receipt of a complaint.

### **4. DEFINITION OF A COMPLAINT**

- 4.1 A complaint is an expression of discontent or dissatisfaction, which requires a written response about the services that the PCT or its employees provides as individuals or as an organisation that cannot be resolved through the Patient Advice and Liaison Service (PALS) or by staff on the spot.

### **5. PURPOSE OF POLICY**

- 5.1 It is a mandatory requirement that all health care organisations have a complaints policy and procedure.
- 5.2 This policy is based on the Local Authority Social Services and National Health Service (Complaints) Regulations (England) Regulations 2009 and Making Experiences Count Guidance – Listening Responding Improving a Guide to Better Customer Care 2009

### **6. EQUALITY AND DIVERSITY**

The PCT recognises the diversity of the local community and those in its employ. Our aim is therefore to provide a safe environment free from discrimination and a place where all individuals are treated fairly, with dignity and appropriately to their need, regardless of age, disability, race, nationality, ethnic or national origin, gender, religion, beliefs, sexual orientation, gender reassignment or employment status. The PCT recognises that equality impacts on all aspects of its day to day operations and has produced an Equality and Human Rights Strategy and Equal Opportunities Policy to reflect this. All strategies, policies and procedures are assessed in accordance with the Equality & Diversity Assessment Toolkit, the results for which are monitored centrally.

### **7. THE FUNCTIONS OF THE COMPLAINTS PROCEDURE**

- 7.1 The primary function is to address the concern of the complainant. This may include, but is not mutually exclusive:
- Giving an apology
  - Giving an explanation
  - Assurance that the matter has been investigated and action has been taken to prevent a recurrence and to inform the complainant about learning.
  - Remediating a complaint, where appropriate
- 7.2 The secondary function is to act as feedback to the PCT to help improve standards. In order to do this we will:
- Establish what the concern is and what outcome the complainant is seeking
  - Systematically investigate the concern
  - Produce an outcome that resolves the matter to the complainant's and staff's satisfaction and ensures that lessons are learned to improve the service.
  - Establish a feedback mechanism reporting openness.

## **8. WHAT THE NHS COMPLAINTS PROCEDURE DOES NOT COVER**

- 8.1 The following complaints are excluded from the scope of the NHS Complaints Procedure -
- a complaint made by a responsible body
  - a complaint by an employee about any matter relating to their employment
  - a complaint the subject matter of which has been investigated under these or previous Regulations
  - a complaint made by a primary care provider which relates either to the exercise of its functions by an NHS body or to the contract or arrangements under which it provides primary care services
  - A complaint which is made orally and resolved to the complainant's satisfaction not later than the next working day
  - a complaint made by an independent provider or an NHS foundation trust about any matter relating to arrangements made by an NHS body with that independent providers or NHS foundation trust
  - a complaint which relates to the provision of primary medical services in accordance with arrangements made by a Primary Care Trust with a Strategic Health Authority under section 28c of the 1977 Act or under a transitional agreement
  - a complaint which is being or has been investigated by the Health Service Commissioner
  - a complaint arising out of an NHS body's alleged failure to comply with a data subject request under the Data Protection Act or request for information under the Freedom of Information Act 2000

- Where a person has stated that they intend to take legal action consideration will be given to whether the complaint can be investigated without prejudicing the outcome of any legal action.

## **9. PERFORMANCE TARGETS**

9.1 The PCT aims to:

- acknowledge all complaints within three working days
- agree timescales with the complainant in which to provide a response from receipt of appropriate consent and respond within those timescales and where that is not possible keep the complainant informed of any new timescales to be worked to.
- The PCT reports its performance on complaints to the Strategic Health Authority and to its Board as required.

## **10. CONSULTATION, APPROVAL and RATIFICATION PROCESS**

As part of the consultation process this policy was approved by the JNCC, Associate Director of Governance and Engagement, the Incident Learning Group, the Assistant Director of Corporate and Public Affairs.

This policy will be approved and ratified by the Integrated Governance Sub-Committee and Risk Management and Assurance Committee as stated in the Policy on Policies.

## **11. DISSEMINATION AND IMPLEMENTATION**

This policy and procedures will be available on the PCT intranet and will form part of the corporate and local induction of all staff.

Awareness of new policies will be via Team Brief.

Training on complaints is available via the Computer Based Learning System.

## **12. DOCUMENT CONTROL INCLUDING ARCHIVING ARRANGEMENTS**

The previous versions of this policy will be removed from the intranet and will be available if required by contacting the author.

## **13. ASSOCIATED DOCUMENTATION**

- Serious Untoward Incident Policy
- Adverse Incident Reporting Policy
- Policy for the Aggregation of Data and Learning from Incidents, Complaints and Claims
- Policy for the Investigation of Incidents, Complaints and Claims

# **NHS North Yorkshire and York and North Yorkshire and York Community and Mental Health Services Complaints Procedure**

## **1. INTRODUCTION**

- 1.1 The purpose of this document is to establish a written procedure for complaints received, both written and oral, involving North Yorkshire and York Primary Care Trust.

## **2. RESPONSIBILITIES**

- 2.1 The Chief Executive has overall accountability for the management of North Yorkshire and York Primary Care Trusts complaints.

However, the responsibility for ensuring that the investigation and resolution of complaints is carried out fairly and objectively, and any recommendations arising from the investigations are disseminated and implemented, is the responsibility of the Deputy Chief Executive for the Commissioning arm and Associate Director of Governance and Engagement for North Yorkshire and York Community and Mental Health Services.

- 2.2 All staff are responsible for ensuring that patients are aware of the Complaints Procedure and how to make a complaint. Staff should ensure that where any complaints cannot be resolved quickly and locally they are recorded and forwarded to the Complaints Department. Staff must also ensure that any complaints not capable of quick local resolution are faxed immediately to the safe haven fax within the Complaints Department or sent via secure NHS net email so that they can be acknowledged within three working days.
- 2.4 All staff who are appointed as Investigating Managers are responsible for undertaking a thorough investigation within the specified timescales. They are responsible for identifying any areas of good practice, recommending areas for improvement and developing action plans in conjunction with service managers and/or team leaders.

## **3. WHO MAY COMPLAIN?**

- 3.1 Any person who is affected by or likely to be affected by the action, omission or decision of the PCT, services provided on behalf of the PCT by the contracted independent sector, general practitioners, commissioned services and other contractors who are based within the PCT's area, may complain.

- 3.2 A complaint may be made by a person acting on behalf of a patient in any case where that person :-

- is a child;

In the case of a child, the representative must be a parent, guardian or other adult person who has care of the child and where the child is in the care of a local authority or a voluntary organisation the representative must be a person authorised by the local authority or the voluntary organisation, and in the opinion of the Complaints Manager is making the complaint in the best interests of that child

- has died;

In the case of a patient or person affected who has died or who is incapable, the representative must be a relative or other person, who, in the opinion of the Complaints Manager, had or has sufficient interest in his welfare and is a suitable person to act as representative.

- is unable by reason of physical capacity or lacks capacity within the meaning of the Mental Capacity Act 2005 to make the complaint themselves;
  - has requested the representative to act on their behalf, the Complaints Manager must first establish that the representative is acting with consent.
- 3.4 If the Complaints Manager is of the opinion that a representative does or did not have sufficient interest in the person's welfare, is not acting in their best interests or is unsuitable to act as a representative, the Complaints Manager will notify that person in writing stating the reasons.
- 3.5 Complainants who attempt to present their complaint under the influence of alcohol or illegal substances, or who are violent, will be asked to return when they are able to articulate their complaint properly, or to put their complaint in writing.

#### **4 CONSENT**

- 4.1 When a complaint is received from a third party consent must be obtained. This can be obtained verbally, documented and confirmed in writing. Consent is a patient's agreement for somebody to act on his or her behalf and to share information with that person.
- 4.2 If a patient is unable to give consent, details can be given to the patient's next of kin if it is considered in the best interests of the patient.
- 4.3 Where consent cannot be obtained and there is no next of kin, details of the complaint should not be ignored and can still be investigated and acted upon. However, no personal details relating to the patient will be provided to the complainant other than the issues that have been investigated and acted upon.

#### **5. CONFIDENTIALITY**

- 5.1 Anyone involved in the handling of a complaint, at any level, has an obligation to comply with this procedure and to ensure confidentiality of information at all times. The PCT will ensure that all complaints are handled in accordance with the requirements of the Caldicott and the Data Protection Act 1998.
- 5.2 Complaints records will be kept separate from health records. Patient's health records should contain only information which is strictly relevant to their care and treatment.

#### **6. PATIENT ADVICE & LIAISON SERVICE (PALS)**

- 6.1 PALS provides information, help support and advice for patients and carers. PALS are able to resolve informal concerns, quickly and directly with the staff concerned, if the service user is happy to pursue this route.
- 6.2 PALS will explain the range of options available to the service user and if appropriate direct them to the formal complaints process. It is for the individual to determine

which route they wish to support them to find a satisfactory resolution to their concern.

- 6.3 PALS contact details are available on the PCT's internet and intranet sites.
- 6.4 There is an explicit recognition that complaints may be raised with any member of staff and resolved on the spot. There is no need to deal with the complaint more formally unless the complainant wishes otherwise.
- 6.5 PALS does not aim to prevent people from making formal or informal complaints or to screen access to the Complaints Process.
- 6.6 As a general rule, PALS issues are those, which can be resolved quickly on the spot and usually relate to something, which has happened very recently. Complaints are not always capable of being resolved on the spot and can be made in relation to incidents which have occurred in the past six months.

## **7. INDEPENDENT COMPLAINTS ADVISORY SERVICE (ICAS)**

- 7.1 The Independent Complaints Advisory Services (ICAS) are an independent organisation that supports patients and their carers wishing to pursue a complaint about their NHS treatment and care. Their contact details are available at [www.carersfederation.org](http://www.carersfederation.org)

## **8. TIME LIMIT FOR MAKING A COMPLAINT**

- 8.1 A complaint should be made as soon as possible after the incident has occurred. It must be made within twelve months of the incident or within twelve months from the time that it came to the notice of the complainants, providing that not more than 12 months have elapsed since the incident.
- 8.2 Where a complaint is made after the expiry of this period discretion may be exercised by the Complaints Manager to extend this time limit where:
  - o The complainant has good reasons for not making the complaint within the designated period
  - o Notwithstanding the time that has elapsed it is still possible to investigate the complaint effectively and efficiently.
- 8.3 In cases where the Complaints Manager rejects the discretionary extension of the time limit the decision will be agreed with the Director or Associate Director responsible for complaints. The complainant may approach the Health Service Ombudsman, who will consider whether or not to reverse the decision.
- 8.4 If it is agreed to refuse to investigate a complaint, the decision must be fully documented in order to respond to any potential subsequent investigation by the Health Service Ombudsman investigation.

## **9. PUBLICITY**

- 9.1 The PCT is required to ensure that the right to complain, advice about how to use the complaints procedure and details of the help available from the Independent Complaints Advocacy Service are well publicised in all their service areas.

- 9.2 Leaflets explaining the above procedures will be forwarded in response to all written complainants and to oral complaints wherever appropriate.

## **10. LOCAL RESOLUTION PROCEDURE (STAGE 1)**

### **Complaints about PCT Commissioning or Services Provided**

- 10.1 Wherever possible, it is intended that complaints involving the PCT should be resolved through the process of Local Resolution. The local resolution process emphasises the principles of openness, fairness and flexibility, and is conciliatory in nature.
- 10.2 The primary objective of local resolution is to provide the fullest possible opportunity for investigation and resolution of the complaint, as quickly as is sensible in the circumstances, aiming to satisfy the complainant whilst being fair to staff. The key parts are as follows:

## **11. ACKNOWLEDGEMENT**

- 11.1 Upon receipt of a complaint the Complaints Department will maintain a register of all complaints received and give each complaint a unique reference number.
- 11.2 All complaints will be acknowledged within three working days. The Complaints Department will contact the complainant to discuss their issues and what would resolve the complaint for them. An acknowledgement letter will be sent clarifying the issues which the PCT will investigate, identify the agreed response date and provide contact details where additional advice and information can be sought, if required.

## **12. INVESTIGATION PROCESS**

- 12.1 Once a complaint is received an investigator will be nominated by the Complaints Manager to carry out a thorough investigation into all the issues raised, identify any areas for action and make recommendations for improvements.
- 12.2 The PCT will agree timescales with the complainant to allow sufficient time for a thorough investigation to take place and for the complainant to receive the results of that investigation.
- 12.3 There may, however, be instances where it is not possible to achieve an adequate conclusion within the agreed timescales and in these cases the complainant will be kept fully informed of the progress of the investigation.
- 12.4 In order to ensure a satisfactory resolution is reached for the complainant, a full investigation will be undertaken, in addition other avenues may also be explored, if appropriate:
- Telephone conferences
  - Face-to-face meetings
  - Mediation
  - Appropriate remedy
- 12.5 The investigation of complaints will follow the PCT's policy on investigating incidents.

## **13. MEDIATION**

Making Experiences Count recommends mediation where complaints are difficult to resolve. Mediation can involve several stages and the PCT will consider mediation in appropriate cases.

## **14. RESPONSE**

14.1 The Complaints Department will be responsible to ensure the nominated investigator provides a draft written response which:

- Summarises the nature and substance of the complaint
- Describes the investigation and summarise the conclusions
- Explain that action will be or has been taken to resolve the complaint
- Where appropriate, apologises to the complainant
- Identifies what action, if any, will be taken in the light of the complaint and how it will be monitored
- Identify what learning has taken place
- Provide details of any remedy made
- List the options available to the complainant if not completely satisfied with the response.

14.2 The Complaints Department will be responsible for ensuring the letter is finalised and agreed with the investigating manager before being forwarded to the Chief Executive.

14.3 The PCT's Chief Executive will sign the final written response to the complainant. There may be instances where it is not possible to achieve an adequate conclusion within the agreed timescale, examples of this may be complex or multi agency complaints. In these cases the complainant will be kept fully informed of the progress of the investigation by the Complaints Department of the organisation leading on the complaint.

## **15. MAKING CHANGES AS A RESULT OF COMPLAINTS**

The Quarterly Incident, Complaints, Claims and PALS Report is shared on the intranet and staff are informed that it is available through Team Brief. Specific learning and changes to practice resulting from complaints is included in Team Brief. Where appropriate action plans are compiled by the investigating manager and monitored in-service or, where feedback is required to the complainant, by the Complaints Department

## **16. EXPLANATIONS AND APOLOGIES**

All staff are encouraged to be honest and transparent with patients and their families when a complaint has arisen. The NHS Litigation Authority has provided advice and guidance on explanations and apologies which is supported by the PCT. Further guidance on this is at Appendix 2.

## **17. COMPLAINTS REGARDING INDEPENDENT CONTRACTORS (GPs, DENTISTS, PHARMACIST, OPTOMETRIST)**

17.1 Patients, carers/service users who wish to make a complaint about an Independent Contractor will be advised to contact the individual practice in the first instance. All practitioners are independent contractors and have the responsibility of managing their own complaints process within NHS guidance.

17.2 The PCT will only become involved in the following circumstances:

- When a complainant does not wish feel able to approach the practice directly

- When a complainant is dissatisfied with the way a practice has handled a complaint
  - When a practice requests support with the handling of a complaint.
  - Where a complainant requests the view of the PCT's Medical Director.
- 17.3 If the complainant requests the PCT to deal with their complaint, with the complainant's consent the Complaints Department, will contact the Practice on their behalf and request the complaint is investigated. The PCT will act as "Honest Broker" in ensuring the complaint is fully investigated.
- 17.4 The independent contractor will investigate the complaint and provide a response to the PCT within 10 working days, wherever possible. This will be sent to the complainant in its full entirety by the Complaints Department.
- 17.5 If the complainant is dissatisfied with the response, further attempts may be made to help resolve the concerns through local resolution. This may include:
- Telephone conferences
  - Face-to-face meetings
  - Mediation

When all avenues have been exhausted through local resolution the complainant may approach the Health Service Ombudsman and ask for an independent review of their complaint.

## **18. COMPLAINTS ABOUT EXTERNAL CONTRACTORS**

There may be contractors providing services to the PCT or working on premises which may impact on patient care or the delivery of services. Each contractor is expected to respond positively and take action where appropriate in regard to complaints. Where staff or patients wish to raise complaints regarding contractors they should contact the PCT Complaints Department as soon as possible, who will make arrangements for the complaint to be referred to the appropriate contractor.

## **19. COMPLAINTS TO OTHER PCTs NHS TRUSTS OR SOCIAL SERVICES – DUTY TO CO-OPERATE**

- 19.1 Where a complaint involves issues relating to another NHS or Local Authority organisation the organisations will agree who will lead on the complaint for the purposes of providing a co-ordinated response to the complainant.
- 19.2 Where a complaint is received by the PCT which wholly relates to another NHS body or Local Authority organisation the Complaints Department will, with the permission of the complainant, pass that complaint on to the appropriate organisation for response.

## **20. COMPLAINTS AGAINST PRIMARY CARE TRUST PURCHASING DECISIONS**

- 20.1 Complaints about purchasing decisions taken by the PCT may be made by or on behalf of any individual personally affected by these decisions. Purchasing decisions may involve General Practitioners, Consultants and other medical staff.
- 20.2 Members of the public may wish to raise general concerns about purchasing issues with the PCT, and in these instances they will receive a full explanation of the PCT's policy. These are not, however, issues for this Complaints Procedure.

## **21. THE HEALTH SERVICE COMMISSIONER (Ombudsman)**

- 21.1 Complainants may approach the Ombudsman where the complaint has been denied investigation because it fell outside the time limits, or where the complainant remains dissatisfied with the outcome of the local resolution process.
- 21.2 The Ombudsman will not automatically investigate all complaints received but will consider complaints, before deciding if further investigation is required.
- 21.3 The role of the Ombudsman now includes investigating complaints about matters involving clinical judgement (with appropriate professional advice).
- 21.4 The Ombudsman is not obliged to investigate every complaint received, and will not generally investigate a complaint which has not *first* been through the Local Resolution of the NHS complaints procedure, or a case which is being dealt with through the courts

**The Health Service Ombudsman for England**  
**11th Floor**  
**Millbank Tower**  
**London SW1P 4QP**

## **22. STAFF TRAINING**

- 22.1 All staff must be aware of the complaints procedure, and how to access the telephone number and location of the Complaints Department to enable them to refer patients/clients. This information is available on the intranet site.
- 22.2 In the first instance patients/clients should be directed to the PALS service in order for the service to be explained and the options available.
- 22.3 Training will be needed to ensure that staff attitude is positive and does not deter legitimate complaints.
- 22.4 Complaints training is available via the PCT's computer based learning system and Customer Care training is provided as part of the Core Training Programme.

## **23. PROCEDURE FOR HANDLING HABITUAL OR VEXATIOUS COMPLAINTS**

The PCT has a separate policy for dealing with complainants who might be considered habitual or vexatious complaints. A small number of complainants absorb a disproportionate amount of NHS resources in dealing with their complaints. The aim of the procedure is to identify situations where the complainant might be considered to be habitual or vexatious and suggests ways of responding to these situations. See Appendix 1 for the policy.

## **24 COMPLAINTS AND LITIGATION**

- 24.1 Where a complainant indicates an intention to take legal action in respect of the complaint it may still be investigated where the PCT or primary care provider consider that to do so would not compromise or prejudice the legal proceedings.
- 24.2 The investigation of a complaint, which is subject to legal proceedings, may be discontinued if at any time it appears to the NHS body that to continue would compromise or prejudice those proceedings.

- 24.3 The legal team for the PCT will be notified of any details of complaints against the PCT, in which the complainant has indicated they will take legal action.

## **25. DISCIPLINARY PROCEDURES**

- 25.1 The Complaints Procedure remains separate from disciplinary matters.
- 25.2 However, complaints can occasionally reveal the need for investigation under the disciplinary procedure and in such an event the Complaints Department will not be involved in any disciplinary investigation.
- 25.3 The Chief Executive will write to inform the complainant that appropriate management action is being taken under the PCT's Disciplinary Procedure. If there is a conflict with the disciplinary procedure, that part of the complaint investigation will be suspended. It is important that any unrelated matters raised in the complaint continue to be investigated.

## **26. COMPLAINTS MADE UNDER THE ACCESS TO INFORMATION ACT (FREEDOM OF INFORMATION, ENVIRONMENTAL INFORMATION)**

- 26.1 Any person who considers that the PCT is not complying with their Publication Scheme under the Freedom of Information Act should in the first instance contact the person who sent the original response or information.
- 26.2 If the person remains dissatisfied, the PCT can be asked to review the decision by sending a written "requirement for review" including their address, a description of the original request and the reasons why they are dissatisfied. This letter should be addressed to the Chief Executive.
- 26.3 The review will be handled by staff who were not involved in the original decision, though this will not apply to Section 36 claimed exemptions in accordance with the Department of Health Directive. The results of the review will be available within 20 working days.
- 26.4 Any appeals should be addressed to the Information Commissioner for an independent review at the following address:

**The Information Commissioner, Wyncliffe House, Water Lane, Wilmslow, Cheshire, SKA 5AF**  
**Telephone: 01625 545700**  
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## **27. LOCAL MONITORING OF COMPLAINTS**

- 27.1 The Complaints Manager will monitor complaints regularly on behalf of the Deputy Chief Executive and Associate Director of Governance and Patient Experience and ensure that the appropriate action is taken.
- 27.2 A quarterly report on Incidents, Claims, PALS and Complaints is presented to the PCT and Community and Mental Health Services Governance Committees.
- 27.3 The report will:
- Identify and monitor arrangements for local complaints handling
  - Consider and act on trends in complaints
  - Consider lessons to be learned which may be used to improve services

27.4 The PCT Board will receive an annual complaints report and other complaints reports by exception.

## **28. ANNUAL REPORT**

28.1 An annual complaints report will also be presented to the Board and details included within the PCT's Annual Report in line with governance processes.

## **29. REVIEW OF PROCEDURES**

29.1 This procedure will be reviewed and revised as appropriate within 12 months of approval and at least every two years thereafter by the Complaints Manager.

## **30. KEY DOCUMENTS**

The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009

Listening, Responding, Improving - a Guide to Better Customer Care

## APPENDIX 1

### PROCEDURE FOR HANDLING HABITUAL AND VEXATIOUS CONTACTS

#### 1. Background

- 1.1 Habitual and/or vexatious contacts are becoming an increasing problem for NHS staff. The difficulty in handling such contacts is causing undue stress for staff and placing a strain on time and resources.
- 1.2 NHS staff are trained to respond to all complaints and concerns fairly and impartially and to ensure a high quality service is provided. However, there are times when there is nothing further which can reasonably be done to assist them or to rectify a real or perceived problem.
- 1.3 Complaints regarding Primary Care Trust (PCT) Services or Independent Contractors are processed in accordance with the NHS Complaints Procedure.

#### 2. Purpose of this Procedure

- 2.1 The aim of this procedure document is to identify situations where the contact may be considered as habitual or vexatious and to suggest ways of responding to these situations.
- 2.2 It is emphasised that this policy should only be used as a last resort. In determining arrangements for handling such complainants there are two key considerations.
  - The first is to ensure that the complaints procedure has been correctly implemented. All avenues to achieve local resolution have been exhausted and that no material element of a complaint is overlooked or inadequately addressed. This will potentially include the arrangement of meetings with staff or complainants and/or the involvement of the Independent Complaints Advocacy Service (ICAS) or other advocates.
  - The second is to identify at what stage the complainant has become a habitual/vexatious complainer.
- 2.3 Staff need to appreciate that even habitual or vexatious contacts may have aspects which contain some genuine substance.
- 2.4 It is in everyone's interest that ongoing communication continues to be effective. Communications should not be continued when nothing further can be reasonably done to resolve the complaint or to rectify a real or perceived problem.
- 2.5 Judgement and discretion must be used in applying the criteria to identify potential habitual, vexatious or persistent individuals and in deciding the appropriate method of handling the situation.

#### 3. Definition of a Habitual or Vexatious Contact

- 3.1 People may show vexatious or habitual behaviour for several reasons and they may be completely unaware that their behaviour is causing distress to others. For example, vexatious behaviour may often be shown by people who:
  - Behave consistently and/or repeatedly in an aggressive manner
  - Present repeatedly and aggressively due to a medical condition
  - Are affected by substance abuse
  - Are unable or unwilling to appoint a carer, guardian or advocate as an intermediary to resolve the complaint

3.2 Whilst there is no one feature of vexatious behaviour and all types of such behaviour may be appropriate in certain circumstances, the following criteria may be indicative of vexatious behaviour.

- **Persists in pursuing a concern or complaint** where the NHS complaints procedure has been fully and properly implemented and exhausted.
- **Do not clearly identify the precise issues** which they wish to be investigated, despite reasonable efforts by Primary Care Trust staff and, where appropriate, the Independent Complaints Advisory Service (ICAS) to help them specify their concerns/complaint, **and/or where the concerns identified are not within the remit** of the Primary Care Trust to investigate.
- **Continually make unreasonable demands in terms of process and fail to accept that these may be unreasonable** (e.g. insist on responses to complaints/concerns or enquires being provided more urgently than is reasonable or normal recognised practice).
- **Making excessive demands and /or maintaining certain expectations and failing to accept that these are unreasonable, eg:**
  - Insisting that a member of staff is dismissed
  - Constantly requesting a new GP
  - Demands to see a particular member of staff/clinician.
- **Continues to Focus on a trivial matter** to an extent that it is out of proportion to its significance. (It is recognised that determining what a “trivial” matter is can be subjective and careful judgement must be used and recorded in applying this criteria).
- Are **unwilling to accept documented evidence** as being factual, **or continually does not accept the adequacy of written responses** in spite of correspondence specifically answering their questions or **does not accept that facts can sometimes be difficult to verify** especially when long time periods have elapsed.
- **Change the substance** of the concern/complaint or **continually raising new issues**, or seek to prolong contact by **continually raising further concerns or questions** upon receipt of a response whilst the complaint is being addressed. (Care must be taken not to discard new issues that are significantly different from the original issue. Each issue of concern may need to be addressed separately).
- Have **threatened or used actual physical violence** towards staff or their families or associates at any time. This will in itself cause direct in-person contact with the complainant to be discontinued and the complaint will, thereafter, only be pursued in writing. (All such incidents should be reported through the PCTs incident reporting process).
- Have **harassed** or been personally **abusive or verbally aggressive** on more than one occasion towards staff dealing with their complaint/concern or their families or associates. (Staff must recognise that people may sometimes act out of character at times of stress or distress and should make reasonable allowances for this. They should document and report all incidents of harassment).

- Are known to have **recorded** meetings or face-to-face/telephone **conversations without** the prior knowledge and **consent** of other parties involved.
- Have in the course of addressing a registered complaint/concern, have **an excessive number of contacts** with the Primary Care Trust, placing unreasonable demands on staff. (A contact may be in person, telephone, letter, fax or email). Discretion must be used in determining the precise number of “excessive contacts” applicable under this section, using judgement based on the specific circumstances of each individual case). eg: Staff need to recognise contacts will increase while patients are awaiting a complaint or concern to be resolved. However, comparisons with historic norms should be used as a starting point.

*It should be noted that in order to be deemed vexatious or unreasonably persistent, (habitual) it is not necessary for the complainants to meet all of the above criteria.*

#### **4. Dealing with Vexatious and Habitual Complainants - Stage 1**

- 4.1 Within the first few contacts, staff can usually identify complaints that may become vexatious. Action should be specifically targeted to try and help the complainants and staff involved if any of the above criteria is exhibited, prior to them been deemed vexatious and/or habitual.
- 4.2 If any of the above criteria is exhibited, the Director and/or the Associate Director responsible for complaints will be informed by the Complaints Manager and appropriate action agreed which may include advising the Complainant immediately in writing by the Complaints Manager. The letter should provide detailed examples of the complainant’s unreasonable behaviour and demands made on the service.
- 4.3 The complainant will also be informed of the PCTs Habitual and Vexatious Policy and that if their behaviour does not improve they may have to consider the application of the policy

#### **5. Options for dealing with Habitual or Vexatious Contacts through Complainants - Stage 2**

- 5.1 Where contacts have been identified as potentially habitual or vexatious and stage 1 has been followed and the complainant persists to make unreasonable demands on the service and meets elements of the above criteria, the Complaints Manager will discuss the issue with the Director and/or Associate Director responsible for complaints who may take specialist advice from relevant professionals to decide whether to declare the contact habitual or vexatious. A written record will be made of the reasons why the complainant is deemed as vexatious and or habitual and how they meet the criteria.
- 5.2 The Director and/or the Associate Director responsible for complaints may decide to try and resolve matters, before invoking this procedure and consider the following options:
  - drawing up a signed “agreement” (Patient Contract) that sets out a code of behaviour for the parties involved. If appropriate this will involve relevant staff / practitioners in a two way agreement. If these terms were contravened consideration would then be given to implementing the vexatious or habitual policy.

- Recommend all contacts to the PCT are in writing and that telephone calls or personal visits will not be accepted
  - Agree on one form of communication only or restrict contact to liaison through a third party. (If staff are to withdraw from a telephone conversation it may be helpful for them to have an agreed statement available to be used at such times).
  - Recommend a single point of contact at the PCT
  - Temporarily suspend all contact whilst seeking legal advice or guidance from the Department of Health or other relevant agencies
  - Imposing and strictly adhering to deadlines to responses etc.
  - Impose a time limit on the conversation (number and duration)
- 5.3 Depending on the outcome the Complaints Manager will write to the complainant with the outcome.
- 5.4 The agreed communication method will be explained to the complainant and thereafter if their behaviour does not improve or they do not adhere to the agreed communication methods they will be deemed as vexatious and or habitual and stage 3 of the policy will be applied.
- 5.5 Vexatious Complainants and their status will be reported in to the relevant Governance Committee in a private session if there is a concern that the individual could be identified.
- 6. Implementing Habitual or Vexatious Contacts through Complainants - Stage 3**
- 6.1 If the complainant does not adhere to Stage 2 and the recommendations made, further action will need to be taken and Stage 3 of the policy implemented. At this stage the complainant will be declared vexatious and or habitual.
- 6.2 The Complaints Manager will produce a further report to present to the appropriate Director or Associate Director, requesting that the contact is declared as habitual or vexatious and the Stage 3 of the policy is applied. Evidence supporting this request will be detailed.
- 6.3 Once a complainant is declared a contact habitual and or vexatious and it is clear they meet any **one** of the above criteria a letter will be sent from appropriate Director or Associate Director. The letter will explain: -
- That the Chief Executive has responded fully to the points raised and has tried to resolve the concern/complaint but there is nothing more to add and continuing contact on the matter will serve no useful purpose
  - the reasons they have been classified as habitual or vexatious
  - advised that this notification will be copied for the information of others already involved with the concern/complaint, e.g. General Practitioners, conciliator.
  - informed that correspondence is at an end relating to the specific complaint and that further letters received will be acknowledged but not answered
  - the complainant has 25 days of receipt of the letter to detail why they are challenging the decision
  - the complainant will be deemed as habitual and or vexatious for a period of six months

- the contact will be advised to seek advice in processing their complaint/concern through other channel's eg: The Independent Complaints Advisory Service (ICAS).
- new issues will be dealt with accordingly unless the unacceptable behaviour is repeated
- a record must be kept for future reference of the reasons why a contact has been classified as habitual or vexatious.
- the Complaints Manager will review the case at five months with the assistance of the appropriate Director or Associate Director to determine if the policy will continue to be applied in the case
- the complainant will be informed of the decision in writing .

## **7. Withdrawing “Habitual or Vexatious” status**

- 7.1 When a contact has been determined as “habitual or vexatious”, there needs to be a mechanism for withdrawing this status at a later date if, for example, the contact subsequently demonstrates a more reasonable approach or if they submit a further concern or complaint for which normal procedures would apply. Staff should previously have used discretion in recommending habitual or vexatious status at the outset and discretion should similarly be used in recommending that this status be withdrawn when appropriate.
- 7.2 Habitual or vexatious status will continue for a period of six months. At five months a review will be undertaken to determine if the policy will continue or cease
- 7.3 The Complaints Manager will review the case and make the recommendations to the appropriate Director or Associate Director. Evidence will be provided to substantiate their recommendation.
- 7.4 The Complaints Manager may recommend that the full 6 month period is extended or recommend that subsequent behaviour justifies an early withdrawal of “habitual or vexatious” status in writing. In these cases discussions should be held with the appropriate Director or Associate Director.
- 7.5 The complainant will be advised of the review in writing and also the outcome.
- 7.6 Subject to approval, in all the above cases removal of habitual or vexatious status will result in normal contact and application of NHS Complaints Procedure being resumed.

## **8. Review Procedure**

- 8.1 This procedure will be reviewed on a bi-annual basis. Any proposed amendments will be submitted to the two Governance Committees.

## **APPENDIX 2 NATIONAL HEALTH SERVICE LITIGATION AUTHORITY GUIDANCE**

### **Apologies and Explanations**



**May 1<sup>st</sup> 2009**

**To: Chief Executives and Finance Directors**

**All NHS Bodies**

Dear Colleagues

**Apologies and Explanations**

I am pleased to report that the Authority's letter of 15 August 2007, on providing apologies and explanations to patients or their relatives, has been updated and endorsed widely by other organisations, so it seemed appropriate to reissue it with those endorsements included. To ensure the widest possible distribution to staff in the NHS and beyond, the co-signatories have all incorporated links to this letter on their own websites. To reduce the possibility of misunderstandings by front-line staff, the original letter has been reworded slightly in places.

**Apologies**

It is both natural and desirable for clinicians who have provided treatment which produces an adverse result, for whatever reason, to sympathise with the patient or the patient's relatives; to express sorrow or regret at the outcome; and to apologise for shortcomings in treatment. It is most important to patients that they or their relatives receive a meaningful apology. We encourage this, and stress that apologies do not constitute an admission of liability. In addition, it is not our policy to dispute any payment, under any scheme, solely on the grounds of such an apology.

**Explanations**

Patients and their relatives increasingly ask for detailed explanations of what led to adverse outcomes. Moreover, they frequently say that they derive some consolation from knowing that lessons have been learned for the future.

In this area, too, the NHSLA is keen to encourage both clinicians and NHS bodies to supply appropriate information whether informally, formally or through mediation. Explanations should not contain admissions of liability. For the avoidance of doubt, the NHSLA will not take a point against any NHS body or any clinician seeking NHS indemnity, on the basis of a factual explanation offered in good faith before litigation is in train. We consider that the provision of such information constitutes good clinical and managerial practice.

To assist in the provision of apologies and explanations, clinicians and NHS bodies should familiarise themselves with the guidance on Being Open, produced by the National Patient Safety Agency and available at [www.npsa.nhs.uk/nrls/alerts-and-directives/notices/disclosure/](http://www.npsa.nhs.uk/nrls/alerts-and-directives/notices/disclosure/)

**Formal Admissions**

In keeping with our financial and case management responsibilities, the NHSLA will make or agree the terms of formal admissions within or before litigation. This circular is intended to encourage scheme members and their employees to offer the earlier, more informal, apologies and explanations so desired by patients and their families.

## **Medical Defence Organisations**

It is critically important to note that all of the above applies to the provision of NHS indemnity to NHS bodies and employees. Should any individual clinicians wish to adopt a particular policy vis a vis apologies and explanations, in a matter which might expose them to an action brought against them as an individual, they should seek the advice of their medical defence organisation and/or professional body.

### **Staff Support**

We should not lose sight of the traumatic effect that adverse outcomes, and their aftermath, might have on NHS staff as well as on patients and their relatives. Some may find compliance with these recommendations cathartic or therapeutic; others will not. None will find compliance easy. Recognising this, employers should do whatever is necessary by way of offering training, support, counselling or formal debriefing.

Yours sincerely

**Stephen Walker CBE**

Chief Executive

We endorse the NHSLA guidance on apologies and explanations.

For many years we have advised our members that, if something goes wrong, patients should receive a prompt, open, sympathetic and above all truthful account of what has happened. Any patient who has had the misfortune to suffer through an error of whatever nature should receive a full explanation and a genuine apology. We encourage members to adopt this approach. There are no legal concerns about taking this course of action: it is quite different from admitting liability.

Dr Michael Saunders

Chief Executive

Medical Defence Union

Dr Stephanie Bown

Director of Policy and Communications

Medical Protection Society

Dr Jim Rodger

Head of Professional Services

Medical and Dental Defence Union of Scotland

Dr Peter Carter

Chief Executive and General Secretary

Royal College of Nursing

Martin Fletcher Chief Executive

National Patient Safety Agency

Dr Hamish Meldrum Chairman of Council

British Medical Association

The GMC fully supports this advice from the NHSLA. If something goes wrong, patients deserve an apology and a full explanation. In *Good Medical Practice* we say 'if a patient under your care has suffered harm or distress, you must act immediately to put matters right, if that is possible. You should offer an apology and explain fully and promptly to the patient what has happened and the likely short-term and long-term effects.'

Finlay Scott

Chief Executive

General Medical Council