

Complaints Policy

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| 1 | SUMMARY | This document sets out ways in which Haringey CCG will encourage feedback and respond to comments, concerns and complaints in respect of the services it provides or commissions. | | | |
| 2 | RESPONSIBLE PERSON: | Brett Vallance, PALS, Complaints and FOI Manager | | | |
| 3 | ACCOUNTABLE DIRECTOR: | Jennie Williams, Director of Nursing and Quality, Haringey and Islington CCGs. | | | |
| 4 | APPLIES TO: | All Departments | | | |
| 5 | GROUPS/ INDIVIDUALS WHO HAVE OVERSEEN THE DEVELOPMENT OF THIS POLICY: | Brett Vallance, PALS, Complaints and FOI Manager Rosie Peregrine-Jones, Assistant Director of Quality, Haringey CCG | | | |
| 6 | GROUPS/INDIVIDUALS WHICH WERE CONSULTED AND HAVE GIVEN APPROVAL: | Quality Committee, 9 May 2018 | | | |
| 7 | EQUALITY IMPACT ANALYSIS COMPLETED: | Policy Screened | 05/02/2015 | Template completed | 05/02/2015 |
| 8 | RATIFYING COMMITTEE(S) & DATE OF FINAL APPROVAL: | Quality Committee, 24 February 2016 1.0 Quality Committee, 9 May 2018, 1.2 | | | |
| 9 | VERSION: | 1.2 | | | |
| 10 | AVAILABLE ON: | Intranet | X | Website | X |
| 11 | RELATED DOCUMENTS: | Incident & Serious Incident Policy, Risk Management Procedure and Guidance, Information Governance Policies (including Freedom of Information) | | | |

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| | | Policy), Safeguarding Policies Continuing Healthcare Policy |
| 12 | DISSEMINATED TO | All CCG employed staff. |
| 13 | DATE OF IMPLEMENTATION: | 9 May 2018 |
| 14 | DATE OF NEXT FORMAL REVIEW: | 9 May 2020 |

DOCUMENT CONTROL

| Date | Version | Action | Amendments |
|------------|---------|--|---|
| 02/02/2016 | 1.0 | Haringey Clinical Commissioning Group Policy produced. | N/A |
| 30/03/2016 | 1.1 | Amendment to the time line | Amendment to the procedure for dealing with Complaints by the PALS, Complaints & FOI Manager approved by SMT on 6 April 2016. |
| 01/05/2018 | 1.2 | Update and amendments made to policy. | Amendment to roles and responsibilities. Amendment to the time line Amendment to internal appeals process |

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1. Introduction

- 1.1 This document sets out ways in which Haringey CCG will encourage feedback and respond to comments, concerns and complaints in respect of the services it provides or commissions.
- 1.2 All complaints will be managed in accordance with the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009.

2. Policy statement

- 2.1 Haringey Clinical Commissioning Group is committed to learning from the complaints it receives to improve the services it provides and commissions.

3. Scope of this policy

- 3.1. The Complaints Policy outlines good practice and identifies the responsibilities of staff in terms of the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009.
- 3.2. This policy sets out the process for handling and considering complaints where Haringey CCG is the 'responsible body'. Where Haringey CCG is not the 'responsible body' the CCG will usually pass the complaint to the responsible body for investigation, provided that the complainant consents. If the complainant does not consent to details of the complaint being passed to the responsible body, they should be advised to make direct contact with the responsible body.
- 3.3. NHS providers are required to have a local complaint management and investigation process. The CCG will monitor themes and trends from complaints about its commissioned services through the provider clinical quality review group (CQRG) meetings. Further information is available in the HCCG Quality Strategy 2014-16).
- 3.4. NHS England is responsible for commissioning primary care services such as GPs, dentists, pharmacists, optical services and some specialised services, and handle complaints if patients and their representatives wish to complain about any of these services.

4. Who this policy applies to: Roles and responsibilities

- 4.1. CCG Chief Officer (CO):
 - Has overall responsibility for complaints handling issues, as stated in Section 4 of the Local Authority Social Services and NHS Complaints (England) Regulations 2009.

- Responsible for signing complaint responses or delegating authority to Directors to sign responses.

4.2. CCG Directors:

- Responsible for the quality of response provided by the service line which a CCG complaint relates to.
- Appoints the investigator and supports the individual during the investigation process.
- Reviews and agrees response letters prior to CO sign off.
- Responsible for signing complaint responses when they are delegated authority to do this by the Chief Officer.

4.3. Assistant Director of Quality:

- Responsible for the CCG's Insight and Learning programme and ensuring that the CCG is compliant with Local Authority Social Services and National Health Service Complaints (England) Regulations 2009.
- Supports the PALS, Complaints and FOI Manager in the complaints process.
- Reviews draft responses before they are sent to the relevant CCG director.

4.4. Head of Communications and Engagement

- Reviews draft responses when complaints have a media interest or are a public affairs issue.

4.5. PALS, Complaints and FOI Manager

- Responsible for the operational management of the complaints procedure.
- Ensures the CCG has a robust system for logging, maintaining and following up complaints.
- Supports managers with complaints investigation and monitor the progress of investigations to ensure that responses are made within the agreed timescales in accordance with CCG Policies and Local Authority Social Services and National Health Service Complaints (England) Regulations 2009.
- Ensures final draft responses received from investigation officers are brought to the attention of the responsible Director for review and CO for sign off.
- Provides complaints support, advice and guidance to the CCG.
- Maintains an up-to-date database of all complaints and provide quarterly and annual complaints data for the CCG.
- Monitors and analyses patient and public complaint information for themes and trends and ensure learning from complaints is reflected in quarterly and annual reports for the CCG.

- Provides information to the Parliamentary and Health Service Ombudsman and relevant NHS regulatory bodies, ensuring actions arising from investigations are monitored, delivered and reported to the relevant committee.
- Provides the relevant committee with regular reports about the number and type of complaints made about Haringey CCG or any other matters reasonably connected with the exercise of their functions.
- Co-ordinates any complaints relating to the CCG and, where appropriate, co-ordinates joint complaints responses where there is a commissioning element within the complaint, in doing so providing a single integrated complaint response. In such cases liaise with other complaints manager/s and agree who will take the lead in co-ordinating investigations and sending out the final response.

4.6. Haringey CCG managers as investigating officers (IOs):

- Responsible for ensuring that this policy and the CCG's complaints process is appropriately implemented within their areas.
- Will deal with minor complaints and problems immediately and informally
- Will ensure all directly received formal complaints about their area of responsibility are reported to PALS, Complaints and FOI Manager
- Will ensure that any member of staff who is the subject of a complaint relating to their area of responsibility, and any subsequent investigation, is informed and offered appropriate, timely support including, where appropriate, referral to Occupational Health Services.
- Ensures that the investigation is completed within the agreed timescale and sent to the PALS, Complaints and FOI Manager for quality checking and record keeping. Managers are responsible for writing draft complaint responses, ensuring that their responses are in plain English and that they appropriately address any concerns raised. They are also responsible for attending meetings with the complainant as required and facilitated by the PALS, Complaints and FOI Manager
- Responsible for implementing any action plan arising from a complaint relating to their area of responsibility and for providing a progress report on the action plan when requested.
- Responsible for delivering and reporting on any recommendations arising from an Ombudsman's report relating to their area of responsibility and reporting progress to the PALS, Complaints and FOI Manager.

4.7. All Haringey CCG staff:

- Responsible for co-operating with the implementation of this policy and ensuring that any concern raised is dealt with appropriately.
- Responsible for ensuring a prompt and appropriate response to expressions of dissatisfaction about a policy, service or commissioning decision by Haringey CCG.

5. Definitions used in this policy

- 5.1. The NHS Executive definition of a complaint is '*An expression of dissatisfaction that requires a response*'. This is a wide definition and it is not intended that every minor concern should warrant a full-scale complaints investigation. The spirit of the complaints procedure is that front line staff are empowered to resolve minor comments or problems immediately and informally or to offer the assistance of the PALS, Complaints and FOI Manager. The CCG will therefore seek to distinguish between requests for assistance in resolving a perceived problem and an actual complaint.
- 5.2. The decision whether the issue is a concern or complaint will usually be determined by the person raising the issue. The complaint must relate to someone who receives or has received services from the responsible body or who is affected, or likely to be affected, by the action, omission or decision of the responsible body which is the subject of the complaint.
- 5.3. If the person expressing a concern does not wish to have it labelled as a complaint it will still be dealt with under this policy unless the individual specifically requests otherwise or where it is not possible to do. A concern is usually an issue that can be resolved informally and doesn't require a formal investigation.
- 5.4. Feedback can also be in the form of a compliment. A compliment is an expression of gratitude about quality of services provided.

6. Exceptions

- 6.1. Complaints not covered by this policy include:
 - Matters which are not considered a complaint as outlined in 'The Local Authority Social Services & National Health Services Complaints Regulations 2009
 - Appeals relating to Continuing Health Care (CHC) / Individual Funding Request (IFR). The CHC/IFR team deals with appeals in their area. Further details can be found in the Continuing Healthcare & Individual Funding Request Policy.
 - Complaints or concerns raised verbally which are resolved to the satisfaction of the person.
 - Primary Care complaints (Doctor (GP), Dentist, Pharmacist or Optician) – Patients may choose whether to contact the service which has delivered the care, or NHSE, who commission Primary Care.
 - Local hospital or mental healthcare organisations complaints as they are required to investigate their own complaints under NHS statutory complaints regulations
 - Complaints which have been previously investigated

- Staff grievances (staff members should use whistle blowing policies or other processes to raise concerns about services)
- Contractual issues between services and commissioners and complaints by health organisations or local authorities against other health organisations or local authorities which are not on behalf of a patient
- Any issue which will prejudice legal or any other formal proceedings (such as disciplinary or safeguarding concerns)
- Complaints about Freedom of Information Requests and Access to Information Requests (for complaints about Freedom of Information Requests see the Freedom of Information Policy).
- Complaints that are being/have been investigated by the Parliamentary and Health Service Ombudsman.
- Where an investigation identifies information that would indicate a need to undertake a disciplinary investigation; that issue may be dealt with separately to the complaint investigation itself. Disciplinary action should not prevent the CCG investigating other issues raised by the complainant if the investigation does not prejudice the disciplinary process. If disciplinary action is taken as a consequence of a complaint the CCG will need to take a decision on what to tell the complainant. The CCG will owe a duty of care to its staff member but also a duty to be open and honest with the complainant. When the Human Resources process has completed the CCG will make a decision about how to feed back to the complainant without breaking confidentiality of any disciplinary process. The HR department should be consulted for more definitive advice on each individual case.

7. Procedure for dealing with complaints by the PALS, Complaints & FOI Manager

| Task | Working Days |
|--|--------------|
| 1. Complaint received via complaints@HaringeyCCG.nhs.uk or via letter to the CCG office or via telephone. | Day 0 |
| 2. Complaint is logged onto HCCG complaints database by PALS, Complaints & FOI Manager | Day 1 -3 |
| 3. Complaint acknowledged by PALS, Complaints & FOI Manager | Day 1- 3 |
| 4. Complaint sent from PALS, Complaints & FOI Manager to relevant responsible manager who will be appointed as Investigation Officer and cc: responsible Director and the Director of Nursing and Quality and Assistant Director of Quality. If the responsible manager is unknown the responsible Director will appoint an Investigation Officer. | Day 1- 3 |
| 5. Investigation Officer to investigate the concerns raised and compile a draft response in the form of a letter from the Director or Chief Officer. | Day 3 - 8 |

| Task | Working Days |
|---|--------------|
| 6. Reminder from PALS, Complaints & FOI Manager sent to the Investigation Officer 2 working days before their 5 working day deadline. | Day 6 |
| 7. Investigation Officer to provide draft response to the responsible Director and cc: PALS, Complaints and FOI Manager. If response not received within 8 working day deadline, request to be chased by the PALS, Complaints & FOI Manager every two days and escalated to relevant Director. | Day 8-10 |
| 8. The response is quality checked by PALS, Complaints & FOI Manager and any further / revised information provided. The response will be looked at from a reader perspective, ensuring it is clear, written in plain English and responds to the points raised in the complaint. | Day 8-10 |
| 9. PALS, Complaints & FOI Manager sends draft response to Assistant Director of Quality for approval and review. | Day 10 - 12 |
| 10. Assistant Director of Quality approves the draft response and returns to the PALS, Complaints & FOI Manager and cc: responsible Director and Executive Nurse and Director of Quality. | Day 12-15 |
| 11. PALS, Complaints & FOI Manager liaises with responsible the Director or Chief Officer/or Chair to ensure that the complaint is signed before the 25 working day deadline. | Day 16-21 |
| 12. Once a response is finalised with appropriate sign-off by Director or Chief Officer/or Chair, it is sent to the complainant by the PALS, Complaints and FOI Manager. | Day 21 - 25 |
| 13. Complaints database is updated on the CCG shared drive. | Day 25 |

8. Timescales

- 8.1. All complaints will be acknowledged within **3 working days** of its receipt by the CCG.
- 8.2. The response should be provided within **25 working days** from receipt of complaint by the CCG or the timeframe or complaint response agreed with the complainant
- 8.3. Any complaints which may take longer than this timeframe then an agreed timeframe needs to be identified in conjunction with the complainant. These may be complaints of a serious nature or where a number of organisations are involved in the investigation of a complaint.

9. How complaints can be received

- 9.1. Complaints may be received verbally, (over the telephone or during a face-to-face meeting), in writing, by fax or email. Where a complaint is not written then a written record must be made of the complaint and a copy of the written record provided to the complainant.

10. Who may make a complaint? Consent issues for patient representatives

- 10.1.** A complaint can be made by any person who has received or is receiving NHS treatment or services, or any person who has been affected by an action or decision of the CCG.
- 10.2.** A complaint can also be made by a representative acting on another person's behalf, if that person:
- Has requested the representative to act on their behalf
 - Is a child
 - Is unable to make the complaint themselves because of physical incapacity or lack of capacity within the meaning of the Mental Capacity Act 2005
 - Has died
- 10.3.** Where a patient is able to give informed consent, the written consent of the patient must be obtained in order for the complaint to be pursued.
- 10.4.** In the case of a child (under 16), a parent or guardian may make the complaint. However in some cases it may be appropriate to obtain consent from a child if that child is considered to be capable of understanding the situation and can give informed consent. The decision as to whether he/she is capable will need to be assessed on an individual basis and in line with Fraser Guidelines.
- 10.5.** Children who received NHS treatment have the right to make a complaint in their own right and have the right to use the NHS complaints process. If the patient is a minor and unable to give consent, the complaint should be discussed with the CCG's Caldicott Guardian.
- 10.6.** If the patient has died then the person making the complaint must have had sufficient interest in the person's welfare to make the complaint (in legal terms this is usually defined as someone having a legal right to have a claim in the deceased estate).
- 10.7.** If there are concerns about whether the patient has capacity to consent (i.e. if the patient is too ill or otherwise incapacitated) this matter should be discussed with the organisation's Caldicott Guardian and guidance taken from the Mental Capacity Act 2005
- 10.8.** If the patient has given lasting power of attorney for their welfare to another person, then that person has the same rights as the patient.
- 10.9.** If the service believes that the person making the complaint does not have sufficient interest in the person's welfare, or is not suitable to act as a representative, then the person will be notified in writing stating the reasons for this decision. An example of the above could be where the case relates to Protection of a Vulnerable Adult.
- 10.10.** If a Member of Parliament makes a complaint on behalf of a constituent, it will be considered that the MP has obtained consent prior to contacting Haringey CCG (In

line with requirements of the Data Protection Act 1998 processing of Sensitive Personal Data – Elective Representatives Order 2002).

10.11. There may be circumstances where patient consent is not required to pass on information, for example:

- When not revealing such information would be breaking the law.
- Where there is a risk of harm to an individual or themselves.
- Information is requested by H.M. Coroner, a court or a tribunal.
- There are reasonable grounds to suspect abuse of a child or vulnerable adult.
- The Caldicott Guardian will be consulted in the handling of these issues.

11. How to make a complaint, comment or compliment

11.1. Haringey CCG and the Services it commissions

- Complaints, comments or compliments relating to a CCG service (for example Continuing Healthcare), the way a CCG service has been commissioned or a commissioning decision made by the CCG should be made directly to the PALS, Complaints & FOI Manager on on 020 3688 2724 or via HARCCG.Complaints@nhs.net.

11.2. Hospital, Community and Mental Services commissioned by Haringey CCG.

- Complaints, comments or compliment about a hospital, mental health, community or other NHS service commissioned by Haringey CCG should be raised directly with the organisation.
- The responsibility for investigating any issue arising from a complaint remains with the organisation that provided the service to the complainant.
- If the complainant does not receive a response from the provider organisation, they can contact Haringey CCG who can liaise with the provider organisation to ensure the complaint is investigated

11.3. Primary Care Complaints (Doctor (GP), Dentist, Pharmacist or Optician)

- Complaints, comments or compliments about a doctor (GP), dentist, pharmacy or optician. Patients may choose whether they complain to the service provider (GP, dentist, pharmacist or optician) or to NHS England who is responsible for purchasing these primary care services. Complaints will often be resolved more quickly if patients contact the provider directly, however, if a patient does not feel comfortable approaching the provider they should contact NHS England at:

NHS England
P.O Box 16738
Redditch, B97 9PT
Email: england.contactus@nhs.net
Telephone: 0300 311 22 33

11.4. Parliamentary and Health Service Ombudsman

- If the complainant is unhappy with the outcome of their complaint they can refer the matter to the Parliamentary and Health Service Ombudsman, who is independent of the NHS and government:

The Parliamentary and Health Service Ombudsman
Millbank Tower
Millbank
London
SW1P 4QP
Tel: 0345 015 4033

11.5. Internal appeals process

- If the complainant is unhappy with the outcome of their complaint they can write again to the CCG and the responsible Director who will consider whether it is appropriate to investigate the complaint further.

If the CCG decides that it is not appropriate to investigate the complaint further when a complainant is unhappy with the outcome of their complaint, the CCG will refer the complainant to the Parliamentary and Health Service Ombudsman.

12. Independent Complaints Advocacy Service

12.1. Advocacy provides practical support and information to people who want to complain about an NHS service. This might mean giving information so that patients can pursue a complaint by themselves or giving the support of an experienced advocate who can help patients make their complaint. NHS Complaints Advocacy Service is independent of the NHS, confidential, and free.

12.2. VoiceAbility provides advocacy assistance to help people make their complaint. Not everyone needs the support of an Advocate to make their complaint. For example, some people just want to know how the complaint system works or know who they should send a letter of complaint to.

12.3. Patients can get in touch with VoiceAbility if they want:

- More information.

- A self-help information pack to help you make an NHS complaint, or help to compile the issues they wish to raise in their complaints

13. Timescales for making a complaint

13.1. Any complaint or expression of concern should be notified to the Clinical Commissioning Group within 12 months of the events it concerns. The later a complaint or expression of concern is notified to Haringey CCG the more difficult it is for Haringey CCG to investigate it and provide an adequate response. The CCG has the discretion to consider a complaint or expression of concern after this time limit in extenuating circumstances. An example of this may be where a complainant has been too unwell or unaware of the issues of complaint (e.g. something has been written in the records which the person is only just aware of)

14. Complaints – specific issues

14.1. Complaints about primary care and provider services directly received by the CCG – Consent issues

- Complaints received about primary care and provider services directly received by the CCG will be directed to the relevant provider or commissioner of that service when appropriate consent is obtained.
- No complaint will be forwarded to another organisation without consent of the person making the complaint and/or a patient if it was made by someone other than the patient.

14.2. Joint complaints with other organisations

- There is a duty within the complaints regulations for co-operation between NHS and Social Care bodies, wherever possible the person making the complaint should receive a joint response. However if no consent for the sharing of information is forthcoming then the organisations are required to respond independently.

14.3. Safeguarding children and protection of vulnerable adults

- If a complaint is received which raises child protection issues or concerns the protection of vulnerable adults the responsibility for highlighting this through safeguarding processes lies with the person who has received the concern (reference to safeguarding processes is at the end of this document). If there is any doubt about how an issue should be handled then the person should contact the CCG Safeguarding/Caldicott lead and speak to their manager. If there is any immediate risk of harm then advice should be sought urgently. The safety of the child and vulnerable adult must always be paramount.

14.4. Complaint Records & confidentiality

- Complaints will be handled in strict confidence at all times. Care will be taken that information is only disclosed to those who have a demonstrable need to have access to it. Information will not be disclosed to patients or complainants unless the person who has provided the information has given written consent to disclosure.
- Complaint records should be stored in accordance with the 'Records Management NHS Code of Practice – Part 1 & 2

14.5. Complaints and Litigation

- The PALS, Complaints and FOI Manager will refer any relevant claims issues to the Head of Quality to forewarn the CCG claims process where there is an explicitly stated intention to take legal action.

14.6. Freedom of Information (“FOI”) requests and the Media

- Some letters of complaint may include the request for information (whether explicitly requested or not) under the Freedom of Information Act. All FOI requests will be managed according to the CCG’s Freedom of Information process.
- Where a complainant indicates they will be contacting the media as a result of their complaint/issue or where the PALS, Complaints and FOI Manager feels there is a potential significant reputational risk relating to the complaint, the CCG Communications Manager will be informed of the complaint/issue.

14.7. Escalation

- If the issues raised in a complaint give rise to significant concern or serious incident, the Head of Quality should be informed immediately.

15. Learning

15.1. Every opportunity will be taken by Haringey CCG to learn from complaints and to use the insight and experience of complainants to resolve the complaint or issue and ensure it does not recur.

15.2. Where actions have been identified following the investigation of a complaint, the Investigation Officer will prepare a robust action plan with a timeframe for implementation.

15.3. The PALS, Complaints and FOI Manager will report on learning from complaints investigation to ensure actions have been appropriately implemented.

15.4. Learning from complaints will be discussed at the CCG’s Insight and Learning Sub-Group and Quality Committee.

16. Reporting

- 16.1.** Reports will be produced quarterly by the PALS, Complaints and FOI Manager for consideration by the CCG's Insight and Learning Sub-Group and Quality Committee. Reports will identify the number of complaints received, issues raised and lessons learnt together with highlighting any emerging themes and trends.
- 16.2.** The reporting of complaints and complaints outcome should demonstrate how complaints have made a contribution to ensuring that people have a positive experience of care.
- 16.3.** An annual report on complaints will also be produced as part of the CCGs Quality Programme.

17. Unusual Complaints

- 17.1.** The CCG follows the "Unusual Complaints Procedure" which has been produced by the National Complaints Managers Forum. An annual report on complaints will also be produced as part of the CCGs Quality Programme.
- 17.2.** The type of complaints that will be applied to the "Unusual Complaints Procedure" and how the CCG will handle these are in Appendix A: "Unusual Complaints Procedure"
- 17.3.** The "Unusual Complaints Procedure" includes the handling of complaints where the complainant is abusive or unreasonably persistent.
- 17.4.** There are a number of types of complaint handling that have some distinct differences to the way in which the majority of complaints are handled. These complaints result in staff working outside or following a slightly different process to the normal way in which complaints are investigated and reported to the complainant.
- 17.5.** The "Unusual Complaints procedure" is designed to encompass all those unusual circumstances and indicate a safe and uniformed process for handling them.

18. Equality and Diversity

- 18.1.** Haringey CCG is committed to ensuring that it treats all patients and staff fairly, equitably and reasonably and that it does not discriminate against individuals or groups on the basis of their ethnic origin, physical or mental abilities, gender, age, religious beliefs or sexual orientation, marriage and civil partnership and pregnancy and maternity.

18.2. The CCG will ensure that the Complaints Policy is equally accessible to all communities and will monitor equality data to ensure better compliance and performance. The CCG recognises the needs of its diverse population and therefore will put in place measures to address both the linguistic and the access needs of all groups.

19. Training

19.1. Training on complaints handling and investigation is available on request to all staff from the CCG's Quality Team.

20. Dissemination and implementation

20.1. The policy will be made available to CCG employed staff via the CCG intranet site and included in the CCG induction checklist. Members of the public will be able to access the policy via the CCG website.

21. Monitoring

21.1. The PALS, Complaints and FOI Manager will record all complaints.

21.2. The CCG's Insight and Learning Sub-Group will require assurance annually on compliance with the policy as part of its Insight and Learning programme.

22. Review

22.1. This policy will be formally reviewed every two years in accordance with the following:

- Legislative or case law changes;
- Changes or release of good practice or statutory guidance;
- Identified deficiencies, risks or following significant incidents reported;
- Changes to organisational infrastructure.

23. References

- Local Authority Social Services and National Health Services Complaints (England) Regulations 2009
- The Principles of Good Complaint Handling (Parliamentary and Health Service Ombudsman) 2008
- Listening, Improving, Responding – a Guide to Better Patient Care (Department of Health 2009)
- NHS Constitution (Department of Health 2009 and 2013)
- Guide to good handling of complaints for CCGs (NHS England 2013)

- NHS Outcomes Framework: Domain 4 – Ensuring that people have a positive experience of care
- Independent review by the Rt. Hon. Ann Clwyd, MP for Cynon Valley, and Professor Tricia Hart, Chief Executive of South Tees Hospitals NHS Foundation Trust.
- Mental Health Act 2005
- Enfield CCG Complaints Policy

Appendix A

Unusual Complaints Procedure

Produced by the “National NHS Complaint Managers Forum” October 2015

Background

The CCG follows the “Unusual Complaints Procedure” which has been produced by the “National Complaints Managers Forum”. The “National Complaints Managers Forum” is a national complaints group whose membership includes NHS Trusts, Foundation Trusts, CCGs, CSU’s, NHS England, Department of Health and the Parliamentary and Health Service Ombudsman.

The National Complaint Managers Forum is in place to share learning and guidance for NHS Organisations to ensure they are following best practice when handling their complaints. They produced the “Unusual Complaints Procedure” following concerns from members having “vexatious complainants” in their policies. The term “vexatious” should not be used as recommended after a Trust was taken to court where the judge said that using such terms label complainants and neither helps the process nor assists in a good image of complaint handling. It also alienates people against organisations and makes them less likely to complain. In order to avoid this happening the “National Complaints Managers Forum” produced this document to encourage best practice and provide guidance on handling unusual complaints.

The “Unusual Complaints Procedure” includes the handling of complaints where the complainant is abusive or unreasonably persistent.

Introduction

There are a number of types of complaint handling that have some distinct differences to the way in which the majority of complaints are handled. These complaints result in staff working outside or following a slightly different process to the normal way in which complaints are investigated and reported to the complainant. This procedure is designed to encompass all those unusual circumstances and indicate a safe and uniformed process for handling them.

It is important that complainants, themselves, do not feel that organisations are placing barriers in the way of the complaint handling or the use of terms are not understood by complainants to put them at any disadvantage in regards to making their complaint. In some instances below the measures included are only to be used as a last resort when all normal methods have failed.

Types of unusual complaints

Cross internal UK borders

With the continued increase in mobility of the public more and more examples of people travelling and needing to use NHS in England. This does not preclude those patients and their representatives from lodging a complaint with the English organisation about their care provided under the NHS.

Such complaint should be handled as normal NHS complaints but with consideration to the need to gain any consent requirements. There are no extra or different requirements in handling this type of complaint.

Cross borders internationally (coming in to the UK)

England is an increasingly visited country for people from abroad. New rules governing charging for treatment are being implemented across the NHS but patients from abroad who have received NHS treatment have the right to complaint freely and have their complaint answered. The NHS Complaints Regulations still apply and complaints should be investigated and responded to in the same way as a normal complaint falling under those regulations.

However, it must be realised that contact with the complainant may be more difficult and meetings would probably be impossible. As a result of this and especially in more complex complaints time frames may well be elongated.

Complaint when the complainant has already told you they are seeking or may seek legal remedy

In cases of complainants making complaints where the person has indicated that they may or have already contacted a solicitor, or has indicated they wish to take the organisation to court to seek either serious monetary redress, it is important that such a complaint carries on through the process without any hindrance. The 2009 Regulations withdrew the need to cease handling such legal complaints and to only treat the issues as a claim. These Regulations state that complaints of this nature need to be handled in accordance with the Regulations alongside any legal claims or action that is proceeding elsewhere. The only differences are the following:

- a. Where the Police are involved in any aspect of the complaint investigation, NHS handling would cease if the Police investigators believe that to continue the NHS organisations enquiry would endanger or hinder a criminal investigation and/or pervert the cause of justice. The complaint can then be recommenced when the Police indicate it is safe to proceed.
- b. When it is found that one or more elements of the complaint that are being complained about or that have arisen out of the investigation are upheld and an apology would have to be issued, it may be prudent to check the wording of the response with the NHSLA. This is to inform the NHSLA that there is a potential claim being processed as a complaint and also to get their sanction on the wording used for any apology and explanation. Of course if Doctor's or Consultants are involved in the elements of the complaint then they might want to consult their insurance service for advice also.

Abusive

People in the complaints process can sometimes start to be abusive to those dealing with the complaint. If this should occur it is important that the organisations policy on abusive patients is applied. **(Haringey CCG will apply as detailed in Haringey CCG's Serious Incident Policy)** It is also important that this is recorded and commenced immediately. Abuse is something that can be repeated and can escalate into violence and therefore it is important to have a clear record and that immediate action is taken.

All NHS organisations should have in place a policy dealing with abuse and violence to staff and this is the key resource to follow in this circumstance. Abuse to staff must not be side-lined or allowed to continue and managers must ensure that any staff abused are supported throughout their experience and afterwards.

A basic guide is that a person being abusive to staff should be warned of their behaviour the first time this happens and this recorded in the local process. Any further abuse must then activate a mechanism for ceasing the interaction with that person through a phrase

informing the person they had been warned about their behaviour and as a result of them not modifying their behaviour interaction was being terminated. Such actions must immediately be reported on the appropriate system.

Where the complaint process is still underway this needs to continue as far as it can without encountering the person who created the abuse. If this is not possible the process should be halted until a more measured approach can be obtained. Records of this decision should be recorded along with reasons and action being taken. When the person gives assurance of good behaviour then the process can be re-started. If such an assurance is not forthcoming and the organisation is left in a position where it cannot therefore finalise a full and open response, the complainant must be informed in writing of the position that the complaint can no longer be fully investigated. If there are elements that have been finalised these can be reported on appropriately.

Violence

In the case where actual violence is used all interaction with that person should immediately be ceased and staff must look to their own and other staff / patients safety first and foremost. The Police should be informed and requested to attend. Again the local organisation must have a policy and process for handling violence to staff and this needs to be followed immediately.

Any complaint handling already underway can be continued as far as possible. See provision under 'Abuse' for instances where investigation is hampered by not having access to the person perpetrating the violence/abuse.

Repeat complaints with same elements

When a complainant makes a complaint which has already undergone investigation with a formal response and has not identified anything different from the original finalised complaint, contact the complainant asking them to highlight either the individual elements they believe has not been answered or any aspect they do not understand. If necessary, provide the complainant with any extra explanation or information that deals with any issues they highlight. If they fail to respond or fail to highlight any deficiency in the existing element responses, then within a reasonable time, write again to them informing them that you have tried to ascertain any issues they have and having failed to do this. Inform them that while they still have the right to take their complaint to the Ombudsman, you now consider the matter closed and will not enter into any further communications about these matters. If they highlight an area that you believe was not in the original complaint and is new to your organisation, then inform them this will be treated as a new complaint and start a new complaints process for this matter.

If they keep highlighting elements saying they do not understand it is suggested you put each element in a plain and simple language as possible and send them this new response. Point out to them the conciliation service if they feel they still do not understand what you are telling them or suggest a meeting to go over the element/elements. Reiterate

that you have attempted to simplify the answer and that you cannot do anything further to assist their understanding suggesting they either use the conciliation service or the Ombudsman. End by saying you now consider the matter closed and will not enter into any further communications about those matters.

Failure to accept findings and not go to PHSO

If a complainant disputes either the facts the investigation found or the results in the response and cannot adequately provide credible evidence that counters the investigations findings, the person should be sent a letter explaining that you have fully investigated the complaint and are unable to find any evidence in upholding any of the elements that are not upheld. Tell them again that they have the right to go to the Ombudsman but that as far as your organisation is concerned, the issues will no longer be discussed and that any further approach from them will be sent a receipt letter but will not be acted upon.

Constantly bringing new elements to the same complaint

When a complainant brings forward new elements to a complaint that has already been responded to any new elements of the complaint should be dealt with as a completely new complaint. However if this has happened more than once then the complainant must be asked, on the third time, to think about the complaint before you start to investigate the new element/s so that they are sure there are no further elements to be brought into the investigation. Assure them that if they bring any further elements within the next (seven) days they will all be investigated but if any further elements that are brought forward after this date (agree the date with the complainant) they will not be investigated as it is too disruptive to keep adding to the same complaint in such a staggered way. Keep in mind the reason may be of an individual having genuine issues but memory or educational difficulties and it is therefore important to ensure the process is fair and the complainant's interests have been taken into consideration.

If a complainant brings these elements forward during the investigation the Complaint Manager with the Investigator must decide if they add these to the existing complaint or deal with it as a fresh complaint. If they deal with the new elements as part of the existing complaint they should review the period of time they agreed with the complainant and discuss with the complainant any extension needed to conduct an efficient investigation.

Regularly making totally new complaints

Complainants have a right to make complaints. There is no cut off period or grace period in the regulations for making multiple complaints and therefore there may be occasions where people make complaints regularly and in some cases overlapping complaints already under investigation.

The first issue to be considered in these circumstances is, are the complaints genuine? If they are then, of course, they should be dealt with as normal complaints. However if you find that many of the complaints are unfounded and this constitutes the majority of the instances then you have to take a decision as to whether so other form of communications with the complainant is needed. Attempts should first be made to meet with the complainant to see why they continue to make complaints and what is their motivation particularly as the majority of their complaints seem to be unfounded. A mediator might be a useful resource at such a meeting. It is possible that they might be given a contact within the organisation to address any issues they have in the future.

If they refuse to meet with the organisation or refuse to stop sending in regular complaints, a two part process should be introduced and this should be explained to them in a letter. The first stage of this is that a letter should be sent to them explaining that the majority of the complaints they are making are unfounded and giving them some idea of the costs involved that they are making on the organisation. Explain to them that such a cost cannot be tolerated as a long term issue and therefore you are giving notice that complaints in future will be put through a process of review. Complaints where a senior manager believes there to be some real substance to the matters will be progressed through the complaint procedure and those where this is not the case will just be receipted via a letter and then filed.

If the recurrence of unfounded complaints does not reduce over a three month period a second letter on this issue should be sent to the complainant saying that all complaints from that source would in future just be receipted and filed with no further responses sent out to the complainant.

Keep in mind the reason may be of an individual having genuine issues but memory or educational difficulties and it is therefore important to ensure the process is fair and the complainant's interests have been taken into consideration.

From Elected Representatives

Elected representative should be treated as anyone else. No preference should be given to them as this would be considered preferential treatment. However, under legislation, elected representatives do not need consent when they are representing their constituents. If you are unsure if the person is an elected position please ask for clarification – Some Parish Councillors are elected and some are volunteers for instance. Also check to ensure the patient is their constituent as the complainant maybe but the patient may live in a different constituency. In all other matter treat the elected person as the complainant in relation to response, finding out further information etc.

Complaint involving an element of treatment abroad

NHS Units are beginning to use clinical operative facilities in European countries to ease the burden on their own resources and to help deal with waiting lists. If a patient returning to the UK after being sent abroad on the NHS complains about any element of their treatment in that contracted centre then such issues must be dealt with under the Regulations. Again it will be difficult to conduct a timely investigation but the NHS body contracting the overseas organisation should have ensured that the agreement with the other company included a clause about complaints and conducting an efficient and open investigation.

The Complaints Manager in the UK should contact the named person heading up the contract liaison in their own organisation and the person in the company abroad that is to deal with a complaint. Together they should arrange for that investigation to be held and the results to be feed back to the UK Complaints Manager.

Complaint where the patient received private treatment

If a patient receives private treatment but not under the NHS then the Complaints regulations do not apply and there should be a way in which the patient can complain about the organisation answer complaints within their contract with the patient. The patient should be referred to this.

If the patient has received private treatment paid for by the NHS then there should be a mechanism for the patient to complain to the NHS organisation and for that body to liaise with the private company on the investigation and response. In this case the NHS Regulations do apply.

Complainants who through their beliefs have an unusual need

A complainant who through their beliefs has either refused treatment or requested some aspect in their treatment that is not normally provided must have their beliefs respected. The patient must be allowed up to a point to have the NHS organisation respect their alternative views and do what they can to facilitate their requirements. If these requirements become an over burden on the NHS body or seem to be not related to a wider religion or creed's requirement then advice needs to be taken on how to reach a common understanding and a mediator may help in these circumstances.

Complainants who have medical issues

When a complaint is made by a patient who has a medical condition that impedes their ability to make the complaint or understand the findings, help should be provided to assist the patient. Advocacy services should be recommended or the involvement of family or a charity in assisting the patient. Efforts should be made to assist the patient to make their complaint and understand the outcomes in whatever best suits that patient and their wishes.

A complaint that is made outside the 12 month period given in the Regulations for reason of a medical complaint delaying the filing of the complaint must be dealt with under the regulation as long as an efficient and thorough investigation can be held.

Those affected by their communications skills – language

In cases where a complainant is making a complaint and it is clear that their first language is not English, there needs to be an assessment as to their ability to understand what they are saying in English and their ability to understand. They need to be asked if they are willing and able to converse in English or if they would prefer to have an interpreter to assist through the process. In most cases where an interpreter is engaged it is often useful to also have a conciliator present from the local service. Ensure at all stages in the process that the complainant understands where in the process they are and what you have been telling them. Keep checking to see if they have any further issues or comments to make.

Those affected by their communications skills – disability

In cases where a disabled person has made a complaint, give the complainant an opportunity to indicate any needs they have to enable them to understand the process and where you are in the process. In relation to meetings ensure that you take all measures to ensure they have all they need to be able to access the place where the meeting is being held and if they require any facilities at the venue.

Those affected by their communications skills – mental health

In cases when a complainant with known mental health issues makes a complaint, it is useful to engage an independent mental health conciliator. This could be from within a mental health or acute Trust if they employ such a skilled person or from an outside organisation.

Those affected by their communications skills – understanding

It is important that all complainants fully understand the process that a complaint will go through and that they know where they are in that process as well as the final outcome. It is therefore important to ensure the complainant in the process gets help to make and progress their complaint. The local conciliation service should be able to assist them in this. Offer on their behalf to contact and introduce them to the service or local representative.

Complainants who want disciplinary action against a member of staff

The complaints process is entirely separate from the disciplinary process. The complaints process is listed as a no blame procedure, which is a misnomer. Of course, if a member of staff was implicated in some serious allegations which were found to be true during the investigation then a Trust would have to take a view as to if it intended to take disciplinary

action against that member. However, complaints are meant to be a learning process and disciplinary action is only taken in the most serious cases. This needs to be explained to the complainant at the outset of the complaint and is another good reason for finding out what outcome the complainant is looking for.

If disciplinary action is taken as a consequence of a complaint the Trust will need to take a decision on what to tell the complainant. The Trust will owe a duty of care to its staff member but also a duty to be open and honest with the complainant. It is entirely appropriate to inform the complainant that a staff member was re-trained or even was disciplined but the Trust would have to decide how much information is given. The HR department should be consulted for more definitive advice.

Complainants who demand to know the names of staff and other personal details

As with the last instance, the individual Trust needs to decide on the release of names of staff and any other personal details about those members. Some Trusts give out names of staff under the duty of openness and now the Duty of Candour. However there have been instances of NHS Staff being stalked and even assaulted by patients and complainants. Of course if the complainant knows the name of the person or persons involved in their complaint which is quite common it is permissible to use those names in the response and process. The individual Trust will need to take the view on release of names not known to the complainant.

As far as more detailed personal information is concerned it would be permissible to release qualifications of the staff member concerned but certainly not any details of addresses or contact details outside the Trust.

If the complainant says they wish to make a complaint to a professional body and therefore requires the name of the person, the complainant can be informed to make their complaint and refer the professional body to the Trust's HR Department for more details of the staff member. This can be facilitating by telling the complainant to pass the complaint reference number to the professional body so they can quote it in their approach to the HR Department.

When a complainant put limits on who can be interviewed about the complaint

Very occasionally a complainant may want a complaint to be made and investigated but they will not want a member of staff whom they might know to be interviewed in the investigative process. If this is the case the complainant must be informed that without the ability to collect full information in the investigative process then it may not always be possible to reach a definitive answer to their complaint. It will, of course, depend on how central the members of staff being precluded is to the complaint. However, that warning should be issued.

The investigation can go ahead and a response written which based on fact may need to leave elements of the complaint that cannot be fully answered. If this is the case ensure

this is explained in the letter and placed against the exclusion of the relevant staff members evidence.

Complainants who are under 18

When a complaint is received from a person who is under 18 there needs to be an assessment as to the person's understanding. A health professional needs to contact the person and discuss their understanding of the issues within the complaint and decide if they believe the complainant to be fully conversant with the complaint issues and what they are asking for. If they believe that they have full cognisance of the matters then the complaint should go ahead and they should be treated like any other complainant.

If it is decided that they do not fully understand the complaint or what will happen during the complaint process then they should be asking the complainant to make their complaint through their parent or guardian. If the complainant decides not to do this then the investigation should continue but no report should be made unless the parent or guardian comes back with their contact details.

Also view the guidance in the Social Care Complaints Regulations as a possible way forward on this point. Distributed with the September – October Monthly Update.

Complainants who contact the organisation by phoning and writing to a number of people in the organisation (Scatter gun approach).

As soon as this type of approach is recognised it needs to be carefully monitored and records need to be kept. As soon as sufficient records are available a letter should be sent to the complainant telling them of the difficulty the organisation is experiencing with this type of communication and that in future the complainant should only deal with the investigator of the complaint. If the investigation is concluded when this starts, the person to refer the complainant to would be the Complaints Manager.

If, at the end of the complaints process, the complainant rejects this and continues to approach various staff members in the organisation a second letter should be sent. This should inform them that any further responses on the telephone will be terminated as soon as it is realised it is this complainant and recorded. They should also be told that these records will then be passed on to the Police with a complaint of criminal harassment. If it continues then follow through with this as a report to the Police.

Where a person is requesting an inappropriate form of redress to their issues

When a complainant states they are expecting some form of redress that seems inappropriate for the level of the complaint, a dialogue needs to be started that while trying to stay neutral to the expected redress level states that redress is a matter to be decided once the investigation is completed. Do not raise the person's hopes or expectations and while trying to remain neutral at this stage, confirm that redress can be looked at but only after the whole facts are known which would mean a full detailed investigation.

When this becomes obvious at the end of the process and the person cannot be dissuaded from their view, then tell them an offer will be made in writing and if they choose to reject that offer they can then take the matter to the PHSO or through a claim against the Trust via their solicitors.

A complaint that is made at a time that over the 12 month limit stated in the Regulations

The regulations state that there is a 12 months' time limit for making a complaint but also states a complaint can be accepted after this time:

- If there was a good reason for the delay (patient too ill to make the complaint within the time) and / or
- the person did not realise they had a matter that could be or needed to be complained about and / or
- notwithstanding the delay, the complaint could still be investigated effectively and fairly

General Notes: It may be necessary to send letters via Special Delivery in cases where you may later need to prove you informed that person of the facts

In all cases be mindful the reasons for unusual action may be of an individual having genuine issues but due to memory or educational difficulties has difficulties expressing or dealing with these matters normally. It is therefore important to ensure the process is fair and the complainant's interests have been taken into consideration.

If staff have been involved in a particularly stressful episode with a complainant please ensure there are support measures put in place to assist that member of staff.

If complainants have been told their future letters or calls will no longer be responded to include in the process an appeal process for them to contact a Non Executive Director who can adjudicate as an appeal process.

Appendix C. Equality and Equity Impact Assessment

This is a checklist to ensure relevant equality and equity aspects of policies have been addressed either in the main body of the document or in a separate equality & equity impact assessment (EEIA)/ equality analysis. It is not a substitute for an EEIA which is required unless it can be shown that a policy has no capacity to influence equality. The checklist is to enable the policy lead and the relevant committee to see whether an EEIA is required and to give assurance that policies will be legal, fair and equitable.

| | Challenge questions | Yes/ No | What positive or negative impact do you assess there may be? |
|-----------|---|--------------------|---|
| 1. | Does the policy affect one group more or less favourably than another on the basis of: | No | |
| | ▪ Race | No | |
| | ▪ Ethnic origin (including gypsies and travellers, refugees & asylum seekers) | No | |
| | ▪ Nationality | No | |
| | ▪ Gender | No | |
| | ▪ Culture | No | |
| | ▪ Religion or belief | No | |
| | ▪ Sexual orientation (including lesbian, gay bisexual and transgender people) | No | |
| | ▪ Age | No | |
| | ▪ Disability (including learning disabilities, physical disability, sensory impairment and mental health problems) | No | |
| 2. | Will the policy have an impact on lifestyle? (e.g. diet and nutrition, exercise, physical activity, substance use, risk taking behaviour, education and learning) | No | |
| 3. | Will the policy have an impact on social environment? (e.g. social status, employment (whether paid or not), social/family support, stress, income) | No | |
| 4. | Will the policy have an impact on physical environment? (e.g. living conditions, working conditions, pollution or climate change, accidental injury, public safety, transmission of infectious disease) | No | |
| 5. | Will the policy affect access to or experience of services? (e.g. Health Care, Transport, Social Services, Housing Services, Education) | No | |