

HPFT

# Compliments, Concerns and Complaints Policy

## HPFT Policy

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Executive Lead	Executive Director Service Delivery & Service User Experience
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<b>Title of document</b>	Compliments, Concerns and Complaints Policy		
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8	19 <sup>th</sup> July 2021	19 <sup>th</sup> July 2024	Head of Corporate Affairs & Company Secretary
<b>Staff need to know about this policy because (complete in 50 words)</b>	<b>Staff may be required to investigate or be involved in investigating a complaint. Staff need an awareness of the legal requirements and expectations for complainants in order to respond appropriately.</b>		
<b>Staff are encouraged to read the whole policy but I (the Author) have chosen three key messages from the document to share:</b>	<ul style="list-style-type: none"> <li>• Compliments, concerns and complaints are an important measure of the quality of services HPFT provides, staff must know how to respond to and learn from feedback.</li> <li>• Try to resolve concerns as they arise</li> <li>• When investigating complaints, the organisation must provide a full, open and transparent response in line with the Statutory Duty of Candour.</li> </ul>		
<b>Summary of significant changes from previous version are:</b>	<p>Updates to contact details, phone numbers and email addresses including changes to the team name from PALS and Complaints Team to the Experience Team.</p> <p>Removal of the “prioritisation of complaints” section.</p>		

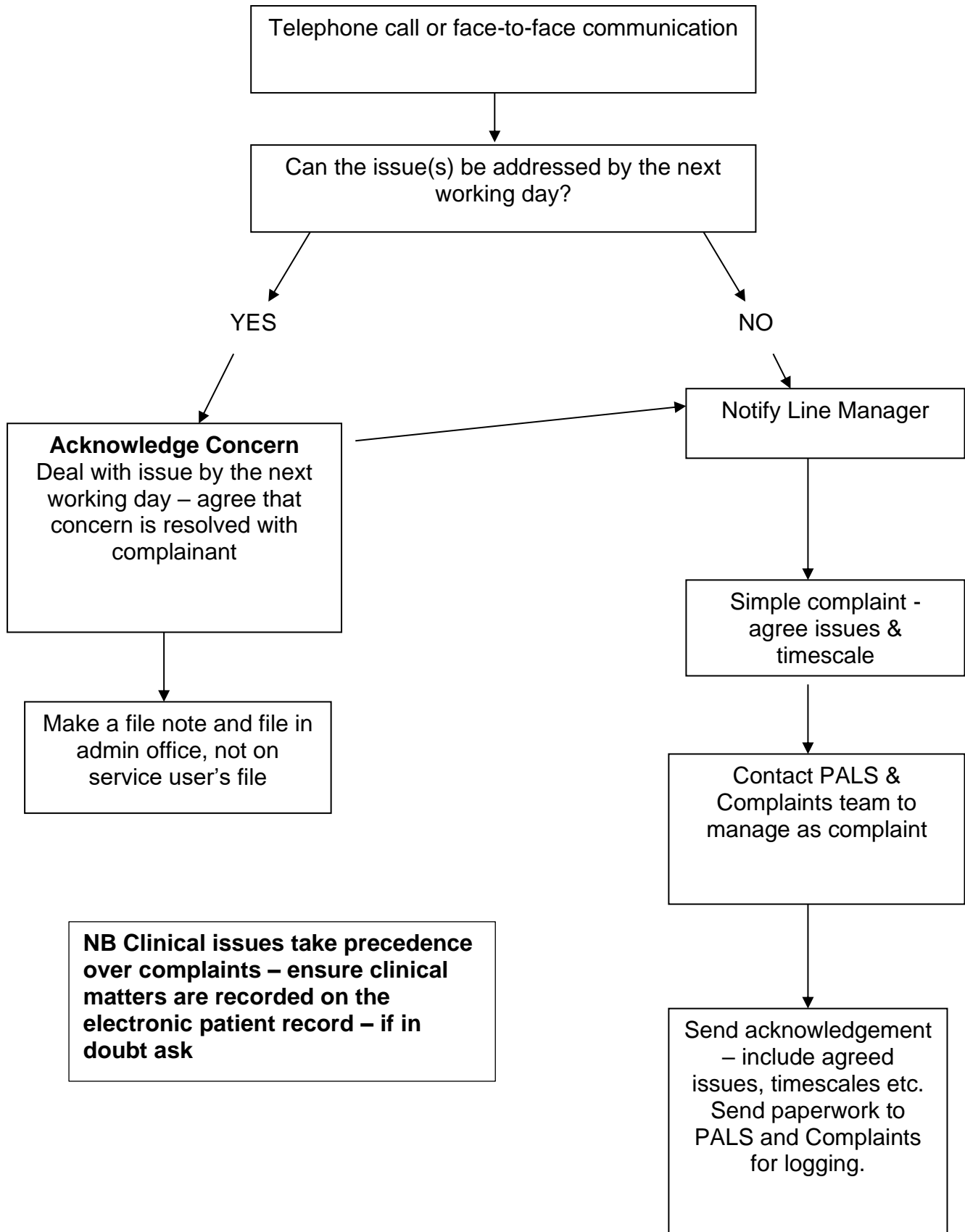
## Contents

<b>PART:</b>	<b>Page:</b>
<b>Preface concerning the Trust Policy Management System:</b> P1 - Version Control History P2 - Relevant Standards P3 - The 2012 Policy Management System & Document Formats	
<b>Preliminary Issues:</b>	
<b>1. Flowcharts</b> <b>Flowchart 1 - Procedure for verbal concerns / simple complaints</b> <b>Flowchart 2 – Procedure for complex verbal / written complaints</b> <b>Flowchart 3 – Complaint investigation</b>	
<b>2. Summary</b>	
<b>3. Purpose</b>	
<b>4. Definitions</b>	
<b>5. Duties and Responsibilities</b> 5.1 Duties and responsibilities within HPFT 5.2 Duties outside HPFT	
<b>What needs to be done and who by:</b>	
<b>6. Compliments</b> 6.1 Introduction 6.2 Recording 6.3 Reporting	
<b>7. Complaints and Concerns</b> 7.1 Introduction 7.2 Access to the complaints procedure 7.3 What people may complain about 7.4 Complaints where disciplinary action may be taken 7.5 Complaints where legal action is being taken or the police are involved 7.6 Complaints raising concerns about fraudulent activity 7.7 Complaints where safeguarding investigation are being undertaken 7.8 Interface with the Safer Care Team 7.9 What people may not complaint about 7.10 Who may complain? 7.11 Making a complaint 7.12 Complaints made direct to a Member of Parliament 7.13 Complaints about discrimination 7.14 Meeting the communication needs of complainants 7.15 Discrimination against complainants/service users 7.16 Time limit for making a complaint 7.17 Concerns 7.18 Formal complaints 7.19 Learning from complaints and continuous service improvement 7.20 The Triage Process 7.21 Management of complaints investigations 7.22 Confidentiality and consent 7.23 Meetings with the complainant 7.24 Remedy 7.25 Data collection 7.26 Supporting complainants	

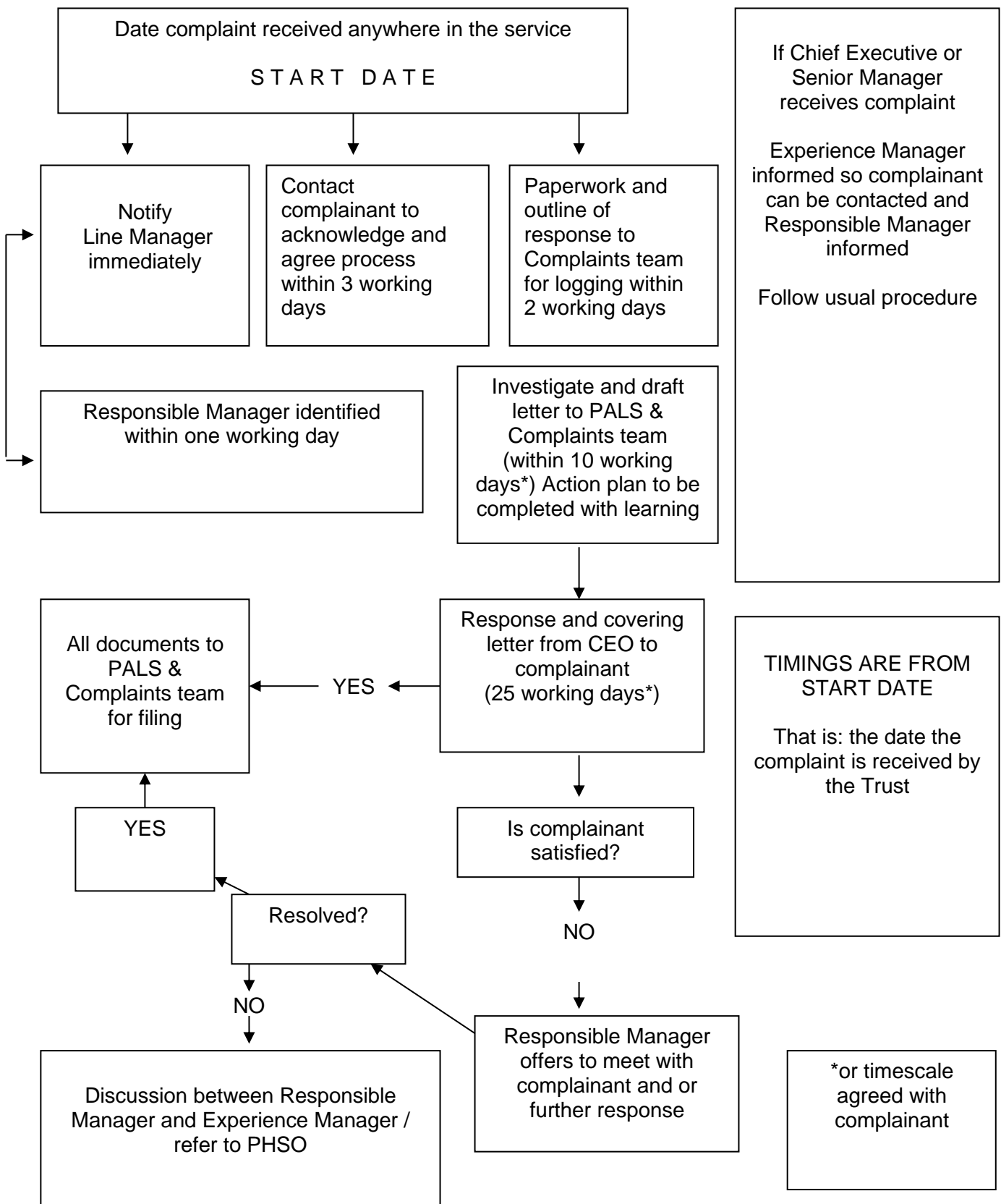
7.27	Supporting staff
<b>8.</b>	<b>Associated Procedures</b>
8.1	Links with other procedures
8.2	Incidents
8.3	Disciplinary matters
8.4	Criminal investigation
8.5	Coroner's cases
8.6	Staff complaints
8.7	Claims for negligence/legal proceedings
<b>9.</b>	<b>Independent Review</b>
9.1	Parliamentary and Health Service Ombudsman
9.2	Local Government Ombudsman
9.3	LGO/PHSO Joint Working Team
<b>10.</b>	<b>Joint complaints</b>
<b>11.</b>	<b>Other issues related to complaints</b>
11.1	Complaints about external provider services
11.2	Complaints about Approved Mental Health Professionals
11.3	Mental Health Act Detention / Care Quality Commission
11.4	Complaints arising from subject access requests made under the DPA and FOI Act
11.5	Complaints about independent contractors
<b>12.</b>	<b>Unreasonably persistent or abusive complainants</b>
<b>13.</b>	<b>Training /Awareness</b>
<b>14.</b>	<b>Equality and RESPECT</b>
<b>15.</b>	<b>Process for monitoring compliance with this document</b>
<b>Associated Issues</b>	
<b>16.</b>	<b>Version Control</b>
<b>17.</b>	<b>Archiving Arrangements</b>
<b>18.</b>	<b>Associated Documents</b>
<b>19.</b>	<b>Supporting References</b>
<b>20.</b>	<b>Comments and Feedback</b>
<b>Appendices</b>	

**1. FLOWCHARTS**

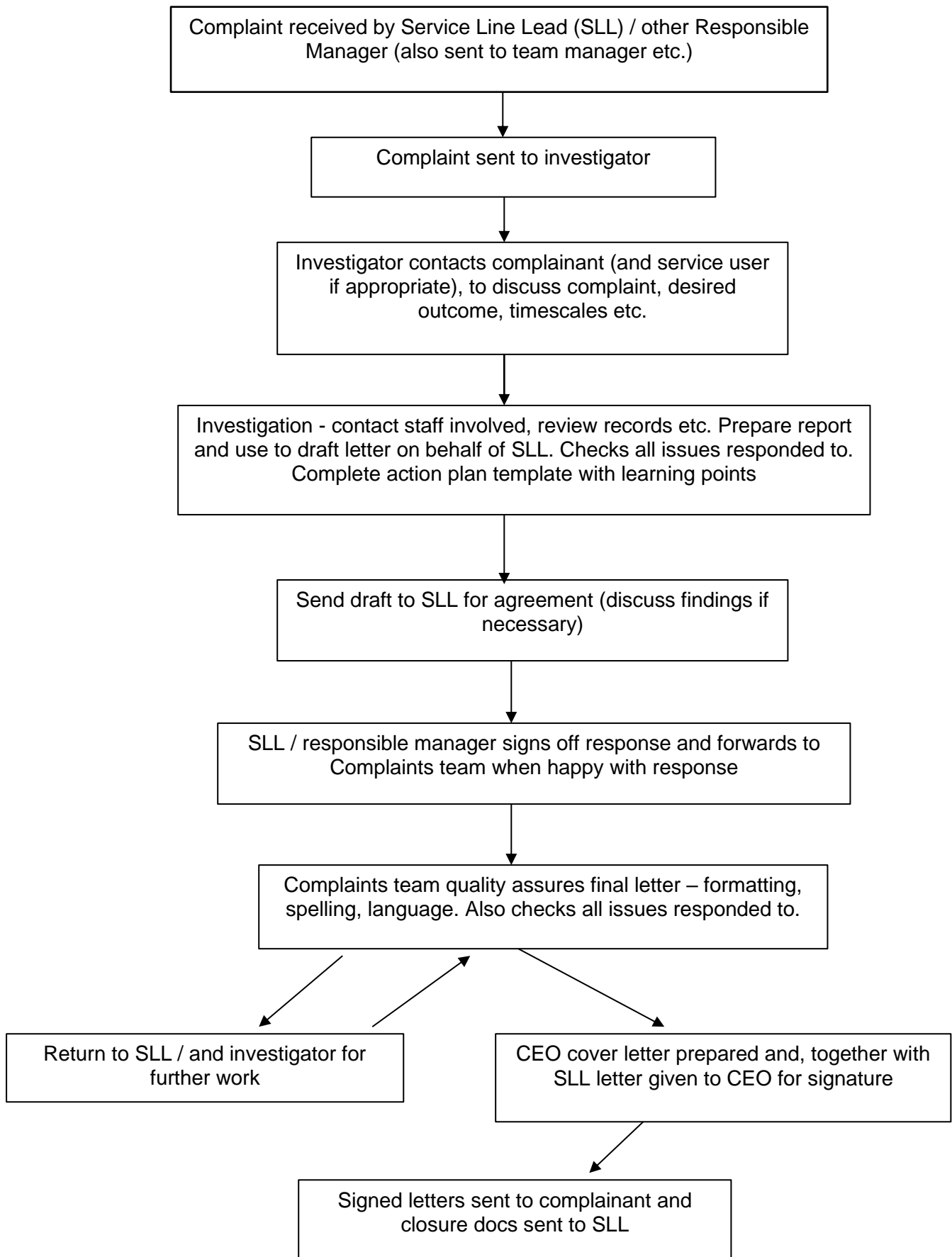
**Flowchart 1: Procedure for verbal concerns / simple complaints direct to service**



**Flowchart 2: Procedure for complex verbal / written complaints**



### Flowchart 3: Complaint investigation flowchart



## 2. SUMMARY

Hertfordshire Partnership University NHS Foundation Trust (HPFT) is committed to providing the highest quality of services in partnership with service users, carers and other organisations.

Compliments, concerns and complaints are an important measure of how well this is achieved and the Trust uses them to improve the quality of the services it provides.

This policy sets out clear procedures that enable everyone – service users, carers, staff and others – to be confident that they know what to expect, what is expected of them and the correct action to take.

## 3. PURPOSE

Service users (and their carers, where appropriate) should have clear information about what can be expected throughout all stages of their care and treatment and be involved in the decisions which affect them, giving them the opportunity for their views and wishes to be heard and taken into account.

This policy is based on the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009 that came into force on 1 April 2009.

This policy provides an integrated approach to the management of all feedback that fully reflects the Trust working collaboratively across all service provision and is a major component of Practice Governance within the Trust. At-a-glance flow charts for dealing with complaints can be found at the top of this section.

### Key aims and objectives

This policy dictates that HPFT has systems in place:

- So that service users, their relatives, carers and others (see section 7.9):
  - a. have suitable and accessible information about, and clear access to, procedures to register complaints and feedback on the quality of service provided
  - b. are not discriminated against when complaints are made
  - c. are treated with dignity in a way that does not breach their human rights. Specifically their human right to privacy and family life (Article 8, Human Rights Act 1998)
  - d. are assured that the organisation acts appropriately and proportionately on any feedback and, where appropriate, make changes to ensure improvements in service delivery
- to perform to the timescales set out in the policy for investigating and responding to complaints
- to provide a full, open and proportionate investigation and response to the complainant
- to comply with the Statutory Duty of Candour whereby NHS providers must be open and transparent with service users about their care and treatment, including when it goes wrong.



- to ensure all complainants are informed of their right to refer their complaint to either the Parliamentary and Health Service Ombudsman or the Local Government Ombudsman

#### **4. DEFINITIONS**

##### **RULE**

###### **Complaint**

The Trust defines a complaint as an oral or written expression of dissatisfaction about any matter reasonably connected with services supplied through HPFT and which takes longer than the next working day to resolve to the satisfaction of the complainant.

###### **Concern**

A concern is an oral or written expression of dissatisfaction about any matter reasonably connected with services supplied through HPFT which can be resolved to the person's satisfaction by the next working day after the concern was raised. An issue raised in writing may be treated as a concern.

###### **Compliment**

For the purposes of this policy a compliment is an expression of the appreciation felt by service users, carers, relatives and external professional bodies for the services provided by staff and the Trust.

Staff to staff compliments (including from trainees to the clinical teams) are not included.

The Trust has booklets (including easy read), posters and a dedicated PALS/Complaints telephone number (01707 253916). Complainants can also make a complaint through a link on the Trust website [www.hpft.nhs.net](http://www.hpft.nhs.net) or by email [Hpft.complaints@nhs.net](mailto:Hpft.complaints@nhs.net)

Glossary - see Appendix 3

#### **5. DUTIES AND RESPONSIBILITIES**

##### **RULE**

###### **5.1 Duties and responsibilities within HPFT**

The Chief Executive:

##### **STANDARD**

The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009 require that the Trust's Chief Executive be the responsible person for ensuring compliance with the Regulations and, in particular, ensuring that any necessary action is taken following the investigation.

The Experience Manager will:

- be responsible for the overall management of the handling of complaints within the Trust in accordance with the 2009 Regulations

- ensure that the Patient Advice and Liaison Service (PALS) and Complaints Team functions effectively when dealing with complaints or concerns
- report to the Trust Board any trends identified as a result of comments, complaints or enquiries to the Patient Advice and Liaison Service (PALS)
- ensure this policy is reviewed and updated as appropriate
- act as Trust lead for complaints passed to the Parliamentary and Health Service Ombudsman (PHSO)
- act as Trust lead for other organisations when a joint response is required, i.e. when issues raised involve multiple organisations.
- ensure the Trust keeps a full documentary record of the handling and consideration of each complaint. These records are important if the complainant goes to the PHSO or Local Government Ombudsman (LGO)
- lead on the planning and delivery of training for all Trust employees on the management of complaints
- take lead responsibility for the analysis of feedback received, including compliance with standards, identifying trends or learning points and carrying out thorough qualitative and quantitative analyses

The PALS and Complaints Co-ordinator will:

- maintain and respond to the PALS helpline (Mon-Fri 9am – 3pm, 01707 253916) and ensure timely responses to telephone calls or messages left by callers
- maintain accurate data on the PALS and Complaints database (Datix)
- liaise with complainants to agree the issues, timescale and desired outcome of a complaint, if the service has not already done so
- liaise with complaint investigators to ensure that assistance is provided to keep the process within agreed timescales
- take an active role in the planning and delivery of training for all Trust employees on the management of complaints
- liaise with the Patient Safety team to identify any risks or learning as a direct result of the aggregation of incidents, complaints, concerns and claims for compensation.
- analyse feedback received, check compliance with standards, identify trends or learning points and carry out thorough qualitative and quantitative analyses

The PALS and Complaints Administrator will:

- Ensure that calls to the PALS helpline are responded to and acted on in a timely way
- carry out the administration process of the complaints and PALS procedures, and production of responses or reports etc., to ensure response deadlines are met
- when necessary, arrange local complaint resolution meetings within timescales

### Executive Directors and Managing Directors:

Are responsible and accountable for the implementation of this policy and associated procedures within their area of responsibility. They will ensure that all complaints are managed in accordance with this policy and that agreed timeframes are met.

### Responsible Manager

The Responsible Manager is responsible for:

- the complaint investigation
- ensuring a complete report on the circumstances surrounding the complaint and address the questions posed by the complainant is prepared
- drawing up an action plan with any lessons learnt and monitoring it
- preparing the response and (with some exceptions) signing it
- meeting with the complainant, if requested

### Trust Staff

All staff members have a responsibility to:

- familiarise themselves with the content of this policy
- try to resolve concerns as they arise or assist service users, carers or visitors to make a complaint, if asked to do so
- work within the standards and guidelines and review their practice as a result of any complaint raised or received
- ensure that complainants, service users, carers and family members are not discriminated against as a result of a complaint being made and are treated fairly and with respect irrespective of any complaint being pursued.
- ensure that they access appropriate training (see Section 13)

## **5.2 Duties outside HPFT**

### Complaints Advocacy Service for complaints about the NHS

Independent complaints advocacy (NHS Complaints Advocacy) for Hertfordshire, Norfolk and North Essex service is provided by POhWER, which has an important role in offering assistance to complainants at each stage of the process. Advice on how to contact POhWER is given to the complainant in their complaints acknowledgement letter and on the Trust website and POhWER will be fully aware of the Trust's procedures as they are in line with the NHS regulations. (see appendix 1 for useful addresses)

### Parliamentary and Health Service Ombudsman (PHSO)

#### **STANDARD**

The PHSO is independent of the NHS and government and derives their powers from the Health Service Commissioners Act 1993. The PHSO can look into complaints about services provided through the NHS in England if someone has suffered because of poor service or treatment or they were not treated properly or fairly - and the organisation has not put things right where it could have.

Complainants have no automatic right to an investigation; rather the Ombudsman assesses each case to determine whether they should investigate it. They may also seek to resolve cases through a short intervention, rather than an investigation. If the PHSO decides to accept a complaint and considers that the Trust could have done more to resolve it, the PHSO will make recommendations that must be responded to. The Trust has the right to challenge any findings (with supportive evidence) at the draft report stage.

Information about the PHSO and how to access their service is given to complainants in their final complaint response letter.

#### Local Government Ombudsman (LGO)

### **STANDARD**

The LGOs are independent of councils and the government. They look at complaints about councils and some other authorities. They investigate complaints about social care provision in a fair and independent way. They have the same powers as the High Court to obtain information and documents. If the LGOs decide to accept a complaint and feel that more could have been done to resolve it, they will make recommendations, which must be responded to. Decisions are final and cannot be appealed.

#### Ombudsmen's Joint Working Team

### **STANDARD**

Where complaints raise concerns about NHS services and Social Services, the Ombudsmen can decide to investigate within the Joint Working Team which currently sits with the LGO. The team will investigate complaints referred to them in a fair and independent way. They have the same powers as the High Court to obtain information and documents. The team can make recommendations, which must be responded to. Decisions are final and cannot be appealed.

#### Duties in relation to the review and approval of the policy

The Experience Manager is responsible for reviewing the policy at set (standard) intervals or when new guidance or legislation comes into force. A virtual group comprising staff representatives "Comments and Feedback" Point 20 and Experts by Experience will be responsible for reviewing and approving any updated policies. The Involvement and Experience Group (IEG) is responsible for initially approving the policy. Once this approval has been obtained, the policy will be agreed by the Trust's Executive Team.

**Approach**

**6. Compliments**

**RULE**

**6.1 Introduction**

Compliments are a vital form of feedback ensuring that the Trust retains a balanced view of service users and carers satisfaction. The Trust receives compliments verbally, in writing and in the form of “tokens of appreciation” to teams, such as, flowers and sweets. Compliments should be celebrated by staff and seen together with other forms of feedback as a way of learning and continuously improving the service they provide.

**6.2 Recording compliments**

All written compliments should be sent to the dedicated email address [hpft.compliments@nhs.net](mailto:hpft.compliments@nhs.net) or sent to the Experience Team, The Colonnades, Beaconsfield Road, Hatfield AL10 8YE. The information is then passed to the communications team for publication through the staff intranet “The Hive”, so that teams can celebrate the great work provided by staff and it can be recognised trust-wide.

For the purposes of reporting internal compliments from one staff member to another, including compliments from trainees to clinical staff, are not logged or reported. Staff to staff compliments should be shared within the team by the team leader or manager and not forwarded to the Experience Team. Staff to staff compliments can be recorded direct on TrustSpace.

**6.3 Reporting compliments**

The Experience team report the number of compliments received in the quarterly board reports and in the annual report.

**7. COMPLAINTS AND CONCERNS**

**STANDARD**

**7.1 Introduction**

The Trust aims to provide a speedy and efficient process that is open, fair, flexible, non-discriminatory and conciliatory, with the emphasis on resolving matters to the complainant’s satisfaction. Every reasonable effort will be made to find a remedy and local solution to the complaint and different approaches will be explored throughout the process. Although the Trust aims to resolve matters to the satisfaction of the complainant, as part of the NHS our duty is to ensure that we provide a full, fair, honest and proportionate response to complaints, since it may not always be possible to satisfy the complainant.

The Trust is committed to the principle that the care and treatment given to a service user or carer shall not be adversely affected because they have complained.

Complaints will only be shared with staff who need to know about them. Complaint records must be kept separate from health records, subject to the need to record information that is strictly relevant to their health in the service user’s records

All concerns raised will be investigated fairly and fully by the Trust. The handling and investigation of a concern or complaint will take into account the individual nature of the complaint and the needs of the complainant. Every effort will be made to enable

the complainant to pursue the complaint and they are entitled to have an advocate to assist at any stage. Assistance with contacting the advocacy service can be provided by the PALS service.

Potential implications for patient safety and organisational learning are investigated as quickly as possible to allow urgent action to be taken to prevent similar incidents.

The Trust has adopted the PHSO's Principles of Complaints Handling and the Principles of Good Administration to be followed by complaint investigators. These principles will be used to help determine whether a complaint is well-founded or not. The principles are:

1. Getting it right
2. Being customer focused
3. Being open and accountable
4. Acting fairly and proportionately
5. Putting things right
6. Seeking continuous improvement

## **7.2 Access to the complaints procedure**

Information about the Trust's Complaints Procedure must be easily accessible to everyone who uses Trust services, whether they are provided directly by the Trust or are contracted out to an independent provider. The Trust has booklets (including easy read), posters and a dedicated PALS/Complaints telephone number (01707 253916). Complainants can also make a complaint through a link on the Trust website [www.hpft.nhs.net](http://www.hpft.nhs.net) or by email [Hpft.complaints@nhs.net](mailto:Hpft.complaints@nhs.net)

Where social care is provided by an independent provider under contract to the County Council's Health and Community Services (HCS), or other social services, the Trust will liaise with them and the independent provider to ensure that the complaint is responded to.

The Trust is committed to ensuring that everyone is able to make a complaint and to have their complaint addressed fairly. Information given to service users, relatives, partners and carers, will be culturally appropriate and meet the individual's communication needs, for example, people with additional needs such as physical, sensory or learning disabilities, and people who do not speak or read English. The Trust's Accessible Information Policy provides guidance on communication needs and procedure on how to access the interpreting and translation services.

Some people may wish to work with advocates to support them in making a complaint, and the Trust welcomes this and supports the advocate's involvement.

In these ways the Trust will support the human rights, privacy and dignity of the service user / complainant.

This section covers the local resolution of concerns and complaints and should be used in conjunction with the **Complaints Handling Toolkit** which is available from the Experience Team for all staff investigating complaints.

## **7.3 What people may complain about**



Under the Health and Social Care Complaints Regulations people can complain about any matter reasonably connected with the services provided by the Trust. This includes NHS services and Local Authority services delegated to the Trust under its partnership agreements. Dissatisfaction may concern any aspect of the service, such as care and treatment; poor communication; staff behaviour and attitude; the commissioning of services by the Trust under an NHS contract or with an independent provider, the function of commissioning health care or other services under an NHS contract or arrangements for the provision of such care or other services with an independent provider.

#### **7.4 Complaints where disciplinary action may be taken**

Although this Policy operates alongside the disciplinary procedure, the two policies are separate. Wherever possible, a complaint will be investigated, even if disciplinary action is being considered, or taken, against a member of staff, provided there is good practice around the staff members right to confidentiality. If an investigation into an issue in a complaint is likely to unfairly jeopardise the disciplinary investigation, that issue will be suspended. The complainant will be informed of the suspension of the complaint and the reasons for it. Every effort will be made to respond to the other issues of the complaint within the agreed timescale.

#### **7.5 Complaints where legal action is being taken or the police are involved**

On receipt of a complaint where legal action is being taken, or when the police are involved, discussions will take place with the relevant legal advisors, the police, or the Crown Prosecution Service, to determine whether investigation and responding to the complaint might prejudice subsequent legal or judicial action. If this is the case the complaint will be suspended until it is appropriate to continue with the complaints process and the complainant will be advised of this fact. If not, the complaint will be investigated and responded to as normal. Consideration should also be given about involving the Local Counter Fraud Specialist (see 7.6 below).

#### **7.6 Complaints raising concerns about fraudulent activity**

The Local Counter Fraud Specialist (LCFS) is responsible for investigating all allegations of fraudulent behaviour. If a complaint is received alleging fraudulent behaviour, such as a member of staff not working contracted hours, or working elsewhere when sick, it should be reported immediately to the LCFS.

Occasionally, evidence of possible fraudulent activity may be uncovered during a complaint investigation and this should be reported immediately to the LCFS. For further information please refer to the Trust's Anti-Fraud and Corruption policy.

HPFT's LCFS can be contacted on 07484 040693.

#### **7.7 Complaints where safeguarding investigations are being undertaken**

If a complaint is raised about an incident that is being, or will need to be, investigated under safeguarding procedures, the safeguarding investigation will take precedence and a complaint will normally be suspended until the safeguarding investigation has been completed. The complainant will be informed of the need to suspend the complaint and delay the response until the safeguarding investigation report has been agreed and used to inform the complaint response. Any issues that are not related to the safeguarding incident can be addressed in the normal way, if the complainant chooses to do so.

#### **7.8 Interface with Safer Care Team**

All complaints that are identified as potential or actual serious incidents are discussed with the Deputy Director of Safer Care and Standards and the Head of

Safer Care and Standards to determine how they should be managed. For example, a complaint response may be delayed while a serious incident investigation is carried out.

### **7.9 What people may not complain about:**

The following are excluded from the scope of this policy:

- a complaint made by an NHS body which relates to the exercise of its functions by another NHS body
- a complaint made by an employee of an NHS body about any matter relating to employment, contractual or pension issues. These issues would be addressed through the relevant employment policies through Human resources.
- a complaint arising out of an NHS body's alleged failure to comply with a data subject request under the Data Protection Legislation or a request for information under the Freedom of Information Act 2000.
- a complaint that has already been investigated under the NHS Regulations.
- a complaint made more than 12 months after the complainant becoming aware of the cause of the complaint **and** the Senior Service Line Lead, feels it is not possible to investigate the case locally and respond to the complaint in a way that is likely to bring about resolution.

### **7.10 Who may complain?**

A complaint may be made by anyone, e.g.:

- a person who receives or has received services from the Trust; or
- any person who is affected by or likely to be affected by the action, omission or decision of the Trust, which is the subject of the complaint.

A complaint can be made by someone acting on behalf of a service user where that service user:

- has died
- is a child (who does not have capacity to make a complaint themselves)
- is unable by reason of physical incapacity or by mental incapacity (within the meaning of the Mental Capacity Act 2005(a)) to make the complaint themselves.
- has requested the representative to act on their behalf.

In cases where the service user or person affected has died or is incapable, the representative must be a relative or other person who, in the opinion of the Trust, has or had, a sufficient interest in their welfare and is a suitable person to act as a representative in the service user's 'best interests'.

In the case of a child, the representative must be a parent, guardian or other adult who has parental responsibility for the child.

In the case of a child or a person who lacks capacity under the Mental Capacity Act 2005, the Trust can only investigate a complaint if it is satisfied that the representative is conducting the complaint in the best interests of the service user and that the service user cannot reasonably make the complaint themselves.



Under the National Health Service Complaints (England) Regulations 2009 Regulations, if the Trust is not satisfied that these conditions are met the complaint must not be considered and the representative must be informed of this in writing with the reasons for the Trust's decision.

The Experience Manager, in discussion with senior managers or the Chief Executive, will determine whether the complainant has "sufficient interest" in the deceased or incapable user's welfare to be suitable to act as a representative. In particular, suitability depends on the need to respect the confidentiality of the service user. For example, the service user may earlier have made it known that information should not be disclosed to third parties.

In the event that the Experience Manager is of the opinion that a representative does or did not have sufficient interest in the person's welfare or is unsuitable to act as representative, the Trust will notify that person in writing, stating the reasons. The complaint must still be investigated and dealt with and another suitable advocate found, where appropriate.

Where a complaint is being made by a person on behalf of a service user who has capacity, the Experience Manager must establish that the representative is acting with consent. This will apply to all service users 12 years and above who have capacity.

### **7.11 Making a complaint**

When a person has a concern or complaint, they may make the complaint to the Chief Executive, the Experience Manager or to any other member of Trust staff.

**The first responsibility of the recipient of a complaint is to ensure that the service user's immediate health care needs are being met.** This may require urgent action before any matters relating to the complaint are dealt with.

All staff should deal with complaints as quickly as possible and, where possible, in an informal and sensitive manner. Complainants should be encouraged to speak openly and freely about their concerns and should be reassured that whatever they say will be treated with appropriate confidentiality and sensitivity, and that their healthcare will not be adversely affected by raising their concerns. A complainant will be asked how they wish the complaint to be dealt with and responded to.

A complaint may be made orally or in writing (including electronically). Trust staff should ensure that when a complaint is received there is no breach of patient confidentiality in line with our Information Governance guidelines. Where a complaint is made orally, the staff member must make a written record of the complaint, the name of the complainant, the issues, how the complainant wishes the complaint to be dealt with and the desired outcome. If the complaint can be dealt with to the satisfaction of the complainant by the next working day, the outcome is recorded and kept on the unit. The team manager will decide if the PALS & Complaints team should be notified and the complaint entered onto the database.

If the issues cannot be addressed by the next working day, or the complainant is not satisfied, a timescale to investigate and respond will be agreed with the complainant and recorded. The documentation must be forwarded to the PALS and Complaints team for logging onto the database.

For the purposes of the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009 Regulations, where the complaint is made in

writing, it is treated as being made **on the date it is received by any member of staff in the Trust.**

Under the 2009 Regulations, an issue or concern that has been dealt with in this way, to the initial satisfaction of the complainant / service user, cannot be accepted as a complaint at a later date.

Procedures for dealing with complaints about the Trust and other organisations providing NHS or social services can be found in section **10** and **Appendix 6.**

### **7.12 Complaints made direct to a Member of Parliament (MP)**

Some complainants will ask their MP to act as their advocate. The MP will usually write to the Chief Executive and may ask for a report or a response to be sent direct to him or herself. Alternatively, the MP may ask for a response to be sent to the complainant with a copy to the MP.

Where the complaint requires the release of personal information, consent from the service user is always requested, if it is not provided with the MP's letter. If the complainant is someone other than the service user and the service user does not have capacity, consent will be obtained from the named individual.

### **7.13 Complaints about discrimination**

Discrimination occurs when people put into practice their own prejudices that cause offence, disadvantage or other disproportionate treatment to another person. People can be discriminated against for a variety of reasons, such as, age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation (Equality Act 2010). Staff must be aware of how to deal with these issues should they witness them, including support for the person being discriminated against and how to take action/report the person perpetrating the discriminatory behaviour.

If the complainant or any witness intimates that the complaint includes an incident concerning any aspect of discrimination this must be taken seriously and investigated appropriately.

### **7.14 Meeting the communication needs of complainants**

Responses to complainants must adequately meet the communication needs of the complainant, for example, be available in different languages or typed in large print, throughout the process, including special arrangements for people with Learning Disabilities, such as easy read and specialist advocacy.

### **7.15 Discrimination against complainants / service users**

It is a legal, professional and Trust requirement that there is no discrimination against complainants as a result of making a complaint. Any complaints of discrimination will be investigated under the appropriate management policies (such as bullying and harassment) and, if upheld, the appropriate disciplinary action will be taken. In addition, the matter may be reported to the relevant professional body.

### **7.16 Time limit for making a complaint**

The regulations require that a complaint should be made within 12 months of the complainant becoming aware of the cause for complaint and, typically, within 12 months of the incident itself.

Where a complaint is made outside the time limit, the Trust should decide to admit the complaint to the procedure if there are good reasons for a complaint not having

been received within 12 months **and** it is still possible to investigate the case locally and respond to the complaint in a way that is likely to bring about resolution.

Local experience is that complaints made outside the established time limits can prove extremely difficult to investigate and resolve.

If discretionary extension of the time limit is refused, the Experience Manager will offer informal communication with the Responsible Manager and advise the complainant of their right to refer the complaint to the PHSO or LGO. A refusal to investigate a complaint must be accompanied by an explanation detailing the reasons why it is not possible to investigate the issues raised.

### **7.17 Concerns**

Verbal concerns which can be dealt with to the satisfaction of the complainant by the next working day are managed locally and do not come under the 2009 Complaints Regulations. A note of the complaint and the actual outcome should be made and kept on the unit. The local manager will decide if the Experience Manager should be notified and the complaint entered onto the appropriate database.

Some people, whilst content to have the matter handled informally, may wish their concerns to be dealt with by somebody more senior. In such cases, staff should offer to put the person raising the concern in touch with their manager at the earliest opportunity and inform the manager that they need to contact the complainant.

Where a written response has been requested, the response must be prepared by the relevant Responsible Manager (or another person with the agreement of the complainant). Initial drafting may be delegated, but the final approval must be made by the Responsible Manager and clinician, where appropriate. If the concern takes longer than the next working day to resolve, all information must be passed to the PALS and Complaints team to be entered onto the database.

### **7.18 Formal complaints**

#### **7.18.1 Receiving a complaint and acknowledging a complaint**

- Complaints, verbal or written, should be handled as locally and as speedily as possible with a view to addressing the concerns of the complainant on the spot. Staff should not give the impression that complaints are only taken seriously if they are made formally to the Chief Executive or PALS and Complaints team.
- Complaints involving more than one service, or which take more than the next working day to resolve, or where the complainant has requested a response from the Chief Executive, must be forwarded to the PALS and Complaints team for logging.
- The person who first receives the complaint should contact the complainant within three working days of receipt to offer a meeting or telephone discussion about the complaint. The aim of this discussion is to clarify the issues, agree how the complaint will be dealt with, the timescale and the desired outcome, together with the requested method of response (for example, in writing by post or email, in a meeting, or by telephone). Issues of confidentiality and consent must be born in mind at all times.
- The person speaking to the complainant must send a letter of acknowledgement within three working days of the discussion setting out the issues to be investigated, and the hoped-for outcome, together with a copy of the Trust's Comments, Compliments and Complaints leaflet. If contact cannot be made, a

letter setting out the Trust's view of the issues and a time scale for response (normally 25 working days) will be sent with an offer to discuss these if desired.

#### 7.18.2 Logging a complaint

The complaints team will consider every complaint to determine whether or not it meets the criteria set out in the Regulations and, where appropriate, admit it to the system. Every acknowledged complaint will be allocated a unique reference number. The complaints team will maintain suitable records to ensure that the information required for the effective handling of the complaint, the completion of the annual statistical returns, and the completion of quarterly and annual reports is maintained.

7.18.3 All complaints are routinely copied to the Chief Executive and Executive Directors.

7.18.3 Members of staff complained about must be informed of the fact and receive a copy of any complaint about them. This will normally be done by the manager investigating the complaint. Complainants must be informed that their complaint will be shared as part of continuous quality improvement. As part of the investigation, the responsible manager may notify other interested persons, such as, senior medical staff, where it is felt appropriate for clinical reasons or as part of the investigation.

7.18.4 All complaints and their responses are forwarded to the relevant Executive Directors for information and monitoring and to ensure that the Trust learns from complaints.

#### 7.18.5 Responses

- A full response must be made within 25 working days of receipt of the complaint or within the timescale agreed with the complainant, if different. If, in exceptional circumstances, it is necessary to request an extension, this must be discussed with the complainant and a new date agreed. The complainant may be unwilling to agree to such an extension and if so, the Experience Manager, in liaison with the responsible manager, should do everything possible to meet the deadline and continue to make every effort to agree an extension with the complainant, if appropriate. If an extension is not agreed and the deadline is missed, the responsible manager must be prepared to give a full explanation to the complainant and, if necessary, to the PHSO.
- Where a written response has been requested, the response must be prepared by the relevant Responsible Manager. Initial drafting may be delegated, but the final approval sits with the Responsible Manager (and Lead Clinician where appropriate).
- Any responses to concerns or complaints must adequately meet the communication needs of the complainant (see section 7.2).
- The response should be in clear, jargon free language, easy to understand and not include unnecessary detail. For example, a complainant is unlikely to be happy with a long letter summarising the service user's care, or chronology of events, especially if they have already outlined this in their complaint. Detail should only be included that is directly relevant to the complaint.
- Responses should mirror the complainant's language and must not paraphrase issues raised so that the context changes.

- The letter should not be defensive or dismissive. Even if the investigation reveals no failure in the care provided, the complainant has felt it necessary to make a complaint and this may have been accompanied by feelings of disappointment, anger or distress. Therefore, it is appropriate to recognise the feelings of the complainant and the response must include an appropriate apology.
- Responsible Managers must ensure that responses to complaints involving medical issues are checked by the appropriate clinicians for factual accuracy. The **Complaints Management Toolkit** provides further guidance on the preparation of response letters.
- Where significant risks have been identified, a draft response letter should be sent to the Experience Manager as soon as possible for the Executive Director of Quality and Medical Leadership, the Executive Director of Quality and Patient Safety or the Deputy Director of Nursing to approve. This will allow time for amending, if necessary, and ensure that the complaint does not go overdue.
- If the response letter is from someone other than the Chief Executive, a covering letter from the Chief Executive or, in his absence, his delegated representative, must accompany the response.
- Complainants should be responded to according to their wishes. If the complainant requests a postal response, letters must be sent by first class post. Email responses must offer the complainant the opportunity to receive postal copies of the letters.. All communications should be marked "Private and Confidential". An outcome report can be held on the service user's clinical file, if relevant to future care, but the complaint documents must be held on the Datix system accessed by the PALS and Complaints Team.

7.18.7 On closure of the complaint, all staff statements, letters, emails, phone calls etc. must be documented and forwarded to the PALS and Complaints team for inclusion in the complaint file on Datix. It is important to maintain a complete record in the event that the complaint was not resolved satisfactorily as it may be referred to the PHSO for further investigation. The Trust is obliged to provide full documentary evidence of actions taken to resolve the complaint.

### **7.19 Learning from complaints and continuous service improvement**

Following resolution of the complaint the Responsible Manager should ensure that appropriate follow-up action, organisational learning and establishing a more positive relationship with the complainant takes place through feeding back the outcome of the complaint to the staff concerned and appropriate managers.

Staff are encouraged to reflect on the issues raised and the outcome of the investigation in order to improve their practice and systems and processes.

Issues raised from complaints are discussed within the local Practice Governance agenda for all Strategic Business Units.

The Experience Team prepares quarterly reports, which include actions taken to improve services as a result of all feedback including complaints. An action plan template is sent out with all complaints for completion by the Responsible Manager. Where there is significant learning, the action plans are used to prepare learning notes which are shared through the Practice Governance network and are on the Trust intranet.



## **7.20 The Triage Process**

Concerns received by the PALS and Complaints Team are triaged within 2 days of receipt. This means that every communication is read, or listened to, and a decision is made regarding any potential clinical risks or safeguarding concerns. If there are any immediate concerns they are passed directly to the clinical team for immediate action. The clinical team are required to update the PALS and Complaints Team with actions taken. If there are no immediate concerns the PALS or complaint enquiry will be dealt with following the usual process.

## **7.21 Management of complaints investigations**

All complaints will be investigated by the Responsible Manager associated with the service concerned (as a minimum). This is normally the Service Line Lead but, where the complaint is solely about a member of the medical staff the Lead Clinician becomes the Responsible Manager.

Complaints with associated risk may require investigation by more than one senior Trust employee or a combination of employees from different professions or with the assistance of a representative from one of our partner organisations, for example, Hertfordshire County Council.

Complaints identified as significant risk will be investigated with the input and assistance of the Managing Director for the Strategic Business Unit concerned and the outcome will be presented to the Executive Director of Quality and Medical Leadership or the Executive Director of Quality and Patient Safety, or other designated person, prior to finalisation and will follow the Learning from Adverse Events policy and processes.

Investigations will include a review of all relevant records, including care records, incident forms, staff rotas, ward diaries; interviews with staff members directly involved or witnesses to an event which has resulted in a complaint, and statements if appropriate. The investigating officer prepares a report to help draft the response. Consideration should be given to providing a copy of the report to the complainant.

## **7.22 Confidentiality and consent**

Under the Human Rights Act 1998, Article 8, people have the right to respect for private and family life, home and correspondence. The Data Protection Legislation provides for the protection of privacy in respect to information held about a person. This means that staff must not disclose personal information about a service user or complainant to a third party except in those circumstances described below.

Staff must ensure that any information disclosed to a third party (including the complainant) concerning a service user named in a complaint investigation is confined to that which is relevant, although it must be recognised that this may be interpreted widely. Where possible, such information will only be provided with the knowledge and consent of the service user.

This means that:

- Service users should be advised at the outset that investigation of a complaint may require examination of medical records and associated documents by the investigators
- When a third party complains about a service user's care, a signed agreement to disclose personal information relevant to the complaint may be required from the service user, or their advocate.

If the service user is competent to do so, consent will be required from them, in writing, wherever possible. If the service user does not have capacity, consent is required from their advocate. The service user should also receive a copy of the complaint. A service user can give verbal consent if they are happy to do so. The complainant will be informed when consent has been received.

In cases where the service user is an inpatient and cannot complete the consent form online or ring the PALS and Complaints Team to provide verbal consent, the Modern Matron or the Ward Manager will be sent the complaint and a consent form and will be asked to liaise with the service user to obtain consent. If the service user is not an inpatient, a consent form, together with a copy of the complaint, will be sent to the service user so that the service user can comment on the issues raised, if they wish to do so.

If the service user is under the age of 18, but is considered to be able to understand the complaint issues raised, they will be asked to provide consent. This will normally affect children between the ages of 12-16 and will always be the case if the service user is between 16-18 years of age.

If the service user refuses consent, the information provided to the complainant is strictly limited to information pertaining to them (rather than the service user) and/or general information about services provided. The complainant must be informed about a refusal to provide consent and what aspects of the complaint, if any, can be responded to.

Concerns about a service user's care should always be looked into, even if no formal response can be provided.

## **7.23 Meetings with the complainant**

### Preliminary meeting

Under the guidelines it is expected that, if possible, the Trust will meet with a complainant:

- to clarify the cause of the complaint and the issues to be addressed
- to clarify any specific needs (translation, large print etc.)
- to agree how the complaint will be handled and responded to (formal, informal, response from the Chief Executive or Service etc.)
- to agree a timescale for investigating and responding to the complaint
- to ensure any immediate care issues are addressed appropriately

If a meeting is not possible, the information can be discussed over the telephone and, if personal contact is not possible, the information will be recorded in a letter and sent to the complainant. This initial contact must take place within three working days of receipt of the complaint.

Following the initial meeting or telephone contact a letter will be sent to the complainant with the relevant information within two working days of the contact.

### Local resolution meetings

Continued dialogue with the complainant and /or service user is important. Local resolution meetings can be held before the complaint response is sent, as part of the local resolution process, or after sending out a written response. Formal local resolution meetings can be beneficial for both the Trust and the complainant and will normally be in addition to any initial meeting offered at the beginning of the complaints process, for example, meetings may be held:

- in cases where a response in a written format may be difficult to understand or appear insensitive, such as, where there has been a bereavement; or
- at the request of the complainant who feels that the issues have not been resolved

The rationale for holding a meeting must be explicit. The agenda should be agreed prior to the meeting, preferably in writing. Meetings may be offered with the relevant senior manager, Modern Matron or Consultant. Exceptionally, and with their full agreement, members of staff complained about may be asked to attend meetings with complainants.

Meetings must be offered and, if possible, take place within **4 weeks** of the request (depending on the complainant's availability). If clinical staff are involved they must be made aware of the request as soon as possible to avoid delay.

The role of the chairperson will be:

- to ensure that the terms of reference and a code of conduct for the meeting are understood and adhered to;
- to ensure that notes are taken and checked for factual correctness by staff present at the meeting. A copy of the notes must also be sent to the Experience Manager.

It is recommended that a voice recording of the meeting is made, with the consent of those present, and a copy, in a suitable format, is sent to the complainant. If a voice recording is made, the notes of the meeting can be informal and the letter sent to the complainant will include the main findings and action points of the meeting.

## **7.24 Remedy**

The Trust is expected to put things right when they have gone wrong and providing fair and proportionate remedies is integral to the resolution of complaints.

The underlying principle is to ensure that the Trust restores the complainant to the position they would have been in if the maladministration or poor service had not occurred and, if this is not possible, the Ombudsman expects Trusts to offer appropriate compensation to the complainant whose complaint is upheld and to others who have suffered hardship as a result of that maladministration or poor service. The Ombudsman wants Trusts to be fair and take responsibility, acknowledge failures and apologise for them, make amends and use the opportunity to improve their services.

Where a complaint has been upheld the Trust will consider a range of both financial and non-financial remedies. Financial compensation will not be appropriate in most cases but the Trust cannot rule it out as a form of remedy for justified complaints.



When considering a remedy, the Trust will take into account any way in which the complaint has contributed to, or prolonged the injustice or hardship. Each case will be considered on its merits and will take account of the individual circumstances.

The range of remedies available includes:

- an apology, explanation and acknowledgement of responsibility
- remedial action, such as, reviewing or changing a decision on the service given to an individual complainant, revising published material, revising procedures to prevent the same thing happening again, training and/or supervision of staff
- an explanation of what lessons have been learned and the changes that have been introduced to prevent a repetition of the problem
- financial compensation for direct or indirect financial loss, loss of opportunity, inconvenience, distress, or any combination of these
- reimbursements of costs incurred in pursuing the complaint
- Giving the complainant an opportunity to share their experiences, initially sending a Complaints Evaluation Survey.

Financial loss will be calculated by looking at how much the complainant has lost or what extra costs they have incurred. Payments will also include an appropriate interest rate for financial loss. Any financial payment must be authorised by the Executive Director, Finance and Performance Improvement.

### **7.25 Data collection**

Each complaint will be analysed in terms of the service area, location, the issues raised and the outcome/learning for the service. The complainant will also be asked to provide a range of equal opportunities information. The Trust will request this information, if it is not already available.

This data helps the Trust identify possible areas of concern, such as unexpectedly high or low numbers of complaints concerning specific groups of service users from a unit or service in order to improve the service for those groups and ensure they have fair access to Trust services.

For administration and audit purposes, the responsible managers and the Experience Manager will ensure the outcomes of all formal complaints are recorded as follows:

- Not upheld
- Partially upheld – a complaint has some elements that are upheld
- Upheld – a complaint is fully or substantially upheld

Quarterly reports and an annual report will be prepared so that information about all feedback can be shared with the relevant groups/committees and the Trust Board. In addition, statistics will be provided to the Department of Health and external bodies as required.

### **7.26 Supporting complainants**

Assistance and guidance must be offered to the complainant. Distinction must be made between a member of staff assisting and giving general support to the

complainant in making a complaint and the support provided by an independent advocate.

Advocacy organisations provide a useful service in assisting service users/relatives/carers and others who wish to make a complaint to do so, especially where the complainant is unable to make, or is disadvantaged in being able to make, a complaint personally. A complainant is entitled to have an independent advocate assist him/her at any stage of the procedure.

The NHS Complaints Advocacy providers have a statutory role in advising complainants and, where appropriate, assisting them in making complaints (see section 5). Other national and local organisations can also help in this area.

The Trust will usually respond to the advocate, leaving them to liaise with the complainant, unless otherwise requested by the complainant or advocate.

The Experience Manager needs to check that complainants do not feel they have been unfairly treated as a result of having complained and a questionnaire will normally be sent out to the complainant five weeks after sending out the response to seek comments on the service provided, provided the complainant has not already indicated that they are dissatisfied with the result of the investigation. (Exceptions include solicitors, MPs and, rarely, complainants where it is felt that it would cause distress to write again).

Some complainants ask their MP to complain on their behalf. In such cases the Trust will ask for consent in the usual way. Responses are signed off by the Chief Executive.

### **7.27 Supporting staff**

Staff support and co-operation with the investigation of complaints is essential. Staff being complained about need to be supported through the process. The rights of those involved in a complaint and its investigation will be preserved through the implementation of the following standards:

- information about staff involvement is only provided on a need-to-know basis
- staff cited in the complaint are advised of the content, progress and outcome of the complaint
- there is clear separation of the complaints procedure from the disciplinary procedure (although disciplinary action does not prevent the complaint from being investigated and responded to)
- staff are supported by their local managers and colleagues
- staff can obtain support and advice through their trade union or professional associations, or from line managers where a complaint is being investigated by an investigating officer from outside their particular service

Whilst meetings between complainants and staff can prove useful, they can be traumatic. Senior managers need to consider the benefit of asking junior staff to attend face to face meetings if there is a risk that they will be confrontational, abusive or unduly distressing.

Managers should consider any of the following to provide immediate or on-going support to staff involved in a complaint:

- providing an informal or formal post incident support session as soon as possible
- giving advice about the availability of counselling and other similar specialist services – contact HR if necessary
- providing access to trade union advice - contact HR if necessary
- referring to Occupational Health or seeking their advice
- explaining the Trust's internal investigation procedure for complaints and guiding individuals on how they will be expected to contribute to the process, such as preparing a statement or being interviewed
- giving staff the opportunity to access professional advice from their relevant professional body/union
- contact the Employee Assistance Service on 0800 328 1437 which is a 24 hour free phone line covers harassment and bullying etc. Alternatively log on to [www.employeeassistance.org.uk](http://www.employeeassistance.org.uk).

NHS staff may complain about the way they have been dealt with under the complaints procedure and may take such a complaint to the PHSO, who would normally expect NHS staff first to have followed local procedures for resolving their complaint. However, the PHSO has the power to consider complaints that have not been through the relevant internal procedures and/or where the internal procedure has not concluded and where they consider that, in the circumstances of the particular case, it is not reasonable to expect this.

## **8. ASSOCIATED PROCEDURES**

### **RULE**

#### **8.1 Links with other procedures**

The resolution of a complaint may require links with other policies and procedures for example the Learning from Adverse Events Policy, the Joint Protocol for managing multi-agency complaints, Safeguarding Vulnerable Adults or Children procedures etc.

#### **8.2 Incidents**

It is important to check if an incident form has been completed in relation to any of the complaints issues raised. Sometimes the first indication that an adverse incident has occurred is when the complaint letter is received. In such cases, the Safer Care Team is informed and, when appropriate, the relevant department will complete an incident form.

If a complaint is received for an incident that is subject to a serious incident investigation the complainant will be advised in writing by the Trust's Complaints team that the complaint will go on hold until the conclusion of the serious incident investigation process. A copy of the complaint will be provided to the serious incident investigation lead and every effort will be made through engagement with the family to consider the key areas of concern or questions as part of the review process. On completion of the serious incident investigation the allocated complaints investigator will be provided with a copy of the serious incident report to aid a complaints response to be drafted.

A copy of the serious incident report will be provided to the family as part of the Trusts commitment to openness and transparency. If there are any outstanding questions or concerns these will then be responded to as part of the NHS complaints process.

Refer to the **Learning from Incidents Policy**

### **8.3 Disciplinary matters**

The Trust complaints procedure is focused only with resolving complaints and not with investigating disciplinary matters. The purpose of the procedure is not to apportion blame amongst staff, but to investigate complaints with the aim of satisfying complainants whilst being fair to staff. It also offers an opportunity to learn from the experience of service users to improve service delivery. Some complaints investigations may prompt a disciplinary investigation.

Consideration as to whether or not disciplinary action is warranted is a matter for management, is subject to a separate investigation process and falls outside the complaints policy. Information gathered during the complaints procedure may be made available for a disciplinary investigation and *vice versa*.

If a complaint is received by an employee of the Trust, which indicates a need for any of the following:

- an investigation under the disciplinary procedures
- a referral to one of the professional bodies
- an independent inquiry into a serious incident under Section 84 of the NHS Act 1977
- an investigation of a criminal offence

The person in receipt of the complaint should immediately notify the Experience Manager in conjunction with the Service Line Lead and Human Resources Business Partner who can make a decision as to whether to initiate such action. A decision must then be taken about whether the complaint can continue without prejudicing the outcome of the disciplinary process.

If it is decided that a full response to the complaint cannot be completed until after the disciplinary investigation, a partial response should be made available to the complainant. The complainant should be advised of the expected timeframe of other investigative processes and kept informed of progress. When that process is complete, a further response should be sent to the complainant, with the outcome and action plan, being mindful of service user and staff confidentiality at all times.

That part of the original complaint which had been referred to a different procedure should only recommence through the Trust complaints procedure where there are outstanding matters in the complaint that have not been previously resolved.

### **8.4 Criminal investigation**

Where a crime may have been committed and the matter has been referred to the police, the complaints investigator may defer matters relating to that part of the complaint. This will only be done after taking advice from the Trust's solicitors, the Crown Prosecution Service and the Police, as appropriate. Care must be taken to ensure that any Trust investigation does not compromise the police inquiry. The

complainant must be kept informed of the action being taken and, if the complaints procedure has commenced, it must be concluded at the appropriate time.

### **8.5 Coroner's cases**

The fact that a death has been referred to the Coroner's office does not mean that investigations into a complaint need to be suspended, but the complaint investigation should take into account any reports to the Coroner that may assist the investigation into the complaint.

### **8.6 Staff complaints**

Staff can complain about services provided to them, as service users in their own right, or in the role of carers to a relative who is a service user.

In addition, staff can complain about corporate services that are not related to HR, pensions or management issues through the complaints process.

Managerial issues are dealt with under management procedures, for example, allegations by members of staff about fellow members of staff or other grievances are addressed through the HPFT Grievance Policy. Staff concerns about health or social care practices should be raised under the **Whistle Blowing Policy** or through the Trust's **Freedom to Speak up Guardian**.

The Trust's Freedom to Speak Up Guardian has a key role in helping to raise the profile of raising concerns in HPFT and provide confidential advice and support to staff in relation to concerns they have about risk, poor practice, quality of care, neglect and/or the way their concern has been handled.

If you are unsure how to proceed with your concern, please discuss with your manager or guardian details below;

- Confidential Speak Up Phone Line on 01727 804100
- Or email the Trust's Freedom to Speak Up Guardian [hpft.speakup@nhs.net](mailto:hpft.speakup@nhs.net)
- Emails can be sent anonymously from our internal Speak Up website
  
- You can also contact the Care Quality Commission on 03000 616 161
- You can contact the NHS Whistleblowing Help Line on 08000 724 725 for free confidential advice

### **8.7 Claims for negligence/legal proceedings**

In the event that a complainant reveals a case of negligence or the likelihood of legal action, the Experience Manager will inform and seek advice from those responsible for claims management. At the beginning of the investigation it may not be clear whether the complainant simply wants an apology, with assurances that any failures in the service will be rectified, or whether they are seeking information, with formal litigation in mind. An open and empathetic approach and response may satisfy the complainant and the expectation is that such a response should happen as a matter of course.

The complaints policy is not a vehicle for negotiating and settling financial compensation, although open and effective management of a complaint might avoid litigation. However, if the complainant has either instigated formal legal action, or notified in writing that they intend to do so, the complaints procedure may have to be

suspended after discussion with the Patient Safety Manager and, if required, the Trust's legal advisors and/or the NHS Litigation Authority (NHSLA).

If, following investigation of a complaint, the investigator is of the view that that some form of financial compensation should be considered, the matter will be referred to the Experience Manager for discussion with the Executive Director of Finance and Performance Improvement.

## **9. INDEPENDENT REVIEW STANDARD**

### **9.1 Parliamentary and Health Service Ombudsman (PHSO)**

Anyone wishing to complain to the PHSO must normally have put their complaint to the Trust first. The PHSO is not obliged to accept or look into a complaint and, the Ombudsman's role is not normally to re-investigate the original complaint put to the Trust. The PHSO determines whether the Trust's service was poor, or the complaint process was flawed in any way, and whether this led to an unreasonable decision on its part. If the PHSO finds that maladministration of this kind has taken place, the complaint against the Trust will be upheld.

The PHSO has the power to consider complaints that have not been put to the relevant NHS body and/or where the first stage of the complaints procedure has not been exhausted where it is considered that, in the circumstances of the case, it is not reasonable to expect this.

The main stages at which complaints are likely to be made to the PHSO are where:

- the Trust has refused to investigate a complaint for whatever reason
- an individual is dissatisfied with the attempts at local resolution of their complaint
- the Trust decides to refer a complaint direct to the PHSO, using their powers to do so under section 10 of the Health Service Commissioners 1993 Act.

The PHSO will normally request and review the Trust's complaints file, including statements and investigation reports and relevant clinical records to the ombudsman, before deciding to accept a complaint for investigation. On completion of the investigation, the PHSO may uphold the complaint in full, in part or may not uphold the complaint at all. The findings and the reasons for those findings will be set out in a report. Where the complaint is upheld, the PHSO may make recommendations for appropriate redress, which might include an apology, an explanation, improvements to practices or systems or, where appropriate, financial redress. The PHSO has the power to refer individual practitioners to regulatory bodies in the interest of service user safety when appropriate.

The PHSO will expect any recommendations to be implemented and will contact the Trust to find out how this has been done. If the Trust does not implement any of the recommendations it must justify that decision with the PHSO.

### **Liaison with the PHSO**

The Experience Manager will liaise with the PHSO.

The PHSO operates to tight deadlines and all staff have a responsibility to assist the Experience Manager in meeting these deadlines.



The Experience Manager will keep interested parties within the Trust informed of the progress of any complaint referred to the PHSO.

## **9.2 Local Government Ombudsman (LGO)**

Anyone wishing to complain about the way the Trust has handled social care aspects of complaints has the right to take their complaint to the Local Government Ombudsman. Who has similar powers to the PHSO (see 9.1 above)

### **Liaison with the LGO**

The Hertfordshire County Council's Complaints Manager with responsibility for complaints about Adult Services liaises with the Trust's Experience Manager who in turn liaises the relevant Trust managers. Timescales are set by the LGO and by the County Council.

## **9.3 LGO/PHSO Joint Working Team**

Complaints about both NHS and Social Care are managed through the PHSO/LGO Joint Working Team. This team sits within the LGO and contact is usually direct with the individual organisations being complained about.

## **10. JOINT COMPLAINTS**

### **STANDARD**

On occasion, a complainant may raise an issue that concerns matters both within and outside the Trust's area of responsibility. In such cases the Experience Manager will liaise with bodies outside the Trust, as necessary, to facilitate a comprehensive response to the complaint (see Appendix 8).

Depending on the issues raised, there will normally be one co-ordinated response to the complaint. In such circumstances the Experience Manager will ensure that:

- It is clear between all relevant parties who will co-ordinate the investigation of the complaint and prepare the response.
- The complainant is consulted on and consents to the procedure that is being adopted and is aware from whom the response may be expected
- Any final response to the complainant is agreed between the relevant parties
- Any actions identified as a result of the investigation have been agreed with the parties involved, before they are relayed to the complainant
- Throughout the process, there is a high level of communication between the relevant parties with copying of all communication from any party with the complainant to each of the other parties.

The Trust has a duty to address the complaint as fully as possible by answering questions, providing information and attending meetings with the lead body ensuring that the complaints investigation is carried out appropriately. Both the Trust and the other organisations involved will consider meeting the complainant together, if this facilitates a more effective outcome.

If, following local resolution the complainant remains dissatisfied with the outcome, the next possible stages of a resolution process needs to be established. Where the outstanding complaint spans Health and Social Care responsibilities, the complainant

will reserve the right to go to the relevant Ombudsman (health issues are referred to the PHSO and social services issues to the LGO).

Any co-ordinated response should clearly identify which part of the complaint has been dealt with by whom so that the Ombudsman can see which part of the complaint relates to them. The Ombudsmen will work closely together to resolve any complaint that concerns both areas.

See **Appendix 8** for the full Joint complaints procedure

## **11. OTHER ISSUES RELATED TO COMPLAINTS**

### **11.1 Complaints about external provider services (commissioned by HPFT)**

Service users receiving services arranged by HPFT from external providers and who wish to make a complaint should not be disadvantaged in comparison to those who receive services direct from the Trust. The Trust has the responsibility to ensure that all commissioned services are delivered to an acceptable standard.

As part of contractual requirements, providers of commissioned services need to operate their own complaints procedures as agreed with HPFT. The provider service should provide details of complaints made about the service provided on behalf of the Trust, to the Experience Manager each quarter.

If the complainant makes the initial complaint to the Trust, the Experience Manager, with the agreement of the complainant, will forward the complaint to the provider service for resolution.

### **11.2 Complaints made about Social Workers or other professionals who are Approval Mental Health Professionals (AMHPs)**

AMHPs are appointed as officers of the local authority and are discharged duties under the Mental Health Act, 1983. They are issued with a parallel contract for this work by the County Council. Complaints made about Social Workers or other professionals employed by the Trust when they are carrying out the function of an AMHP (under the terms of their parallel contract) should initially be referred to HCS. The responsibility for governance of the AMHP service is shared by HCS and HPFT under the existing partnership arrangements and, depending on the nature of the complaint, HCS may request that the Trust takes the lead with the investigation.

### **11.3 Mental Health Act Detention / Care Quality Commission (CQC)**

#### **STANDARD**

Complaints about care provided to service users detained under the Mental Health Act 1983 (MHA) are made to the Care Quality Commission (CQC), if they are about the use of powers or how duties are carried out under the MHA. Complaints can be made by anyone – patients, staff or any member of the public. Service users detained under the MHA are provided with leaflets published by the CQC, which inform service users and families how to complain about the use of the Mental Health Act. These are available in ordinary text and easy read formats.

Powers and duties carried out under the Mental Health Act cover a wide range of services, including receiving care while detained in hospital or while on a guardianship or community treatment order.

Where complaints are made that might relate in part to the MHA procedures, the Trust should advise the complainant of their right to complain direct to the CQC at:



CQC Mental Health Act  
Citygate  
Gallowgate  
Newcastle-upon-Tyne  
NE1 4PA

Phone: **03000 616161** - press '1' to speak to the mental health team.

#### **11.4 Complaints arising from subject access requests made under the General Data Protection Regulation (GDPR) 2018 and the Freedom of Information Act 2000 (FOI)**

Under the GDPR, service users may submit a request for a copy of their health records (and associated information, for example, audit trail data) from any NHS organisation that holds information about them. Such a request is called a data subject request. Under the FOI any individual can request information not related to an individual's personal information from the Trust.

Complaints about data subject requests under the GDPR and FOI are exempt from the Complaint Regulations. However, complaints from service users about accessing their health records should, in the first instance, be handled by local organisations, as with any other complaint under the Regulations.

If a complainant is not satisfied with the handling of a complaint made about a request for information under the GDPR or FOI, they should be advised of their right to pursue their complaint with the Information Commissioner's Office (ICO). The ICO is the independent ombudsman with responsibility for dealing with GDPR or FOI issue. The ICO can be contacted at [www.ico.gov.uk](http://www.ico.gov.uk)

#### **11.5 Complaints about independent contractors**

Independent contractors have a duty to co-operate in the complaints process (the GMS Regulations for Independent Contractors SI 2004/291)

### **12. UNREASONABLY HABITUAL OR VEXATIOUS COMPLAINANTS RULE**

Regrettably, the Trust may occasionally be contacted by complainants who have no desire to see their concerns resolved, or to facilitate any improvements in Trust practice. Complaints in such circumstances, or the making of persistent or repeated complaints, or complaints accompanied by violence or abuse, may represent a misuse of the complaints process.

The complaints procedure is intended to deal with formal complaints in a constructive way. Communications containing inappropriate language, discriminatory sentiment, personal abuse or criticism have no place in such a process and will be rejected by the Trust in line with the Trust RESPECT statement and relevant legislative drivers (for example the Equality Act 2010). In such circumstances the complainant will be reminded that it is inappropriate for Trust staff to be faced with such abuse and they will be invited to re-submit any complaints in a more acceptable format.

Whilst it should always be remembered that even the most difficult of complainants may have issues of genuine substance, it is not appropriate that Trust staff should be faced with verbal aggression or abuse. Staff encountering such abuse by telephone,

are encouraged to politely explain the situation to the caller and advise that, if the behaviour continues, they will bring the call to a close. It is inappropriate for any member of staff to tolerate objectionable behaviour in the course of their work, and meetings with aggressive, abusive or excessively confrontational complainants may similarly be terminated or refused.

Any such incidents should be reported on Datix and will be reported in quarterly reports.

The procedure for managing such complainants is outlined in Appendix 10.

### 13. TRAINING STRATEGY

Course	For	Renewal Period	Delivery Mode	Contact Information
Complaints training for front line staff	All staff in contact with service users, carers or members of the public	At start and when there are significant changes to the process	E-learning	<a href="mailto:hpft.learning@nhs.net">hpft.learning@nhs.net</a>
The NHS Complaints and Feedback Process	For managers and staff who investigate complaint	When needed	E-learning	Hpft.learning@nhs.net
Responding and Learning from Feedback	Managers responsible for gathering and using feedback	When needed	MS Teams course – 60 minutes	Contact the Learning & Development Team: <a href="mailto:hpft.learning@nhs.net">hpft.learning@nhs.net</a> You can check for future dates <a href="#">here</a> , and request a specific date. If no dates – contact Experience Team
Investigating Complaints	Managers and all those involved in investigating complaints	When needed	Teams course - 60 minutes	Contact: Experience Team <a href="mailto:hpft.pals@nhs.net">hpft.pals@nhs.net</a>

#### Associated training

Several training courses are relevant to effective complaints handling, these include: Relating to People, Equality and Diversity and Becoming Carer Aware.

### 14. EMBEDDING A CULTURE OF EQUALITY & RESPECT

The Trust promotes fairness and RESPECT in relation to the treatment, care and support of service users, carers and staff.

RESPECT means ensuring that the particular needs of ‘protected groups’ are upheld at all times and individually assessed on entry to the service. This includes the needs of people based on their age, disability, ethnicity, gender, gender reassignment status, relationship status, religion or belief, sexual orientation and in some instances, pregnancy and maternity.

Working in this way builds a culture where service users can flourish and be fully involved in their care and where staff and carers receive appropriate support. Where discrimination, inappropriate behaviour or some other barrier occurs, the Trust expects the full cooperation of staff in addressing and recording these issues through appropriate Trust processes.

**RULE:** Access to and provision of services must therefore take full account of needs relating to all protected groups listed above and care and support for service users, carers and staff should be planned that takes into account individual needs. Where staff need further information regarding these groups, they should speak to their manager or the Equality and Diversity Lead.

Where service users and carers experience barriers to accessing services, the Trust is required to take appropriate remedial action.

<b>Service user, carer and/or staff access needs</b> (including disability)	The Trust makes provision to ensure that all service users, carers and other’s with sufficient interest are able to raise a concern or complaint, or give a compliment by providing access to advocates, PALS and Complaints literature in different languages, on request, and ensuring that responses are provided in an accessible format as agreed with the complainant. It is also clearly set out that complainants will not suffer discrimination by raising a concern or complaint.
<b>Involvement</b>	It is made clear that complaints are valued as a means of learning from poor experience of mistakes and for improving the services we offer.
<b>Relationships &amp; Sexual Orientation</b>	The compliments, concerns and complaints processes are open to all service users, carers and others with sufficient interest regardless of relationship or sexual orientation
<b>Culture &amp; Ethnicity</b>	The use of advocacy and interpretation services should ensure that complainants from ethnic minority groups receive an appropriate response to their concerns and complaints.
<b>Spirituality</b>	Where concerns or complaints raise issues about spirituality these will also be raised with the Spiritual Care team to ensure successful resolution.
<b>Age</b>	The use of advocacy services is encouraged for service users or carers who struggle with making a complaint due to their age. Older people with dementia are able to use the easy read complaints leaflet. CAMHS services have a modified ‘Compliments, Complaints Feedback’ leaflet. People can also access the procedure through the Trust website.
<b>Gender &amp; Gender Reassignment</b>	The process provides equal treatment for men, women and transgender people
<b>Advancing equality of opportunity</b>	The Experience Team will continue to develop ways to ensure that all those who wish to do so feel able to raise a complaint or concern, have the issues investigated and receive an open, honest and proportionate response.

## **15. PROCESS FOR MONITORING COMPLIANCE WITH THIS DOCUMENT**

The Experience Team will produce quarterly and annual reports to Involvement and Experience Group to demonstrate compliance with the standards. This report is sent to the Commissioners the Local Area Team and the local HealthWatch after being agreed by the Trust Executive.

Each month, data is produced for the Performance Management Team, with regards to the number of complaints received and percentage responded to within 25 working days. The Trust target is for 90% of complaints to be responded to within 25 working days.

Key Performance Indicators e.g. the NHSLA Standard for this document is given in **APPENDIX 1**.

Action:	Lead	Method	Frequency	Report to:
Review of compliance with NHSLA Criterion 2.3 at levels 2 & 3	Experience Manager	Review policy against NHSLA standard	Policy checked every year	IEG
CQC Outcome 17	Experience Manager	Review policy against CQC Outcome	Policy checked every year	and IGC
Complaints regulations	Experience Manager	Review policy when regulations change	Policy checked and amended as required	
NHS Constitution	Experience Manager	Review policy when NHS Constitution changes	Policy checked and amended as required	

**16. Version Control**

**STANDARD**

Version	Date of Issue	Author	Status	Comment
1	Feb 2002	Complaints Manager	Archived	Superseded
2	May 2007	Complaints Manager	Archived	Superseded
3	Sep 2008	Complaints Manager	Archived	Superseded
4	Jun 2009	Complaints Manager	Archived	Superseded
5	Dec 2010	Complaints Manager	Archive	Superseded
6	21 May 2013	Complaints Manager	Archived	In new Trust format.
6.1	23 Feb 2015	Complaints Manager	Archived	Updated to include revisions from the MHA Code of Practice 2015
7	30 <sup>th</sup> March 2017	Complaints Manager	Superseded	Full review
7.1	25 <sup>th</sup> May 2018	Complaints Manager	Superseded	Reviewed under GDPR
7.2	2021	Interim Experience Manager	Superseded	Interim policy changes
8	16/07/2021	Interim Experience Manager	Current	

**17. Archiving Arrangements**

**STANDARD:** All policy documents when no longer in use must be retained for a period of 3 years from the date the document is superseded as set out in the Trust Business and Corporate (Non-Health) Records Retention Schedule available on the Trust Intranet

A database of archived policies is kept as an electronic archive administered by the Compliance and Risk Manager. This archive is held on a central server and copies of these archived documents can be obtained from the Compliance and Risk Manager on request.

All complaints files will be scanned, where possible, six months after the last contact with the complainant and retained on the database for the life of the database and in the electronic case file for eight years.

All PALS and complaints records are held electronically. Paper records already archived will be destroyed as confidential waste eight years after closure of the complaint. Destruction will be recorded on the database.

**18. Associated Documents**

**STANDARD**

This procedural document should be used in conjunction with the following HPFT policies, all of which are available on the HPFT staff website:

- Anti-Fraud and Corruption policy
- Accessible Information Policy
- Hertfordshire Interagency Safeguarding Adults at Risk Policy
- Hertfordshire Joint Protocol for the Handling of Social Care and Health Care Complaints
- Learning from Incidents Policy
- Speak Up Policy
- Trust RESPECT statement
- Complaining about the user of the Mental Health Act (CQC 2012)
- Complaining about the use of the Mental Health Act – Easy to Read (CQC 2012)

## 19. Supporting References

### STANDARD

Being Open – communicating patient safety in incidents with patients and their carers (NPSA, 2009)

Equality Act 2010

Freedom of Information Act (2000) Policy (HPFT)

Handbook to the NHS Constitution (DoH 2016)

Human Rights Act 1998

Listening, Responding, Improving – A guide to better customer care (Department of Health 2009)

Mental Health Act 1983: Code of Practice (Department of Health 2015)

NHS Constitution (DoH 2015)

NHS Litigation Authority guidance about complaints

NHS Complaint Regulations (May 2004)

NHS Complaints Regulations (as amended) (October 2006)

Principles of Good Administration (PHSO 2005)

Principles of Remedy (PHSO 2007)

Principles of Good Complaints Handling (PHSO 2008)

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

## 20. Comments and Feedback

### STANDARD

#### People/groups involved in the consultation.

Executive Director Service Delivery and Service User Experience	
Company Secretary and Head of Corporate Affairs	Patient Safety Manager
Experience Manager	Practice Governance Leads
Compliance and Risk Facilitator	Head of Information Rights





<b>Appendices</b>		
1. Useful addresses		<b>40</b>
2. CQC Outcome 17		<b>41</b>
3. Mental Health Act		<b>42</b>
4. NHS Constitution		<b>44</b>
5. Glossary		<b>45</b>
6. Good Practice for investigators		<b>46</b>
7. Local Resolution Guidance		<b>47</b>
8. Complaints performance targets		<b>48</b>
9. Hertfordshire Joint Protocol		<b>49</b>

## Useful addresses

Organisation	Address	Phone number / email
Experience Team	Trust Head Office The Colonnades Beaconsfield Road Hatfield AL10 8YE	01707 253916 <a href="mailto:Hpft.complaints@nhs.net">Hpft.complaints@nhs.net</a> Hpft.pals@nhs.net
Hertfordshire County Council Client Relations Team (social care)	Health & Community Services Room 164 County Hall Hertford SG13 8DF	01992 556685 <a href="mailto:Hcs.complaints@hertfordshire.gov.uk">Hcs.complaints@hertfordshire.gov.uk</a>
Viewpoint	Unit 28 Weltech Business Centre, Ridgeway Welwyn Garden City AL7 2AA	01707 328014 <a href="mailto:info@hertsviewpoint.co.uk">info@hertsviewpoint.co.uk</a> <a href="http://www.hertsviewpoint.co.uk">www.hertsviewpoint.co.uk</a>
Carers in Hertfordshire	The Red House 119 Fore Street Hertford SG14 1AX	01992 586969 <a href="http://www.carersinherts.org.uk">www.carersinherts.org.uk</a>
Opening Doors (Advocacy Service for Forensic services in Norfolk)	38a Bull Close Norwich NR3 1SX	01603 631433 Email: <a href="mailto:admin@openingdoors.org.uk">admin@openingdoors.org.uk</a> <a href="http://www.openingdoors.org.uk">www.openingdoors.org.uk</a>
POhWER Advocacy	PO Box 14043 Birmingham West Midlands B6 9BL	Tel: 0300 456 2370 Fax: 0300 456 2365 Minicom: 0300 456 2364 <a href="mailto:pohwer@pohwer.net">pohwer@pohwer.net</a> <a href="http://www.pohwer.net">www.pohwer.net</a>
Parliamentary and Health Service Ombudsman	Millbank Tower Millbank London SW1P 4QP	0345 4033 <a href="http://www.ombudsman.org.uk">www.ombudsman.org.uk</a>
HealthWatch	Douglas Tilbe House Hall Grove Welwyn Garden City AI7 4PH	01707 275979 <a href="mailto:info@healthwatchhertfordshire.co.uk">info@healthwatchhertfordshire.co.uk</a> <a href="http://www.healthwatchhertfordshire.co.uk">www.healthwatchhertfordshire.co.uk</a>
CQC Mental Health Act	Citygate Gallowgate Newcastle-upon-Tyne NE1 4PA	Phone: 03000 616161 - press '1' to speak to the mental health team.

## Outcome 17: Complaints

### What should people who use services experience?

#### **People who use services or others acting on their behalf:**

- .. Are sure that their comments and complaints are listened to and acted on effectively.
- .. Know that they will not be discriminated against for making a complaint.

#### **This is because providers who comply with the regulations will:**

- .. Have systems in place to deal with comments and complaints, including providing people who use services with information about that system.
- .. Support people who use services or others acting on their behalf to make comments and complaints.
- .. Consider fully, respond appropriately and resolve, where possible, any comments and complaints.

## Mental Health Act (MHA) 1983 Code of Practice

### Information about complaints or if the Act is not being applied appropriately

- 4.53 A patient and persons supporting them (e.g. a patient's nearest relative, family, carer, advocate or legal representative), especially a patient lacking capacity, must be supported to make a complaint if they think the safeguards of the Act are not being appropriately applied or they have concerns about the care and treatment being provided.
- 4.54 Staff should be aware that it can be particularly difficult for patients and those supporting them to take forward complaints due to their mental ill-health and fear that this may impact on the quality of care and support they receive. All efforts must be made to support patients (especially those lacking capacity) and those supporting them to make complaints without any negative impact on the quality of care and support provided.
- 4.55 It is usually best for initial concerns to be raised locally. All providers should have clear complaints policies and procedures. Patients and those supporting them (including nearest relatives, family, carers and advocates) must be given information about how to make a complaint to the hospital. The information must be in formats that these individuals can understand.
- 4.56 Information about how to make a complaint to the service commissioner, CQC or Parliamentary and Health Ombudsmen should also be readily available.
- 4.57 CQC is likely to ask providers to detail the information provided to patients and those supporting them about how to make a complaint (see contact details below).
- 4.58 Patients can complain to the service provider, commissioner, local authority, CQC or the police depending upon what the complaint is about. The NHS complaints procedure sets out how complaints should be dealt with about NHS and local authority-funded services whilst the Act gives specific powers to make complaints about care under the Act and specifies certain criminal offences.
- 4.59 If the complaint is about service provision, a complaint may be made to the service provider or the commissioner. If not satisfied with the outcome, the complaint may be taken to the Parliamentary and Health Service Ombudsman.
- 4.60 If the complaint is about care and treatment under the Act, the complaint can be made to the service provider, commissioner, or CQC. If not satisfied with the outcome, the complaint may be taken to the Parliamentary and Health Service Ombudsman or ultimately the Secretary of State for Health or Justice, as appropriate. This guidance focuses on care under the Act. Chapter 12 gives guidance on the applications that may be made to the Tribunal.
- 4.61 Every service provider should make reasonable efforts to raise awareness and understanding of the Act and Code among patients and carers and, particularly in relation to their rights under the Act.
- 4.62 Providers should ensure staff are trained appropriately to support patients who have additional needs to access information about complaints and resolution procedures.

Every effort should be made to place copies of the Code in areas accessible to patients, and as appropriate their visitors.

- 4.63 Information about how to make a complaint to the service commissioner, the CQC or Parliamentary and Health Ombudsmen should also be readily available. This should be displayed on all mental health wards. Complaining to the commissioner may be the right option if the individual is not comfortable complaining directly to the service provider or, if the complaint is under the Act, directly to the CQC. Information should include specific information about the right of detained patients to complain to the CQC (contact details below), and the local support available if they wish to raise a concern or complaint. This should be available in alternative formats, e.g. easy read or Braille. The information should be explained to all patients, including those who lack capacity to make decisions about complaints, have problems communicating (e.g. they do not read or write), or whose first language is not English.
- 4.64 A patient and persons supporting them (e.g. a patient's nearest relative, carer, advocate or legal representative), especially a patient lacking capacity, should be supported to make a complaint if they think the safeguards of the Act are not being appropriately applied or they have concerns about the care and treatment being provided.
- 4.65 Staff should be aware that it can be particularly difficult for patients to take forward complaints due to their mental ill-health and fear that this may impact on the quality of care and support they receive. All efforts should be made to support patients (especially those lacking capacity), and those supporting them, to make complaints without any negative impact on the quality of care and support provided.
- 4.66 A qualifying patient (see paragraphs 6.8 – 6.11) may request the support of an independent mental health advocate (IMHA) in progressing a complaint. IMHAs are specialist advocates who are trained specifically to work within the framework of the Act and can enable patients to participate in decision-making. Patients should be encouraged to provide feedback on their general experiences, locally and to national bodies.

#### **Contact details for the CQC**

Call CQC on: 03000 616161 and press '1' to speak to the mental health team.

Write to CQC at:

CQC Mental Health Act

Citygate

Gallowgate

Newcastle

NE1 4PA

Email CQC at: [enquiries@cqc.org.uk](mailto:enquiries@cqc.org.uk)

Or fill out a 'Tell us your experience' form on the CQC website: [www.cqc.org.uk](http://www.cqc.org.uk)

This material does not form part of the Code. It is provided for assistance only.

## NHS CONSTITUTION 2009

Under the NHS Constitution 2009, patients and the public:

- have the right to have any complaint they make about NHS services dealt with efficiently and to have it properly investigated
- have the right to know the outcome of any investigation into their complaint
- have the right to take their complaint to the independent Health Service Ombudsman, if they are not satisfied with the way their complaint has been dealt with by the NHS
- have the right to make a claim for judicial review if they think that they have been directly affected by an unlawful act or decision of an NHS body
- have the right to compensation where they have been harmed by negligent treatment.

The NHS also commits:

- to ensure that complainants are treated with courtesy and receive appropriate support throughout the handling of a complaint, and the fact that they have complained will not adversely affect their future treatment
- when mistakes happen, to acknowledge them, apologise, explain what went wrong and put thing right quickly and effectively; and
- to ensure the organisation learns lessons from complaints and claims and uses these to improve NHS services

**GLOSSARY**

<b>HCS</b>	Health and Community Services (Hertfordshire County Council) - Adult Social Care
<b>AMHP</b>	Approved Mental Health Professional (authorised person who can make a decision to detain a person under the Mental Health Act).
<b>GDPR</b>	General Data Protection Regulations 2018
<b>FOI</b>	Freedom of Information Act 2000
<b>GMS</b>	General Medical Services (involves contracting for General Practitioners)
<b>HPFT</b>	Hertfordshire Partnership University NHS Foundation Trust
<b>ICO</b>	Information Commissioner's Office
<b>LGO</b>	Local Government Ombudsman
<b>MP</b>	Member of Parliament
<b>NHSLA</b>	National Health Service Litigation Authority (HPFT insurers)
<b>PALS</b>	Patient Advice and Liaison Service
<b>PHSO</b>	Parliamentary and Health Service Ombudsman
<b>IEG</b>	Involvement and Experience Group



**GOOD PRACTICE FOR INVESTIGATORS**

1. All paper correspondence received in connection with complaints should be date stamped immediately upon receipt
2. When considering an investigation first ensure that the service user's current clinical needs are being met
3. No person will be responsible for investigating a complaint in which they are the subject of the complaint
4. Staff identified in a complaint will be advised of the fact and of the substance of the complaint made against them.
5. Investigators must ensure that the responses to complaints involving medical issues are checked by the appropriate clinician for factual accuracy.
6. Obtain written statements from staff and others involved, either directly or as witnesses, as part of an investigation. These may be written, signed and dated by the person involved, or written up by the investigator from discussions with the person involved and signed and dated by that person.
7. Only staff directly involved in a complaint investigation should be aware of the complaint. (The complaint and its outcome can be shared at a later date in an anonymised format).
8. Staff involved are entitled to see the draft response to a complaint before it is finalised, in order to comment on matters of factual accuracy and to have the opportunity to comment on any conclusions/proposed actions. Staff should also be sent a copy of the final response.
9. All complaints correspondence to be marked "private and confidential" and emailed or sent by first class post, in accordance with the complainant's wishes. In exceptional cases the correspondence will be sent recorded or special delivery.
10. A full response must be sent to the complainant within 25 working days from the date of receipt or at the agreed time if different. If the response is to be delayed for any reason, the investigator must advise their manager and the Experience Team. The complainant must be advised of the delay and their agreement sought to extend the timeframe.
11. All staff statements, letters, emails, phone calls and the investigation report must be documented and forwarded to the Experience Team for inclusion on the complaint file.
12. Staff must be reminded of the need to support the complainant's /service user's human rights, privacy and dignity throughout the complaints process.

## LOCAL RESOLUTION GUIDANCE

Most complaints and concerns are initiated with front line staff or departmental managers.

- On receiving a complaint, first ensure that the service user's immediate health care needs are being met, before the complaint can be dealt with
- Assess the complaint by carefully listening to what the complainant is saying. Find out what the complainant wants and decide if you are able to resolve the complaint
- Assure the complainant that they will be treated with appropriate confidentiality and sensitivity and their care will not be adversely affected by making the complaint
- If you are able to resolve the complaint by the next working day, do so in an informal and sensitive manner. Be sure the complainant is satisfied with the resolution you propose before closing the matter. Make a record of the issue, the actions taken and the outcome and keep on the unit but not in the service user's records. Remember offering an apology is not an admission that something has gone wrong.
- If you are unable to resolve any, or all, of the issues, refer the complaint to your manager for advice. Inform the complainant of this and explain that your manager will contact them. Remember, the complaint remains your responsibility until you know your manager has contacted the complainant.
- Some complainants may wish to speak to someone not involved in their care. If so, seek advice from the PALS & Complaints team on 01707 253916.
- Although you are encouraged to try to resolve a complaint on the spot, remember that the complainant has the right to complain to the Chief Executive.
- If you receive a written complaint, immediately scan and send to [hpft.complaints@nhs.net](mailto:hpft.complaints@nhs.net) and give the letter to your manager.
- Use the complaints process to improve the quality of your service. Share the information both with your own colleagues (team meetings) and those of other service areas affected by the complaint but, remember to respect the confidentiality of the complainant and others named in the complaint.
- It is recognised that not all complaints are upheld or justified. They may arise after the correct procedures were followed in an appropriate manner.
- In cases where an allegation of serious negligence or a criminal offence is made, the matter must be considered by a Senior Manager and the Safer Care Team.
- If in any doubt, or to obtain further information/guidance/support at any stage in handling a complaint, seek advice from your line manager or the PALS & Complaints team and check the Compliments, Concerns and Complaints Policy and guidance available on the staff website.

## COMPLAINT PERFORMANCE TARGETS

Event	Time Allowed	National Regulations/Trust Target
<b>When to complain</b>	12 months from event or the date on which the matter which is the subject of the complaint came to the notice of the complainant. Longer if the Trust can effectively investigate and resolve the issues raised	National Regulations

## LOCAL RESOLUTION

<b>Simple concern</b>	Dealt with on the spot or agreement to respond within one working day	National Regulations
<b>Acknowledgement / contact with complainant</b>	Within 3 working days from date of receipt to agree the issues, hoped for outcome and response times	National Regulations
<b>Confirmation of complaints process</b>	Within 2 working days send letter confirming the issues, hoped for outcome and response times, and contact details of lead investigator	National Regulations
<b>Response</b>	5-25 working days from the date on which the complaint was received in the Trust, as agreed with complainant	National Regulations / Trust Target
<b>Local Resolution Meeting</b>	Within 4 weeks from date on which offer was accepted by either parties	Trust Target
<b>Complainant to apply to Ombudsman</b>	As soon as possible, but within 12 calendar months from the date of the final response.	National Target

# **Hertfordshire Joint Protocol for the Handling of Social Care and Health Care Complaints**

This Protocol complies with the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009

## **Participating Organisations**

East & North Hertfordshire NHS Trust

East and North Herts Clinical Commissioning Group

East of England Ambulance Service Trust

Herts Community NHS Trust

Central London Community Healthcare NHS Trust

Herts County Council Health and Community Services

Change Grow Live (CGL)

Herts Valleys Clinical Commissioning Group

Hertfordshire Partnership University NHS Foundation Trust

Isabel Hospice

POhWER  
(Generic and Complaints Advocacy)

West Herts Hospitals Trust

# Hertfordshire Joint Protocol for the Handling of Social Care and Health Care Complaints

## 1. Introduction

- 1.1 New complaints handling regulations were implemented in April 2009 and require a single response to a complaint that includes more than one NHS organisation and social care services. Hertfordshire's Joint Protocol provides the framework sets a standard for communication between all partner organisations providing NHS care. The protocol does not replace the complaints procedures of participating organisations and should be read in conjunction with each organisation's procedures. Although the focus of this protocol is adults services it is also appropriate for services for children across the statutory services (paragraph 4.3)
- 1.2 This protocol complies with the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009 and is informed by the Department of Health Best Practice Guidance; *Listening Responding, Improving – a guide to better customer care (February 2009)* and the Department of Health Advice Sheet 2 *Joint Working on Complaints*.
- 1.3 The protocol is to be followed by staff in all the participating organisations when dealing with complaints that concern the provision of both social care and health care across different organisations.

*Note: The joint approach can only proceed with the complainant's agreement. If this is not agreed each organisation will carry out their own investigation.*

- 1.4 Where the complaint concerns the services of a non NHS provider agency and/or independent contractors, these organisations will be encouraged to participate in the joint approach outlined in this protocol.

## 2. The purpose of the protocol

- 2.1 This protocol brings participating organisations together to provide a unified, and effective complaints service for people who may be dealing with a number of health and social care organisations.
- 2.2 The protocol provides a framework for collaboration throughout 'Local Resolution' to ensure:
- people have the means to complain and to express concerns regardless of age, gender, culture, ethnic origin or ability and the process for doing so (when the complaint involves more than one organisation) remains consistent and easy to use.
  - a person centred approach to complaints planning **and** the person complaining receives a single, co-ordinated response

- regular and effective communication between responsible complaints managers and service complaints leads in participating organisations and between responsible complaints managers, service ‘leads’ and the person complaining
- the complaints are assessed /triaged to determine the level of investigation required including possible use of other procedures, for example, *Safeguarding* procedures (adults, children and young people)
- learning points arising from complaints covering more than one organisation are identified and addressed by each organisation

### **3. Role of the complaints managers**

- 3.1** The designated complaints manager(s) in each participating organisation is responsible for managing the complaints service and for implementing this protocol. Each complaints manager should clarify who deputises if s/he is absent. This will be recorded and updated as necessary. Complaints Managers will hold a list of *Contact Details for Participating Organisations*.
- 3.2.1** Complaints managers will co-ordinate actions are required, agree who will take the lead role in completing a single, co-ordinated response for the complainant and co-operate fully with each other throughout the process.
- 3.3** If the complaints managers are unable to reach agreement about any matter covered by this protocol, they should refer the matter promptly to the responsible senior manager in the organisation(s) for resolution.
- 3.4** Complaints managers are responsible for ensuring that any learning / action points (including any shared learning) for the participating organisation(s) are recorded and reported to the responsible senior operational managers for inclusion in each organisations performance reporting framework.

### **4. The protocol - how it works in practice**

- 4.1** When a joint approach to a complaint is indicated, a complaints manager will take the lead in co-ordinating the response.

Factors to take into account in identifying the lead organisation include:

- which organisation is the primary focus of the complaint
- which organisation first received the complaint (if the seriousness and number of complaints are about the same for each)
- whether the person complaining expresses a clear preference
- impact on the organisations’ governance arrangements
- which organisation is likely to have ongoing contact with the complainant

- 4.2 For the majority of joint approach complaints the lead organisation will be determined by the organisation which is the primary focus of the complaint.
- 4.3 Instances will occur when a joint approach will involve children and adult social care and health services across Hertfordshire. For example when complaints arise concerning services to disabled young people in transition. In such cases the NHS complaints procedure will need to be used in conjunction with the relevant social care procedure.
- 4.4 **Role of the complaints lead** - the lead complaints handler will co-ordinate the response as follows:

- Ensure the complaint has been acknowledged within **three working days** and, if not already obtained, seek consent for the sharing of information for the complaint investigation. Please refer to *Statement of Consent for the Disclosure of Personal Records – attached*.
- In some instances the complainant will have written to or copied their letter to other participating organisation about their complaint. Organisations that have been copied into letters would not normally acknowledge receipt of the letter.
- When a joint approach is indicated, notify the complaints manager(s) involved and agree the basis for a co-ordinated response. Ensure that the complaint is assessed and an approach to resolution / appropriate level of investigation, with timescales agreed with the complainant.
- **If the complaint is complex and/or involves a number of organisations the lead partner should consider the need for a meeting with the secondary partners/ responsible managers to agree the action/complaint plan. Such a meeting will have priority and should facilitate, not delay the investigation.**

**Note: consider a conference call to avoid delay.**

- Contact the complainant and/or their advocate/representative to agree the approach including timescales and what the complainant wants to happen as a result of making their complaint, in line with the organisation's policies. Check knowledge of / access to local advocacy agencies able to assist the complainant (POhWER ICAS, MIND etc.).
- Collate the outcome of each partner organisation's investigation, draft final response and, if necessary, seek approval from all the agencies involved prior to 'signing off' as agreed. A deadline for this must be specified within timescales. If there is to be a delay advise the complainant and discuss the option of separate responses,
- *Note: When contextual changes have been made, it is essential that the final response is agreed by the lead partner and all the secondary partners*



*before it is sent. Complaints managers will facilitate this. Organisations must take responsibility to do this in a timely manner.*

- Ensure that participating organisations remain responsive to options for achieving speedy and effective resolution, for example, by arranging a complaints resolution meeting.
- The response will carry the lead organisation's 'logo' and will make it clear which organisation has contributed to each part of the response and providing a clear account of what has taken place, the decision making process, the findings and learning for each organisation.
- The complainant will be given the option to discuss the response with the relevant organisations for further local resolution
- The complainant must be advised of their right to refer their complaint to the responsible Ombudsman

#### **4.5** Role of the complaints managers in the secondary organisations:

- Co-operate fully in completing a single, co-ordinated response
- Maintain contact with the lead organisation to advise on progress and agree draft final response prepared by lead partner, if needed.

## **5. Timescales**

**5.1** Timescales will be agreed between participating organisations and the complainant.

**5.2** Secondary organisations will record the reason for any variation to their own organisation's timescales. All organisations need to communicate with each other if the investigation cannot be completed within the agreed timescale.

**5.4** Where extensions are required, the responsible organisation will communicate with the complainant and agree a revised timescale with them. Extensions to timescale should not be the norm.

*Note: Where there is an unreasonable delay from one or more participating organisations, the lead organisation will consider sending a partial response. The organisation(s) responsible for the delay will apologise in the subsequent response.*

## **6. What happens if the complainant is not satisfied with the joint response?**

**6.2** If the person complaining is not fully satisfied with the first response, the lead organisation will review the complaint response with the complainant taking

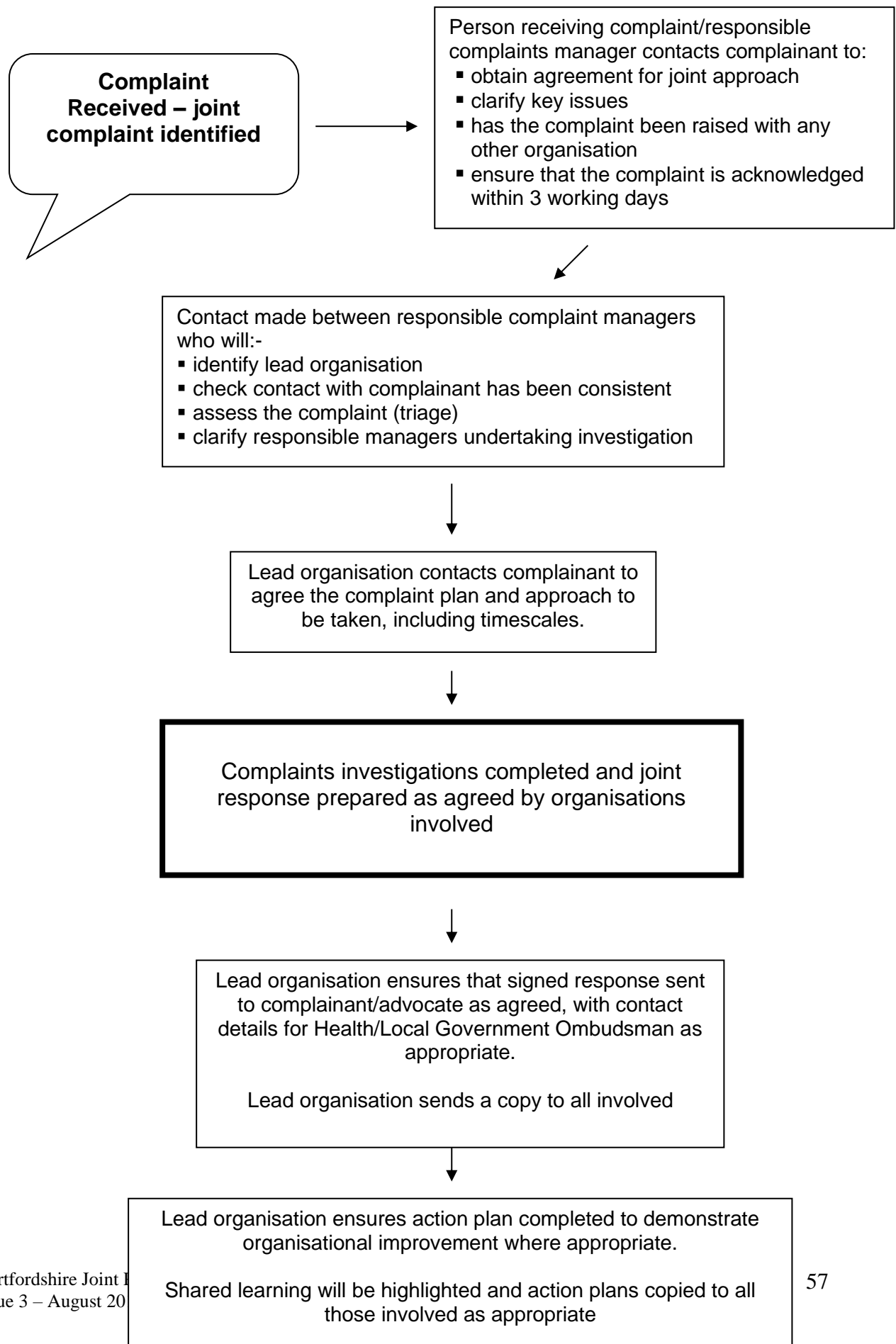
care to check what aspects of the complaint(s) are resolved /not resolved and what the complainant wants to happen as the next step and inform the secondary organisations.

- 6.3** An organisation may withdraw from the joint process at this point if the complaints concerning that organisation are resolved. In turn, this may require a review as to which organisation now acts as the lead partner in completing a review of the complaint.
- 6.4** Participating organisations will need to consider options for further work within Local Resolution or whether Local Resolution should now be concluded. Practice may differ between organisations as to how far Local Resolution will be extended to include further review/investigation. This should be taken into account when completing the joint response (see section 4)
- 6.5** The responsible Ombudsman may also check the thoroughness of the first response and may invite the participating organisations to consider further options for resolution.
- 6.6** In the event of the participating organisations being unable to agree the resolution of a complaint, or unable to agree a way forward in expediting resolution, the matter will be referred to the responsible senior managers in each organisation.

## **7. The Protocol – principles for handling complaints**

- 7.1** Feedback from people using our services and their carers tells us about the quality and effectiveness of the services we provide and the services we commission. Our ability to *listen*, *respond* and *improve* is a hallmark of good customer care.
- 7.2** The Ombudsmen have devised a set of principles as a guide to public bodies in putting things right speedily and effectively and these are embodied in local publications. The principles are:
- Getting it Right
  - Being Customer Focused
  - Being Open and accountable
  - Acting fairly and proportionately
  - Putting things right
  - Seeking continuous improvement
- 7.3** Organisations should also share best practice and guidance in all aspects of good customer care, communicating effectively, writing response letters and learning from complaint findings.

## Flow Chart for Handling of Joint Approach Complaints



## **Procedure for managing habitually demanding, unreasonable and persistent complainant behaviour**

### **1. Introduction**

Whilst most people engage well with staff, there will be cases when either a complainant refuses to accept the outcome or makes their point in a manner which is abusive, threatening or in an otherwise unacceptable way. People who exhibit habitually demanding or vexatious behaviour places a strain on time and resources and causes unacceptable stress for staff.

The following is HPFT's procedure for managing complainants who are making unreasonable demands on services and who may have exhausted the local complaints procedure. This procedure will only be used after all reasonable measures have been taken to try to resolve the person's issues.

Judgement and discretion must be used in applying the criteria to identify such behaviour and in deciding on the action to be taken in each case.

This procedure must be used in conjunction with the Compliments, Concerns and Complaints Policy and Procedure and the Non-physical and Physical Assaults (Violence and Aggression) Policy.

### **2. Purpose of the procedure**

- 2.1 To identify situations where someone might be considered to be an unreasonably demanding or persistent complainant and establish a procedure whereby they can be treated equitably and fairly.
- 2.2 To protect staff from the nuisance, abuse and threatened or actual harm, which may be caused by such behaviours.

### **3. Definitions**

- 3.1 A habitual or unreasonably persistent complainant is someone who repeatedly raises the same issue, despite having been given a full response.
- 3.2 Unreasonable behaviour could be considered as any of the following: to harass, distress, annoy, tease, cause trouble, agitate, disturb or pursue issues excessively.

### **4. Criteria for deeming a complainant to be unreasonable or persistent**

- 4.1 It is accepted that complainants or others coming into contact with the Trust may act out of character. They may demonstrate persistent or unreasonable behaviour for a number of reasons and may be unaware of the impact their attitude/behaviour is having on others. Unacceptable behaviour that continues through several contacts and after the effects their behaviour is having on the organisation have been explained, should be considered against this procedure.
- 4.2 Behaviour exhibited by a person (and/or anyone acting on their behalf) may be deemed to be habitually demanding or persistent where they:

- are abusive or aggressive towards staff (in writing, verbally or physically). Staff must recognise that people may sometimes act out of character at times of stress, anxiety or illness and should make reasonable allowances for this;
- do not clearly identify the problem, despite reasonable efforts by the Trust and, where applicable, the advocacy services to clarify and agree the issues to be addressed;
- persist in pursuing a complaint when the procedures have been fully and properly implemented and exhausted;
- continue to focus on a trivial matter which is out of proportion to its significance;
- change the basis of the complaint as the investigation proceeds or introduce trivial or irrelevant information at a later stage;
- seek to prolong contact by continually submitting minor additions/variations following receipt of a response. (Care must be taken not to ignore new issues which are significantly different from the original issue. These might need to be addressed as a separate complaint);
- make excessive demands on the time and resources of staff with lengthy phone calls, numerous or lengthy emails or letters and expecting immediate responses and fail to accept that these may be unreasonable. (The decision to determine what is excessive will be based on the specific circumstances of each individual case);
- are unwilling to accept the response, repeatedly arguing points with no new evidence, or does not accept that facts can sometimes be difficult to verify when a long period of time has elapsed.

## **5. Process for managing persistent and/or unreasonable behaviour**

### **5.1 Stage 1**

Actions prior to designating a person's contact as persistent and/or unreasonable

It is important to ensure that the details of a complaint are not lost because of the presentation of that complaint. There are a number of considerations to bear in mind when considering imposing restrictions upon a complainant. These may include:

- Ensure all correspondence and verbal contact is in line with Trust Values
- ensuring the person's case is being, or has been dealt with appropriately, and that reasonable actions will follow, or have followed the final response;
- being confident that the person has been kept up to date and that communication with the complainant has been adequate prior to them becoming unreasonable or persistent;
- checking that new or significant concerns are not being raised that require consideration as a separate case;
- applying criteria with care, fairness and due consideration for the complainant's circumstances. This should include the impact of bereavement, loss or

significant/sudden changes to the complainant's lifestyle, significant others, quality of life or life expectancy;

- considering the proportionality and appropriateness of the proposed restriction in comparison with the behaviour and the impact upon staff;
- ensuring that the complainant has been advised of the existence of the policy and has been warned about, and given an opportunity to amend, their behaviour.

Consideration should also be given as to what, if any, further action can be taken prior to designating the person's contact as unreasonable or persistent. This might include:

- raising the issue with a Director with no previous involvement, in order to give an independent view;
- consider offering a meeting at a local level as a means to dispel misunderstandings (if one has not been offered previously and where appropriate risks have been assessed);
- where multiple teams are being contacted by the complainant, agree a cross-team approach;
- consider whether the use of an advocate would be helpful;
- consider the use of 'ground rules' for continuing contact with the complainant;
- consider referring to the PHSO if the complainant has not already done so.

Ground rules may include:

- time limits on telephone conversations and contacts;
- restricting the number of calls that will be taken/agreeing a timetable for contacting the service;
- requiring contact to be made with a named member of staff and agreeing when this should be;
- requiring contact through a third party, such as an advocate;
- limiting the complainant to one mode of contact;
- informing the complainant of a reasonable timescale to respond to correspondence;
- informing the complainant that future correspondence will be read and placed on file but not acknowledged;
- advising that the organisation does not deal with calls or correspondence that is abusive, threatening or contains allegations that lack substantive evidence and request that the complainant provides an acceptable version of the correspondence or makes contact with a third party to continue communication with the organisation;
- asking the complainant to enter into an agreement about their conduct;

- advising that irrelevant documentation will be returned in the first instance and (in extreme cases) in future may be destroyed;
- adopting a 'zero tolerance' policy and explaining e.g. 'The Trust operates a zero tolerance policy and the safety of staff is paramount at all times. Staff have a right to care for others without fear of being attacked either physically or verbally'.

## 5.2 Stage 2

Where a person's contact has been identified as persistent and/or unreasonable, the decision to declare them as such is made jointly by the Executive Director for Delivery and Service User Experience, the relevant Managing Director, and the d Experience Manager.

Once it is clear that an individual is considered to be habitually demanding or persistent, it is appropriate to inform them in writing that their conduct is unacceptable and that, if it continues, they may be classified as persistent or unreasonable. The letter will state clearly which elements of their behaviour are causing problems and, where they are involved in the NHS complaints procedure they will be advised to seek advice from e.g. their local advocacy service in presenting their complaint.

Other actions that can be taken at this stage are:

- limiting the number and duration of telephone conversations, emails and letters;
- where hand-written correspondence is unclear, the complaint will be acknowledged and the complainant offered the opportunity to contact the Experience Team to discuss their concerns. If this option is not taken the correspondence will be returned and the complainant signposted to the complaints advocacy service;
- identifying a sole point of contact (for open formal complaints this will normally be the Experience Manager, for closed complaints this will be the relevant operational lead and possibly an experienced/senior clinician to manage clinical issues);
- informing the complainant that written communication will be the only communication accepted;
- the Experience Manager will notify all staff likely to receive contact from the complainant advising them of the action decided upon and provide a suitable script which staff should read to the complainant (and repeat up to three times) before terminating the call. This will be regularly reviewed;
- the relevant Managing Director will write to the complainant informing them why their behaviour is preventing any possible resolution of the complaint, and include an agreement setting out a code of behaviour for both parties listing grounds on which the complaint will or will not be dealt with;
- the relevant Managing Director/Executive Director will write to the complainant informing them that the points raised have been fully responded to and



continued contact on this matter would serve no useful purpose. The letter would include advice on contacting the relevant Ombudsman;

- the Experience Manager will escalate the case to an Executive Director and agree a suitable course of action, which will be communicated to the complainant in writing;

Once a complainant has been deemed as habitual or persistent the status will be withdrawn if, for example, the complainant subsequently demonstrates a more reasonable approach or if they submit a complaint about different issues for which the normal complaints procedure would appear appropriate.

If it becomes apparent through the course of investigating a complaint that staff have been subjected to personal verbal or written abusive comments, the complainant will be advised that this is unacceptable and will not be tolerated. Staff will be advised to report such incidents on Datix.

### **Stage 3**

Where the Trust has responded fully to the points raised by the person, has tried to resolve the issues without success and continued contact on the matter would serve no useful purpose, the individual will be notified by the Chief Executive that the contact is at an end and that further contact will be acknowledged, but not answered.

In extreme cases, or where the safety of staff is at risk, the individual will be informed that the Trust reserves the right to inform the police or to take legal advice (as appropriate). All contact with the person and/or investigation of the complaint will be suspended whilst seeking legal advice or guidance from relevant agencies.

Any further complaints received from a person who has been designated as habitually demanding or persistent under this procedure, will be subject to a reasonable investigation as deemed necessary by the Chief Executive in conjunction with advice received from staff dealing with complaints. The Chief Executive (or deputy), in conjunction with the relevant Managing Director may, at their discretion, choose to omit one or two of the above stages.

## **6. Urgent or extreme cases of persistent and/or unreasonable behaviour**

In urgent or extreme cases safeguarding and zero tolerance procedures should be adopted, this may include the use of emergency services or taking legal action. In these circumstances the case must be reviewed at the first opportunity after the event in line with the Non-physical and Physical Assaults (Violence and Aggression) Policy and the Compliments, Concerns and Complaints Policy and Procedure.

## **7. Reviewing and withdrawing persistent/unreasonable behaviour status**

When a complainant has been classified as persistent or unreasonable, the status will only apply to the specific issues related to the complaint. The status will be reviewed after 6 months, earlier if the person demonstrates a more reasonable approach. If the person submits a further complaint for which the normal complaints procedure appears appropriate, this will be handled as such.

## **8. Record Keeping**

Ensure adequate records are kept of all contact with a persistent and/or unreasonable person. Incident forms should be completed using the Trust's Datix system following any incident of aggression (verbal or physical).

### **9. Supporting affected staff**

Consider the impact on staff and ensure they are properly supported. This will include, for example, through supervision and the Employee Assistance Service (0800 882 4102/www.pamassist.co.uk).

### **10. Freedom of Information Act 2000**

Where a Freedom of Information Act request is made by a complainant or person who has been designated as habitually demanding or vexatious, the Trust may, in assessing whether that individual request is a vexatious request, take into account the habitually demanding or vexatious complainants/behaviour if it considers this to be relevant. In doing so, the Trust will also follow Information Commissioner guidance on vexatious requests.

### **11. Associated Policies:**

Non-physical and Physical Assaults (Violence and Aggression) Policy

Compliments, Concerns and Complaints Policy and Procedure

Incident and Serious Incident Requiring Investigation Reporting Policy

### **12. References:**

Commonwealth Ombudsman – Fact sheet – Unreasonable complainant conduct from Commonwealth Ombudsman Better practice guide to managing unreasonable complainant conduct 2009

NHS England Complaints Policy

NHS Protect Unacceptable behaviour – Guidance on warning letters and other written communications

Local Government and Social Care Ombudsman – Guidance on managing unreasonable complainant behaviour

Barnet, Enfield and Haringey Mental Health NHS Trust - Complaints Management Policy – Appendix 4 – Procedure for managing habitual or vexatious complainants

Worcestershire Primary Care Trust Policy for dealing with habitually demanding or vexatious complaints and/or habitually demanding or vexatious behaviour

	<i>we are...</i>	<i>you feel...</i>
<b>Our Values</b>	<b>Welcoming</b>	✔ Valued as an individual
	<b>Kind</b>	✔ Cared for
	<b>Positive</b>	✔ Supported and included
	<b>Respectful</b>	✔ Listened to and heard
	<b>Professional</b>	✔ Safe and confident