

Policies and Procedures

Policy Document for **Complaints Procedure**

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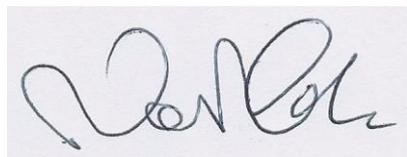
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Document Approval and Sign-Off

The following persons have authorised the release of this Policy Document:

CAUTION

Any edits, revisions or additions to this document require authorization from the persons specified below, prior to distribution or use.

Name	Role	Initials for Sign-Off
N Cook	Operations Director	

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INTRODUCTION

Legislative Context

The procedures set out in this policy comply with the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009.

This policy provides guidance on how complaints will be dealt with by the company. The policy should be accompanied with the Investigating Complaints Toolkit Listening, Responding, Improving: A Guide to Better Customer Care. 2009 (DoH 2009)

Aims of the Procedure

It is essential that the company has a consistent and orderly process for receiving and handling complaints. Positive use should be made of the information received to ensure that similar occurrences are avoided in the future and that services are continually improved.

Service users, and those acting on their behalf, should be able to complain in a variety of ways and expect a detailed, considered and prompt response. The handling of a service user's concerns should not be restricted by rigid procedures.

This is supported where available by the local Patient Advice and Liaison Service (PALS) which facilitates the pro-active resolution of problems as and when they arise, thereby reducing the need for service users, relatives and carers to use the complaints procedure to obtain a solution.

In dealing with complaints the company aims to ensure that:

- As far as possible, complaints are resolved to the complainant's satisfaction as quickly as possible, and within the company's target for responses.
- Complainants are advised about the complaints procedure and the opportunities for representation, interpretation/translation support and conciliation.
- Complainants are satisfied that a thorough investigation has taken place and that a reasonable attempt has been made to provide a full response to their concerns.
- The viewpoint of the staff involved in a complaint will be represented in any investigation and the staff will be treated with understanding and consideration at each stage of the procedure.

- Deficits and failures in service provision are identified and remedial action is taken.

Definition of a Complaint

The NHS Executive has suggested that one definition of a complaint is “an expression of dissatisfaction that requires a response”. It is not intended that every minor concern should warrant a full-scale complaints investigation. The spirit of the complaints procedure is that front line staff are empowered to resolve minor problems and queries immediately and informally whenever this is possible.

The company seeks to distinguish between requests for assistance in resolving a problem, which are often verbal, and an actual formal, written complaint. The former will be dealt with in an informal manner and the latter will be dealt with in accordance with the complaints procedure.

MANAGEMENT OF COMPLAINTS BY THE COMPANY

The Operations Director is the lead Director with overall responsibility for the management of complaints. Operational responsibility for the management of complaints processes, and associated activities, rests with the Service Manager.

All staff are required to comply with the company’s guidance for managing complaints (see Appendix A). Service Managers are responsible for investigating complaints relating to their area, and providing to the Operations Director draft responses and background information. Service Managers are accountable to the Directors for taking any necessary remedial action or making service improvements in response to complaints and feedback.

Independent contractors are contractually required to have in place, and to publicize, local procedures for enabling patients and users to raise concerns and complaints.

The Senior Management Team is accountable for scrutinizing the managed system and receives quarterly and annual reports on activity across all service areas.

GUIDANCE

Who can make a Complaint?

Any person, or their representative, who has been affected by, or is likely to be affected by, any action of the company, or who is, or has been, a patient of an independent contractor or an independent provider, may make a complaint.

A complaint may be made by a person acting on behalf of a service user who: has died, is a child, is not physically or mentally capable of making the complaint, or when the person affected has asked the representative to act on his/her behalf.

Where the patient or person affected has died, or is incapable, the representative must be a relative or other person who, in the opinion of the Operations Director, had, or has a sufficient interest in his /her welfare and is a suitable person to act as a representative. In the case of a child, the representative must be a parent, guardian or other adult person who has responsibility for the care of the child. If the child is in the care of the Local Authority or a voluntary organisation, the representative must be a person authorised by the Local Authority or the voluntary organisation.

If the Complaints and Corporate Affairs Manager does not believe that the representative does, or did, have sufficient interest in the person's welfare, or is suitable to act as a representative, he will notify that person in writing stating the reasons behind his decision.

Consent

Any person wishing to make a complaint on behalf of someone else must have written consent to do so from the service user. If the service user has died then the Service Manager must determine whether the complainant had sufficient interest in the person's welfare, or is suitable to act as a representative. If he does not consider this to be the case, then he will notify that person in writing stating the reasons behind his decision.

Children may have someone make a complaint on their behalf if they are under the age of 16. This person should normally be a parent, guardian or other adult person who has responsibility for the care of the child. If the child is in the care of the Local Authority or a voluntary organisation, the representative must be a person authorised by the Local Authority or the voluntary organisation. Representatives of people incapable of complaining for themselves should normally confirm that they are acting with the consent of the person concerned.

Time Limits

Normally a complaint should be made:

- Within 6 months of the event that caused the problem, or

- Within 6 months of the date of discovering the problem

There is discretion to extend the time limit where it would be unreasonable, in the circumstances of a particular case, for the complaint to have been made earlier and/or where it is still possible to investigate the facts of the case.

What cannot be dealt with under the Complaints Procedure

A complaint made by another organization which relates to the exercise of the company's functions.

A complaint made by an independent contractor which relates either to the exercise of its functions by the company or to the contract or arrangements under which it provides services.

A complaint which is being, or has been, investigated by the Health Service Ombudsman.

A complaint arising out of the company's alleged failure to comply with a data subject request made under the Data Protection Act 1998 or a request for information under the Freedom of Information Act 2000.

A complaint where the complainant has stated that he/she intends to take legal proceedings (see section 12).

A complaint where the company is taking, or is proposing to take, disciplinary proceedings in relation to the substance of the complaint against a person who is the subject of the complaint.

A complaint made by an employee of the company about any matter relating to his/her contract of employment.

The company operates a 'Dignity at Work' policy in relation to behaviour or written statements which could be considered to be racially, religiously or sexually biased. In these circumstances, the company will write to the service user to explain that their behaviour is unacceptable and that, if this behaviour does not cease, further action will be taken by the Company.

Making a Complaint

Verbal Complaints

Staff will often receive informal comments and suggestions and these may include expressions of dissatisfaction. If staff receive verbal comments from service users, the person receiving the comment should establish the facts and clarify whether a complaint is being made.

Staff are encouraged, in conjunction with their line manager and, if appropriate, PALS, to deal with verbal complaints to which they can provide an immediate response. The aim is to resolve the matter causing concern, to reassure the complainant, to learn from the complainant's experience and to eliminate the potential for similar problems. Details of the complaint, and action taken in response, should be completed on the pro-forma for verbal complaints (in the 'Guidance for Staff - Managing Complaints' at Appendix A) and forwarded to the directors. It is important to keep a written record of any verbal complaint in case the complainant takes further action at a later date.

Where the complainant indicates that they are not satisfied with the verbal response, or where the person dealing with the complaint considers that the complainant may wish to take the matter further, it is recommended that the complainant is informed of their right to bring the matter to the attention of the Operations Director.

Staff should provide the complainant with a copy of the company's complaints leaflet, copies of which should be available at all of the company's sites. Healthshare will also fund translation/interpreter services where necessary and provide assistance for those with sight or hearing difficulties. Alternatively, complainants can be given a comments card and reminded that they should tick the relevant box if they wish their concerns to be handled as a formal complaint.

Written Complaints

All written complaints must be acknowledged within two working days of receipt. If appropriate, the complainant should be invited to submit details in an alternative format, for example, in Braille, on tape or in the service user's first language. The Operations Director will arrange for this communication to be transcribed and verified by the complainant.

Comments Cards

Comments cards are available at all of the company's sites and provide service users with the opportunity to record their complaint/comments. Service users are offered the option of receiving a written reply to their comments or, alternatively, to have their complaint dealt with under the formal complaints procedures.

Acknowledgement and record of the complaint

The Service Manager, or someone acting on her behalf, will send a written acknowledgement of the complaint within 2 working days of the date on which the complaint was made or received.

Where the complaint is made verbally, the acknowledgement must be accompanied with a written record of the complaint.

A copy of the complaint and the acknowledgement letter, as well as a copy of the Operations Managers full response, must be sent to any person identified as the subject of the complaint as well as the Operations Director. The acknowledgement letter must also include information advising the complainant about their right to receive assistance from the Independent Complaints Advocacy Service (ICAS).

HANDLING COMPLAINTS

The Complaints Process

A Flow Chart showing how complaints about the company are dealt with can be found in the 'Guidance for Staff – Managing Complaints' at Appendix A.

All written complaints, and the details of verbal complaints which have not been resolved informally by staff, should be immediately sent to the Operations Director so that the complaint can be acknowledged within 2 working days. The complaint will then be forwarded to the appropriate Service Manager for investigation.

The investigating manager will provide the Operations Director with a draft response to the complaint within 10 working days. If necessary they will seek clinical advice from the Clinical Lead or Clinical Director. A response will then be prepared and signed by the Operations Director within 20 working days of receiving the complaint. If there are good reasons why the Operations Director cannot sign the response, it will be signed by another Director acting on their behalf.

The service manager may, in conjunction with the Operations Director, find it helpful to arrange a meeting with the complainant to facilitate the investigation and improve communication and understanding. A written summary of the key areas of discussion at any such meeting should normally be sent to the complainant.

The response should include an apology where appropriate, an explanation, details of any action taken to prevent a recurrence of the incident and inform the complainant of their right to refer their complaint to the Care Quality Commission within two months of receiving the response.

Complaints which could Potentially Lead to Disciplinary Action

The complaints procedure is concerned only with resolving complaints and not with investigating disciplinary matters. The purpose of the complaints process 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 improve service delivery.

Some complaints will, however, identify information about serious matters and the company may feel that it is appropriate to consider a disciplinary investigation at any point during the complaints process. Consideration as to whether or not disciplinary action is warranted is a separate matter for the staff member's line manager. It falls outside of the complaints process and is subject to a separate process of investigation. Information gathered during the complaints process can, however, be made available for a disciplinary investigation. If disciplinary action is to be taken, the complaints process must cease immediately and all relevant parties must be informed.

When it is likely that a complaint, if found to be justified, could lead to disciplinary action being taken against a member of staff, the investigating manager should ensure that the staff member's line manager is immediately notified of the complaint. The line manager may then need to carry out the investigation but, if not, he/she should be kept informed of the progress being made with the investigation.

In cases of this nature, the Service Manager will remain responsible for ensuring that a thorough investigation is carried out. The decision about whether disciplinary action should be invoked is for the staff member's line manager or the Operations Director in line with the Company's disciplinary procedure. All disciplinary matters must be dealt with separate to the complaints procedure.

Possible Claims for Negligence

If a complaint reveals a prima facie case of negligence, or if it is thought there is a likelihood of legal action being taken, the person in receipt of the complaint should inform the Operations Director. Even if the complainant's initial communication is via a solicitor's letter, the inference should not necessarily be that the complainant has decided to take formal legal action. In the early part of this process it may not be clear whether the complainant simply wants an explanation or an apology, or whether they are seeking information with litigation in mind. A full investigation should still be carried out and an explanation should be given, and if appropriate, an apology offered to the complainant.

It may be necessary for the Operations Director to discuss the issues and options available to the complainant in an attempt to prevent litigation. Legal advice may be sought at this time. Copies of all correspondence should be passed to any staff member concerned, and their line manager, and they should also be informed that legal advice is being taken.

The complaints procedure should cease if the complainant explicitly indicates an intention to take legal action in respect of the complaint. All parties concerned should be advised in writing that the complaints procedure will be brought to an end.

Financial Compensation and Ex-Gratia Payments

The Operations Director should be immediately notified if any service user writes to the Company indicating that they want financial compensation to resolve their complaint/concerns. The Operations Director will raise this matter with the Senior Management Team and the matter will then be dealt with.

Allegations of a Criminal Offence

Where a complaint, or investigation into a complaint, suggests that a criminal offence may have taken place, the Operations Director should be notified immediately so that he can decide whether the police should be informed.

Serious Untoward Incidents

If a complaint raises issues which constitute a potential untoward incident, the Service Manager will notify the appropriate officers as specified in the Company's Adverse Event Reporting policy.

CONCILIATION

The Operations Director may, in any case where he thinks it would be appropriate to do so and with the agreement of the complainant, make arrangements for conciliation, mediation or other assistance for the purpose of resolving the complaint.

The aim of conciliation is to assist both parties in a complaint to talk through the problems in the hope of reaching an agreement which both parties will accept. This must be agreed by both parties and cannot be imposed. The conciliation process will be confidential between the parties concerned and the Conciliator. Conciliators are not required to report on the detail of the case other than to confirm that a meeting has taken place and whether or not the conciliation was successful.

COMPLAINTS ABOUT OTHER SECTORS

Complaints About Another Service

If a complaint is received which relates to another service the complaint will be acknowledged by Healthshare and passed onto the appropriate service within 2 working days of receipt. The correspondent will be advised of the contact details of the appropriate organisation and the name of the person to whom their correspondence has been referred for action. If the complainant's consent to refer is not implicit in the letter then this will be sought before the complaint is forwarded.

Multi-Sector Complaints

Where a complaint spans more than one organisation, discussions should take place between the relevant complaints managers as to whether the issues should be handled separately or as part of a joint response. Where it is decided that a joint response should be formulated, one officer should be nominated to co-ordinate the investigation and to be the main point of contact for the complainant during the investigation. The complaint should be acknowledged within 2 working days and the complainant should then be advised how the investigation will take place.

HANDLING AND CONSIDERATION OF COMPLAINTS BY THE HEALTHCARE COMMISSION

General Complaints Remit of the Healthcare Commission

Complainants who remain dissatisfied following local resolution may refer their complaint to the Care Quality Commission asking for an independent review of their complaint. The complainant can only refer their complaint to the Care Quality Commission when they have received a final response from the company. A complainant can also refer their complaint to the Care Quality Commission if an investigation into their complaint has not been completed within 6 months of the complaint being made. The complainant can refer their complaint to the Care Quality Commission either orally or in writing (including e-mail) and must do so within 2 months (or as soon as reasonably possible) of receiving the final response from the company.

Investigation by the Healthcare Commission

If the Care Quality Commission proposes to investigate a complaint, it will notify the complainant and the company and, within 10 working days, they will notify the parties involved of the proposed terms of reference for its investigation. The company will have 10 working days to comment on the proposed terms of reference.

The Care Quality Commission may investigate the complaint in any way it feels is appropriate. The Commission may ask the company to produce any information or documentation which it feels is necessary. This information will be requested in writing with the complainant's consent.

THE HEALTH SERVICE OMBUDSMAN

If complainants remain dissatisfied after the company and the Care Quality Commission have considered their complaint, they can write to the Health Service Ombudsman requesting further investigation. Complainants will need to provide reasons explaining why they still remain dissatisfied and why they feel that they have suffered hardship or an injustice. The Health Service Ombudsman regularly reports to Parliament about the cases which have been investigated.

VEXATIOUS AND HABITUAL COMPLAINANTS

Most complainants behave entirely reasonably but, on rare occasions, their behavior can cause concern. They may, for example, abuse or threaten members of staff, or continue to raise new questions when their original concerns appear to have been fully addressed. It is recognised that a point can come, even with a complaint put in a courteous and reasonable manner, at which it has to be accepted that no purpose will be served by further communication.

This section of the policy is included to ensure that any restriction placed on complainants should be there as a result of a fair and consistent policy, and that complainants should only be regarded as vexatious or unreasonably persistent for good reason, and not just because they are forceful and determined. In order to help monitor the use of this policy, the circumstances will be reported to the Operations Director each time it needs to be invoked.

In determining the arrangements for handling such complaints, staffs are therefore presented with the following key considerations:

- To ensure that the complaints procedure has been correctly implemented as far as possible and that no part of a complaint is overlooked or inadequately addressed.
- To appreciate those even habitual complainants may have grievances that contain some genuine substance.

- To ensure an equitable approach.
- To be able to identify the stage at which a complainant has become habitual.

It is recommended that this should only be used as a last resort and after all reasonable measures have been taken to try to resolve complaints, for example, through local resolution, conciliation, PALS or through the involvement of advocates. Judgment and discretion must be used in applying the criteria to identify potential habitual complainants and in deciding the action to be taken in specific cases. This should only be implemented following careful consideration by, and with the authorization of, the Operations Director.

Definition of a Vexatious/Habitual Complainant

Complainants and/or anyone acting on their behalf may be deemed to be vexatious/habitual where previous or current contact with them shows that they meet at least TWO of the following criteria:

Where complainants:

- Persist in pursuing a complaint where the NHS complaints procedures have been fully and properly implemented and exhausted (e.g. where the Healthcare Commission has reviewed the complaint and confirmed that they are taking no further action).
- Seek to prolong contact by changing the substance of a complaint or continually raise new issues and questions whilst the complaint is being addressed. (Care must be taken not to discard new issues which are significantly different from the original complaint. These might need to be addressed as separate complaints).
- Are unwilling to accept documented evidence of treatment given as being factual e.g. clinical notes.
- Deny receipt of an adequate response despite evidence of correspondence specifically answering their questions.
- Do not accept that facts can sometimes be difficult to verify when a long period of time has elapsed.
- Do not clearly identify the precise issues that they wish to be investigated, despite the reasonable efforts of the company, or an appropriate advocate, to help them specify their concerns.
- Do not accept that their concerns are not within the remit of the company to investigate.
- Focus on a trivial matter to an extent where it is out of proportion to its significance. (It is recognised that determining what a “trivial” matter is can be subjective and careful judgement must be used in applying this criteria).
- Have, in the course of making a complaint, had an excessive number of contacts with the company placing unreasonable demands on staff. (A contact may be in person or by telephone, letter, e-mail or fax. Discretion must be used in determining the precise number of “excessive contacts”)

applicable under this section using judgement based on the specific circumstances of each individual case).

- Are known to have recorded meetings or face to face/telephone conversations without the prior knowledge or consent of the other parties involved.
- Display unreasonable demands or expectations and fail to accept that these may be unreasonable (e.g. insist on responses to complaints or enquiries being provided more urgently than is reasonable or normal recognised practice).
- Have threatened or used actual physical violence towards staff or their families or associates at any time – this will in itself cause personal contact with the complainant and/or their representatives to be discontinued and the complaint will, thereafter, only be pursued through written communication. (All such incidents should be thoroughly documented).
- Have harassed or been personally abusive or verbally aggressive on more than one occasion towards staff dealing with their complaint or their families or associates.

(Staff must recognise that complainants may sometimes act out of character at times of stress, anxiety or distress and should make reasonable allowances for this). Staff should thoroughly document all incidents of harassment.

Managing Vexatious/Habitual Complainants

Checks should be carried out to determine whether the complainant meets

sufficient criteria to be classified as a vexatious/habitual complainant.

Where there is an ongoing investigation the Operations Director should write to the complainant setting parameters for a code of behaviour and the lines of communication. If these terms are contravened, consideration will then be given to implementing other action.

Where the investigation is complete, at an appropriate stage the Operations Director should write a letter informing the complainant that:

1. He has responded fully to the points raised and has tried to resolve the complaint
2. There is nothing more that can be added
3. The correspondence is now at an end

The Operations Director may wish to state that future letters will be acknowledged but not answered.

In extreme cases the company should reserve the right to take legal action against the complainant.

Withdrawing ‘Vexatious/Habitual’ Status

Once complainants have been determined as ‘vexatious/habitual’ there needs to be a mechanism for withdrawing this status at a later date if, for example, complainants subsequently demonstrate a more reasonable approach or if they submit a further complaint for which normal complaints procedures would appear appropriate. Staff should previously have used discretion in recommending ‘vexatious/habitual’ status and discretion should similarly be used in recommending that this status be withdrawn.

CONFIDENTIALITY

Care must be taken at all times to ensure that use of a service user’s personal information is confined to that which is relevant to the investigation of the complaint. Service users must be informed that it may be necessary to disclose information contained in their health records to other parties involved. Written consent will be sought before any records are disclosed.

Confidentiality of records relating to deceased service users continues after death and, where possible, the next of kin’s consent should be obtained.

COMPLIMENTS AND POSITIVE FEEDBACK

As a balance to complaints it is important that we also record the things that go well. Positive comments and letters of praise should always be fed back to the staff concerned. When compliments are received, a copy will be forwarded to the service manager so that the comments can be passed to the staff member/s being praised.

The complaints team would like to receive copies of any letters of praise or written positive comments so that they can be recorded and included in quarterly reports. The service concerned, and the name and contact details of the service manager, should be indicated when forwarding such letters.

PERFORMANCE MANAGEMENT

Service Improvements and Clinical Governance

When patients express concern over the clinical care provided, the appropriate manager should arrange a prompt reassessment. The individual’s care plan should be reviewed in the light of the results of that assessment.

Performance Management

A quarterly complaints, claims and compliments report will be submitted to the Senior Management Team detailing complaints activity in the last quarter. An annual complaints, claims and compliments report will be published covering the year April to March. The quarterly reports will specify the number of complaints received during the quarter and will identify the subject matter of those complaints, summarising how they were handled and will identify the outcome of any investigation. The quarterly reports must also identify any complaints where the recommendations of the Care quality Commission were not acted upon, giving the reasons for this decision.

Appendix A - Complaint Process Flowchart

