Complaints Policy & Procedure

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PART A: POLICY ON COMPLAINTS

1. Introduction

1.1 The Trust will actively seek feedback on all aspects of its services and will use this information to review, develop and enhance people's experiences of 2gether NHS Foundation Trust. This position is underpinned by the NHS Constitution.

1.2 The Trust acknowledges the importance of an effective and efficient Complaints Policy and the need to continually gain feedback on its services. Services users and carers should be enabled and encouraged to speak openly and freely about their concerns and experiences. People must be reassured that whatever they say will be treated with the appropriate confidentiality, sensitivity and care.

1.3 The Trust acknowledges its obligation requirements to comply with current NHS complaints, other national guidance and best practice. A 'Review of NHS Hospitals Complaints System: Putting Patients Back in the Picture (Ann Clwyd MP and Professor Tricia Hart Oct 2013) identified key themes regarding complaints which included the need for readily available and accessible information, for the process to be free from fear of jeopardising future care; that complaints are handled sensitively and promptly and followed a clear process. Best practice dictates that people should be supported through the complaints process. Cross-organisational complaints should be seamless; the outcome should be independent. Learning from complaints must be effectively cascaded in order to be embedded in practice and support service improvement.

1.4 The Trust has an obligation under the Duty of Candour Policy (CQC Regulation 20), which came into force for NHS Bodies on 27 November 2014. This requires all staff to demonstrate:

- **Openness** – enabling concerns and complaints to be raised freely without fear and questions asked to be answered.

- **Transparency** – allowing information about the truth about performance and outcomes to be shared with staff, patients, the public and regulators.

- **Candour** – any patient harmed by the provision of a healthcare service is informed of the fact and an appropriate remedy offered, regardless of whether a complaint has been made or a question asked about it.

(See Being Open/Duty of Candour Policy)

1.5 The 2gether NHS Foundation Trust view complaints positively. The organisation is committed to having effective procedures in place to handle all issues brought to the attention of staff. The organisation will learn from feedback and ensure that people's experiences are used to continually improve services. The Parliamentary and Health Service Ombudsman, Review of Complaint Handling for 2011/12 notes;

“...each complaint that is not fully addressed or investigated is a missed opportunity for the NHS to continue to improve, to pick up on possible systematic problems, and to reinforce the trust that we all place in the NHS to get our care and treatment right.”
1.6 The Trust is committed to make every effort to resolve things that go wrong as soon as possible and to give service users and carers an outcome that they are satisfied with. The priority is to resolve concerns wherever possible without the need for formal complaint investigation. The first step should always be for the person who wishes to raise an issue to talk to staff directly to try to reach a way forward.

1.7 Where this is not possible, the Trust wants to make sure that it is easy for anyone to make a formal complaint and to give feedback about how matters can be improved. Service users and carers need to feel confident that making a complaint will not result in any reduction or loss in service. Complaints should be treated positively and, where possible, leave service users and carers feeling satisfied with the way their complaint has been handled, confident that the Trust has learnt from their experience and gain a sense of resolution to their concerns.

2. Purpose

2.1 The principle purpose of the complaints policy and procedure is to provide a flexible and responsive complaints handling system which focuses on the specific needs of the complainant and seeks to reach speedy local resolution that satisfies the best interests of the complainant.

2.2 To achieve this, the policy and procedure must be designed with the following objectives:

- to promote a culture within the Trust which welcomes complaints as an opportunity to engage with service users and to put matters right as quickly as possible
- to provide a complaints handling system which is fair for complainants and staff alike
- to facilitate coordinated handling of cross-boundary complaints
- to ensure that the lessons learned from complaints and feedback are used to improve the service
- to ensure that the complaints procedure is open, accessible and well publicised.

2.3 The following are excluded from the scope of this policy:

- complaints made regarding the management of Freedom of Information requests and data protection issues; these concerns should be managed via the Information Governance Team
- complaints made by organisations about a Trust service where the issue is contractual or relates to service level agreement. Disputes or queries should be addressed as part of contract monitoring
- a complaint made by a Trust employee about any matter relating to his/her contract of employment. (Refer to Grievance Procedure)
- a complaint which is under investigation (or has been investigated) by the Health Service Ombudsman
- a complaint where the complainant is proposing to take legal action, this should be addressed through the ‘Claims Policy and Procedure’
- a complaint should be made within 12 months of its event. (See 12 for more detail)
a complaint which has already been investigated under the procedure. If a complainant remains dissatisfied with the response to their concerns and resolution has been unsuccessful, the case should be referred to the Parliamentary Health Service Ombudsman for review.

3. Duties

3.1 The Chief Executive is responsible for ensuring compliance with NHS Complaints Regulations and that action is taken in light of the outcome of any investigation.

3.2 Responsibility for the development, maintenance and review of this document, both policy and procedure, lies with the Director of Quality.

3.3 The Service Experience Clinical Manager has delegated authority to manage the complaints procedure on behalf of the Chief Executive and should be readily available to both the public and members of staff.

3.4 Service Directors/Directorate Managers are responsible for ensuring the timely handling of complaints, reviewing investigations to ensure all concerns are addressed and actions arising from complaints are implemented.

3.5 Complaints Investigators will be at a sufficiently senior level in the Trust and will have the necessary knowledge and skills to respond appropriately to complaints, to carry out simple mediation and or conciliation work or to conduct a complaint investigation. In more complex complaints they will need or be supported by someone with Root Cause Analysis skills.

3.6 All Trust Staff should be aware of the Complaints Policy and have a responsibility to report complaints and concerns. Staff should be approachable and be able to respond in an open, sensitive, non-judgemental and timely way which seeks to resolve concerns as much as is possible and assist with service improvements identified as a result of complaints and concerns.

4. Definitions

Complaint A complaint is understood to be ‘a formal expression of dissatisfaction requiring a response.’ Complaints may be about any matter reasonably connected with the exercise of the Trust’s functions.

Concern An issue raised which has the potential to become a complaint, but which the person requests is dealt with outside the complaint regulations. For concerns which can, through immediate and timely intervention, resolve the issue raised in a short time frame (24 hours).

Healthwatch An organisation gathering views of local people about their experiences of local health and social care services. Healthwatch also provide advice and help to make choices about services and help people to access advocacy services Info@healthwatchgloucestershire.co.uk

SEAP Independent Complaints Advocacy Service which helps service users to pursue complaints within the NHS. www.seap.org.uk
PALS Patient Advice & Liaison Service, advocacy service established by the NHS to provide people with help, advice and liaison regarding the NHS services, including complaints.

GUIDE From 1st April 2013 Healthwatch Gloucestershire became responsible for providing the public with local information to help them make informed choices about their health and social care needs. This service builds on the legacy of the GUIDe Information Service, providing a single point of access for information and advice.

CQC Care Quality Commission a government body that oversees quality within the NHS. www.cqc.org.uk

MHA Mental Health Act

PHSO The Parliamentary and Health Service Ombudsman (or Health Service Ombudsman) provides an independent referral service to the public when they feel that an NHS body has not investigated a complaint properly or fairly or have provided a poor service. www.ombudsman.org.uk

POhWER Independent complaints advocacy supporting Herefordshire residents. www.pohwer.net

Datix This is the name of the computer system used by the Trust to record and manage complaints and incidents

RIo This is the main computer system for recording and maintaining clinical information about service users. It should not contain information about complaints and is not linked to Datix.

IAPTUS This is the electronic clinical recording system used by the Let’s Talk Service/Mental Health Intermediate Care Team.

5. Context

This document is intended to comply with:

- The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009
- Data Protection Act 1998
- Access to Health Records Act 1990
- Mental Health Act 1983

6. Trust Staff Training and Support

6.1 Staff training is crucial to developing a culture within the organisation which values and encourages feedback including complaints. Staff need to feel confident that they know how the statutory complaints procedure operates and that they have the necessary skills to respond to concerns, queries and complaints at an early stage with courtesy and sensitivity. The Trust recognises that every single member of staff, whatever their role, may receive a complaint or may be asked to respond to a concern. The Trust will therefore provide basic training on the induction programme for new staff and will also encourage all staff to attend further complaints and investigation training as part of their on-going professional development.

6.2 The Trust recognises it is vital to support staff that are involved in complaint investigations or those who are subject to a complaint. Immediate support for staff should be provided by their line manager and/or Professional Head. Guidance can be
provided by the Service Experience Department. Further support is available from the ‘Working Well Service’ and the Staff Counselling Service.

6.3 Very occasionally complainants behave inappropriately. This can cause undue stress to staff. In exceptional circumstances, when complainants are regarded as being unreasonable or unreasonably persistent the Trust has a procedure to manage the situation. This procedure is found in Appendix 1.

6.4 Many of the issues experienced by staff when complaints are made against them or which involve them can be minimised by an organisational non-blaming culture which demonstrates that it values complaints as opportunities to put matters right for service users and learn from mistakes. These attitudes can be demonstrated to staff by the manner in which complaint investigations are undertaken and by the commitment which the Trust shows towards staff in enabling them to develop highly accomplished conflict resolution skills.

7. Monitoring

Trust wide and Locality Service Governance groups will review complaints and concerns and other relevant information to ensure risk areas are identified, problems addressed and that lessons learnt are cascaded and embedded into practice. The Service Experience Department will analyse and share all the themes emerging from complaints, concerns, comments, compliments and other feedback which will be disseminated through quarterly reports. Other methods of cascading learning will also be utilised to promote best practice, for example, Team Talk, News in Brief, bespoke training events. The Service Experience Clinical Manager will produce a quarterly Service Experience Report (which includes complaint information) which will be presented to the Trust Board. This forms part of the Continuous Improvement System and is described more fully in the document System for Continuous Improvement.

The process for monitoring this policy is set out in Appendix 2.

8. Review

This policy will be reviewed by the Director of Quality once every two years or more frequently if guidance or legislation changes.

9. References

- The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009
- Listening, Responding, Improving: Guidance to support implementation of the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009
- Listening for patients speaking up for change; The Patients Association; January 2013
- NHS complaint procedures in England; SN/SP/5401; Social Policy Section; April 2013
- NHS Constitution; January 2009
The Independent inquiry into care provided by Mid Staffordshire NHS Foundation Trust; January 2005-March 2009; Robert Francis QC


10. Associated Documentation

The following together NHS Foundation Trust policies are relevant to this document:

- Service Experience Strategy 2013
- Promoting Dignity at Work Policy
- Files Management Policy
- Health & Social Care Records Policy & Procedure
- Service Users, Carers and Young People’s Strategy

The following diagram shows how various other policies and documents relate to the current one:

**Figure 1: Relationship between key Trust Documents**
11. Guidance and Process for Managing a complaint

11.1 Introduction

The aim of the Trust’s complaints procedure is to enable service users to have their concerns resolved quickly and effectively. Any member of staff may find themselves in the position of having to respond to a complaint and many of these will only require a clear and courteous response with an explanation, apology or an agreement to look into matters further and respond as soon as this has been done. Many complaints will be resolved in this way and there will be no need for further action. It is good practice to follow up with written confirmation of what was discussed, what was agreed and any further action that needs to be taken.

It is also extremely important to check and make a note of the fact that the complainant is satisfied and does not wish to take matters further. The Trust has a corporate Service Experience Department in place to support the process of formal complaint resolution.

11.2 Who May Make a Formal Complaint (in relation to this policy)

A complaint may be made by:

- a person who receives or who 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.

11.3 Complaints on Behalf of a Service User

A relative or other person complaining on behalf of a patient will be sent an acknowledgement letter and advised that consent, itemising the issues, will be sought from the service user. The service user will be advised of the details of the complaint and be asked to complete the consent form and return it to the Service Experience Department. The service user will decide whether they wish to provide consent to confirm their agreement or not to a reply being sent to the person who made the complaint. The service user can indicate if their preference is to receive the response to the complaint directly. If the patient is unable to act for themselves, the Trust will take reasonable steps to ensure the complainant is an appropriate person to receive information. In any event if there is no signed agreement from the patient as to what personal information can be passed on, there is a greater limitation on the content of the response, (See also 15 Consent).

11.4 Deceased Service Users

In the case of the person having died or being incapable, the representative making the complaint must be a relative or other person who, in the opinion of the Service Experience Clinical Manager, had or has a sufficient interest in their welfare and is a suitable person to act as a representative. This depends, in particular, on the need to respect the confidentiality of the service user. For example, the person may have made it known that information should not be disclosed to third parties. If the Service
Experience Clinical Manager determines that a complainant is not suitable to act as a representative, he/she must provide that person with full information outlining the reasons the decision has been taken.

11.5 Children and Young People

In the case of a child, the representative must be a parent, guardian or other adult who has care of the child and there must be reasonable grounds for the complaint being made by a representative instead of the child. Where the child is in the care of a local authority or a voluntary organisation, the representative must be a person authorised by the local authority or voluntary organisation.

11.6 Care Quality Commission

The Trust may receive enquiries from the Care Quality Commission (CQC) on behalf of complainants who have contacted them directly. These will be investigated in line with Trust Policy and the response will be made to CQC and copied to the complainant.

11.7 Members of Parliament and County Councillors

Enquiries from Members of Parliament (MPs) are normally directed to the Chief Executive (CE). Responses to MP enquiries are normally coordinated by the CE office with support from the Service Experience Department as required. A copy of all correspondence will be sent to the Service Experience Department for information.

11.8 Complaints from Service Users Detained Under a Section of the Mental Health Act 1983

Detained patients should be made aware of their entitlement at any stage to contact the Care Quality Commission (CQC) and be helped to do so if necessary. The CQC has the power to investigate complaints in relation to detention under the Mental Health Act (MHA) and can also support and advise detained patients through the NHS complaints process, advising them of their rights and corresponding on their behalf with the Trust.

If a complaint is about something which happened while a person was detained under the Act, the CQC would not normally become involved until after the Local Resolution and Health Service Ombudsman stages. A complaint about the way in which powers or duties have been exercised under the Act can be made straight to the CQC. However, it has discretion to refer this kind of complaint to the Trust to deal with under its own complaints procedure.

If a person wishes to complain that they are being detained against their will, the CQC has no power to discharge them. They should ask for their case to be considered by the MHA Managers and/or the Mental Health Review Tribunal.

11.9 Complaints made by Service Users Who May at That Time Lack Capacity

Service users, who raised complaints at a time when they may lack capacity, can pose particular challenged to staff dealing with their complaints. Advocacy services will be encouraged to assist the service user and ensure fair representation in a supportive manner and help resolve immediate concerns with the relevant clinical team. The clinical team involved in the individual’s care may advise the Service Experience Department of an unexpected timeframe of when the service user may regain capacity so that
complaint issues may be clarified. In these circumstances, the Service Experience Department may advise the complainant that their complaint has been put on hold until a time is reached when they can engage in the complaints process, whilst maintaining regular communication with them for reassurance.

12. **Time Limits for the Complainants to Inform the Trust**

12.1 Generally, a complaint should be made within twelve months of the date on which the matter, which is the subject of the complaint, occurred or came to the notice of the complainant.

12.2 The Service Experience Clinical Manager has discretion to extend this time limit where the complainant had sound reasons for not making the complaint within that period and where it is still possible to investigate the complaint effectively and efficiently. This discretion should be used flexibly and with sensitivity.

12.3 An example of where discretion might be exercised would be where the complainant has suffered such distress or trauma as to prevent them from making a complaint at an earlier stage.

In the event that it is decided not to investigate a complaint on the grounds that it has not been made within the time limit, the complainant will be informed of the right to request the Health Service Ombudsman to consider it. It may still be possible to provide the complainant with some limited information about the matter complained about (such as a copy of the relevant part of the health record) on an informal basis.

12.4 **Time Limits for the Trust to Respond to Complainants**

The 2009 government regulations allow the Trust to negotiate a timescale with the complainant. As a Trust we aim to respond within a 25 working day response time (as a guideline) and 60 working days in more complex cases.

13. **How to Complain**

There are many ways in which an issue, concern, worry or complaint may be expressed and staffs needs to be sensitive to the fact that the term ‘complaint’ may not be explicitly used. Often, an issue to be raised may be preceded by “I don’t wish to complain, but....” Staff working within the learning disability service need to be especially vigilant and sensitive to behaviour or manner which indicates distress or discomfort but which may not be verbally expressed. Service users with learning disabilities or communication difficulties may need to be assisted to express their concerns. Sometimes a trusted staff member may be best placed to record or pursue a complaint on behalf of a service user, or access to an appropriate advocacy service needs to be facilitated.

Either way, staff need to feel confident that their manager(s) will support them in this activity.

Where the issues raised are serious, complex or if attempts made to resolve the issue have been unsuccessful, the matter should be referred on to the Service Experience Clinical Manager, either for advice or for managing. The complainant should always be informed of their right to address their complaint to the Service Experience Clinical Manager or, if they prefer, to the Chief Executive.
Out of hours advice on how to deal with a very urgent or serious issue should be sought from the senior nurse on duty or the senior manager on-call.

Concerns and complaints raised via social media sites will be acknowledged within two working days and will invite the individual to contact the Service Experience Department in order to progress confidentially.

Where a person wishes to make a formal complaint, they may write, e-mail or speak to either the Chief Executive or the Service Experience Department Clinical Manager. They may also make it to any other member of the Trust’s staff, who will pass it to the Service Experience Clinical Manager.

13.1 A complaint about the Chief Executive should be made to the Chairman.

A complaint may be made orally or in writing (including electronically). Where a complaint is made orally and its nature is complex, the Service Experience Clinical Manager may encourage the complainant to put it in writing in order to avoid confusion or doubt about the issues raised. The Service Experience Clinical Manager will ensure that the complainant is aware of the assistance available from advocacy services. Otherwise, the Service Experience Clinical Manager will make a written record of the complaint. Where the complainant has a learning disability or communication difficulties, the Service Experience Clinical Manager will ensure that appropriate support is available to ensure that the complainant is not disadvantaged in any way and that their voice is heard.

14. Responding to a Complaint

14.1 Triage: Assessing the Complaint

The Service Experience Department will carry out an assessment of the seriousness of the complaint in order to establish the impact of the complaint on the people involved, the potential risks to the organisation and the level of response required.

The Service Experience Department will, unless otherwise indicated, contact the complainant directly to clarify aspects of the complaint. Dependent on the outcome of the triage the Service Experience Clinical Manager/Officer may feel it is appropriate to initiate some action immediately, for example, contacting the clinical or safeguarding teams to mitigate any potential risks to the complainant.

14.2 Safeguarding

The Trust has in place systems and processes to promote safeguarding and wellbeing of patients. These are reflective of local and national guidelines. It is important that when a complaint is received, consideration is given as to whether it may meet the Safeguarding Adults’ or Children’s’ threshold and this must be done in a timely manner.

Where a potential safeguarding issue has been identified the Service Experience Department must immediately refer to the Safeguarding Team, they will advise on the appropriate action to be taken.
Where the safeguarding issue relates to a Trust service or member of staff it must be investigated by someone not directly working or managing the service area concerned. Please refer to Safeguarding Policies for more guidance.

14.3 Cases Subject to litigation

If the complainant explicitly indicates an intention to take legal action in respect of the complaint, then additional considerations must be taken into account.

If a complainant’s initial communication is via a solicitor’s letter, the Service Experience Clinical Manager should be notified immediately. It should not necessarily be assumed that the complainant has decided to take formal legal action. It may not be clear whether the complainant simply wants an explanation and an apology, with assurances that any failures in service will be rectified in the future, or whether information is being sought with litigation in mind. An open, sympathetic and learning orientated response may be what a complainant is seeking.

On receipt of such a notification in these circumstances, it is good practice for discussions to take place with the relevant authorities (such as local legal advisors or the NHS Litigation Authority) to determine whether progressing the complaint may prejudice subsequent legal action. The complaint should be put on hold only if this is the case, with the complainant being advised of this and given an explanation.

In other words, the default position in cases where the complainant has expressed an intention to take legal proceedings would be to seek to continue to resolve the complaint unless there are clear legal reasons not to do so. (Reference: DH’s Reform of Health and Social Care Complaints: Proposed Changes to the Legislative Framework December 2008.)

14.4 Complaints about another Organisation

On occasions, a complaint may be received regarding another organisation in its entirety. On receiving such a complaint, the Service Experience Clinical Manager will contact the complainant within three working days and advise them that the complaint has been sent to the wrong organisation. The service experience Department will:

- establish if the complainant would like the complaint forwarded to the other organisation on their behalf
- seek the complainant’s written consent to share information contained in the complaint with the other organisation
- provide an explanation why their consent is being sought

On receipt of this consent, the complaint should be sent to the other organisation immediately and a written acknowledgement should be sent to the complainant detailing where/to whom the letter has been sent, including contact details.

If consent is not gained, the Service Experience Clinical Manager will try to establish why this is the case and seek to resolve the matter. However, if this is unsuccessful, the complainant should be told of their right to contact the other organisation directly in order to pursue their complaint.

The only circumstances in which a complainant’s lack of consent can be overridden is if the complaint includes information that needs to be passed on in accordance with
Safeguarding Children or Protection of Vulnerable Adults procedures or other circumstances set out in the Data Protection Act. In such cases, the complainant is entitled to a full written explanation about the organisation’s duty of care and its obligation to pass on information provided. This does not compromise an investigation.

Information exchanged under this protocol can only be used for the purpose for which it was obtained.

14.5 Social Care Complaints

With respect to complaints made about social care services provided by the Trust on behalf of the County Council, these will be managed under the Trust’s complaints procedure in co-operation with the County Council’s complaints manager.

14.6 Complaints Involving More Than One Agency

Where the complaint concerns more than one agency, special conditions apply. See Appendix 3.

15. Need for Consent

15.1 When a complaint is made by a person other than the service user, that requires the disclosure of personal information, the consent of the service user will be sought before the response is sent. A letter and consent form will be sent to the service user which will identify the scope and the nature of the complaints being raised on their behalf. The person raising the complaint will be informed of the need to gain informed consent. No information will be sent or disclosed until the consent has been obtained from the service user. The service user will need to understand the issues being investigated on their behalf to ensure they understand the information that will be divulged to their advocate.

15.2 A service user’s wishes, relationships and situation may vary on a regular basis. Therefore, consent to sharing information needs to be a dynamic rather than fixed-point process.

15.3 There may be occasions when a service user may not be considered to have capacity to make a decision about the sharing of information. In these situations it is possible to share information under the Best Interest principle of the Mental Capacity Act.

15.4 Consent from the service user will not be required when the complaint is made by a legally appointed representative or advocate. A Member of Parliament may raise issues on behalf of a constituent, but if disclosure of information contained in their clinical records is required to respond to the concern raised, consent will need to be obtained from the individual constituent. If a service user is determined to be incapable of giving consent in respect of a complaint investigation or when the service user is deceased, the organisation must be satisfied that the representative is a suitable person acting in the individual’s best interest. Disclosure of information in these cases should be limited to the extent required to respond to the complaint.
16. Acknowledging the Complaint

16.1 When a complaint has been accepted, the Service Experience Clinical Manager or delegated member of staff will try to contact the complainant by telephone (unless explicitly asked not to), to explain the complaint process, clarify the nature of the complaint, and establish the outcome they are seeking to achieve. The acknowledgement needs to be made within 3 working days. If it is not possible to contact the complainant by telephone, written acknowledgement will be sent.

16.2 The Trust's leaflet outlining the complaints procedure and including information about the complainant’s right of assistance from advocacy services should be enclosed with the letter of acknowledgement.

16.3 Agreed complaint issues should be sent to the complainant for confirmation and amendment with a request for validation in 5 working days. Following ratification the complaints will be sent to Service Directors for investigation.

16.4 The Trust acknowledges that making a complaint can be difficult and stressful for anyone but particularly for service users who may be vulnerable by virtue of their illness or disability. It therefore recognises the important role played by advocacy services in assisting complainants at each stage of the complaints process and includes contact details in its information leaflets about the complaints procedure. Staff should also be aware of other local voluntary organisations and advocacy services to which people wishing to complain may be referred for assistance and of the role of the Healthwatch in responding to queries and suggestions and helping to sort out local health concerns.

16.5 The Trust has arrangements for providing sources of support for communicating with people whose first language is not English or who have hearing or vision problems. Please refer to the Trust’s Translation Procedure document for guidance or contact the Service Experience Department for advice.
Figure 2: Summary Complaint handling Process

Complaint received (written/verbal)

Complaint triaged
Consider:
- Safeguarding
- Consent
- Litigation (see page 14)

Complaint

Telephone call to complainant, clarify issues and acknowledgement within 3 working days
- Explain process/consent
- Identify possible resolution

Document complaint issues and request amendments and response within 5 working days
- Identify anticipated response date
- Enclose information leaflets
- Advocacy (see page 16)

Complaint issues confirmed

Keep complainant regularly and routinely informed of progress

Obtain consent (See page 15)

Send complaint to Senior Manager to identify investigator
- Clarify deadline for investigation (see page 17)

Investigation received/reviewed for completeness and queries clarified

Investigation and draft response considered by the Chief Executive. Final response to complainant.
17. Resolution Options

Throughout the whole process, alternatives to resolving the complaint will be considered in consultation with the complainant and without prejudice to the complaint investigation procedure. For example:

- advocacy support for a planned appointment or review meeting
- a facilitated meeting or advocacy support to discuss concerns with the relevant clinicians or other staff
- a meeting with a senior manager or clinician
- a second opinion from an independent clinician
- mediation
- access to health records
- the provision of information relevant to their concern
- referral to another service

If a complaint can be resolved immediately this should of course take priority e.g. an apology or re-arrangement/re-instatement of a service.

At all times, the complaints investigator/co-ordinator and/or Service Experience Clinical Manager should, in consultation with the complainant, must consider if there is a more effective and efficient way to resolve a complaint other than a lengthy investigation.

If any approach other than an investigation is felt to be appropriate, and this has been agreed with the complainant, then action needs to be taken immediately to put this in place. Meetings with clinicians, mediation sessions and second opinion meetings should take place within ten working days whenever possible.

17.1 Informal Resolution of Complaints (Defined as Concerns)

A process will be agreed, in consultation with the complainant and the relevant staff involved whereby the complainant’s needs are most likely to be successfully addressed. Many complaints may not require investigation but rather an informal enquiry process which will seek to establish how the event occurred which caused the concern and how matters may be put right. There may or may not be organisational learning from the incident. Examples of ways in which matters may be put right might be:

- an apology from someone at a suitably senior level to reassure the service user that the concern has been taken seriously
- an offer to re-instate a service where it is identified that a service may have been removed or altered prematurely
- a timely meeting to listen to concerns or offer an explanation where a misunderstanding has occurred
- a promise to change certain aspects of a service where it appears that an improvement could be made as the result of the issue having been raised
Local resolution is an opportunity to listen and give time to resolve the matter. This may include a timely meeting with appropriate staff. A letter of apology which addresses the complaint issue and contains a clear statement regarding actions carried out to resolve the matter, will be sent to the individual to ensure they are satisfied with the outcome.

17.2 Formal resolution

- **Appointing an Investigator**

In some situations it will be clear that the complaint issue is either too complex or too serious to be resolved in the manner described above. The Service Experience Clinical Manager will ask the Locality/Service Director to nominate an investigating manager. The investigation should be undertaken by a manager independent of the team within which the complaint has occurred. Whoever undertakes the investigation, they should normally be someone who has had training in complaint investigation and conflict resolution techniques. Once the nature of the complaint has been clarified with the complainant, an investigation will be carried out. However, efforts will still be made, at the same time, to resolve the matter to the satisfaction of the complainant. A mediation or conciliation meeting may be arranged and if a solution is agreed the investigation process may be halted at this point, unless it is felt by the manager concerned that the issues raised constitute important learning for the organisation, in which case, the investigation will continue and the outcome communicated to the complainant and other relevant members of staff.

- **Informing Directors**

The Medical Director/Professional Lead/Clinical Director will receive a copy of all complaints involving medical/professional staff. The Director of Engagement and Integration will be kept informed of all open complaints. The investigating officer should ensure that a copy of the complaint is sent to any person identified as the subject of the complaint. A copy of the final response letter signed by the Chief Executive should be sent to the investigator who can then cascade to the staff to ensure that any service development and learning is actioned.

- **Keeping the Complainant Informed**

It is very important to keep in touch with the complainant during the investigation to reassure them that their concerns have not been forgotten. Even though an investigation is taking place, attempts will be made to resolve the complaint informally if possible. The Service Experience Department is responsible for ensuring this liaison activity is undertaken.

- **The Investigation**

All investigations must be conducted in a manner that is supportive to those involved and should take place in a neutral, blame free atmosphere. Investigators have a responsibility to report their findings accurately and in line with their duty of candour. Investigators should identify what actions they believe should be implemented to prevent a recurrence and identify who is responsible for ensuring these measures have been put in place.
• The Service Experience Department will:
  • send a copy of the complaint with a breakdown of the key issues of the complaint whenever possible, the investigation template and a covering letter to the senior manager and ask them to identify a complaints investigator
  • identify the date the investigation needs to be returned to the Service Experience Department
  • Keep the complainant up to date with the progress of the investigation

An investigation should normally be completed within 12 working days however if this is not possible due to the complexity of the issues or availability of staff, the complaints investigator will need to negotiate this with the complainant and inform the Service Experience Clinical Manager and Service Director/Clinical Director (or their delegate)

The Locality Director/Clinical Director will:
• identify the investigating officer
• provide support and guidance as required
• be aware of the time frame and support the investigator in meeting the deadline
• review and ‘sign off’ the investigation, using the template provided, to ensure all areas of the complaint have been addressed and that the investigation is of the expected standard
• forward the investigation to the Service Experience Department

The Investigator will:
• establish what has happened, what should have happened and who was involved and make written records of the investigation/staff statements
• thoroughly evaluate all the evidence collected (see Appendix 5)
• base all conclusions on analysis of the facts and what can reasonably be inferred from them
• compare the evidence collected with established standards for care or service provision
• provide a judgement based on the evidence to confirm if the complaint is well founded or not
• send the investigation report to the commissioning manager and the Service Experience Department within the time frames identified (see Appendix 6)
• notify the commissioning manager and Service Experience Department of any delays or problems to ensure the complainant can be kept informed.
• Ensure that learning is identified and lists associated actions and by whom these will be carried out. This will be shared with relevant parties

If accounts are made by staff which conflict with those given by the complainant, and there is no corroborating evidence either way, care must be taken not to accept that the account given by the staff member over the complainant or give the impression that this is the case. A statement to the effect that the matter is inconclusive should be made in the report.

The investigator will write a report based on the investigation and submit the findings with the supporting evidence, and recommendations to the Service Experience
Department within the identified time frame. The investigator will also be required to complete the Learning Action Plan (see appendix 7) in consultation with the Service/Locality director.

For additional guidance on investigative techniques, investigating officers should refer to the document *Guidelines for Investigating Incidents, Complaints and Claims*.

- **Producing the Investigation Report**

The investigation report must respond fully to each aspect of the complaint. It should contain explanations of the action being taken and specify any recommendations or improvements. There should not be any information that the investigating officer considers inappropriate for disclosure to the complainant. However, if this is the case, it should be clearly indicated that such information is to be treated as confidential. Staff statements used as part of the investigation should be included in the final report in addition to relevant clinical notes.

The Service Director/Clinical Director will be responsible for ensuring that the investigation is completed and is provided to the Service Experience Department by the agreed deadline. If a complex clinical or technical issue arises advice should normally be sought from one of the Trust’s senior clinicians not involved in the complaint. If such advice is not available or if the Trust’s clinicians feel unable to provide objective advice, the Service Experience Clinical Manager should liaise with the appropriate Professional Head about seeking advice from the Trust’s legal advisors. If very serious concerns are raised, the Chief Executive may ask for an independent review of an individual service.

- **Delays and Time Extensions**

If it is not possible to conclude the investigation within the agreed period, an interim report detailing progress, the reason for the delay and the likely date that the completed investigation will be sent to the Service Experience Clinical Manager. The complainant will be kept informed of the progress and the reasons for the delay.

Complainants will be updated via letter or telephone every three weeks until the final response letter has been sent to them.

If the complainant is unwilling to agree to such a delay, the Trust should do everything possible to meet the agreed deadline but continue to make every effort to reach agreement with the complainant, explaining why a comprehensive report within a shorter timescale may not be possible. If an agreement cannot be reached, a letter detailing progress so far should be sent to the complainant containing the information gained so far with an explanation given as to the reasons for the delay.

If the deadline for the completed response is missed, the Trust will need to be able to provide a full explanation to the Parliamentary Health Service Ombudsman. If the Trust has good grounds for requesting an extension but has been unable to obtain the complainant’s agreement and has not therefore been able to provide an appropriate response, the Health Service Ombudsman will take that into consideration.

- **Resolution Meetings**

The Service Experience Clinical Manager, in consultation with the complainant may agree to convene a resolution meeting as part of the resolution process. The meeting
would be between the complainant, their advocate and key staff involved in in their care and this forum would provide the opportunity to seek a resolution to the concerns raised.

18. Reply to a Formal Complaint

When the investigation is completed, the investigation report should be shared with all those who have been involved with the investigation to ensure factual accuracy. Where the complaint involves clinical issues, the findings and response must be shared with the relevant clinicians to ensure factual accuracy in respect of these clinical issues. The complaints investigator will be responsible for using the information from the investigation to draft a reply to the complainant from the Chief Executive. The report should be written so that it is “clear, accurate, balanced, simple, fair and easy to understand”, (Francis Report, pg. 259), can be understood by the complainant and is candid about the findings. Issues concerning third party information will be excluded. The Service Experience Clinical Manager is responsible for the quality of the draft reply.

The Draft Reply Format will:

- include the name, professional title and team of all those involved in the investigation process
- use plain language with any technical or clinical terms explained
- summarise the nature and substance of each aspect of the complaint
- comment on the investigation process, methods used, statements taken, and dates of critical events and actions
- present events in chronological order
- address each point of the complaint
- provide an explanation of the events complained about
- explain what is the usual standard to be expected and whether this standard has or has not been met and why
- Summarise conclusions and indicate if their complaint issue has been upheld or if no further action has been identified
- where things have gone wrong, make an appropriately worded apology
- identify learning and action required for each part of the complaint that has been upheld in order to improve the service and reduce the risk of a recurrence
- the complaint response should be send as soon as possible to the complainant, unless it is clinically indicated that sending a response letter may be detrimental to the complainant’s mental health in which case it may be delayed based on clinical advice. In such circumstances, the Service Experience Department will advise the complainant of this and update them regularly for reassurance whilst communicating with the relevant clinical team until the response letter can be sent
- where the complainant has communication issues, appropriate arrangements will be made via an advocate, a translator or a suitable staff member to support the complainant to receive the response letter.
- encourage the complainant to come back to the Service Experience Department or appropriate person if they are not satisfied with the response and also alert them to the role of the Health Service Ombudsman
- the final response will be signed by the Chief Executive, except in cases where for good reason this is not possible, in which case it will be signed by a nominated Deputy
- inform them that they will be sent a satisfaction survey regarding the complaints process, one month after receipt of the final response letter.
19. Delays in sending a response

Where a complaint investigation is very complex and lengthy, an interim response should be sent to the complainant indicating progress so far and estimating the likely time scale before the investigation is completed. The Service Experience Clinical Manager may, in suitable cases, consider it appropriate to explain that a comprehensive response may not be possible to achieve within a short time period and consider whether additional time will genuinely enable local resolution of a complaint to be achieved.

The Service Experience Clinical Manager should ensure that any discussion regarding extending the response time for the complaint response letter is discussed with the complainant and the outcome whether agreed/disagreed recorded. The reply should also contain information concerning the right of the complainant to take their complaint to the Health Service Ombudsman if they remain dissatisfied.

Possibility of Negligence

If the investigation of a complaint indicates the possibility of negligence, the Service Experience Clinical Manager should ask the Trust’s legal advisors to check the reply before it is sent to the complainant. However, evidence of negligence should not delay a full explanation of events and all Trust staff must act in line with the duty of candour so that errors identified in the delivery of care are shared with individuals concerned.

20. Meeting the Complainant

A written reply must be sent to all people who have made a complaint. However an offer to meet the complainant with a senior clinician and/or manager is good practice. In this case it is important to ensure that the complainant is willing to meet in person and understands the purpose of the meeting. No undue influence should be placed upon the complainant to agree to this. Invitations to all attendees will be agreed in advance with the complainant. The complainant may wish to have an advocate or another person at the meeting to support them. This is entirely appropriate and to be welcomed. Notes should be taken by a member of staff and sent to all parties for agreement or amendment before being finalised as a true record.

20.1 Checking the Response

The investigator and staff who have been involved with the complaint should be sent a copy of the final response letter, even though they will already have reviewed a draft copy for comment. Staff should have the opportunity to discuss the contents with their line manager, especially as there may be learning issues for them, or conclusions which may require management support.

20.2 Final Letter

The final response letter is always signed by the Chief Executive or his nominated Deputy in his/her absence. As email systems are not guaranteed to be secure, the Trust does not use them for external communication. All written replies will be sent by post or collected in person from an agreed location. The person collecting a reply will be asked to provide proof of identity or authority to collect it. First class post or,
exceptionally, special delivery mail, should be used when sending sensitive information, i.e. health records. All communications should be marked ‘Private and confidential’ or ‘Personal’. Other routes for receiving information, for example e-mail, can only be used if explicitly requested by the complainant and they fully understand the data security issues.

20.3 Confidentiality

All complaints are treated in confidence and no record of the complaint will be placed on the service user’s clinical records. The only exception to this guidance is if it is considered that information identified in the investigation is of important clinical relevance to the service user’s health needs. Staff involved in investigating the complaint will be required to return all documentation related to the complaint to the Service Experience Department on completion of the investigation.

This is reinforced in the Guidance on Clinical Record scanning which states that complaints letter and associated documents should be saved “only if clinically relevant to the service user’s health”. The complaint letter and reply may meet this criterion; other documents are less likely to do so. Originals of all documents should be retained separately in the Complaints Department.

21. Updating and Closing the Files

When a complaint has been closed, the relevant actions will be taken to ensure that complaint files are complete and the Datix records are up to date.

Further guidance on the management of complaints files is available in the Service Experience Department.

22. Reopening Complaints

The complainant may be dissatisfied with the response to their complaint. In this case, the complainant has the right to request that it be re-examined. This request should be within a reasonable time. A guideline is 6 months from receipt of the final letter, though it can depend on individual circumstances.

In such cases, the file is ‘reopened’ and the procedure of resolution restarts.
23. Making Improvements through learning from Complaint Outcomes

In order to promote the development and improvement of our services it is important that lessons are learnt from all service experience feedback including complaints. To ensure learning takes place information from service users and carers needs to be analysed. Actions to address and improve services need to be recorded and cascaded across the organisation to promote a learning culture.

23.1 Learning Outcomes

**Level 1 – Learning from Each Complaint**

- Learning from complaints will be identified and highlighted throughout every investigation. Once learning has been identified the investigating manager will alert the appropriate Manager and request an action plan and assurance of implementation (see Appendix 5).

- Improvement may include continuous professional development for individual staff, development plans for teams, localities or specific professional groups. Local managers are responsible for ensuring that any lessons learnt are implemented in their locality. Further assurance that learning has been cascaded will take place via Governance Committee and Delivery Committee Forums.

- To facilitate this process the Service Experience Department will circulate learning outcomes from complaints via the Service Experience Quarterly Reports.

**Level 2 – Aggregated Learning from Complaints**
The Service Experience Team will review the learning outcomes from complaints and identify and aggregate information appropriate for Trust wide dissemination. This will ensure the organisation shares good practice and works to continually improve services in response to service user and carer feedback.

Complaint outcomes, themes and organisation wide learning will be reported quarterly in the Service Experience Report and cascaded across the organisation to Directors and Senior Managers, for dissemination and cascade to teams and action. The Service Experience Report will also be available on the Trust website to share lessons learnt with a wider audience of service users, carers and other organisations. This will be supplemented through complaint training events, Team Talk and Byte Size as appropriate.

Risks identified from complaint outcomes, individually or through aggregated data will be considered by Localities and Directorates in the review of risk registers so that risk reduction measures can be put in place.

Action Plans resulting from complaints and concerns will be monitored through the Locality and Service specific Governance Committees and assurance will be provided through regular monitoring via a Trust wide action plan reviewed quarterly at the Trust Governance Committee.

23.2 Audit of Complaints Files
This will be undertaken quarterly by the Service Experience Manager/Complaints Manager.

Including:

- timeliness of the complaint response process
- the quality of documentation
- regular communication between the Service Experience Department and the complainant
- the accessibility of the final response letter
- complaints process has been duly followed
- internal and external communication/collaboration has occurred
- complainants/carers etc. have not been discriminated against as a consequence of the complaint
- changes/improvements as a result of complaints have been implemented.

An action plan will monitor progress and this will be reviewed by the Director of Engagement and Integration.

23.3 Complaints and Concerns Satisfaction Feedback

The Service Experience Team will commission a survey to ask people who have made a complaint or raised a concern to feedback their satisfaction with the resolution process. The views of the respondents identify ways of improving the complaints/concerns handling process. The outcomes of the survey will be reported in the Service Experience Report.
23.4 Equality Monitoring

The Trust recognises that equality monitoring is an important part of assessing services and an essential part of identifying and tackling inequality and discrimination. Monitoring those who use services will provide indicators regarding the Trust’s ability to engage with and meet the needs of the local population.

Complainants are invited to disclose equality monitoring information via a questionnaire or over the telephone on receipt of their complaint into the Service Experience Department. Information regarding the importance of information will be explained and assurance given that information is held confidentially. This will give the opportunity for the Service Experience department to consider appropriate adjustments to ensure an inclusive and equitable service is delivered from the beginning of the complaints.

Figure 4: Organisational Learning
Unreasonable or Unreasonably Persistent Complainants

1. Introduction

A small number of complainants may be described as unreasonable or unreasonably persistent. This is not because they raise uncomfortable or searching issues but because they pursue their complaints in a way which can either impede the investigation or can have significant resource issues for the organisation. In addition, some people may display inappropriate behaviour when making a complaint. Such behaviour may involve:

- making the same complaint repeatedly (with minor differences) but never accepting the outcomes
- seeking an unrealistic outcome which is not within the scope of the organisation to grant
- a history of repeatedly making unreasonably persistent complaints
- making contact with the organisation which is unreasonably lengthy, complicated, aggressive, threatening or abusive towards staff
- making unnecessarily excessive demands on staff time and resources while a complaint is being investigated, for example excessive telephoning or numerous emails or writing lengthy complex letters every few days and expecting immediate responses.
- continuing to complain about an historic or irreversible decision or event
- significantly changing aspects of the complaint partway through the investigation or denying statements made at an earlier stage
- persistently approaching the Trust through different routes about the same issue in the hope of getting different responses (a ‘scattergun’ approach).
- unwillingness to accept documented evidence as factual or denying receipt of an adequate response despite correspondence specifically answering their questions/concerns. This could also extend to complainants who do not accept that facts can sometimes be difficult to verify after a long time period has elapsed.
- refusal to identify the precise issues they wish to be investigated, despite reasonable efforts to do so by staff and, where appropriate, their advocates
- focusing on a small detail to an extent that it is out of proportion to its significance and continuing to focus on this point
- **abusive or verbal aggression 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. They should document all incidents of harassment.)
- **recording meetings or face-to-face/telephone conversations** without the prior knowledge and consent of the other parties involved.
- **making defamatory comments about staff to the media.**
- combinations of some or all of these.

It is important to differentiate between persistent complaints and unreasonably persistent complainants. Some people may be persistent because they feel that the Trust has not dealt with their complaint properly and are not prepared to leave the
matter there. Unreasonably persistent complaints pursue their complaints in an inappropriate way which can cause great strain on both staff and resources.

Labelling a person as ‘unreasonable’, ‘difficult’ or ‘challenging’ may get in the way of the ability to understand the complainant. It is important to remember that, if a person contacts the Trust with what they believe is a complaint, it is a complaint to them, whatever staff may think. If the complainant raises the same or similar issues repeatedly, despite receiving a full response, there may be underlying reasons for this persistence.

Regardless of the manner in which a complaint is made and pursued, its substance should be considered carefully and on its objective merits. Complaints about matters unrelated to previous complaints will be similarly approached objectively and without any assumption that they are bound to be inappropriate.

When it is felt that a complainant is unreasonably pursuing a complaint a decision needs to be taken as to whether:

- the complaint is being or has been looked into properly
- any decision reached concerning the complaint is the right one
- communication with the complainant has been thorough
- the complainant is not providing any significant new information that might affect the Trust’s view on the complaint

Before identifying a complainant as “unreasonably persistent”, staff must:

- ensure that the complaints procedure has been correctly implemented so far as possible and that no material element of a complaint has been overlooked or inadequately addressed
- be able to identify the stage at which a complainant has become unreasonable or unreasonably persistent; and
- provide suitable evidence of their unreasonableness (e.g. abusive letter, physical assault)

It is emphasised that a complainant will be identified as unreasonable or unreasonably persistent only in exceptional circumstances and after all reasonable measures have been taken to try to resolve complaints following the Trust’s complaints procedures. Judgement and discretion must be used in applying the criteria and in deciding action to be taken in specific cases.

2. Procedure for handling unreasonable or unreasonably persistent complainants

If the Trust is satisfied on these points it should consider whether there is any further action that is necessary prior to taking the decision to designate a complainant as unreasonable or unreasonably persistent.
Before such a decision is taken, a warning needs to be given that if such actions continue, the Trust may decide to treat the complainant as unreasonable or unreasonably persistent with an explanation as to why this is the case.

If a complainant’s unreasonable behaviour is abusive or threatening, it is reasonable to require them to communicate in a specific way, such as in writing or with one or more designated members of staff. If a complainant or their representative threatens or uses actual physical violence towards staff or their families or associates at any time, this will in itself cause personal contact to be discontinued and the complaint to be responded to through written communication only. Any such incidents should be documented.

3. Trust action

It may be appropriate in the first instance for the Chief Executive to inform a complainant that they are at risk of being classified as unreasonable or unreasonably persistent. A copy of this procedure will be sent to the complainant, who will be advised to take account of the criteria in any dealings with the Trust. In some cases it might be appropriate to copy this notification to others involved in the complaint and suggest that the complainant seeks advice before taking their complaint further, e.g. from an independent advocate.

It may also be appropriate to try to resolve matters by drawing up a signed agreement with the complainant setting out a code of behaviour for the parties involved.

If these steps do not lead to a change in the complainant’s behaviour, the Chief Executive, Medical Director/Director of Quality and Performance/Director of Engagement and Integration and a Non-Executive Director will determine whether to identify the complainant as unreasonable or unreasonably persistent and, if so, what action to take. If the complainant is a service user, the advice of the appropriate clinician will be sought. The support of the Local Security Management Specialist may also be sought.

The Chief Executive will implement such action and will notify the complainant in writing of the reasons why they have been classified as unreasonable or unreasonably persistent and what action will be taken. This notification may be copied for the information of others already involved in the complaint. A record must be kept for future reference of the reasons why a complainant has been classified in this way. The Chief Executive may deal with the complainant in one or more of the following ways:

- withdraw contact with the complainant in person or by telephone, letter, fax, email or any combination of these, provided that one form of contact is maintained. Alternatively, restrict contact to liaison through a third party. If staff are to withdraw from a telephone conversation with a complainant, there will be an agreed statement available for them to use at such times.

- notify the complainant in writing that the Chief Executive has responded fully to the points raised and has tried to resolve the complaint but there is nothing more to add and continuing contact on the matter will serve no useful purpose. The complainant may be notified that correspondence in relation to their complaint or any further complaints relative to the same period of time or the
same or similar issues as an earlier complaint is at an end and that further letters received will be acknowledged but not answered.

- inform the complainant that in extreme circumstances the Trust reserves the right to pass unreasonable or vexatious complaints to the Trust’s solicitors or police, which may result in legal action against the complainant.

- temporarily suspend all contact with the complainant or investigation of a complaint whilst seeking legal advice or guidance from solicitors, the Security Management Service or other relevant agencies.

The decision to classify a complainant as unreasonable or unreasonably persistent will be reported in an anonymised format to the Trust Board as part of the quarterly complaints reports.

4. Withdrawing ‘Unreasonable or Unreasonably Persistent’ Status

Once a complainant has been determined as ‘unreasonable or unreasonably persistent’, there will be a mechanism for withdrawing this status. For example, if the complainant subsequently demonstrates a more reasonable approach or if they submit a further complaint for which normal complaints procedures would appear appropriate. Subject to the approval of the Chief Executive, Medical Director/Director of Quality and Performance/Director of Engagement and Integration and a Non-Executive Director, normal contact with the complainant and application of NHS complaints procedures will be resumed.

A complainant should also have an opportunity to apply to have their ‘unreasonable or unreasonably persistent’ status withdrawn. A Non-Executive Director should review the circumstances and establish the current position. If this remains unchanged, then the policy continues to be applied to the complainant.

If however, there is demonstrable evidence that the circumstances have changed, then the Non-Executive Director and Chief Executive, Medical Director/Director of Quality and Performance/Director of Engagement and Integration will reconsider withdrawing the status of ‘unreasonable or unreasonably persistent’. Subject to their approval, normal contact with the complainant and application of the NHS complaints procedure will be resumed.
Appendix 2

Management & Monitoring of the Complaint Procedure & Policy

Management

- Regular Review and Update of Complaints Policy
- Train Staff
- Implement Complaints Process
- Individual Feedback to Complainants
- Generate Reports on Complaint Numbers, Themes and Outcomes

Monitoring

- Ratification by all key stakeholders including Service users and care representatives, Governance Committees, Trust Board
- Evaluate Training
- Record complaint information and outcomes on Data and monitor trends
- Non-Executive Audit
  - Parliamentary Health Service Ombudsman feedback
  - Service User Satisfaction Survey
- Reports disseminated to localities/services/governance committees, DOH and National returns

Monitoring and Feedback inform subsequent review and updating of the policy
Appendix 3: Complaints involving more than one Agency

Agreement of Joint Protocol

Where a complaint is about care provided by both the Trust and other health and social care agencies the organisations must agree a protocol to decide the best way to provide a unified and effective response to the complainant. The protocol will ensure:

- that there is a single, consistent and agreed contact point for complainants
- that there is regular and effective liaison and communication between complaints managers and complainants
- that learning points arising from complaints covering more than one body are identified and addressed by each organisation

The Lead Organisation

When determining which organisation will take the lead role in a joint complaint, the following criteria will be taken into account:

- which organisation manages integrated services
- which organisation has the larger number of issues being complained about and which complaints are most serious or most urgent
- if this cannot be identified, which organisation originally received the complaint
- whether the complainant has a clear preference for which organisation takes the lead
- the impact on the organisation’s governance arrangements
Co-ordination of Activities

As a representative of the organisation signing up to a protocol, the Trust’s Service Experience Clinical Manager is responsible for co-ordinating whatever actions are required and co-operating with other complaints managers to agree who will take the lead role in joint complaints. The Service Experience Clinical Manager must also ensure that there is someone else to whom any queries may be addressed when they are absent.

Joint Investigations

When it is clear that a joint complaint investigation is required, the Trust and the other organisation should seek to agree which organisation should take the lead in coordinating the handling of the complaint and dealing with it under the Protocol agreed. The lead body’s Complaints Manager will:

- contact the complainant within three working days to discuss the complaint and explain that more than one organisation will be involved with the investigation process
- gain consent to the sharing of information, as described above
- explain who will co-ordinate the response
- negotiate a response period which is the period of time within which the complaint is likely to be investigated
- coordinate the handling of the complaint by working closely with all those involved, attempting to resolve the complaint informally if possible
- ensure that the complainant is kept informed of progress
- ensure a comprehensive and appropriate response is sent
- co-ordinate action plans across organisations which demonstrate learning and organisational improvement where appropriate
Confidentiality

Confidential information about an individual’s healthcare must not normally be shared with another person without the consent of the individual to whom it relates. Consent should be obtained in writing, wherever possible. If this is not possible, verbal consent should be logged and a copy sent to the complainant.

If a complainant makes a complaint about another person’s care but does not provide that person’s consent for the reply to include confidential information, the Service Experience Clinical Manager must firstly establish their eligibility to complain (that the complainant is affected by the Trust’s action, omission or decision). The following process should then be followed:

- the complainant should be informed of the requirement to inform the service user of the complaint and to seek their consent for information about them to be shared. The complainant will be asked to confirm their agreement with this

- at the same time, the clinician responsible for care will be asked whether the service user has capacity and whether responding to the complaint would raise any welfare issues

- the Service Experience Clinical Manager will liaise with the clinical team to identify the most appropriate way of seeking consent. The complaint will then be shared with the service user and their consent for the disclosure of confidential information sought

- if a capacious service user does not provide consent, the complainant will be informed that the Trust’s response will be restricted to comments of a general nature

- if a service user does not have the capacity to give consent, the health professionals must take decisions about the use of information. As the capacity of some people can fluctuate, the Service Experience Clinical Manager will establish with the clinical team if the service user is likely to regain capacity during the investigation and, if so, check the position with them on a regular basis. They will also keep the complainant informed of the situation

If someone is complaining about a service user issue but is, at the same time entitled to use the complaints procedure in their own right because they are affected by an action, omission or decision, then they can enter the complaints procedure on that basis. However, any confidential information pertaining to that service user issue will not be shared without the service user’s consent.

If the person who is the subject of the complaint has died, confidential information about them can normally be given to the next of kin/executor through the Access to Health Records Act.

If a person with parental responsibility complains about the care of a young person aged 16 or 17, the young person’s consent will normally be required in order to disclose confidential information about him/her but each individual’s circumstances
should be considered. In the case of children under 16 who are considered “Fraser or Gillick competent”, their consent will also be required.

If a Member of Parliament who states in writing that they have obtained a service user’s consent for the sharing of information, this may be accepted without further resort to the service user.

If an elected representative makes a complaint but does not have the service user’s consent, the Trust is permitted, but not compelled, to disclose general information, but not personal and sensitive information.

Further advice on the disclosure of confidential information is available in “Confidentiality – NHS Code of Practice” available on the Trust intranet.
INVESTIGATION

Investigating officers will be required to provide a written report in response to a complaint within the specified time frame. When the investigation is likely to take longer than anticipated e.g. due to staff absence, the Investigating Officer must inform the Service Experience Department at the earliest opportunity in order that the complainant can be advised.

A complaint investigation report can serve a range of purposes. When conducting the investigation and compiling the report the content and outcome can have a significant impact on the complainant, the people complained against and others involved in the process. The investigation must be clearly documented evidencing a fair, candid and balanced process.

The Investigating Officer will consider the best way to carry out the investigation. In order to obtain information to address the issues raised in the complaint, they would normally:

- arrange to contact and/or meet with the complainant
- arrange to contact and/or meet with the Service User, carer, relative, friend as appropriate to the investigation
- arrange to contact and/or meet any relevant member(s) of staff
- request a statement from any member(s) of staff
- examine the service user’s clinical records
- review Best Practice Guidelines
- consider Codes of Professional Practice
- review Trust Policies and Procedures

When contacting or meeting with any member of staff, the Investigation Officer will:

- record name and title of the person being interviewed
- explain the investigation procedure
- provide details of the complaint
- if the Investigation Officer is the line manager of member(s) of staff named in the complaint, offer another manager who will support the staff member(s) during the investigation. This is an addition to the rights of staff who are the subject of a complaint to seek advice from their professional association of Trade Union
- document, date and confirm the accuracy of the interview summary
- obtain the staff member’s signature following the statement that “I believe to the best of my knowledge that this is a true account of events.”

When contacting or meeting with the complaint and/or service user the Investigating Officer will:

- explain the Trust Complaints procedure
- explain how they will be conducting the investigation
- confirm that the issues raised are those that require investigation
- document, date and confirm the accuracy of the interview summary
The final complaint investigation report should:

- be as clear about the facts in each aspect of the complaint
- be concise and clearly written with no jargon
- distinguish between fact, feeling and opinion
- reach clear conclusions and make recommendations to resolve the complaint
- provide recommendations which are linked to the evidence within the report
- add attachments with all evidence

At the conclusion of the investigation, the Investigating Officer will provide a response to all the issues raised in the complaint, with the supporting documentation e.g. service user notes, statements, investigation notes, notes of meetings/telephone calls, to the Service Experience Department with a Learning Plan and action points for each complaint investigated.

The Learning Plan will include:

- details of actions already taken
- information about action that needs to be taken by whom and in what time frame

No record of the complaint/investigation will be placed in the clinical records of the service user about or by whom the complaint has been made.

On receipt of the investigation, a senior member of staff within the Service Experience Department will review the investigation to identify:

- any unresolved issues
- that decisions are based on the balance of probabilities
- if the complaint is well founded
- if the document is clear legible and non-judgemental

Following assurance that all aspects of the complaint have been investigated and an outcome has been established wherever possible a final response will be drafted by a Complaint Officer for consideration by the Chief Executive.
Investigation Template

Please indicate which of the following you have used as part of the investigation.

a. Reviewed clinical records ........................................

b. Met with the complainant ...........................................

c. Met with the complainant and Service Experience Dept ...........................................

d. Reviewed policy/procedures If so, please list .................................

e. Interviewed staff .....................................................
  (Name, title, date of interview, notes included)

f. Other

For each issue in the complaint, the following questions need to be answered following your investigation.

Background Information:

Issue 1:
  a) What happened or was provided according our clinical records and staff interview?
  b) What should have happened or been provided according to expected standards
  c) What was the impact?
  d) Is this issue upheld/partially upheld/not upheld? Do you think we need to apologise?
     If yes, why? If no, why does the complainant think otherwise?
  e) What conclusions can be drawn?

Issue 2:
  a) What happened or was provided according our clinical records and staff interview?
  b) What should have happened or been provided according to expected standards
  c) What was the impact?
  d) Is this issue upheld/partially upheld/not upheld? Do you think we need to apologise?
     If yes, why? If no, why does the complainant think otherwise?
  e) What conclusions can be drawn?

Is there learning as a result of the investigation?

Local learning
What is it?
Who will communicate this or ensure changes to practice take place?
How can this be monitored?

Organisational learning
Who is ensuring this will happen, and how?
Name:
Base:
How will this be monitored?
Complaint Investigation Report Checklist & Sign-Off

Complainant name: ____________________________ Complaint No: ____________________

This document is used to review all investigating officers’ reports prior to submission to the Service Experience Department to ensure that all required elements of the report are fully completed. Where there are missing elements, or additional detail is required, this information will be requested as a matter of urgency. This document must be completed by the relevant Community Services Manager(s) and countersigned by the respective Service Director(s) in which the complaint relates. For those complaints relating to medical colleagues it will be completed by the relevant Clinical Director.

Please circle the appropriate rating. For any No’s in the provided column or none/poor’s in the Credibility & Thoroughness column remedial actions must be undertaken.

<table>
<thead>
<tr>
<th>Required Elements</th>
<th>N/A</th>
<th>Provided</th>
<th>Credibility &amp; Thoroughness</th>
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<tbody>
<tr>
<td>Complaint No/NHS No/DOB provided</td>
<td>Y/N</td>
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<td>None/Poor/Good/Exemplar</td>
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<td>Investigating Officer Details</td>
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<td>None/Poor/Good/Exemplar</td>
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<tr>
<td>Investigation Process (staff interviews, records used, etc.)</td>
<td>Y/N</td>
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<td>None/Poor/Good/Exemplar</td>
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<tr>
<td>Background Information</td>
<td>Y/N</td>
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<td>None/Poor/Good/Exemplar</td>
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<tr>
<td>For Each Issue:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• What happened</td>
<td>Y/N</td>
<td></td>
<td>None/Poor/Good/Exemplar</td>
</tr>
<tr>
<td>• What should have happened</td>
<td>Y/N</td>
<td></td>
<td>None/Poor/Good/Exemplar</td>
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<tr>
<td>• What was the impact</td>
<td>Y/N</td>
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<td>None/Poor/Good/Exemplar</td>
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<tr>
<td>• Is the issue upheld/partially upheld/not upheld.</td>
<td>Y/N</td>
<td></td>
<td>None/Poor/Good/Exemplar</td>
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<tr>
<td>• What conclusions can be drawn</td>
<td>Y/N</td>
<td></td>
<td>None/Poor/Good/Exemplar</td>
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<tr>
<td>Local Learning:</td>
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</tr>
<tr>
<td>• What is it</td>
<td>Y/N</td>
<td></td>
<td>None/Poor/Good/Exemplar</td>
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<tr>
<td>• Who will communicate it and/or ensure these take place</td>
<td>Y/N</td>
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<td>None/Poor/Good/Exemplar</td>
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<tr>
<td>• How will this be monitored</td>
<td>Y/N</td>
<td></td>
<td>None/Poor/Good/Exemplar</td>
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<tr>
<td>Organisational Learning:</td>
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<tr>
<td>• Who is ensuring this will happen and how</td>
<td>Y/N</td>
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<td>None/Poor/Good/Exemplar</td>
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### Required Remedial Actions

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<th>Due Date</th>
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Checklist completed by:

**CSM** (for non-medical complaints only)

Signed off by:

**Service Director** (or Delegated Deputy) and or **Clinical Director**

Signature ........................................................................

Name (Please print) ..........................................................

Designation ....................................................................

Date ............................................................................
# Appendix 7: Learning Action Plan

Action Plan agreed by: ................................................................. Date: ........................................

Responsible Lead for Action Plan: .................................................................

<table>
<thead>
<tr>
<th>Root cause/ Contributing Factor</th>
<th>Agreed Action</th>
<th>Individual Team, Directorate, Organisation</th>
<th>By Whom</th>
<th>By When</th>
<th>Resources Required</th>
<th>Evidence of Completion</th>
<th>Signed off</th>
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Appendix 8: Aggregated Learning from Complaints and Concerns Template

Name of Locality/professional group: ........................................................................................................

<table>
<thead>
<tr>
<th>LEARNING FROM COMPLAINTS</th>
<th>AREA FOR ASSURANCE</th>
<th>PROGRESS UPDATE</th>
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</table>

Progress update completed by: ..............................................................

Date: .................................................................................................