

Complaints Policy and Procedure

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Complaints Policy and Procedure

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1. INTRODUCTION

- 1.1 NHS Wirral Clinical Commissioning Group (CCG) recognises the importance of the views of their patients and public in helping to improve the quality of services provided in line with the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009.
- 1.2 Ensuring good handling of complaints is one way in which CCG's can help to improve quality of care for patients and learning from complaints enables organisations to continually improve the services they provide and the experience for all patients. NHS Wirral CCG ensures that complaints are managed in accordance with the strategic goals and objectives and ensure that all complaints are managed promptly and efficiently, in line with the Health Act 2009 and NHS Constitution, are adequately investigated and that complainants are treated within dignity and respect.
- 1.3 NHS Wirral CCG is committed to proactively building continuous and meaningful engagement with the public and patients to shape services and improve health. We view complaints as a positive opportunity to learn from and improve the way in which we carry out our functions and improve patient experience.

2. MANAGEMENT OF COMPLAINTS

- 2.1 NHS Wirral CCG has a Corporate Affairs Team who process and manage complaints received by the CCG.
- 2.2 An internal process is in place within the Corporate Affairs Team and a local procedure has been agreed with NHS England, to ensure that complaints are processed within a timely manner. When a complaint is received it is recorded on the Datix risk management system and an acknowledgement letter is sent to the complainant within 3 working days, detailing clear point of action for investigation. A member of the Corporate Affairs Team will then liaise direct with the complainant to discuss the appropriate resolution and to agree actions; consent is also obtained where required. The final response is then collated within 25 working days and forwarded to the Chief Officer within the CCG for final approval and sign off before it is sent to the complainant, within the timescale agreed with the complainant. If a complaint is not able to be investigated within the timescale of 25 working days, then an extension of time should be agreed with the complainant, and a letter is sent to confirm this also.
- 2.3 The principles of Being Open, which encourage truthfulness, timeliness and clarity of communications will be observed when investigating, analysing and changing practice as a result of complaints.

3. DEFINITION OF A COMPLAINT

- 3.1 A complaint is defined as an expression of dissatisfaction. Complaints can be made by email, letter or telephone.

The email address is complaints.nhswirralccg@nhs.net.

All letters should be sent direct to the Corporate Affairs Team of NHS Wirral CCG:

Corporate Affairs Team, NHS Wirral Clinical Commissioning Group

5th Floor

Old Market House, Marriss House, Birkenhead, Wirral, CH41 5AL

- 3.2 A complaint can be received via telephone call to initiate the complaint; however, this should also be formally recorded, and should be followed up and confirmed in writing by the complainant.

Telephone number – 0151 541 5380

- 3.3 Patients verbal comments, concerns, complaints and compliments are also received via the CCG public facing website and generic mailbox WICCG.InTouch@nhs.net.

4. RECORDING

- 4.1 All complaints, including those resolved informally on the spot, must be recorded for monitoring purposes. This will demonstrate that the CCG is responsive to comments, complaints, concerns and compliments and this will provide management information for monitoring the current quality of service provision and to inform future service changes and developments. New complaints received by the CCG logged on the in-house Datix system and fielded for investigation.

5. TIME LIMIT FOR MAKING A COMPLAINT

- 5.1 Complaints should be made within 12 months of the expression of dissatisfaction. However, discretion can be applied to vary this time limit where it is considered appropriate by the CCG's Chief Officer.

6. SUPPORT MECHANISMS FOR STAFF

- 6.1 It is important to consider not only how the complainant feels in such situations, but also those in the organisation being complained against as this can be an extremely stressful experience.
- 6.2 Staff will be supported by their Line Manager, in the first instance, and if required the CCG will provide confidential counselling for staff involved in complex complaints.

7. WHO CAN MAKE A COMPLAINT?

- 7.1 A concern or a complaint may be raised under this policy by anyone:
- a) who is receiving, or has received, NHS treatment which are commissioned by the CCG, including hospital services and community services within Wirral.
 - b) or a relative or friend on behalf of the patient, if they have been given permission to act; and who is affected by or likely to be affected by the action, omission or decision of the responsible body which is the subject of the complaint.

- 7.1 The main services commissioned by NHS Wirral CCG include:

- Wirral University Teaching Hospital NHS Foundation Trust
- Wirral Community NHS Foundation Trust
- Clatterbridge Cancer Care Centre
- Cheshire & Wirral Partnership NHS Foundation Trust

Complaints relating to Primary Care Services (from 1st April 2020)

8. COMPLAINTS REGARDING PROVIDER ORGANISATIONS

- 8.1 When a complaint is received by the CCG and it is considered that it is more appropriate for the complaint to be dealt with by the provider organisation e.g. NHS Foundation Trust, the Corporate Affairs Team will ask the complainant whether the complainant consents to details of the complaint being sent to the provider for investigation; and if consent is obtained, the Corporate Affairs Team will send details of the complaint to the provider for response.
- 8.2 If the Complainant states that they would prefer for the Corporate Affairs Team to deal with the complaint on their behalf, the provider organisation will be notified of this.
- 8.3 If a complaint has previously been investigated by a Provider Organisation and the complainant remains dissatisfied with their response then the complainant has the right to escalate this to the Parliamentary & Health Service Ombudsman. The CCG are unable to reinvestigate a complaint which has already been investigated by a Provider Organisation, unless any new issues are raised.

9. COMPLAINTS RELATING TO LOCAL AUTHORITY SOCIAL SERVICES (PART/WHOLE)

- 9.1 Where a complaint is received that contains material which relates wholly or in part to a Local Authority Social Services (LASS) complaint the Corporate Affairs Team will ask the complainant whether s/he consents to details of the complaint being sent to the relevant adult social care provider; and if the complainant so consents, send details of the complaint as soon as reasonably practicable.
- 9.2 Where the responsible body receives a complaint via the CCG in the circumstances referred to above, then the LASS must co-operate for the purpose of co-ordinating the handling of the complaint and ensuring that the complainant receives a co-ordinated response to the complaint.

10. COMPLAINTS RELATING TO PRIMARY CARE SERVICES

- 10.1 Complaints regarding Primary Care Services should continue to be made direct to these services for investigation and response.
- 10.2 If the Complainant states that they would prefer for the Corporate Affairs Team to deal with the complaint on their behalf, the Primary Care Service will be notified of this and the CCG will liaise with the Primary Care Service with regards to the investigation, on behalf of the complainant.
- 8.3 If a complaint has previously been investigated by a Provider Organisation and the complainant remains dissatisfied with their response then the complainant has the right to escalate this to the Parliamentary & Health Service Ombudsman. The CCG are unable to reinvestigate a complaint which has already been investigated by a Primary Care Service, unless any new issues are raised.

11. PATIENT CONFIDENTIALITY

- 11.1 The use of the patient's personal information to investigate a complaint is a purpose for which it is not necessary to obtain the patient's express consent. Care must be taken at all times throughout the complaints procedure to ensure

that any information disclosed about the patient is confined to that which is relevant to the investigation of the complaint and only disclosed to those people who have a demonstrable need to know it for the purpose of investigation the complaint.

- 11.2 Where a complaint is made on behalf of a patient who has not authorised someone to act for him/her, care must be taken not to disclose personal health information to the complainant, unless the patient has expressly consented to its disclosure.
- 11.3 Complaints records will be held centrally & electronically by the Corporate Affairs Team of the CCG. Complaints records must be kept separate from health records, subject to the need to record any information which is strictly relevant to his or her health in the patient's health records.

12. PATIENT ADVICE AND LIAISON SERVICE (PALS)

- 12.1 The Patient Advice and Liaison Service (PALS) provided by Wired is commissioned by NHS Wirral CCG to provide on the spot help whenever possible, with the power to negotiate immediate or speedy resolution (within 48 hours) of problems for patients. In some cases, the PALS service will refer patients to independent advice and advocacy support from local and national sources, including Healthwatch.

- 12.2 PALS can be contacted:

Via telephone on: 0151 363 3948 / 0844 880 1500 or (Freephone) 0800 054 2137

Via email: WirralPals@wired.me.uk

13. NHS COMPLAINTS ADVOCACY SERVICE

- 13.1 The NHS Complaints Advocacy Service (NCAS) currently provides external independent advocacy to people wishing to complain about the treatment or care they received under the NHS.
- 13.2 There is a statutory requirement to provide advice on where complainants may obtain assistance. Therefore, this service must be signposted to the complainant no matter what level their complaint is being dealt with.
- 13.3 Trained advocates with knowledge of the NHS Complaint Procedures help clients to understand whether they wish to pursue a complaint and where needed advocates provide support to clients in doing so.
- 13.4 The support offered ranges from helping the client with initial preparation in ordering their thoughts and thinking about what a good resolution would look like to them, through to attendance at resolution meetings and helping people with correspondence.

14. FAIRNESS AND EQUALITY

- 14.1 Making a complaint does not mean that a patient/complainant will receive less help or that things will be made difficult for them. Everyone can expect to be treated fairly and equally regardless of age, disability, race, culture, nationality and sexual orientation. CCG staff must also ensure that patients and their carers are not discriminated against when a complaint is made and that their ongoing treatment will be unaffected. Complaint records must be kept separate from clinical records.

15. LEARNING FROM EXPERIENCE

- 15.1 Lessons learnt from complaints are an important tool to assist quality and responsiveness. Where appropriate, lessons learnt from complaints will be reported to both the Governing Body and Quality and Performance Committee on a bi-monthly basis.

16. ESCALATION

- 16.1 If the complainant remains dissatisfied with the response letter received and actions undertaken following the investigation; they have the right to ask the Parliamentary & Health Service Ombudsman (PHSO) to review their complaint, this will be made clear in our correspondence with the complainants. The PHSO is independent of the NHS and can be contacted:

Via telephone: 0345 015 4033

Via text phone: 0300 061 4298

Via email: phso.enquiries@ombudsman.org.uk

17. REPORTING STRUCTURE/MONITORING

- 17.1 A bi-monthly report detailing complaints received will be submitted to the Quality and Performance Committee, which is a subcommittee of the Governing Body, together with lessons learnt. A bi-monthly update will also be provided to Governing Body, from the Director of Corporate Affairs. Reports to external stakeholders, i.e. Health watch, NHS England, Care Quality Commission and the Parliamentary Health Service Ombudsman, will also be made available as and when required. The monthly update reports will include information on the service area, subject of complaint and service improvements, themes, lessons learned and positive outcomes
- 17.4 The compliance of this policy will be monitored by the following auditable Key Performance Indicators (KPIs) prior to review in a year or earlier in response to changes in legislation.
1. Chief Officer response forwarded to complainant within agreed timescales.
 2. Service improvements reported to NHS Wirral CCG Governing Body in an annual activity report.

18. THE COMPLAINTS PROCEDURE – GENERAL OVERVIEW

There are two stages of the complaints procedure: Local Resolution and Review by the Parliamentary & Health Service Ombudsman (PHSO).

18.1 Complaints Process

The principal objective of local resolution is to provide the fullest opportunity for investigation and resolving issues and concerns in an open, fair, flexible and conciliatory manner. A complaints training programme 'Complaints Made Easy' is available to support staff.

18.2 Time Frames

All complaints that are raised with either staff or the Corporate Affairs Team of the CCG will be risk assessed/triaged jointly by the Corporate Affairs Manager and the Corporate Officer to determine how they are best managed.

In all cases a complaint must be acknowledged within three working days after the day on which it receives the complaint. All acknowledgments will be made in writing to the complainant.

At the time the complaint is acknowledged the manner in which the complaint is to be handled and the period within which the investigation is likely to be completed, of 25 working days, and response sent should also be discussed with the complainant.

Once agreed details of the actions to be taken should be recorded in an Action Plan.

If a complainant does not accept the offer of a discussion to discuss the handling of the complaint, the CCG will determine the response period and notify the complainant in writing.

The opportunity for the timeframe to be re-assessed during the investigation will remain open. A complaint which is made orally; and is resolved to the complainant's satisfaction not later than the next working day after day on which the complaint was made is not required to be dealt with in accordance with these arrangements.

A complaint must be made not later than 12 months after the date on which the matter which is the subject of the complaint occurred; or if later, the date on which the matter which is the subject of the complaint came to the notice of the complainant.

The time frame shall not apply if the CCG are satisfied that the complainant had good reasons for not making the complaint within the time limit, and notwithstanding the delay, it is still possible to investigate the complaint effectively and fairly.

18.3 Arrangements for the handling and consideration of complaints.

Stage one, Local Resolution.

Complaints received in writing addressed to any member of staff must be scanned and emailed, **without delay**, to the Corporate Affairs Team of the CCG for immediate action.

All complaints whether verbal or in writing are dealt with under local resolution. A verbal complaint resolved to the complainant's satisfaction not later than the next working day after the day on which the complaint was made does not have to be dealt with under the arrangements.

Verbal complaints that need further investigation and all written complaints must be handled in accordance with the Regulations. Please refer to Appendix B.

All written complaints and unresolved verbal complaints will receive in writing a response from the Chief Officer.

It is important that those dealing with complaints feel confident that, in every case, everything reasonable and fair has been done to resolve a complainant's concern at this stage.

Review by the Parliamentary and Health Service Ombudsman.

Stage two, Independent Investigation.

When a complainant remains dissatisfied, following receipt of the final response from the Chief Officer, they may request the Parliamentary and Health Service Ombudsman to consider undertaking an independent investigation into the handling of their complaint by the responsible organisation. On receipt of the complaint the Parliamentary and Health Service Ombudsman will assess the nature and substance of the complaint and decide, with the help of expert advice if necessary, how it should be handled.

Further details of the remit of the Parliamentary and Health Service Ombudsman are available in Appendix 3.

19. RESPONSIBILITIES

19.1 The CCG will ensure that there is a designated person responsible for ensuring compliance with the arrangements made under the Regulations. The responsible person in the case of the CCG is the Chair of the Quality and Performance Committee.

19.2 The Quality and Performance Committee will be responsible for managing the procedures for handling and considering complaints in accordance with the arrangements and will report as necessary to the Governing Body.

The Quality and Performance Committee and NHS Wirral CCG are responsible for:

- Updating the Governing Body on the progress of complaints
- Ensuring that target dates and deadlines are achieved
- Producing quarterly reports to the Governing Body, on the number and type of complaints as well as lessons learned, and action taken
- Producing an annual report for the CCG Governing Body reflecting trends over the last year
- Ensuring conciliation is available to complainants and practitioners, if required
- Ensuring the recommendations made by the Parliamentary and Health Service Ombudsman are implemented

19.3 The CCG Corporate Affairs Team are responsible for:

- Undertaking or delegating complaint investigations
- Root Cause Analysis of complaints

- Informing staff involved in the complaint
- Ensure that all their staff are familiar with the NHS Complaints Procedure
- Ensuring that all written statements made by staff as part of the investigation process are accurate, legible and signed and dated
- Ensuring that the investigation is carried out as soon as possible and findings are sent to the Complaints Manager within deadlines given
- Providing a draft response letter
- Liaising – information sharing and feedback – where the investigation indicates that external partner agencies should be involved e.g. Health & Safety Executive, Police
- Producing annual statistics to the Department of Health for their KO41a returns
- Using complaints/findings as a learning opportunity process for staff by cascading good and bad practice identified, and ensuring actions are taken to minimise and prevent future complaints to include – review of practice and systems in place, training.

20. ROLES AND RESPONSIBILITY OF ALL STAFF

20.1 Stage One – Local Resolution

Complaints – verbal and written.

All staff, and particularly those working directly with service users, should familiarise themselves with the Complaints Policy and receive feedback, openly and honestly. All staff, including contracted staff, are responsible for treating patients, relatives, carers, visitors and colleagues with empathy, dignity and respect. They should also recognise that the way the service is perceived by service users is critical in measuring the quality of service delivery.

There is no requirement to cease a complaint investigation if a person indicates an intention to bring legal proceedings.

20.2 Written complaints and compliments.

CCG staff are responsible for ensuring that letters of complaint, to whoever addressed, are forwarded immediately to the Corporate Affairs Team who, on behalf of the Chief Officer, will acknowledge the letter no later than three working days after the day on which it is received.

The acknowledgement may be made orally or in writing and at the time it acknowledges the complaint, the Corporate Affairs Team will determine how the complaint will be handled. The Corporate Affairs Team will then discuss with the complainant the manner in which the complaint is to be handled; and the period within which the investigation of the complaint is likely to be completed; and the response sent to the complainant.

An Action Plan must be formulated, which the complainant is in agreement with. This will clearly demonstrate to the complainant that their concerns are being taken seriously and are acted upon.

If a staff member is named or referred to in a complaint, then they will receive a copy of it as quickly as possible.

All staff are required to assist in the investigation of complaints providing as much information as possible to assist in the investigation and the resolution of the complaint.

Any response given to a complainant concerning issues of clinical judgement will be agreed with the clinician concerned.

21. ROLE AND RESPONSIBILITY OF INVESTIGATING MANAGER

21.1 Stage One – Local Resolution

The tool provided by the National Patient's Safety Agency for Root Cause Analysis has been agreed as the systematic approach NHS Wirral CCG has adopted when investigating a complaint.

1. Firstly, it is important to ensure the patient's immediate health care needs are being met before tackling the issues of the complaint.
2. The investigating manager / Corporate Officer should forward a copy of the complaint to any staff member named or referred to in the correspondence immediately.
3. It is important to investigate complaints rapidly and thoroughly. The investigation should be factual, including a review of the relevant records and documentation, together with discussions with, and if appropriate statements from, staff involved. Clinicians should be asked to advise on clinical issues if and when required.
4. The investigating manager / Corporate Officer should deal with the complaint in the format agreed and documented in the Action Plan. This may involve speaking to the complainant over the telephone; or arranging a meeting with them and the relevant staff to discuss the complaint and the findings of the investigation. When liaising with the complainant it is important, to secure the confidence of the complainant, that the person investigating the complaint is impartial.

It is good practice to keep a written record of these meetings/discussions and a copy of issues discussed and agreements reached.

After completing the investigation, a follow up letter from the Chief Officer will be sent to the complainant. The letter will include an explanation of how the complaint was considered; and the conclusions reached, including any matter for which the complaint specifies, or the CCG considers, that remedial action is needed, and confirmation as to whether the CCG is satisfied that any action needed in consequence of the complaint has been taken or is proposed to be taken.

5. Conciliation

If the investigating manager feels conciliation would be useful, then this should be agreed with the Corporate Affairs Team. The team will then ensure arrangements are made to appoint an Independent Lay Conciliator, if the complainant agrees to this approach.

If the complainant chooses not to meet, or does not want to discuss his or her concerns with the investigating manager, then this should be recorded and respected. The investigation should continue as normal, based on the information available in the written complaint.

The investigating manager / Corporate Officer will provide a full written report to the Corporate Affairs Team, together with copies of records and documentation referred to. The report should include the process of investigation, a full factual explanation, and details of any action taken to resolve the complaint and/or to prevent a recurrence of the problem.

21.2 Stage 2 –Investigation by the Parliamentary and Health Service Ombudsman.

If the Corporate Affairs Team receives notice of a decision from the Parliamentary and Health Service Ombudsman that they are to undertake an independent investigation into a complaint, the staff member or body which is the subject of the complaint will be notified as reasonably practicable.

Managers of staff involved in Stage 2 – (Investigation by the Parliamentary and Health Service Ombudsman) of the procedure should ensure support is available to the staff member throughout the process.

22. DISCIPLINARY ISSUES

22.1 It is not appropriate to address disciplinary matters through the NHS complaints procedure. However, evidence from complaints may be used as part of a disciplinary process.

23. LEGAL MATTERS / ISSUES

23.1 If formal legal action has been initiated by the complainant, there is no requirement for the NHS complaints procedure to cease. However, if advised by an appropriate body, i.e. NHS Litigation Authority that to continue with a complaint investigation may jeopardise a legal matter, then the complaint investigation will cease and the necessary parties informed.

23.2 The NHS complaints procedure would not be able to assist complainants with claims for compensation.

24. OTHER PROVIDERS

24.1 The CCG should ensure that all NHS Providers and Independent Providers with whom it has a Contract or Service Level Agreement has robust arrangements in place for handling complaints from the CCG's residents about the services they provide.

25. LEGAL FRAMEWORK

25.1 The complaints procedure is based on:

- The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009 No. 309;
- The National Health Service (General Medical Services Contracts) Regulations 2004 No. 291;
- The National Health Services (Personal Medical Services Agreements) Regulations 2004 No. 627;
- The National Health Service (Pharmaceutical Services) Regulations 2005 as amended by the National Health Service (Pharmaceutical Services) Amendment Regulations 2006;
- The National Health Service (General Dental Services Contracts) Regulations 2005;
- The National Health Service (Personal Dental Services Agreements) Regulations 2005;
- The National Health Service (General Ophthalmic Services Contracts) Regulations 2008;
- The Primary Ophthalmic Services Amendment, Transitional and Consequential Provisions Regulations 2008,
- The General Dental Services, Personal Dental Services and Abolition of the Dental Practice Board Transitional and Consequential Provisions Order 2006.

26. SAFEGUARDING ASPECTS

- The LSCB/SAB managing allegations policies should be used in conjunction with this policy.
- This policy is primarily for concerns where the interests of others, most especially patients, or of the CCG itself, are at risk. It can also be used by staff in order to raise allegations against colleagues in terms of safeguarding children or adults. It can be used by volunteers, trainees, agency workers, home workers, contractors and independent consultants as well as all CCG employees.
- This organisation also has separate policies to cover fraud and safeguarding concerns which provide further guidance and details separate procedures for reporting suspected cases of fraud. If your concern relates to a suspected incidence of fraud or safeguarding, then please refer to the fraud or safeguarding policies respectively. Please note that the principles of this policy will still apply.
- Where safeguarding concerns are raised these should be reported immediately to the responsible safeguarding officer in line with the safeguarding policy.

APPENDIX A - COMPLAINTS PROCEDURE – TIME LIMITS

Time Limits for Stage One – Local Resolution

Event	Time Allowed
Original Complaint.	12 months from event on which is the subject of the complaint occurred; or if later, the date on which the matter which is the subject of the complaint came to the notice of the complainant. The time limit shall not apply if the responsible body is satisfied that the complainant had good reasons for not making the complaint within that time frame; and notwithstanding the delay, it is still possible to investigate the complaint effectively and fairly.
Local Resolution	Time Allowed
Verbal Complaint.	A complaint which is resolved to the complainant's satisfaction not later than the next working day after the day on which the complaint is made is not dealt with under these Regulations and will be managed as a patient enquiry / concern.
Written complaint or unresolved verbal complaint acknowledgment.	Within 3 working days after the day the complaint is received.
Corporate Officer / Corporate Affairs Manager / Director of Corporate Affairs / Chief Officer	As agreed with complainant and documented in Action Plan for investigation of the complaint.
Full response by the CCG	Within 25 working days or as agreed with complainant and documented in Action Plan and if an extension of time is required.

Time Limits for Stage Two – Investigation by the Parliamentary and Health Service Ombudsman

Action	Time Allowed
Request for independent investigation	Within 12 months of when the complaint was made locally. (However, the PHSO do have the discretion to waive the time limit if appropriate).
Acknowledge complaint of Email enquiry Written enquiry	Within one working day of receipt. Within two working days of receipt
Substantive response to enquires	80% within 40 working days

APPENDIX B STAGE TWO – The Parliamentary and Health Service Ombudsman

In any case where a person has made a complaint to an NHS Body, Primary Care Provider or Independent Provider and is not satisfied with the outcome of the investigation of his/her complaint by the responsible body and after receiving a final formal written response from the organisation he/she may request the Parliamentary and Health Service Ombudsman (PHSO) to consider undertaking an independent investigation into the handling of their complaint by the responsible organisation.

The PHSO can carry out independent investigations into complaints about poor treatment or service provided through the NHS in England.

The PHSO provides a service to the public by undertaking independent investigations into complaints against NHS services provided by hospitals, health authorities, trusts, GPs, dentists, pharmacists, opticians and other health care practitioners who have not acted properly or fairly or have provided a poor service. They can also investigate complaints against private health providers if the treatment was funded by the NHS.

A request must be made in writing (including electronically) and must be made within 12 months from the date on which the matter, which is the subject of the complaint occurred, or where that is not possible, as soon as reasonably practicable.

When the complaint is received it will be acknowledged within two working days.

The PHSO will look at whether the complaint is one that they can handle, because they can only investigate complaints where they have the legal power to do so. If they decide not to do so, they will let the complainant know why they have made that decision.

Once sufficient information is available, the case manager will recommend a course of action. To ensure consistency, this recommendation will be reviewed by the team leader. The decision will be conveyed to both the complainant and the organisation which the complaint is made.

The possible courses of action at this stage include:

- a) Taking no further action, giving reasons. It may be that there is evidence that the complaint has already been thoroughly investigated and answered locally.
- b) Referring back to the NHS organisation complained against, suggesting in writing what further action it might take to resolve the complaint or review its procedures and services.
- c) Referring the case to other procedures, for example statutory professional regulatory bodies.

APPENDIX C HABITUAL/OR VEXATIOUS POLICY

The vast majority of NHS complainants are responsible in how they act and behave, and act courteously and fairly. Habitual and /or vexatious complainants can cause undue stress for staff. Our staff are trained to respond, with patience and sympathy, to the needs of all complainants but there are times when there is nothing further which can reasonably be done to assist or to rectify a real or perceived problem.

This policy document, which has been incorporated into the Complaints Procedure, may be made available to members of the public to raise its awareness albeit that its primary use is for complaints personnel. It should be recognised that implementation of such a policy will only occur in exceptional circumstances.

BACKGROUND

In determining arrangements for handling such complaints, complaints staff are presented with two key considerations:

1. To ensure that the NHS Complaints Procedure has been correctly implemented so far as possible and that no material element of a complaint is overlooked or inadequately addressed and to appreciate that habitual or vexatious complaints can have aspects which contain substance. The need to ensure an equitable approach is crucial.
2. To be able to identify the stage at which a complaint has become habitual or vexatious.

AIMS AND OBJECTIVES

Complaints about services commissioned by the CCG are considered in accordance with the NHS Complaints Procedure. The aim of our habitual and/or vexatious complaints policy is to:

- Outline criteria that will be used by the CCG in defining a habitual and/or vexatious complaint.
- Set out how a complaint will be handled.

This policy will be used as a last resort and, after all reasonable measures have been taken, to try and resolve complaints during the NHS Complaints Procedure, for example, through local resolution, conciliation. Care should be taken because if you label a complainant as vexatious from the start then it will never be anything else. This may get in the way of your ability to understand why the complainant is so persistent and may only prolong the time it takes to reach a conclusion. Judgement and discretion will be used in applying the criteria to identify potential habitual or vexatious complaints and in deciding action to be taken in specific cases. The policy will only be implemented following careful consideration by, and with the authorisation of the Chief Officer or deputy in their absence.

When the Chief Officer is considering its implementation, this policy will be shared with all complainants to give them prior notification of its possible implementation, should the complainant's unreasonable actions/behaviour continue.

DEALING WITH HABITUAL AND/OR VEXATIOUS COMPLAINTS

Where complaints have been identified as habitual or vexatious in accordance with the criteria (see Definition of Habitual/Vexatious Complaint) the Chief Officer will ultimately determine what action to take. The Chief Officer will implement such action and will notify complainants in writing, of the reasons why their complaint has been classified as habitual or vexatious and the action that will be taken. For completeness, this notification may be copied to any others involved for example a Conciliator. A record will be kept, for future reference, of the reasons why a complaint has been classified as habitual or vexatious.

The Chief Officer, in conjunction with the CCG's Chair may decide to deal with such complaints in one or more of the following ways:

- Set out in a letter a code of commitment and responsibilities for the parties involved if the CCG is to continue processing the complaint. If these terms are contravened, consideration will then be given to implementing other action as indicated below.
- Decline contact with the complainant, either in person, by telephone, by fax, by letter, by e-mail or any combination of these, provided that one form of contact is maintained. This may also mean that only one named CCG officer will be nominated to maintain contact (and a named deputy in their absence). The complainant will be notified of this person. Once a person has been identified as vexatious the Corporate Affairs Manager must be kept informed of all communication either written or verbal in order to avoid duplication and time wasting.
- Notify the complainant, in writing that the Chief Officer has responded fully to the points raised and has tried to resolve the complaint but that there is nothing more to add and continuing contact on the matter will serve no useful purpose. The complainant will be notified that the CCG will acknowledge and respond to new complaints in accordance with the NHS Complaint Procedures. The CCG does not intend to provide a response to any letters which are threatening or abusive or old issues where a response has already been provided. The complainant will be advised that they are being treated as a persistent or vexatious complainant.
- Inform the complainant that in extreme circumstances the CCG reserves the right to seek advice on unreasonable or vexatious complaints from the CCG's solicitors.
- Temporarily suspend all contact with the complainant, in connection with the issues relating to the complaint being considered habitual and/or vexatious, while seeking advice or guidance from the appropriate sources.

WITHDRAWING HABITUAL OR VEXATIOUS STATUS

Once complaints have been determined as habitual or vexatious, the CCG has a mechanism for withdrawing this status at a later date if, for example, a complainant subsequently demonstrates a more reasonable approach or if they submit a further complaint for which the normal complaints procedure would appear appropriate.

As was the case in originally identifying a complaint as habitual or vexatious, staff will use the same discretion in recommending that this status be withdrawn when appropriate. Where this appears to be the case discussion will be held with the Chief Officer and subject to their approval, normal contact with the complainant will then be resumed. The Chief Officer will advise the complainant of this, in writing.

MONITORING ARRANGEMENTS

The Corporate Affairs Manager will report quarterly to the Quality and Performance Committee with statistical information on the number of complaints being categorised as habitual and/or vexatious, if applicable.

DEFINITION OF A HABITUAL OR VEXATIOUS COMPLAINT.

1. Complainants (and/or anyone acting on their behalf) may be deemed to be habitual or vexatious where previous or current contact with them shows that they meet two or more of the following criteria:

Where complainants:

2. Persist in pursuing a complaint where the NHS Complaints Procedure has been fully and properly implemented and exhausted.
3. Persistently change the substance of a complaint or continually raise new issues or seek to prolong contact by continually raising further concerns or questions upon receipt of a response whilst the complaint is being addressed. Care must be taken, however, not to disregard new issues, which are significantly different from the original complaint, as they need to be addressed as separate complaints.
4. Are repeatedly unwilling to accept documented evidence or treatment given as being factual; for example, nursing records, or deny receipt of an adequate response in spite of correspondence specifically answering their questions, or do not accept that facts can sometimes be difficult to verify when a long period of time has elapsed.
5. Repeatedly do not clearly identify the precise issues which they wish to be investigated, despite reasonable efforts from staff to help them specify their concerns, and/or where the concerns identified are not within the remit of the CCG to investigate.
6. Regularly focus on a trivial matter to an extent, which is out of proportion to its significance, and continue to focus on this point. It is recognised that determining what a trivial matter is can be subjective and careful judgement will be used in applying this criterion.
7. Have threatened or used physical violence towards staff 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 continued through written communication. All such incidents will be documented.

The CCG has determined that any complainant who threatened or used actual physical violence towards staff will be regarded as a vexatious complainant and will receive such written confirmation from the Chief Officer. This will also inform the complainant of what action may be taken with regard to any further communications received. It will give the PHSO's address should the complainant wish to "appeal" the decision and the Chief Officer's letter will be copied to the Ombudsman, for information.

8. Have, in the course of addressing a registered complaint, had an excessive number of contacts with the CCG – placing unreasonable demands on staff. For the purposes of determining an excessive number, a contact may be in person, by telephone, by letter, e-mail or fax. Discretion will 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.

9. Have harassed or been personally abusive or verbally aggressive on more than one occasion towards staff dealing with the complaint. Staff recognise, however, that complainants may sometimes act out of character in times of stress, anxiety or distress and will make reasonable allowances for this. They will document all instances of harassment, abusive or verbally aggressive behaviour.
10. Are known to have recorded meetings or face-to-face/telephone conversations without the prior knowledge and consent of other parties involved.
11. Make unreasonable demands on the patient/complainant relationships and fail to accept that these may be unreasonable, for example, insist on responses to complaints or enquiries being provided more urgently than is reasonable or within the NHS Complaints Procedure or normal recognised practice.

APPENDIX D

CONCILIATION SERVICE

Conciliation is when an independent lay person assists in the resolution of a complaint. Assistance is usually given by bringing both parties together in discussion. The CCG can offer the services of independent lay conciliators to assist with complaints.

Conciliation is:

- Voluntary – it can only proceed if both parties agree. Parties can withdraw at any time.
- Confidential – all discussions are held in private and are confidential.
- Impartial – conciliators are not employed by the NHS; they are neutral and do not take sides.
- Free – to complainant and practitioner.

NB: Complainants can be accompanied by friends, family or possibly a representative from the Independent Health Complaints Advocacy Service ICAS. Those complained against can be accompanied by a colleague or, for example, a representative from the Local Representative Committee.

WHEN IS CONCILIATION USEFUL?

Conciliation can be useful in the following situations, for example:

- The practitioner concerned or the complainant would like to meet with the complainant or the practitioner concerned in the presence of a conciliator in an attempt to resolve the matter.
- Complainant may have received a response to their complaint but are still dissatisfied with part of the explanation and wish to meet in an attempt to settle the matter at this stage.
- Complainant may wish to refer the matter to the PHSO but have not tried conciliation.

WHAT HAPPENS AFTERWARDS?

Afterwards, the conciliator will write to both parties stating that conciliation has taken place and will refer the complainant to the CCG Corporate Affairs Team for advice on the next stage of the NHS Complaints Procedure, which is referral to the PHSO.