



Ref No: 221

## POLICY FOR THE MANAGEMENT OF CONCERNS AND COMPLAINTS

### SECTION 1 PROCEDURAL INFORMATION

Version:	6
Title of originator / author:	Head of Patient Experience and Engagement
Title of Approving Committee/Group:	Quality Committee
Title of Ratifying Committee:	Document Ratification Group
Date ratified:	16 November 2022
Date issued:	16 November 2022
Review date:	16 November 2025
Target audience:	Trust wide

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## Document History Summary

Version	Date	Author	Status	Comment
1.1		Brigid Reid	Draft	Flow chart to be added
1.2		Brigid Reid	Draft	Stage 1 Level 2 non exec
1.3	31/3	Brigid Reid	Draft	HMB changes
1.4	17/4	Brigid Reid	Final version 1	Policy Ratification feedback re flow chart
1 b	11/9	Brigid Reid	Amend	Non Exec request to QA 7.2.11
1c	23/10	Brigid Reid	Amend	Feedback from Sept Policy Ratification Group re format
1.d	08/11	Sarah Taylor	Amend	Organisational structure change
2	09/11	Sarah Taylor	Ratified	Amended following feedback from policy ratification group. Ratified.
3a	10/12	Sarah Taylor	Draft	New format and amended to meet NHSLA requirements
3b	03/14	Anna Downward-Fletcher	Draft	Full review
3c	03/14	Anna Downward-Fletcher	Approved	
3	03/14	Anna Downward-Fletcher	Ratified	
4a	Sep 16	Patient Experience and Complaints Manager	Draft	Policy revised and updated in line with NHS England guidance and Trust classed as outstanding by the CQC including Salford Royal Hospital, Frimley Health and South Tees
4b	Dec 16	Patient Experience and Complaints Manager	Draft	Policy submitted for review and ratification
4c	Dec 16	Patient Experience and Complaints Manager	Draft	Document modified to address comments and observations raised by members of the Document ratification Group
4	Dec 16	Patient Experience and Complaints Manager	Final	Ratified by Trust Document Ratification Group
4	May 18	Patient Experience and Complaints Manager	Approved	Policy reviewed/amended with reference to: General Data Protection Regulation 2018
5a	Nov 19	Head of Patient Experience	Draft	Policy revised and updated in line with Trust review date
5b		Head of Patient Experience	Approval	Policy circulated to Clinical Governance Committee for review and approval
5	May 20	Head of Patient Experience	Final	Policy circulated to DRG for review and ratification
6a	July 2022	Head of Patient Experience and Engagement	Draft	Policy revised and updated in line 360 Assurance Audit and PHSO Complaint Standards

6b	Nov 22	Head of Patient Experience and Engagement	Draft	Submitted to DRG for full review. Changes need to be made within 1 year of full review date
6	Nov 22	Head of Patient Experience and Engagement	Final	Ratified by the Document Ratification Group

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## 1. INTRODUCTION

The Rotherham NHS Foundation Trust (TRFT) welcomes feedback from its users as a means to improve services and is committed to responding to all issues of concern by a patient, relative, carer or advocate and learning from the issues raised.

The Trust will provide an accessible and impartial service, which is accountable, confidential and effective. All issues raised will be handled not only with the seriousness they deserve, but also in a way that provides answers to service users which are full, frank, honest and timely.

The Trust will ensure that service change occurs, as a result of the lessons learned from the issues raised and will meet the standards laid down in the National Health Complaints (England) Regulations 2009, Statutory Instrument (2009) No. 309. Under these Regulations, the Trust must provide a patient focussed complaints service. We must be:

- **Listening** to what the complainants are saying
- **Responding** to the issues they raise and
- **Improving** Trust services subsequent to the lessons learnt from Trust investigations into their concerns.

The Trust will ensure that the principles of the Human Rights Act 1998 and the European Convention of Human Rights are maintained at all times.

The Trust will also deliver a complaints service which complies with Parliamentary and Health Service Ombudsman (PHSO) best practice. The six principles of best practice are; Getting it right; Being customer focused; Being open and accountable; Acting fairly and proportionately; Putting things right and Seeking continuous improvement.

Towards the end of 2014, the PHSO started its 'My expectations' project in partnership with the Local Government Ombudsman and Health Watch England to review people's expectations for good complaints handling. The following 'My expectations' model which resulted from this piece of work has been adopted by the Care Quality Commission for their inspections. The PHSO 'My expectations' model will also be adhered to by TRFT;



The Trust will also work in line with the PHSO National NHS Complaint Standards that were published in March 2021 and due to be introduced across the NHS in Spring 2023. The Complaint Standards set out a single vision for staff and NHS service users (and people who support them) of what is

expected when a complaint is raised. This will help make sure everyone experiences a culture that seeks out learning from complaints, and meets the outcomes also set out in the PHSO document My Expectations.



The standards follow the relevant requirements as given in the Local Authority, Social Services and National Health Service Complaint Regulations 2009 and the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (the 2009 and 2014 Regulations). It must be read in conjunction with the more detailed guidance modules available on the Parliamentary and Health Service Ombudsman website.

This Trust also recognises and accepts its responsibilities outlined by the Care Quality Commission's Fundamental Standard; Regulation 16. Receiving and acting on complaints 'Guidance for providers on meeting the regulations' or Key Line of Enquiry (KLOE) Responsive 4. The intention of this regulation is to make sure that providers have systems and processes that ensure that they are able to meet other requirements in this part of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (Regulations 4 to 20A). To meet this regulation; providers must have effective governance, including assurance and auditing systems or processes. These must assess, monitor and drive improvement in the quality and safety of the services provided, including the quality of the experience for people using the service.

The systems and processes must also assess, monitor and mitigate any risks relating to the health, safety and welfare of people using services and others. Providers must continually evaluate and seek to improve their governance and auditing practice.

The recommendations following the final report into the Mid Staffordshire NHS Foundation Trust inquiry by Robert Francis QC and the review of the NHS Hospitals Complaints system 'Putting Patients back in the Picture', Clwyd and Hart 2013 and the Assurance of Good Complaints Handling for Acute and Community Care – A toolkit for commissioners, have been considered in the development of this policy.

This policy supersedes and replaces The Management of Concerns and Complaints Policy Ref No: 221 and the previous version of the policy for the management of Compliments, Comments, Concerns and Complaints.

## **2. PURPOSE & SCOPE**

The policy deals with the handling of concerns and complaints regarding Trust services, buildings or the environment. Concerns and complaints may be received from patients, patient relatives, carers, visitors and other service users. Concerns and complaints excluded from the scope of this policy are identified in paragraph 5.7.

The policy applies to all hospital services/sites, departments and areas within the organisation and applies to all permanent and temporary staff working within the Trust.

### **2.1 Purpose**

The policy aims to promote early, local and prompt resolution, and involving the complainant in deciding how their concerns are handled. Likewise, good complaint handling and continuous learning is endorsed throughout the policy, promoting improvements in the quality and safety of services at TRFT and facilitating positive patient experiences.

#### **Aims:**

- 1) To listen, to acknowledge mistakes, explain what has happened and to consider prompt appropriate and proportionate remedies to put things right, if necessary.
- 2) To provide a consistent approach to the timely and efficient handling of all concerns and complaints, establishing an agreed complaints plan with the complainant, with an emphasis on early resolution.
- 3) Ensure organisational openness and an approach that is appeasing and fair to people both using and delivering services.
- 4) Respect the individual's right to confidentiality and treat all users of this policy with respect and courtesy.
- 5) Learn from concerns and complaints and use them to improve the quality of services and to prevent mistakes happening again.
- 6) The Trust will actively seek the views and the comments of its users and encourage a culture of openness.
- 7) Complaints will not be seen in isolation, but as part of the overall service that the Trust provides. Complaints handling will be seen as an integral part of everyone's role.
- 8) Information on complaints trends will be captured, analysed and reported across the organisation to effect improvements in how services and care are provided.
- 9) Staff will be suitably trained and empowered to deal with complaints.



- 10) Expressions of dissatisfaction will, where possible and appropriately, be resolved immediately by the person receiving them.
- 11) The Trust will communicate with its patients and service users using language that is easily understood.

**Outcomes:**

- 1) The policy and procedure will, as far as is reasonably practical, be easy to understand, accessible, publicised in ways that will reach all service users and include information about support and advocacy services.
- 2) All staff will receive an appropriate level of training to enable them to respond positively to concerns and complaints, and to endeavour to resolve issues quickly.
- 3) The Trust will ensure that service users and carers can raise a concern or complaint without their care, treatment or relationship with staff being compromised.
- 4) All concerns and complaints will be acknowledged within three working days. Where possible the complaint issues will be clarified, investigation timescale agreed with the complainant, and the best way to reach a satisfactory outcome discussed.
- 5) Investigations will be thorough, responsive and appropriate to the seriousness of the complaint, conducted within the timescales, where possible, agreed with the complainant.
- 6) The format of the response to the concern/complaint will be agreed with the complainant, this may be verbal (by telephone or at a meeting), by email or written letter.

Concerns will often be resolved with a verbal response. Complaints will require a written response or if a meeting was agreed a copy of the digital recording taken during the meeting and a closer letter is required.

The response will explain how the complaint has been investigated, acknowledging shortcomings and apologising where appropriate, explain the outcome of the investigation, what actions have been or will be taken and what the next steps are for the complainant if they remain dissatisfied with the response.

- 7) The Trust will strive to resolve all complaints locally, whilst reminding people of their right to take the matter to the PHSO if they are not satisfied.
- 8) Within Divisions local leadership and accountability will support early resolution and ensure concerns and complaints are responded to promptly and used to initiate actions for service improvement/opportunities for staff improvement.
- 9) Trust governance structures will be used to ensure organisational learning from complaints and the sharing of best practice.
- 10) To ensure that all staff are aware of their responsibilities and are sympathetic and responsive to any concerns expressed.

- 11) All complainants will be kept informed of progress by the Investigating Officer and outcome of their complaint investigation as far as is reasonably practicable and that timely apologies are given.
- 12) That the reasons for the complaint are identified and the appropriate action is implemented. Where it is specifically requested and felt appropriate the lessons learnt must be communicated to the complainant and shared Trust-wide to inform best practice.
- 13) That staff are supported by an organisation that advocates an open and fair culture.
- 14) Confidentiality, respecting the confidentiality of both the staff and complainants.
- 15) Concerns and complaints are reviewed and monitored to ensure fairness and effectiveness.
- 16) Complaint and concern processes will be honest, thorough and with the prime purpose of satisfying the concerns of the complainant whilst also being fair to the staff.

## **2.2 Scope**

The policy applies to all departments and areas within the organisation; and applies to all staff working within the Trust.

The policy deals with the handling of concerns and complaints regarding Trust services, buildings or the environment received from patients; patient relatives, carers or visitors; other service users and members of the public.

The complaints excluded from the scope of this policy are;

- A complaint made by a local authority, NHS body, primary care provider or private healthcare provider unless this has been funded by the Trust.
- A complaint made by an employee of a local authority or NHS body about any matter relating to employment.
- A complaint which is the same issue as a complaint that has previously been made and was resolved.
- A complaint which has previously been investigated under the 2004, 2006 or 2009 regulations.
- A complaint that has been reviewed by the Parliamentary Health Service Ombudsman (PHSO).
- A complaint that alleges a failure to comply with a request for information under the Freedom of information Act 2000, or a failure to comply with a data subject request under Data Protection Act 2018 and the General Data Protection Regulations (GDPR) Complaints about privately funded care.

### 3. DEFINITIONS AND ABBREVIATIONS

#### 3.1 Definitions

For the purpose of this policy the following definitions apply (NB it is important to note that it is sometimes difficult to clearly differentiate between a concern and a complaint, and for this reason they must be viewed on a continuum).

- 3.1.1 **Concern:** A concern can be defined as “a matter of interest, importance, inquiry or anxiety”. These are often issues where more immediate action is required, where things are ‘going wrong’ or general help and support is required.

Concerns are received throughout the organisation and through the Patient Experience Team, the aim is to resolve the concern to the individual’s satisfaction as promptly as possible and within a reasonable timescale.

If this is not possible then the individual raising the concern, can decide to await a satisfactory outcome through local resolution or can ask that their concern be investigated as a complaint under the NHS Complaint Regulations (2009).

- 3.1.2 **Complaint:** The Trust defines a complaint as “an expression of dissatisfaction”, or a perceived grievance or injustice which requires a formal response”.

Complaints and concerns can be received in written format (letter, email, on-line contact form) or via face to face or telephone communication.

All concerns and complaints will be recorded and reported via the DATIX system and a wider analysis of trends and themes will be shared through the Trust’s governance structures.

- 3.1.3 **Comment:** General feedback not requiring investigation but highlighted to service for possible service improvements.

- 3.1.4 **Compliment:** Message of appreciation to be disseminated to relevant staff. Please refer to Appendix 6.

- 3.1.5 **Independent Review:** The Trust will arrange appropriate independent review of complaints and will, on occasions, commission an external body to carry out a review of the care given. This includes the provision of medical records and complaint details to the third party.

- 3.1.6 **Local Resolution:** Is the first stage of the NHS complaints procedure. Ideally, it will start after all attempts to resolve a complainant’s concerns have been explored by clinicians and managers at a local or service level as soon as they arise. On occasions complainants may prefer to bypass clinicians and managers at a local level and contact the Patient Experience Team or Chief Executive personally.

A complainant will be contacted where possible to agree how their issue will be resolved and given a timeframe within which it is felt reasonable to expect this to be completed.

- 3.1.7 **Never Event:** a sub-set of Serious Incidents and are defined as 'serious, largely preventable patient safety incidents that should not occur if the available preventative measures have been implemented'.
- 3.1.8 **Serious Incident:** are events in health care where the potential for learning is so great, or the consequences to patients, families and carers, staff or the Trust are so significant, that they warrant using additional resources to mount a comprehensive response. They can extend beyond incidents that affect patients directly and include incidents that may indirectly impact on patient safety or the Trust's ability to deliver on-going healthcare.
- 3.1.9 **Red Incident:** If following review of an incident the Serious Incident panel do not consider this meets the Serious Incident National Framework SI criteria; but consider this requires a more detailed investigation and report they may ask for an internal or Red Incident level of investigation to be undertaken. These reports are all recorded by the Patient Safety team but must be monitored by the Divisional governance team to ensure all the actions and learning is completed.
- 3.1.10 **Parliamentary & Health Service Ombudsman:** Is responsible for the second stage of the complaints procedure and a complainant may wish to contact them if the Trust has exhausted attempts to resolve their complaint and they remain unhappy. The Ombudsman is responsible for reviewing complaints and making recommendations where necessary on how the complaint was handled and what more can be done.

## 3.2 **Abbreviations**

CEO	Chief Executive Officer
CFS	Counter Fraud Service
CN	Chief Nurse
COO	Chief Operating Officer
CQC	Care Quality Commission
CSU	Clinical Service Unit
DCN	Deputy Chief Nurse
EIA	Equality Impact Assessment
GDPR	General Data Protection Regulation
HoN	Head of Nursing
HR	Human Resources
ICB	Integrated Care Board
KLoE	Key Lines of EnquiryKo41a This national data collection monitors written complaints received by the NHS regarding Hospital and Community Health Services.
KPI	Key Performance Indicator
LRM	Local Resolution Meeting
MD	Medical Director

MP	Member of Parliament
NE	Never Event
NoK	Next of Kin
NPSA	National Patient Safety Agency OLAF
Learning Action Forum	Organisational
PET	Patient Experience Team
PHSO	Parliamentary and Health Service Ombudsman
RCA	Route Cause Analysis
SI	Serious Incident
SOP	Standing Operating Procedure
TRFT	The Rotherham NHS Foundation Trust

#### 4 ROLES & RESPONSIBILITIES

<b>Roles</b>	<b>Responsibilities</b>
<b>Board of Directors</b>	<p>The Board of Directors is ultimately accountable for ensuring the concerns and complaints policy is in place and has effective controls to support the policy's purpose and aims.</p> <p>The Board will ensure that there is appropriate expertise and the necessary resources available to enable the policy to be effectively discharged.</p> <p>Provide scrutiny of complaints via the Non-Executive Directors; Directors will review a random sample of closed complaints files on a quarterly basis.</p>
<b>Chief Executive (CEO)</b>	<p>The CEO is the 'responsible person' for ensuring compliance with The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009 and that action is taken if necessary, in light of the outcome of the complaint.</p> <p>The CEO or nominated deputy in their his/her absence will read and review all complaints and the responses and will provide a signed cover letter to accompany this.</p>
<b>Chief Nurse (CN)</b>	<p>The CN or nominated deputy in their absence is responsible for providing the Board with a monthly report regarding complaints activity, the actions taken and an evaluation of the effectiveness of these actions.</p>

<b>Roles</b>	<b>Responsibilities</b>
<b>Deputy Chief Nurse (DCN)</b>	<p>The DCN is responsible for ensuring detailed procedures are developed, agreed, implemented and monitored.</p> <p>Ensuring Key Performance Indicators (KPIs) are monitored and reported to Divisions, Patient Experience Group, Patient Experience and Inclusion Committee, Quality Committee, and Trust Board.</p>
<b>The Head of Patient Experience</b>	<p>The Head of Patient Experience or nominated deputy will read all complaints and provide a written acknowledgement of the complaint.</p> <p>The Head of Patient Experience or nominated deputy will consider and approve requests for an extension to a complaint response timeframe where it is deemed appropriate to do so.</p> <p>The Head of Patient Experience is responsible for: Ensuring detailed procedures are developed, agreed, implemented and monitored.</p> <p>Ensuring Key Performance Indicators (KPIs) are monitored and reported to Divisions.</p> <p>Managing the procedures for handling and considering complaints under the complaints regulations.</p> <p>Interpretation of the NHS Complaints Procedure and developing and reviewing associated national and local policy and procedures.</p> <p>Executing their duties as described in the associated procedural documents.</p> <p>Oversee the administrative process for PHSO investigations.</p> <p>Providing training in relation to the management of concerns and complaints.</p>

<b>Roles</b>	<b>Responsibilities</b>
	<p>Monitoring concerns and complaints' KPIs, analysing complaints information and provide data and information for divisions, Patient Experience Group, Patient Experience and Inclusion Committee, Quality Committee, South Yorkshire Integrated Care Board, Trust Board reports and the annual Ko41a.</p> <p>Escalating, as appropriate, issues to the Deputy Chief Nurse.</p> <p>Informing the Communications Manager of Potential Media interest.</p>
<p><b>The Complaints Manager and Patient Advisors</b></p>	<p>The Complaints Manager is responsible for the management of day to day provision of a patient advice and support service in relation to concerns and complaints.</p> <p>The Complaints Manager and Patient Advisors will provide a single point of contact for patients, relatives, carers and representatives wishing to complain and/or seek advice on the Trust complaints process.</p> <p>Managing the administrative process for PHSO investigations.</p> <p>Execute their duties as described in the associated procedural documents. Monitor concerns and complaints, KPIs and analyses complaints information and provide data and information as required by the Head of Patient Experience.</p> <p>Ensure the Head of Patient Experience is kept apprised of any complaint investigations that are not going to meet the timescales within the complaints procedure.</p> <p>Provide concerns and complaints data and information as required for the Head of Patient Experience.</p> <p>Notify the Divisions via Datix Web and</p>

<b>Roles</b>	<b>Responsibilities</b>
	<p>ensure that any directly named Doctor is also notified of the complaint. Facilitate the complaints process ensuring the Trust is adhering to the policy and co-ordinate all complaints received including acknowledgement, seeking consent and response timeframe.</p> <p>Facilitate the approval with Heads of Nursing and sign off with the Chief Executive or nominated deputy.</p> <p>Ensure any signposting to the Parliamentary Health Service Ombudsman is undertaken for complaints that cannot be resolved locally.</p> <p>Produce the statutory return (KO41a) to the Department of Health and an annual report for the Trust.</p>
<p><b>Heads of Nursing/Midwifery/Clinical Professions</b></p> <p><b>Divisional Governance and Quality Leads</b></p>	<p>Are accountable for the management of complaints within their Division in liaison with Governance Leads, Service Manager, General Manager and Clinical Director as required.</p> <p>Ensure that this policy and associated procedures are implemented within their Division.</p> <p>Allocate an Investigating Officer to each complaint investigation within their Division.</p> <p>Ensure complaints investigations are undertaken within the required timeframes.</p> <p>Quality assure all complaint responses and ensure all aspects of the complaint have been addressed and the response has been written in line with the guidance on writing response letters at Appendix 3.</p>



<b>Roles</b>	<b>Responsibilities</b>
	<p>Make a judgement regarding whether the complaint outcome is upheld, partially upheld or not upheld in line with the KO41a.</p> <p>Disseminate complaints information as appropriate to front line staff within the Division.</p> <p>Ensure that individual complaints and also trend data are considered at the Divisional governance groups.</p> <p>Inform the Division's governance group who is responsible for the achievement of the KPI performance in relation to these areas in the management of complaints.</p> <p>Ensure that complaint action plans are monitored at Divisional or speciality governance groups and ensure that all identified learning and improvements are implemented and disseminated across the division and the Trust.</p> <p>Responsible for the timely completion of action plans and monthly updates on the progress of all open action plans and lessons learned.</p>
<b>Directors of Clinical Services</b>	<p>The Directors of Clinical Services are responsible for investigating complaints relating to or involving a senior member of their medical team/ Division. Each Director of Clinical Services will account to the Medical Director for performance within their area of responsibility.</p>
<b>General and Service Managers</b>	<p>Inform the Head of Patient Experience of any changes to services which may have a potential impact upon patient experience, or the potential to raise concerns or complaints.</p> <p>Act as an investigator or assist with a full investigation of the complaint as required.</p>

<b>Roles</b>	<b>Responsibilities</b>
<b>Investigating Officer</b>	<p>Ensure a full investigation of each aspect of the complaint (in line with the Trust's Incident and Serious Incident Management Policy) and provide the Patient Experience Team with the information required as set out in the policy and complaints 7 step guide, within 20 working days of receipt of the letter of complaint. Appendix 1.</p> <p>Ensure that any clinician involved in the person's care, directly named or identified as a part of the investigation, is notified of the complaint and provided with a copy for their information.</p> <p>Discuss any delays or complications encountered during the investigation with the Divisional lead for complaints. If the final response will not be available within the agreed timescale, an extension request can be submitted for consideration by the Head of Patient Experience or nominated deputy in their absence.</p> <p>Maintain a contemporaneous record by systematically documenting the complaint investigation on Datix and ensure that records are sufficiently detailed and comprehensive to guarantee a resource from which to track and monitor progress.</p>
<b>Matrons / Lead Nurses / Ward or Departmental Managers</b>	<p>Ensure every effort is made to informally resolve concerns/complaints which arise locally. Provide advice to their staff teams on the principles of 'first line resolution' wherever possible.</p> <p>Provide advice to patients regarding the process for making a complaint if local resolution cannot be achieved.</p> <p>Act as an investigator or assist with a full investigation of the concern or complaint and provide the investigating officer with the information required electronically and within the timescale requested.</p>

Roles	Responsibilities
	Ensure feedback to the staff involved in complaints and ensure that the learning is disseminated widely. Assist with the development of improvement strategies and their implementation.
<b>Communications Manager</b>	The Communications Manager will ensure that media interest is managed appropriately if they are alerted to its potential by the Patient Experience Team or press. They will decide in collaboration with the designated Executive, whether any information will be disclosed to the press, the content of any press statement, who will answer press enquiries and whether media access to the area will be given.
<b>Legal Affairs Department</b>	Will review complaints responses in cases where there is a possible or pending claim for negligence.
<b>Corporate Secretariat</b>	Responsible for opening and date stamping all written complaints and MP enquiries received by the Chief Executive's Office. All complaints received must be electronically scanned and emailed directly to the Patient Experience Team email in-box at <a href="mailto:your.experience@nhs.net">your.experience@nhs.net</a> upon receipt. The original can then await review by the appropriate Executive Director/ addressee.
<b>All Staff</b>	<p>Every staff member is responsible for supporting people who wish to provide feedback or raise concerns, every effort will be made by Trust staff to act upon feedback at the time that it is given, to try to resolve the concerns of patients, relatives and carers promptly.</p> <p>The Patient Experience Team provides a comprehensive service incorporating concerns and complaints. Team members will support patients, relatives and carers throughout, regardless of whether their feedback is handled as a concern or as a complaint.</p>

Roles	Responsibilities
	<p>All staff will ensure that information gained is acted upon to improve, plan, develop and evaluate the services delivered.</p> <p>All staff must make every effort to deal with concerns as they arise, informally and promptly and inform senior staff of any issues raised.</p> <p>Where local resolution of a concern has failed and/or the individual wishes to make a complaint, then staff should ensure that they are given the appropriate information about how to do this and the Patient Experience Team be advised of the complaint immediately.</p> <p>An incident report should be completed, where appropriate.</p> <p>All staff must ensure that any associated correspondence is not kept or copied and filed in the patient's clinical record. No reference to the complaint should be documented in the patient's clinical record.</p> <p>All staff requested to do so, must comply with any complaint investigation, including providing a statement or complete a memory capture form within the defined timeframe.</p>

## 5 PROCEDURAL INFORMATION

In addition to the information contained within this section; procedures and guidance that support the implementation of this policy are listed below:

- Appendix 1 The 7-step guide to the formal complaint's management process on working days
- Appendix 2 Guidance on conducting an investigation into a complaint
- Appendix 3 Guidance for staff on preparing statements
- Appendix 4 Guidance on preparing a complaints response letter
- Appendix 5 Guidance for meetings with complainants
- Appendix 6 Capturing compliments and messages of thanks
- Appendix 7 Guidance for using Datix and uploading documents, Trust wide guidance on Datix usage is also available on the Hub.

- Appendix 8 How to raise a concern or make a complaint leaflet
- Appendix 9 Concerns Log
- Appendix 10 Section 10 Document development

## **5.1 Methods of providing feedback to the Trust**

Feedback can be made in a number of ways, so that the individual can choose the most convenient way for them.

Patients and their representatives can raise concerns and complaints via a number of methods;

- Verbally in person, or via the telephone to staff on duty, or the Patient Experience Team
- In writing via a letter
- In writing via an email
- In writing via the links on the Trust Internet portal
- Via the NHS Opinion or Patient Choice websites
- Via a third party such Absolute Advocacy (Cloverleaf) or another advocacy service.

The Trust will raise awareness of all these methods through promoting this via the use of leaflets, posters and the Trust internet.

## **5.2 Handling and management of feedback**

Making a complaint can be a daunting experience and the evidence suggests that many people who might wish to complain do not do so, because they do not know how to, or they find the process too intimidating. The Trust therefore can lose valuable feedback from its patients.

The Patient Experience Team will offer assistance to facilitate the raising of concerns and will respond to individuals with specific needs, e.g. for interpreting services, in order to enable everyone who wishes to give feedback to be able to do so.

The Patient Experience Team will offer support to complainants throughout the complaints process and will also provide details of Absolute Advocacy (Cloverleaf) who can assist and advocate for them. Complainants must not be led to believe either directly or indirectly, that they may be disadvantaged because they have raised a concern or complaint.

Patients and their representatives must be asked how they wish issues they raise to be dealt with, in line with the Patients Association's Person Friendly Charter for handling complaints with a human touch.

However, any feedback received which suggests a cause for concern, must be investigated and responded to whether or not the informant has indicated that they wish to have the matter dealt with.

### **5.3 Information about raising a concern or making a complaint**

Written information regarding how the Trust deals with concerns and complaints will be made available in all departments, reception areas, the Trust website, Absolute Advocacy and through external agencies and partners.

Patients, Service users and the public who require assistance to make a complaint will be directed to local complaint advocacy services and will receive as far as is practical, assistance from the Trust to enable them to understand the procedure and receive advice as to where to obtain assistance.

Concerns and complaints may be made verbally (in person or via telephone) or in writing (letter or electronically). A concern or complaint may be raised with any member of Trust staff, the Patient Experience Team, or the Chief Executive. Alternatively, the complainant may choose to address their concerns to the local commissioner for Trust services, NHS England, a Member of Parliament or another third party such as Absolute Advocacy (Cloverleaf).

If an issue is received via one of these external agencies, upon receipt it will be managed in line with any other concern or complaint received by the Trust.

### **5.4 Who may raise a concern or make a complaint**

A complaint can be made by any person who receives or has received services from an NHS organisation, a primary care provider or independent contractor/provider or by a person who is affected, or likely to be affected by the action, omission or decision of the responsible body which is the subject of the complaint. This includes a MP or other bodies such as the ICB or NHS England.

A complaint can also be made by a representative acting on behalf of a person who receives or has received services from the above or who:

- Is a child (an individual who has not attained the age of 18). The Trust must be satisfied that there are reasonable grounds for the complaint being made by a representative instead of by the child e.g. the capacity of the child.
- Is unable to make the complaint themselves because of physical incapacity or lack of capacity within the meaning of the Mental Capacity Act 2005;
- The person has died; or
- Has requested the representative to act on their behalf.

If the Trust is satisfied that a representative is **not** conducting the complaint in the best interests of a child or a person that lacks capacity, then the Trust must not consider the complaint and will inform the representative of the reason for this decision.

### **5.5 Consent if the complainant is not the patient/ third party**

If a complaint is made on behalf of an individual then the Trust will need to seek consent from that individual, so that an investigation can be legitimately carried out.

If an individual is unable to provide consent for a person making the complaint on their behalf (for example, they are incapable by reason of physical or mental incapacity, or they are a child), then their legal guardian or parent or other verified appropriate representative will be accepted to act on their behalf.

Where a complaint has been made on behalf of a patient by a Member of Parliament (MP) it will be assumed that implied consent has been given by that patient. If however the complaint relates to a third party, consent will need to be obtained from the patient prior to the release of personal information.

If a patient is deceased, the relationship of the complainant to the deceased patient must be clarified and confirmed as the next of kin, or the Executor of their Estate.

In the event that consent or sufficient evidence cannot be made available confirming the relationship between the complainant and the patient, or the complainant cannot demonstrate sufficient legitimacy in the person's welfare, the Trust will notify the complainant in writing confirming that they will not progress the matter and the complainant will not receive any details relating to the patient, or any information obtained via their health records.

In circumstances where a complaint is made by a third party when the patient has not authorised the complainant to act on their behalf, this does not preclude the Trust from undertaking a full and thorough investigation into the concerns raised. Specifically, if the complaint raises concerns about patient safety or the conduct of staff, the relevant Trust policies will be invoked.

A response to the third party will be limited, to include any matters of a non-personal or non-clinical nature only, and this will not include the outcome of any Human Resource (HR) investigation. The response to the complainant will explain why this restriction is in place.

## **5.6 Concerns**

A concern is often shared by way of feedback or it can also be an enquiry made to clarify treatment and care. In the majority of cases, if a person is feeling dissatisfied, they may like the matter rectifying speedily as the Trust recognises that not all correspondence received will benefit from the NHS Complaints Procedure nor is it everyone's expectation when they write to the Trust. All staff are encouraged to attempt to resolve any concerns as much as practically possible within their service area or at the point of service delivery. They must ensure that they:

- Take time to listen and consider the complainants views.
- Reassure the service user, their relative, carer or representative that all concerns and complaints are welcome and they are entitled to raise concerns.
- Treat the complainant with empathy and fully consider their needs.
- Treat the issues with confidentiality, as far as practically possible and with sensitivity.

Where the member of staff or service are able to resolve matters locally a record of the discussion held, the outcome and actions agreed with the complainant should be recorded onto a concerns log (Appendix 9) and sent to the Patient Experience Team. This document can also be found on the hub.

These are also received by the Patient Experience Team; the issues will be logged on Datix and the directorates will be sent all the key information also using the concerns log. It may be that departmental staff or the Patient Experience Team can resolve matters quickly without the need for a formal route.

Concerns or complaints which are dealt with to the complainant's satisfaction, will be classified as an informal concern/complaint.

A record of the outcome of concern should be recorded on the concerns log documentation and sent back to the Patient Experience Team. They will close the concern on Datix.

If a meeting is arranged or a letter written by the directorate staff to try and resolve the concern, it will remain open on Datix until a fully completed concerns log is received with the outcome of the meeting or a copy of the letter written by the directorate provided.

Where the complainant remains unhappy with the outcome and informal resolution is not possible, staff should give assistance to the complainant to allow them to raise their complaint formally. Staff should provide ease of access to the complaints process and make it as simple as possible.

Staff should provide details and documentation in the way of this policy and the Trust's complaint leaflet (see appendix 8) on how to make a complaint or direct the complainant to the Trust's Patient Experience Team for further information

## **5.7 Exclusions to the complaint procedure**

The Trust is not required to consider the complaint in the following circumstances - however, the Trust will consider each case individually and as soon as reasonably practicable, notifying the complainant in writing of its decision and the reason for that decision.

- A complaint made by a responsible body (Local Authority, NHS body, primary care provider or independent provider) who provides care under arrangements made with an NHS body.
- A complaint by an employee relating to their employment. These must be raised as a concern or a grievance using the appropriate HR policies.
- A complaint, the subject matter of which has been investigated previously under the NHS complaints regulations.
- A complaint that is or has been investigated by the PHSO.
- A complaint arising out of the alleged failure to comply with a request for information under the Data Protection Act 2018 (GDPR) or a request for information under the Freedom of Information Act (2000). These should be directed to the Information Commissioner.



- Lost property claims, which are investigated and handled under the Security Policy which deals with patient property.
- Private healthcare unless this has been funded by the Trust.

## 5.8 **Specific considerations when dealing with concerns and complaints**

The Patient Experience Team and the Investigating Officer have a responsibility to ensure that the complainant is fully informed of any relevant considerations that may alter a complaint investigation or a response timeframe.

In any case where the complaints procedure is being brought to an end, the complainant and any persons identified in the complaint must be notified.

### 5.8.1 **Concerns or complaints involving vulnerable adult or child protection**

Where it is known that the complaint involves a vulnerable adult or child, the Safeguarding Lead must be informed and the most appropriate route of investigation agreed, this may not necessarily be by using the complaints procedure.

### 5.8.2 **Concerns or complaints that include a Never Event (NE) or Serious Incident (SI).**

If a complaint is received that has already been subject to the completion of a Red Incident, a Never Event (NE) or Serious Incident investigation (SI investigation) but this has not been shared with the patient, their relatives, or Next of Kin (NoK), then the Patient Experience Team must liaise with the Patient Safety Team to determine if the report covers the issues raised as a part of the complaint.

If this is the case it may be appropriate that this report is provided in response to the complaint, with an explanation of the process undertaken for investigation, along with an apology that this report was not shared with them at the time. If further issues have arisen and they require investigation, this must be completed in line with the process for investigating new complaints.

If the complaint received triggers a red incident, NE or SI investigation, or is part of one of these processes, this investigation must take precedence and will occur first. The Patient Experience Team must explain this process to the complainant and the timeframes agreed must be in line with the red incident, NE or SI Investigation timeframes agreed.

The Patient Experience Team will duly close a complaint file when a matter is formally passed to this level of investigation. The Patient Experience Team must ensure that a response is provided before archiving the complaint file for assurance purposes and also explain that once the above investigation is complete and should there be any issues not resolved the complaints process can be commenced upon request.

If the issues raised within the complaint are not within the remit of the NE or SI investigation, it is expected that the allocated NE or SI Investigating Officer will also complete the investigation into these issues. However, should they require support to do this, the Patient Experience Team will ask for an

Investigating Officer from the Clinical Service Unit (CSU) which the incident relates to support the NE/SI Investigating Officer.

Once the NE or SI investigation is complete and has been through its ratification then this must be shared with the complainant as part of their complaint response, unless there are circumstances such as a Serious Case Review and criminal proceedings.

### **5.8.3 Clinical negligence, personal injury or other claim**

In circumstances where the complainant indicates a clear intention to bring legal action for clinical negligence, personal injury or other claim, the use of the complaints procedure is not necessarily prohibited.

The Patient Experience Team must discuss the nature of the complaint with the Legal Affairs Team to determine whether progressing the complaint might prejudice subsequent legal or judicial action.

If there is no legal reason why the complaint should not be investigated, it will continue in accordance with Trust policy.

If there may be issues which could prejudice subsequent legal action the Patient Experience Team must work closely with the Legal Affairs Team to ensure the complaint response is provided appropriately.

### **5.8.4 Disciplinary or professional investigation or investigation of a criminal offence**

Cases regarding professional conduct where a complaint is found to be justified, may require an internal disciplinary investigation to be undertaken. Such an investigation may result in the involvement of one of the professional regulatory bodies, the Police, Trust Security & Emergency Resilience Service depending of the nature of the allegation.

Appropriate action will be taken in accordance with the Trust Disciplinary Procedure. In such circumstances, the complainant must be informed that a disciplinary investigation will be undertaken but that they have no right to be informed of the outcome of the investigation.

Any other issues raised in the complaint which do not form part of the disciplinary or criminal investigation may continue to be dealt with under this policy. The Medical Director, Chief Nurse, Chief Operating Officer and Director of Operations will be informed as appropriate.

### **5.8.5 Coroner's Inquest**

In complaints involving a death that is referred to the Coroner, this will be identified by the Patient Experience Team at the point of registration. The Patient Experience Team will liaise with the Legal Affairs Team about this for any specific consideration that may be required and confirmation of what statements and information they may have already.

The Legal Affairs Team must be provided with a copy of the complaint and asked to confirm if they are happy for the investigation to continue.

The allocated Investigating Officer will be made aware that the complaint is also subject to a Coroner's Inquest and that any information already received will be shared. The Investigating Officer will be asked to liaise with the Legal Affairs Team as appropriate.

#### **5.8.6 Allegations of fraud or corruption**

Any complaint concerning possible allegations of fraud, bribery or corruption being discovered or suspected, must immediately be reported directly to the NHS Counter Fraud Authority and the Trust Director of Finance, in line with the Counter Fraud, Bribery and Corruption Policy.

#### **5.8.7 Media Interest**

In cases where a complainant has expressed their intention to contact the media, the Communications Team must be informed and will take appropriate action regarding Trust communication and media management.

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

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

Where a complaint is made after this time, the complaint may be investigated if the complainant had good reasons for not making the complaint within the above time limits and given the time lapse it will still be possible to investigate the complaint effectively and efficiently. For example, if circumstances prevented the complainant expressing their dissatisfaction any earlier (i.e. ongoing treatment) or the complainant was previously unaware that there was a cause for complaint.

In circumstances when a complaint is not being investigated on the basis of being time expired, the complainant must be informed of the reason for that decision and informed that they may still ask the Parliamentary and Health Service Ombudsman to consider their complaint.

Complaints will not be investigated if the time elapsed prevents the Trust from conducting a full and factual investigation. A decision not to extend the twelve-month period will be made by the Assistant Chief Nurse (Patient Experience) in discussion with the Head of Patient Experience and confirmed in writing to the complainant providing them with a concise explanation.

### **5.10 Handling of joint complaints between organisations**

Where a complaint involves a second provider, in health, or social services the Complaints Manager will inform the second provider. The relevant managers will:

- Determine how the complaint can be handled jointly and which provider will be responsible for sending the joint response.
- Advise the complainant accordingly and inform other contacts as necessary.

In circumstances where TRFT has taken the lead on a complaint involving more than one provider and the Trust's reply is available, but the other organisation

has not supplied their information within the prescribed time limits, the Trust will provide its information to the complainant within the timescale agreed and a reminder will be sent to the Complaints Officer of the other organisation. In the event that information is still not received, the Chief Executive of the other organisation will be advised. In the event that this still does not elicit a response the Trust will close their files.

The complainant will be advised that as the only matter that remains outstanding relates to the other organisation, the matter has been transferred to them for completion.

Named contact details will be provided to the complainant. The second organisation will be advised that the Trust's files are closed and that they now have sole responsibility.

In circumstances where the Trust has taken the lead on a shared complaint and the complainant is dissatisfied with the response; but this relates wholly to the other organisation, the further management of this complaint will be handed over to the other organisation. The complainant will be advised of this action and also the rationale. They will be provided with named contact details.

If a complaint is received that relates wholly to another NHS organisation, the complaint will be referred to the appropriate organisation by the Patient Experience Team once consent has been received from the complainant to do so, the complainant will be advised accordingly, including the provision of a contact name and address.

## **5.11 Support in providing feedback/making a complaint**

Making a complaint can be daunting and evidence confirms that many people who might wish to complain do not because they do not know how to do so or they find the process too intimidating. The Trust therefore loses valuable feedback from its patients.

The Patient Experience Team will offer assistance to those individuals with specific needs, e.g. literacy, interpreting services, to enable everyone who wishes to give feedback to be able to do so.

The Patient Experience Team will offer support to complainants throughout the complaints process and will provide details of Absolute Advocacy (Cloverleaf).

Complainants must not be led to believe either directly or indirectly that they may be disadvantaged because they have raised a concern or complaint.

## **5.12 Listening and responding to concerns of patients, their relatives and carers (early local resolution)**

### **5.12.1 Early local resolution**

When something has gone wrong, patients and relatives are encouraged to raise concerns or make a complaint as soon as possible and directly to the staff involved.

This is often front-line staff in wards, departments, clinics or reception areas. All Trust staff, as a means of improving service provision, should welcome receiving the complainant's concerns or complaint positively.

In most circumstances the quickest and most effective way of resolving a concern or complaint is to deal with the issues when they arise, or as soon as possible after this (early local resolution). Usually this is best undertaken as close to the point of care or service delivery as possible.

If the staff member approached is unable to deal with the issue, they must refer the matter to a more senior member of staff on duty at the time e.g. nurse in charge, Lead Nurse, Matron, Service Manager, Head of the Department. A complainant may simply require an explanation and apology and therefore should not be automatically referred to the Patient Experience Team unless local resolution cannot be achieved, or they request this.

If the concern or complaint requires further investigation or if the complainant wishes to address their concerns to somebody not involved, the complaint will be referred to the Patient Experience Team.

The team will provide the complainant with the appropriate information to help them understand the possible options for pursuing a concern or complaint. As far as possible, the complainant will be involved in decisions about how their concern or complaint is handled.

#### **5.12.2 Stage 1 Local Resolution**

Local resolution is the first line of investigation and response to a complaint and is undertaken within the Trust. Local resolution enables the Trust to provide the quickest opportunity for a full and thorough investigation and response; acknowledge failures and apologise for them; quickly put things right when they have gone wrong and to use the opportunity to improve services.

All concerns and complaints will be dealt with in an open, honest and conciliatory way. The Trust will adopt a flexible approach to resolution with the emphasis on a positive outcome and not on the process.

### **5.13 Listening and responding to complaints of patients, their relatives and carers (Complaint Investigation)**

#### **5.13.1 Local Resolution**

Complaint assessment and acknowledgement.

On receipt of a complaint, the first responsibility is to ensure that the patient's immediate health needs are being met.

If the concern or complaint has been received at the point of service delivery but early local resolution has been attempted but not achieved, the concern or complaint will be passed to the Patient Experience Team.

Other concerns or complaints received in the Trust e.g. by Chief Executive's Office will also be forwarded to the Patient Experience Team, ideally within 24 hours of receipt.

In cases where a complaint that is to be investigated under the NHS Complaints Regulations is received verbally, the complainant will be advised of what has been documented to confirm their concerns. Alternatively, a transcript can be sent to the complainant for agreement, prior to the start of the investigation if requested or required.

Alternatively, the complainant may wish to seek the support of an advocate; contact details will be provided or a referral on their behalf can be made to the service if required.

The nature, complexity and seriousness of the complaint are assessed and graded by the Patient Experience Team using the Risk Matrix complaint assessment tool in line with the Trust Risk Management Strategy.

Using the National Patient Safety Agency (NPSA) risk rating matrix guidance is a systematic and effective method of identifying risks and it is an essential part of any risk management programme.

It also encompasses the processes of risk analysis and risk evaluation with colour rated scoring, green being minor through to red being major.

As part of this triage, complaints that highlight potentially serious (red rated) incidents or have Care Quality Commission (CQC) involvement are discussed with the Chief Nurse upon receipt. Any immediate action required is undertaken.

	<b>Likelihood</b>				
<b>Likelihood score</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
	<b>Rare</b>	<b>Unlikely</b>	<b>Possible</b>	<b>Likely</b>	<b>Almost certain</b>
<b>5 Catastrophic</b>	5	10	15	20	25
<b>4 Major</b>	4	8	12	16	20
<b>3 Moderate</b>	3	6	9	12	15
<b>2 Minor</b>	2	4	6	8	10
<b>1 Negligible</b>	1	2	3	4	5

All complaints will be acknowledged within three working days. This can be a verbal acknowledgement which then allows the Patient Experience Team to engage with the complainant, to agree their complaint issues and to commence resolution. This verbal acknowledgement will be followed up by a formal letter of acknowledgment from the Head of Patient Experience.

If verbal contact is unable to be made then a letter of acknowledgement will be sent, confirming the registration of their complaint and inviting the complainant to make contact if they wish to discuss anything further.

If it is felt that the investigation cannot be completed without having this dialogue with the complainant, a letter of acknowledgement will explain this and ask that they make contact to enable their complaint to be progressed.

### 5.13.2 **Complaint Investigation**

Complaints will be thoroughly investigated in a manner appropriate to resolving the issues speedily and efficiently and within the agreed timeframe.

This also provides practical support to the Investigating Officer about the ways in which investigations can be completed and guidance on identifying actions.

Staff directly involved in the complaint will not be nominated as Investigating Officer.

Clinicians who are named in a complaint will be notified of the complaint by the Patient Experience Team via email which will be copied to the relevant Head of Nursing, Deputy Head of Nursing and Governance Lead. The Clinician will be advised to liaise with the Investigating Lead or Governance Lead as appropriate.

Staff involved or named in a complaint will be notified of the complaint via the Investigating Officer or their line manager.

Support will be provided to the member of staff by their line manager or Divisional Matron. Copies of the complaint will be made available to named persons.

The Investigation Lead is responsible for reviewing the complaint and contacting the complainant to establish further context to the issues raised, agree who will receive the response, the preferred way the complainant would like to receive their response and if there are any special requirements that need to be considered as part of the investigation and response process. Importantly the complainant must also be provided with the name of the Investigation Lead and contact details should they wish to contact the investigator at any stage of the investigation. If the contact with the complainant has been unsuccessful and every reasonable attempt has been made on more than one occasion or, they have indicated that they do not wish to be contacted by telephone, the Investigation Lead must email or write to the complainant to outline:

- Their name, role and contact details should they wish to get in touch at any point during the investigation.
- Their understanding of the issues of the complaint.
- How the issues will be investigated.

If it is identified that input is required from another organisation, the Patient Experience Team will progress this by seeking the appropriate consent from the complainant.

The Investigating Officer will oversee the quality and timeliness of the investigation, and validate the conclusions, outcome and actions agreed for inclusion in the complaint response.

The Investigating Officer is also responsible for the drafting of the response on behalf of the Head of Nursing/Midwifery/ Clinical Support Services.

Where any issues relating to patient safety, litigation, safeguarding are identified, the Investigation Lead should ensure the appropriate action or department is contacted to progress the issues. The Patient Experience Team should be made aware of the action taken.

On completion of the investigation and draft response the Divisional Head of Nursing/Midwifery/ Clinical Support Services will be responsible for reviewing the complaint investigation to ensure that it has been thorough, addresses all of the issues raised by the complainant and that appropriate action and lessons to be learnt have been identified. When satisfied that all of these areas have been met the Head of Nursing/Midwifery/ Clinical Support Services will sign off the response letter. All statements or interviews undertaken as a part of the investigation process must be uploaded to Datix by the Investigating Officer to form part of the Complaint file. It is essential that the Investigating Lead uploads all aspects of the investigation to Datix (including all email correspondence and requests for statements and completed memory captures). Appendix 7.

If a complaint relates to a Corporate Team and sits outside of the clinical divisional structure signing of the complaint response will be the responsibility of the appropriate Director, Service Manager for that area.

### 5.13.3 **Remedy**

If a complaint is upheld or partially upheld, the Trust will decide whether any mal-administration or service failure has caused an injustice (Health Service Ombudsman's Principles of Remedy).

The Trust should, as far as is possible, put the individual's status back into the position that they would have been if the mal-administration or service failure had not occurred. If that is not possible, the Trust should consider whether it is appropriate to compensate appropriately.

The Trust will consider suitable and proportionate financial and non-financial remedies for the complainant and where appropriate, for others who have suffered the same injustice. An appropriate "remedy" may be an apology, and an explanation or by taking remedial action. Financial compensation will not be appropriate in every case but should be considered where appropriate.

Appropriate and proportionate financial remedy will be considered using the principle of ex-gratia payments to compensate complainants in exceptional cases.

If an ex-gratia payment is considered for this purpose, the appropriate governance arrangements are applied to the consideration of each ex-gratia payment request and in line with the Trust Standing Financial Instructions (SFI's).

This policy does not relate to medico-legal claims for compensation which will be dealt with through the Legal Affairs Department in conjunction with the NHS Litigation Authority.



#### 5.13.4 **Complaint Response**

All complainants will receive a fair and honest response. The complainant may prefer to receive this via a letter, at a Local Resolution meeting or in a telephone call. The latter will be followed up in writing. The response will address all issues raised, provide a full explanation, an apology as appropriate, any decisions regarding remedy and actions that have, or are planned to be undertaken to put the matter right and lessons learnt. Where possible the response will be in a format suitable for the complainant, e.g. the use of large font.

The Investigating Officer is responsible for producing a draft response which will be approved by the Head of Nursing/ Midwifery/ Clinical Services. The draft response will then be uploaded to Datix and the Patient Experience Team notified via Datix that the letter is ready for Chief Executive Consideration. If deemed appropriate the Chief Nurse, Deputy Chief Nurse, or Head of Patient Experience may review the draft response prior to being signed by the Chief Executive or nominated deputy.

#### 5.13.5 **Meetings**

Local Resolution Meetings (LRM) also known as face to face meetings with Trust staff are offered as a part of the investigation process. Complainants will be informed of the potential benefits of a face to face meeting with relevant staff in order to clarify issues, determine what outcome they expect and how they wish to be kept updated throughout the investigative process. This meeting will be offered by the investigating officer and if the complainant is in agreement will be arranged swiftly.

If the complainant does not wish to meet at this point, the above details will be discussed during this telephone conversation. The complainant will be informed that there is further opportunity to meet later in the process if they wish. Meetings may be arranged at any point in the process when it is felt to be the most beneficial to the complainant.

At the conclusion of the investigation LRM's can also be offered as this allows the opportunity to answer the questions raised and provide further opportunity for discussion and explanation, these meetings can also be held via Microsoft Teams.

All meetings held are digitally recorded so that a copy of the recording can be provided to the complainant. This enables all parties to be able to refer to this at a later date and clarify any issues discussed and the specific details.

The digital recording will be issued within a covering letter which clearly outlines the main details of the meeting. If a recording cannot be taken, meeting notes will be made and sent to the complainant for their review and agreement followed by a final and approved response letter. For LRM's undertaken via teams these are also saved to Datix and an encrypted copy can be sent via email with a covering letter.

#### 5.13.6 **Re-investigation of a Complaint**

In cases where the complainant is not satisfied with the Trust response, the complaint will be re-opened.

This may be because the complainant considers the initial investigation to be inadequate, incomplete or unsatisfactory; or the complainant believes that their issues have not been addressed or fully understood. The complainant may ask further questions at this stage based upon the response that they have received.

The complaint will be reassessed by a member of the Patient Experience Team; the issues that remain unresolved for the complainant will need to be clarified and a new complaints plan agreed, the same procedure will be followed.

Independent advice or a second opinion may be considered, on the element of the complaint that has been re-opened for investigation.

Meeting with the complainant is encouraged, to aid resolution of the complaint. In some circumstances and in agreement with all parties, conciliation or mediation could also be considered.

If local resolution has been completely exhausted and the complainant still remains dissatisfied, the complainant will be reminded of their right to go to the Parliamentary and Health Service Ombudsman (PHSO).

#### **5.13.7 Stage 2: Parliamentary and Health Service Ombudsman (PHSO)**

In cases where the Trust has been unable to resolve a complaint (which has been managed in line with the formal complaints regulations) to the complainant's satisfaction, the complainant has the right to refer their complaint to the PHSO for independent review.

The PHSO is independent of the NHS and the government and will undertake an independent investigation into complaints where it is considered that the Trust has not acted properly or fairly or provided a poor service.

The Trust will fully comply with all PHSO requests for information, the Chief Executive, Chief Nurse, Medical Director and Divisional Management teams will be notified, as appropriate, of any complaint (and any persons named) that is being investigated by the PHSO.

If the complaint is upheld by the PHSO, the above staff will also be notified. The Complaints Manager will work with the relevant division to complete the actions required. This will be reported at Board level, divisional governance meetings and to any other outside agencies as requested by the PHSO for example the South Yorkshire Integrated Care Board and NHS England /Improvement.

#### **5.13.8 Confidentiality**

Individuals should be assured that concerns and complaints will be handled in the strictest of confidence.

Disclosure of information collected as part of an investigation or contained within an investigation report or written response which identifies individuals must be confined to those with a justifiable and demonstrable need to know.

Disclosure of information from health records to persons involved with an investigation will be handled in accordance with the requirements of the Data Protection Act 2018 and the General Data Protection Regulations (GDPR).

Correspondence about complaints must not be included in patient's records and no reference to the complaint must be entered in the patient's clinical record.

Information about complaints and all the people involved is strictly confidential, in accordance with the Caldicott principles. Information is only disclosed to those with a demonstrable need to know or a legal right to access those records under the Data Protection Act 2018 GDPR.

All data will be processed in accordance with Trust's Data Protection Policy.

Complaints must not affect the patient's or complainant's treatment and the complainant must not be discriminated against. Any identified discrimination by a member of staff will be reported to the Human Resources team and managed as per Trust policies.

#### 5.13.9 **Record Keeping**

A complete documentary record will be maintained for each concern or complaint on Datix. This will include all written or verbal contacts with the complainant, staff involved in the investigative process, statements and all actions taken in investigating the complaint and action plans. Investigating Officers should routinely maintain contemporaneous records of the investigation by uploading to Datix. This will provide a resource from which to track and monitor progress. Appendix 7.

A complaint file will also be held by the Patient Experience Team. This a confidential record and as such will be stored securely and easily retrieved and understood in the event of any further enquiry.

In accordance with the NHS Records Management Policy (2010) Complaints files are kept and disposed of confidentially in accordance with the Trust's Records Management Policy. Currently, complaints files are retained for 10 years.

### 5.14 **Support for Complainant and Staff**

Dealing with a complaint can be stressful for both the complainant and the staff involved.

#### 5.14.1 **Complainant**

Guidance and support on how to raise concerns can be obtained from the Patient Experience Team, on the Trust's website and via local advocacy services. Local advocacy services can assist and support people making a complaint, including preparing, presenting or writing a complaint.

The local advocacy information and advocacy support is noted within the Trust's Complaints leaflet and which is provided to all complainants with their letter of acknowledgement. The complainant will also be provided with the contact details for the Patient Experience Team.

#### 5.14.2 **Staff**

Receiving and investigating complaints can be stressful for staff to deal with. On receipt of a complaint the staff involved will be notified of the support available to them by the Investigating Officer, e.g. from their line manager, the Patient Experience Team, and relevant trade union.

### 5.15 **Harassment, Discrimination, Vexatious/Unreasonably Persistent and Intractable Complaints**

#### 5.15.1 **Harassment**

Violence, racial, sexual or verbal harassment will not be tolerated, neither will language that is of a personal, abusive or threatening nature. If staff do encounter this behaviour, they should seek support from their line manager and complete an incident form via Datix. This will also require escalation to the Head of Patient Experience and Engagement. Where appropriate the complainant will be informed in writing that their behaviour is unacceptable.

In the event that the complainant has harassed or threatened staff dealing with their complaint, all personal contact with the complainant will be discontinued. The complaint thereafter can only be pursued through written communication.

These decisions will be made by the Chief Nurse in conjunction with the Head of Patient Experience and the Trust will manage the individual using the Management of Violence and Aggression Policy.

#### 5.15.2 **Management of Vexatious/unreasonably persistent Complainants**

Vexatious and unreasonably persistent complainants are those that raise the same or similar issues repeatedly, despite having received a full response to all the issues they have previously raised.

Each circumstance must be considered carefully. It is emphasised that it is expected that this guidance will only be used as a last resort and when all reasonable measures have been taken. See Standard Operating Procedure for the Management of Concerns and Complaints.

Examples would include complainants that:

- Display unreasonable demands or expectations and fail to accept that these may be unreasonable e.g. timeframes for response, direct access to the staff involved etc.
- Have excessive contact or inappropriate contact with the Trust, placing unreasonable demands on its staff.
- Persist in pursuing a complaint where the Trust's complaints procedure has been fully and properly implemented and exhausted.
- Are unwilling to accept documented evidence of treatment given as being factual, deny receipt of an adequate response, or do not accept that facts can sometimes be difficult to verify when a long period of time has elapsed.

- Do not clearly identify the precise issues which they wish to be investigated, despite reasonable efforts of the Trust staff, or another body to try and assist them to specify their concerns, or where the concerns identified are not within the remit of the Trust to investigate.
- Change the substance of a complaint, continually raise new issues, and seek to prolong contact by continually raising further concerns or questions upon receipt of a response.
- Care must be taken not to disregard new issues which are significantly different from the original complaint. Any new matter must be considered on its merits.
- Fail to engage with staff in a manner which is deemed appropriate: e.g. repeatedly using unacceptable language; refusing to adhere to previously agreed communication plans, or behaving in an otherwise threatening or abusive manner on more than one occasion, having been warned about this.

Where complainants are violent or aggressive, staff should refer to the Trust's Violence and Aggression Policy.

The Head of Patient Experience and Engagement in agreement with the Deputy Chief Nurse will determine the point at which a complainant is considered to be unreasonably persistent and will decide what course of action to take.

Below are some possible courses of action that may help to manage complainants who have been designated as persistent or unreasonable.

- Requiring their contact to be made with a named member of staff.
- Requiring contact to be made through a third person, such as an advocate.
- Limiting the complainant to one mode of contact e.g. in writing only.
- Requiring any personal contact to take place in the presence of a witness.
- Advising that the organisation does not deal with correspondence that is abusive or contains allegations that lack substantive evidence. Request that the complainant provide an acceptable version of the correspondence or make contact through a third person to continue communication with the organisation.

Notify the complainant in writing that the Trust has responded fully to the points raised and considers that all methods of resolving the complaint have been exhausted and either there is nothing more to add, or continuing contact on the matter will serve no useful purpose.

Further, explaining that correspondence is at an end and that any further communications on the specific or a closely related matter that are received will be read and placed on file, but not acknowledged and no further action will be taken.

Once a course of action has been determined the Chief Nurse or Head of Patient Experience will draft a letter informing the complainant of the decision

and the reasons for this. The letter will be reviewed and signed by the Chief Executive.

### **5.15.3 Persistent/ Habitual Complainants**

We expect Trust staff to deal with individuals in a respectful and professional manner at all times and to follow appropriate procedures, however there may be instances when nothing more can reasonably be done to rectify a real or perceived problem. Alternatively, there may be some complainants who because of their frequency of contact with the Trust, hinder progress of its day to day business.

At this stage it is important to ensure that complaints procedures have been followed correctly and that all elements of the complaint have been adequately addressed. We need to ensure an equitable approach; this is crucial as habitual or vexatious complainants will usually have issues which contain some genuine substance.

Should such situations occur, we will consider whether it is appropriate to flag the complainant as vexatious. It is emphasised that applying a vexatious status should only be used as a last resort and after all reasonable measures have been taken to try to resolve complaints following the NHS Complaints Procedure, through local resolution, or involvement of an appropriate advocacy support agency.

If at any time an individual's behaviour becomes offensive or unacceptable (as above) we will manage those individuals in accordance with the Management of Violence and Aggression Policy.

### **5.15.4 Intractable complainants**

Dealing with a complaint is usually a straightforward process but in a minority of cases, people pursue their complaints in a way that can either impede the investigation or can have a significant resource issue for the Trust.

The difficulty in handling such complaints places a strain on time and resources and can cause undue stress for staff. Staff should respond with patience and sympathy to the needs of all complainants, but there are times when there is nothing further that can reasonably be done to assist them to rectify a real or perceived problem.

If an Investigating Officer or member of the Patient Experience Team feels this is the case, then this will be escalated to the Head of Patient Experience.

The Head of Patient Experience and Complaints Manager will review the evidence to support this and in conjunction with the Chief Nurse make a decision on how further contact from the complainant will be managed. It may also be appropriate to seek the views of the Trust's Legal Affairs Team or Trust Solicitor.

## **5.16 Reference to External Agencies**

If the review of a complaint reveals a possible case of criminal activity or another serious matter, the Head of Patient Experience should ensure the Deputy Chief Nurse (Patient Experience) is notified.

In such cases it will be necessary to refer the matter(s) raised to one or more external agencies e.g. the Police, NHS Improvement & NHS England, Her Majesty's Coroner etc. In such cases the Chief Nurse will be responsible for making such a referral.

#### **5.17 Complaints Analysis, Learning and Reporting**

Information from concerns and complaints will be used to improve the quality of care, treatment, services and facilities provided by the Trust and to reduce risk

Analysis will include;

- Performance achieved against the Key Performance Indicators (KPIs)
- Number of complaints, subject of complaints, location of complaints and risk grading
- Identification of themes or trends
- Complainant satisfaction

On a weekly basis the Complaints Manager or Patient Advisor will provide each of the Division's Heads of Nursing and Governance Leads with a report on the target dates for complaints investigations and responses, and a status update on all open complaints within their Division.

On a monthly basis the Head of Patient Experience and Engagement will provide a report to the Business Intelligence Analytics Team to show performance against the Key Performance Indicators and data in relation to concerns, complaints and PHSO investigations.

Complaints information will be reported monthly to the Board, bi-monthly to the Patient Experience Team, quarterly to the Patient Experience and Inclusion Committee and annually via the annual complaints report and KO41a with any supplementary reports as required.

A sample of complaints files will be reviewed by a Non-Executive Director on a quarterly basis.

Complaints provide us with valuable information and the Trust aims to have the learning points from these agreed where appropriate, prior to the response being sent to the complainant. An action plan will be produced for those complaints where corrective actions and learning are identified as being necessary.

Lessons must be learned from individual complaints. This learning needs to translate into improvement strategies that are developed and monitored through divisional governance arrangements from wards and departments through to Board level.

The Organisational Learning Action Forum (OLAF) Action Plan tracker is held in the Quality and Standards Drive within which there is a repository to store Word versions of the Action Plans.

Each Division will have nominated staff who have access and the Divisions are responsible for the timely completion of each action plan and for also uploading the action plan to the divisional repository.

### **5.18 Complainant Satisfaction**

Understanding the experience of the complainant during and after a complaint investigation is considered good practice by the Trust. Complaints handling satisfaction questionnaires are sent with all response letters to obtain feedback on the handling of the complaint by the Patient Experience Team and the Division.

### **5.19 Comments and Feedback**

Outside of concerns and complaints the Trust acknowledges that there are many patients and visitors to the organisation who wish to offer general feedback on their experience or offer suggestions on how the Trust can improve their services. Such comments can be made:

- Verbally in person, via the telephone to staff on duty, or via the Patient Experience Team
- In writing via letter
- In writing via email
- In writing via the links on the Trust Internet
- By using NHS UK or Care Opinion

The Patient Experience Team will acknowledge these comments, send to the relevant departments and where changes are made as a result of a comment, these will be fed back to the individual.

## **6 REFERENCES**

- A review of the NHS Hospitals Complaints System, Putting Patients Back in the Picture, (Clwyd and Hart 2013).
- Good practice standards for NHS Complaints Handling, (Patients Association 2013)
- Listening, Responding, Improving – a guide to better customer care (Department of Health 2009)
- Local Authority Social Services and National Health Service Complaints (England) Regulations 2009
- Principles of Good Complaint Handling (Parliamentary & Health Service Ombudsman 2008)



- Report of the Mid Staffordshire NHS Foundation Trust Public Enquiry, (Francis Report 2013)
- Care Quality Commission
- NHS England, Assurance of Good Complaints Handling for Acute Care 2015
- Patient Experience Improvement Framework (NHS Improvement 2018)
- NHS Complaint Standards (Parliamentary & Health Service Ombudsman 2022)

## **7 ASSOCIATED DOCUMENTATION**

- The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009
- NHS Constitution DOH 2009
- Parliamentary and Health Service Ombudsman Vision for Good Complaint Handling (PHSO 2009)
- NHS England, Assurance of Good Complaints Handling for Acute Care 2015
- Patient's Association – Good practice standards for NHS complaints handling September 2013
- Care Quality Commission – Complaints Matter 2014
- Francis Report February 2013
- Clwyd and Hart Reports October 2013
- Parliamentary and Health Service Ombudsman, My expectations for raising concerns and complaints report 2014
- NHS Complaints Standards (2022)
- TRFT Records Management Policy
- TRFT Being Open and Duty of Candour Policy
- TRFT Supporting Staff involved in an incident, Claim or Complaint policy
- TRFT Claims Handling Policy
- TRFT Risk Management Strategy
- TRFT Incident and Serious Incident Management Policy
- TRFT Security Policy (Patient Property)
- TRFT Violence and Aggression Policy
- TRFT Data Protection (GDPR) Policy
- TRFT Information Governance Policy