The Tavistock and Portman NHS
NHS Foundation Trust

Complaints Procedure

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Complaints Procedure

1 Introduction

The Trust is committed to ensuring that those who use its services are readily able to access information about how to make a complaint and that the issues raised are dealt with promptly and fairly.

We aim to provide a complaints service that meets the needs and objectives of the complainant, whilst at the same time complying with the requirements set out in the NHS Complaints Procedure.

We recognise that the information derived from complaints provides an important source of data to help make improvements in our services. Complaints can act as an early warning of failings in systems and processes which need to be addressed.

We make sure that the care of people who make complaints about our services will not be adversely affected because they have complained. Complaints correspondence is stored and recorded separately from healthcare records.

The Trust serves a diverse patient population. We are committed to providing a complaints service to all regardless of their racial or cultural background, gender or sexual orientation, religion or disability.

2 Purpose

This procedure replaces the Trust's Complaints Policy and Procedure issued in 2014. The purpose of this procedure is to set out the processes for dealing with formal complaints in accordance with revised National Health Service (Complaints) Regulations 2009 no 309.

Under the 2009 regulation the NHS Formal Complaints Procedure comprises two stages:

Stage 1	Local Resolution
Stage 2	Referral to the Parliamentary and Health Service Ombudsman

This procedure details the following:

- The objectives, values and principles of the complaints process as well as the roles and responsibilities of staff dealing with complaints.
- The processes to be followed when dealing with complaints under Local Resolution, which is the first stage of the NHS Complaints Procedure.
- The Investigation by the Parliamentary and Health Service Ombudsman, which is the second stage of the NHS Complaints Procedure.

The key objectives of this procedure are:

- To provide an open and accessible mechanism by which people can raise concerns.
- To be easily understood by staff, patients and complainants.
- To seek early reconciliation between the Trust and the complainant.
- Whenever possible to ensure that complaints are dealt with at the time that they arise.
- To ensure that complaints are investigated thoroughly and fairly.
- To ensure that lessons are learnt from complaints and that appropriate action is taken to make improvements where deficiencies are identified.
- To ensure that all staff dealing with, and resolving complaints, are trained and supported to do so effectively.
- To provide the Clinical Quality, Safety, and Governance Committee with quarterly updates on complaints.

3 Scope

This procedure relates to patient-related complaints only. All formal patient complaints, however received, should be managed as set out in this policy. Complaints from staff are dealt with under the relevant Human Resources policies and complaints from trainees under relevant procedures managed by the Directorate of Education and Training.

4 Definitions

Within this procedure the term **formal complaint** refers to any written complaint received from a patient or a representative of the patient. Under the NHS Complaints Regulations on receipt of any written complaint from a patient the Trust is required to follow the process set out in this document.

A **verbal complaint** may be treated as a formal complaint if on discussion with the complainant he/she wishes his/her concerns to be treated formally. In this case a detailed written record must be made by the recipient of the complaint and sent to the complainant with an invitation for it to be signed for accuracy and returned to the Complaints Manager.

Patients and carers wishing to raise informal complaints can speak directly to their therapist or other member of staff or can be directed to the Trust's Patient Advice and Liaison Service (PALS). Details of the PALS service are to be found in the PALS policy.

5 Duties and responsibilities

5.1 Chief Executive

The Chief Executive is accountable for ensuring that the Trust's Complaints Procedure meets the statutory requirements set out in National Health Service (Complaints) Regulations 2009 All written responses to formal complaints must be signed by the Chief Executive (or by his nominated deputy, in his absence).

Under the Compliance Framework for Foundation Trusts the Chief Executive is responsible for reporting any serious complaints[1] to NHSI (formerly Monitor).

5.2 Responsible Director

The Chief Executive retains this responsibility.

5.3 The Clinical Quality, Safety and Governance Committee

This committee (CQSG) has delegated authority from the Board of Directors:-

- To receive and note reports about the operation of the complaints procedure and the effect on service improvement.
- To receive assurance that emerging themes are investigated and acted upon, and that themes that are consistent with those raised elsewhere (e.g. serious incidents) are identified and acted upon.
- To receive assurance that the complaints procedure features in patient satisfaction surveys and/or is subject to a separate survey.

[1] *Extract from Compliance framework 2011-11 paragraph 100 "When a complaint has arisen that may not be a serious incident requiring investigation but which may give rise to material adverse impact on the trust, this should be reported in a timely manner to Monitor"*

- To ensure that complaints about services are the subject of regular and public reporting to the Board of Directors, on at least a quarterly basis as noted in the CQSG report which is posted on the Trust website.
- To ensure that senior staff provide the necessary leadership, training and support to those dealing with complaints.

5.4 Complaints Manager

The responsibilities of this role are as follows:

- Receive and manage all formal complaints in accordance with this policy and procedure and within timescales set out in this policy.
- Manage the complaints handling process within the Trust.
- Raise any issues related to an inability to complete the complaints process in line with this document with the Associate Director of Quality and Governance, who will advise on issues as they arise.
- Ensure that the Associate Director of Quality and Governance is made aware of any actual or potential issues arising from complaints that could put the Trust at risk, including potential legal claims and involvement of Parliamentary and Health Service Ombudsman.
- Ensure that information about the complaints procedure is available to patients and anyone else who requests it.
- Inform members of staff about complaints received about them.
- Draft responses to complaints to ensure they meet the standards expected.
- Provide data on complaints to the Patient Safety and Clinical Risk (PSCR) Lead and to the Clinical Quarterly Review Group on a quarterly basis.
- Act as the Trust's designated manager to liaise with the Parliamentary Health Service Commissioner (the Ombudsman) for complaints which proceed to the second stage of the NHS Complaints Procedure.

5.6 All Directors

Directors have a responsibility to:

- Ensure that formal complaints relating to their directorates are appropriately investigated within the timescales and guidelines specified in this document.
- Ensure that the outcomes of investigations are conveyed clearly and promptly to the Complaints Manager and Chief Executive.
- Where appropriate develop action plans to address shortcomings in services.

- Identify and implement any changes in practice within their division/directorate which are required as a result of complaint.
- Monitor the effective implementation of action plans.
- Report progress on action plans developed as a result of serious complaints to the Complaints Manager and the PSCR.
- Report progress on the implementation of recommendations made following investigation by the Health Service Ombudsman to the relevant CQSG work stream lead.
- Ensure that members of staff against whom complaints have been made are appropriately supported throughout the investigation.

5.6 Medical Director

The Medical Director is responsible for review of all complaints to ensure that lessons are learnt as appropriate. This will be carried out both by supporting the relevant director during the complaints investigation and through review of the PSCR reports to the CQSG.

6 Procedures

Stage 1: Local Resolution

6.1 Aim of Local resolution

The main objective of local resolution is to ensure that complaints are dealt with promptly and satisfactorily by ensuring that the Trust:

- Investigates each complaint thoroughly
- Identifies any lessons to be learnt
- Ensures that appropriate remedial actions are taken
- Communicates effectively with the complainant and resolves the matter to the satisfaction of the complainant.

6.2 Verbal Complaints

Wherever possible complaints and concerns should be dealt with at the time they arise by the appropriate clinician and/or departmental manager and/or director. The Patient Advice and Liaison Service (PALS) can provide information and help for patients and their representatives to resolve concerns quickly. A record of complaints handled verbally should be sent to the Complaints Manager. Refer to the Trust PALS procedure

6.3 Formal Complaints

People wishing to make formal complaints should be advised to put their concerns in writing and address them to the Chief Executive, the Complaints Manager, or submit a complaint via the Trust website. If a formal complaint is made orally to the Complaints Manager or other member of staff, a written record detailing the issues of concern should be prepared by the member of staff who has spoken to the complainant. This should then be forwarded to the complainant asking them to confirm that the issues of concern have been correctly understood and to sign the written record.

6.4 Time Limit for Making a Formal Complaint

A complaint should be made within twelve months of the time the event(s) (note this has been extended from 6 months in the 2006 regulations) that has given rise to the complaint. This time limit can be extended at the discretion of the Chief Executive.

6.5 Who May Complain

A complaint may be made by a patient, a person acting on behalf of a patient, or anyone who has been affected by any action/omission/ decision of the Trust. Where a complainant is acting on behalf of a patient, written consent must be obtained from the patient before a response can be sent. Where the patient is a child without capacity, a complaint may be made by the parent or guardian. Where the patient has died, the complaint may be made by the named next of kin or by a person nominated by the named next of kin. In other circumstances where the complainant may have difficulty complaining on their own behalf or have other requirements e.g. vulnerable children and adults, or people with mental health difficulties, the Chief Executive will review each situation in light of current legal requirements and good practice guidance from the Department of Health and offer help and support to a complainant as appropriate.

6.6 Handling a Complaint

All complaints should be managed through the Trust Complaints Quality Portal.
On receipt of a formal complaint the Complaints Manager will:

- Acknowledge a written complaint within three working days of receipt, enclose complaints leaflet, or give a brief indication of the process and the anticipated time for response.

- Send a copy of the complaint to the relevant director or service lead asking them to appoint an investigation lead who will look into the issues raised in the complaint and provide a full report. The investigation report will be approved by the Director of the service to which the complaint refers.
- On occasion it may be appropriate to resolve the complaint by a meeting or a telephone call. It this is the case the complaint is then recorded as an informal complainant and will not require a complaint report or response from the Chief Executive.
- Advise the Associate Director of Quality and Governance of any complaints that may have legal implications.
- Monitor the agreed time scale for response to a complaint (this can be a Trust-set target)
- Once the investigation is complete the Complaints Manager will draft a written response for the Chief Executive to consider alongside the information received from the relevant Clinical Director or Service Lead.
- Include in the response details of any action, which is being taken to implement changes in practice and procedure identified as a result of the complaint.
- Ensure final letters of response are sent to the appropriate staff for approval of the content before being sent to the complainant.
- Send approved final response to complainant within agreed set timescale. If the final response will be delayed inform complainant by email or letter.
- Ensure that response advises the complainants of their right to contact the Health Services Ombudsman if they are not satisfied with the way that their complaint has been dealt with. Information on how to contact the Health Services Ombudsman is contained within the Trust's complaints leaflet.
- Ensure copies of the response to the complaint are sent to the relevant staff.
- Be responsible for maintaining secure and accurate records of each complaint.
- Monitor complaints which are reopened to identify whether the initial investigation and response was appropriate or whether new issues have been raised.

Appendix A shows the process to be followed when investigating a formal complaint. Appendix B provides guidance on writing a report in response to a complaint.

6.7 Action Plans

Where the investigation of a complaint identifies the need to make changes in practice and systems, it is important that all remedial measures are clearly documented, acted upon and monitored. When staff are asked to provide accounts during an investigation they should be asked to provide details of any action or procedural change which may be made as a direct result of the complaint. The relevant director will be responsible for agreeing any procedural changes and the development of action plans. Action plans should be developed after the completion of the investigation into the complaint.

When a complaint involves care provided by several organisations, the Complaints Manager will liaise with those organisations to identify the most appropriate handling process for the investigation and who will lead on co-ordinating the complaint.

6.8 Complaints that have Medico-legal Implications

Complaints of a medico-legal nature will be passed to the Associate Director of Quality and Governance who will review the complaint and the outcome of the investigation when this has been completed. The complaint will remain on the complaints register and documentation will be filed in the complaints department. The exception to this will be if the complaint becomes a legal claim when it will be managed under the Trust Procedure for Claims Management.

6.9 Details of Complaints which Warrant Professional Disciplinary or Criminal Investigation

Complaints such as professional misconduct, poor performance, theft, assault, wilful negligence or abuse will be passed to Director of Human Resources for consideration and possible action.

6.10 Complaints about Members of Staff

Where complaints are expressed against a member of staff, the following process should be followed (except where professional, disciplinary or criminal investigation is warranted).
When a complaint is received regarding a member of staff the Complaints Manager will inform them and offer support if needed, information should be obtained from the member of staff via interview or statement. The member of staff's line manager will then be asked to review this.

Following review by the line manager, action such as counselling, supervision or training should be initiated by the line manager as appropriate.

6.11 Complaints Involving Other Organisations

Where a complaint is received which involves a local healthcare partner, wherever possible a joint investigation should be carried out with the permission of the complainant.

The Complaints Manager dealing with the complaint should contact the partner organisation when the complaint is received. Agreement should be reached on who will prepare the joint response and the complainant advised accordingly.

6.12 Help for people wanting to make a complaint

Any person making a complaint should be advised that they can seek support from the NHS Complaints Advocacy, VoiceAbility. VoiceAbility provides free, impartial, confidential and independent support to people who wish to complain about health care services. Further advocacy services are available at Pohwer (for those with learning difficulties) or Rethink Mental Illness. Information on how to contact these services is contained in the Trust's complaints leaflet.

6.13 Complaints received via the media

The Trust will not enter into correspondence with complainants via the media. People who get in touch with the local press to complain about the care they or their relatives have received should be advised to contact the complaints department if they wish to pursue a formal complaint against the Trust. Where a complainant has contacted the media because they are dissatisfied with the way in which their complaint has been dealt with by the Trust, they should be reminded of their right to contact the Ombudsman if they remain dissatisfied with the Trust's handling of their complaint.

The Complaints Manager will work with the communications department to prepare statements on specific issues where this is considered to be appropriate.

6.14 What cannot be investigated as a formal complaint

The formal complaints process will be suspended if:

- The complainant expresses an intention to pursue a legal claim against the Trust.
- The complaint concerns a member of staff who is, or may be, subject to disciplinary proceedings relating to the issue raised in the complaint.

In either of the above circumstances, the complainant will be notified in writing that the complaints procedure has been suspended and that the matter is being dealt with in accordance with medico-legal or human resources policies and procedures. There will be ongoing liaison with the complainant where appropriate.

6.15 Performance standards for stage 1

The Trust has set the following performance standards:

- Formal complaints must be acknowledged by the complaints department on the first working day after receipt of the complaint (usually within 3 days) If this is not achieved then an explanation for the delay should be included on the complaints file

- The Trust's target timescale for responding to formal complaints is **twenty five** working days, unless the matter is complex, (e.g. involves other organisations) in which case the target time will be agreed with the complainant.

The Trust recognises that it is not always possible to achieve this particularly where a complaint is complex. However, it is the responsibility of the Trust to ensure that timescales set out in the NHS Complaints Procedure are adhered to wherever possible. Timescales will also be monitored via the quarterly complaints reports to the PSCR lead.

Conciliation/mediation

Where appropriate, and with the agreement of the complainant, the Complaints Manager may involve an independent conciliator or mediator to try to resolve a complaint.

6.16 Trust's handling of persistent complainants

Complaints received by the Trust are a form of feedback on our services from service users and their carers. It is important, therefore, that robust processes are in place to investigate appropriately and respond in timely and constructive way. It is important that service users who choose to complain are not subsequently discriminated against or experience different care/treatment as a result of complaining.

However, complainants who display unreasonable behaviour in relation to complaints put a strain on time and resources and cause stress to staff. Whilst staff are expected to respond to complainants with patience and sympathy there are times when unreasonable behaviour is extreme or persistent and there is nothing further which can be reasonably done to assist the complainant or to rectify a real or perceived problem.

The aim of this section of the policy is to help identify situations where a complainant may legitimately be regarded as 'behaving unreasonably' and to outline ways of responding in such situations. The decision to deem a complainant's behaviour unreasonable should only be made after all appropriate steps have been taken to try and resolve the complaint through the Trust's normal Complaints Procedure. Any cases of this kind must have the explicit support of the Chief Executive. Where appropriate the complainant should have been encouraged to contact the NHS Complaints Advocacy, Voiceability for help and advice and to seek the support of a representative to provide liaison with the Trust. Staff concerned should ensure that there is a complete record of the steps that have been taken. Judgment and discretion will be needed in deciding the action to be taken in specific cases.

Appendix C sets out the process for terminating this process on these grounds.

Complaints procedure - stage 2: Investigation by the parliamentary and health service ombudsman:

6.17 The Parliamentary and Health Service Commissioner (Ombudsman)

Complainants who remain dissatisfied with the way their complaint has been handled following referral to the Trust have the right to ask the Parliamentary and Health Service Ombudsman to review their complaint. The Ombudsman is authorised to investigate complaints in which a failure in service, or maladministration, has allegedly caused injustice and hardship. The Ombudsman will not usually investigate a complaint which has not been through the Trust's Complaints Procedure.

Reports and recommendations produced by the Ombudsman will be formally presented to the CQSG.

What the Ombudsman Will Do

On receipt of a complaint, the Ombudsman will check that it is a complaint that they have the legal power to consider.

The Ombudsman **can** consider complaints about:

- Unsatisfactory care or treatment.
- Failure to provide a service that should have been provided.
- Poor administration, errors, attitude, misleading advice.

The Ombudsman **cannot** consider complaints about:

- Private health care not funded by the NHS.
- Refusal of access to medical records.
- Matters on which legal action has been or is about to be taken.
- Personnel matters relating to recruitment, pay or discipline.

6.18 Role of the Complaints Manager during Stage 2

The Complaints Manager will be the Trust's nominated contact for liaising with the Parliamentary and Health Service Ombudsman investigating officer, to include the following responsibilities:

- Provide copies of documentation as requested by the Ombudsman.
- Ensure that all staff involved in the complaint are informed of the Ombudsman's involvement and are updated on developments and decisions.

- Ensure that decisions by the Ombudsman are communicated to the appropriate staff and acted upon promptly.

6.19 What the Ombudsman May Decide

Having completed the investigation the Ombudsman may decide to uphold the complaint in part or in full, or not at all. Where the complaint is upheld or partially upheld, recommendations will be made for appropriate redress which might include, an apology, an explanation, improvements in practices and systems, or, where appropriate, financial redress. The Ombudsman also has the power to refer clinicians to regulatory bodies in the interests of patient safety.

The Ombudsman will expect any recommendations to be fully implemented and the Trust is required to demonstrate that this has been done.

Clinical divisions and functional directorates will be responsible for the development of an action plan to implement the Ombudsman's recommendations and for monitoring adherence to them.

6.20 Implementation of Recommendations Made by the Ombudsman

Other than in exceptional circumstances, all action plans should be implemented within a maximum of 6 months. It is the responsibility of the relevant Director to draft the action plan. The action plan should then be presented to the PSCR lead. A date will be agreed for a progress report on the action plan to be presented to the Trust's CQSG. In the meantime, action plans should be monitored on a regular basis by the director.

Reports produced by the Ombudsman following a review of a complaint will be presented, together with the action plans, to the Executive Management Team by the relevant Director.

6.21 Making changes as a result of a complaint

The Trust makes every effort to learn from complaints and where appropriate make changes to practice to reduce the chance of a similar complaints being received again and/or improve the experience for future patients. This will be achieved through the detailed analysis and consideration of each individual complaint by the Complaints Manager, in conjunction with the Chief Executive and the relevant Director who together will see what lessons can be learned and changes made as appropriate to the circumstance of the complaint.

The Complaints Manager will provide a detailed report to the PSCR lead on a quarterly basis and the CQSG may consider what if any lessons can be learned/changes made as a result of complaints received and subsequent investigation of those complaints. Lessons to be learned from the complaints report will be included in the aggregate analysis report.

7 Process for monitoring compliance with this Procedure

The Complaints Manager will provide a quarterly report to the Patient Safety and Clinical Risk Work Stream detailing the complaints received in the quarter. Details of service lines, numbers of complaints and whether they were upheld, partially upheld or not upheld should be included.

The Patient Safety and Clinical Risk Work Stream will report assurance of compliance with the procedure to the CQSGC, and refer any matters arising from complaints to the Executive Management Team for action if required.

Monitoring of changes agreed as a result of feedback from complaints will be monitored by the PSCR and the Complaints Manager.

8 References

The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009
http://www.opsi.gov.uk/si/si2009/uksi_20090309_en_1

Department of Health (2009) Listening responding and improving health care
http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_095408

National Patient Safety Agency. (2005). Patient Briefing - Saying Sorry When Things Go Wrong. London, National Patient Safety Agency. National Patient Safety Agency. (2005). Being Open Communicating Patient Safety Incidents with Patients and Their Carers. London: National Patient Safety Agency.

The Data Protection Act 1998 London: Office of Public Sector Information. Available at: www.opsi.gov.uk

Freedom of Information Act 2000 London: Office of Public Sector Information. Available at: www.opsi.gov.uk

9 Associated documents[2]

This policy should be read in conjunction with the following Trust policies and procedures:

- Incident Reporting Policy
- Risk Management Strategy
- PALS Policy and Procedure
- Claims Management Procedure

[2] For the current version of Trust procedures, please refer to the intranet.

10 : Equality Impact Assessment

1. Does this Procedure, function or service development affect patients, staff and/or the public? **YES**

2. Is there reason to believe that the Procedure, function or service development could have an adverse impact on a particular group or groups? **NO**
*3. If you answered **YES in section 2,** how have you reached that conclusion? (Please refer to the information you collected e.g., relevant research and reports, local monitoring data, results of consultations exercises, demographic data, professional knowledge and experience)*

4. Based on the initial screening process, now rate the level of impact on equality groups of the Procedure, function or service development: **Negative / Adverse impact:** **Low**……. (i.e. minimal risk of having, or does not have negative impact on equality) **Positive impact:** **Low**……

Date completed: 1st March 2019

Name: Amanda Hawke

Job Title: Complaints Manager

Appendix A : Process for handling formal complaints

Process for Handling Formal Complaints:

(Trust target timetable)

Day 1
Receipt of complaint

First working day of complaints manager, after receipt of complaint
Complaints manager acknowledges receipt and advises complainant of process and timescale

First working day of complaints manager, after receipt of complaint
Complaints manager logs complaint on the Quality Portal, sends details to the relevant Directorate with the request that they investigate the complaint and send details of the investigation, including any reports obtained, to the Complaints Manager

Response requested within two weeks* of details being sent to the Directorate; response to clearly state whether elements of the complaint are upheld or not upheld. If a complaint is upheld, state what lessons will be learnt from the complaint, and what actions will be taken by the service.
*giving leeway of up to three weeks

By day 20
Complaints investigation completed*
Complaints manager formulates response for Chief Executive consideration.
Proposed response checked for accuracy and approved by Directorate

*If report/statement(s) is not available, the appropriate Director is advised so that they can chase the response

Day 22-24
Final revision of response

If there is an unavoidable delay so that the response cannot be completed within 25 days, the complaints manager will contact the complainant to inform them of the expected timescale

By day 25
Finally approved letter signed by Chief Executive and sent to the complainant

Appendix B : Guidelines for staff on preparing a report

Guidelines for staff on preparing a report for an internal investigation or in response to a complaint, legal claim or other formal investigation

You may be required to prepare a factual account of your involvement in the care of a patient for a variety of purposes. These can be:

- As part of an internal investigation, following an incident
- In response to a letter of complaint
- In response to an indication that a patient or relative is considering legal action against the Trust
- In response to a request from a patient or patient's advisor in relation to a third party matter.

In all cases there are some basic principles that should be followed:

- a report (or indeed a letter) once signed and 'on the record' is difficult to retract
- Such a report does not form part of the clinical records however, the patient usually has the right to see a copy under the Data Protection Act. 1998
- The granting of 'legal professional privilege' (ie preventing the patient form obtaining a copy of a report) is only possible once there is a clear indication that a patient/relative is suing and the 'primary purpose of such a report is in support of a defence of a case.
- Following an adverse event or a serious complaint, there will now be an expectation that a report will be prepared and therefore such reports are likely to be seen by the patient on request.

Therefore the following guidelines should be adopted whenever you are called to write a report:

1. Do not write in haste or from memory. Ensure that you have the available factual evidence to hand (i.e. clinical notes/other records relating to the patient)

2. Start your report in the following way *I am Dr/Ms/Mr/Mrs…..(full name). I hold the qualifications of …….. I am currently in the post of, a post that I have been in since……* If you are not still in the post that you held at the time of the event provide details of that post and your role on the day in question , *e.g. clinical psychologist in the x team* If you are a trainee/recently qualified briefly describe the relevant experience that you had had up to the event.

3. Consider carefully what you write, stick to the facts of which you are certain, and do not stray into areas of practice that are outside your area of expertise

4. Account for your actions. Think of the report as relating your thought processes, -why you wrote what you did, how did you arrive at your diagnosis and treatment plan. Do not simply regurgitate the clinical record.

5. Do not be afraid to be over detailed. If it is fact then it can only help

6. If, in the clinical record, you used any acronyms or diagrams explain them.

7. If you genuinely cannot remember the particular patient/episode of care then it is acceptable to state this, e.g., "I only have a hazy recollection of this patient/this event, and therefore I am making this record from the records that were made by me and colleagues at the time and my usual practice. Be clear in such situations to state whether you are interpreting the records without direct memory or just stating your usual practice.

   Keep it factual

   Concentrate on what was done, by whom. **Do not** stray into what **might** have happened

   Do not record opinions in such an account. Usually at the early stages of an investigatory process your opinions as to what went wrong are best kept to yourself, or discussed verbally with the investigation when your factual account is complete

   If you are inexperienced at preparing such a report seek advice from the Complaints Manager or the Associate Director of Quality and Governance, who may access legal advice on your behalf if required. Present the advisor with a draft and do not sign it until you have obtained advice. When the final version is complete, destroy drafts, or they may become part of the legal documentation. (Drafts, if not destroyed can be requested as disc losable documents).

Guideline prepared by Governance and Risk Adviser

Appendix C : terminating the complaints management process following unreasonable behaviour

1) Criteria for application of this process

Complainants (and/or anyone acting on their behalf) may be deemed to be unreasonable where previous or current contact with them shows that they meet one of the following criteria:

a) **Persist in pursuing a complaint** when the Trust's complaints procedure has been fully and properly implemented and exhausted, or is not within the Trust's remit to investigate; or

b) **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 not to discard new issues which are significantly different from the original complaint. These should to be addressed as separate complaints); or*

c) Are **unwilling to accept documented evidence** of treatment given as being factual, e.g. records, or

d) **Deny receipt** of an adequate response in spite of correspondence specifically answering their questions; or

e) **Do not clearly identify the precise issues** which they wish to be investigated, despite reasonable efforts of Trust staff and, where appropriate, the aid of advocacy services to help them specify their concerns. Or the concerns identified are not within the remit of the Trust to investigate but they continue to be raised; or

f) **Focus on a trivial matter** to an extent that is out of proportion to its significance and continue to focus on this point. *(It is recognised that determining what is a "trivial" matter can be subjective and careful judgement must be used in applying this criteria);* or

g) Have in the course of addressing or raising a complaint had an **excessive number of contacts** with the Trust placing unreasonable demands on staff. *(A contact may be in person or by telephone, letter or fax. Discretion must be used in determining the precise number of "excessive contacts" applicable under this section, using judgement based on the specific circumstances of each individual case);* or

h) Have **harassed,** threatened, or used actual physical violence, been personally **abusive or verbally aggressive, racist or homophobic** towards

staff dealing with their complaint or their families or associates. This will in itself cause personal contact with the complainant and/or their representatives to be discontinued with immediate effect and the complaint will, thereafter, only be pursued

i) through written communication. (Staff must recognise that complainants may sometimes act out of character at times of stress, anxiety, or distress and may make reasonable allowances for this. They must document all incidents of harassment using the Trust's incident reporting system).

2) Process for declaring a complainant's behaviour unreasonable

a) The Chief Executive shall:-

i. consider whether the complaints procedure has been **correctly implemented so far as possible and that no material element of a complaint** and

ii. prepare the evidence of meeting the these criteria above to the Chief Executive who shall consider such cases.

b) The Chief Executive, shall consider the complaint and any response(s) to it together with evidence presented regarding the complaints process or the criteria above and any other relevant information and shall declare or otherwise whether the above criteria has been met and provide direction as to the nature of any future communication of the Trust with the complainant and others.

c) The approved decision must be recorded in writing with the reasons for the decision for the decision and a copy provided to the complainant and their representative together with any direction as to communication and copy to others already involved in the complaint (such as practitioners and clinicians, conciliators, advocacy services, Member of Parliament)

d) The Chief Executive may, but is not limited to, directing the following:

i. try to resolve matters by drawing up a signed "agreement" with the complainant (and if appropriate involving the relevant clinician in a two-way agreement) which sets out a code of behaviour for the parties involved if the Trust is to continue processing the complaint. If these terms are contravened consideration would then be given to implementing other action; and/or

ii. decline contact with the complainants either in person, by telephone, by letter or any combination of these, provided that one form of contact is maintained.

iii. (If staff are to withdraw from a telephone conversation with a complainant the following statement or other alternative may be used: I'm sorry I am unable to deal with your complaint. I understand your complaint is being dealt with by ....., please contact telephone number .....); and/or

iv. restrict communication through a third party by negotiation; and/or

v. notify the complainant in writing that the Trust has responded fully to the points raised and has tried to resolve the complaint but there is nothing more to add and continuing contact on the matter will serve no useful purpose. The complainants should also be notified that the correspondence is at an end and that further letters received will be acknowledged but not answered (NB: before this action is taken, the Complaints Manager must ensure that the complainant has been informed of their right to request an Independent Review by the Ombudsman); and/or

vi. inform the complainants that in extreme circumstances the Trust reserves the right to pass unreasonable or vexatious complaints to the Trust's solicitors; and/or

vii. temporarily suspend all contact with the complainants or investigation of a complaint whilst seeking legal advice or other relevant agencies; and/or

viii. time limit the declaration or make it subject to its review or reconsideration;

3) Effect of declaration

Subject to the terms of the Chief Executive's decision, a complainant whose behaviour is declared unreasonable does have the right to make new complaints if they wish and they shall be considered on merit (if they fall outside the Chief Executive's direction) by the Complaints Manager or referred to Chief Executive for consideration and direction. The complainant should be treated fairly during the investigation of new complaints; however, the complainant should conduct themselves in an acceptable and courteous manner and not verbally harass or cause offence to Trust staff and other service users or be breach of any direction of the Chief Executive's decision.

4) Victims Of Harassment

Where staff have been assaulted, verbally abused or harassed the Trust will consider whether it is appropriate to report the facts to the police with a view to criminal prosecution. If the police and the Crown Prosecution Service decide not to prosecute, the Trust will advise its staff to consider the commencement of a private prosecution. (The Trust will also advise its staff as to the commencement of appropriate civil action such as an injunction if appropriate. The Trust will provide the member of staff with the appropriate support in taking such action.)

5) Reviewing decisions

The Chief Executive may determine at a later stage that the complainant is no longer unreasonable if, for example, complainants subsequently demonstrate a more reasonable approach.

Further Information

APPENDIX D

STATUTORY LEGISLATION AND RELATED GUIDANCE AND STATUTES

Core Legislation

The Local Authority Social Services and National Health Service Complaints (England) Regulations (2009)
http://www.legislation.gov.uk/uksi/2009/309/contents/made

The Local Authority Social Services and National Health Service Complaints (England) (amendment) Regulations (2009)
http://www.legislation.gov.uk/uksi/2009/1768/contents/made

The Health and Social Care Act (2008)
http://www.legislation.gov.uk/ukpga/2008/14/contents (changes still outstanding)

Primary Guidance

Listening, Responding, Improving: A Guide to Better Customer Care:
http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_095408

Related Guidance and Statutes

National Health Service Bodies and Local Authority Partnership Arrangements Regulations 2000
http://www.opsi.gov.uk/si/si2000/20000617.htm

Handling complaints in the NHS - good practice toolkit for local resolution
http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/Browsable/DH_4108465

The NHS (General Medical Services Contracts) Regulations 2004 – SI 2004 No. 291
http://www.opsi.gov.uk/si/si2004/20040291.htm

Effective Care Co-ordination in Mental Health Services 1999
http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4009221

Care Home Regulations 2001
www.hmso.gov.uk/si/si**2001/2001**3965.htm

Children Act 2004
http://www.legislation.gov.uk/ukpga/2004/31/contents
Care Standards Act 2000
www.hmso.gov.uk/acts/en2000/2000en14.htm

The Children Act 1989 Representations Procedure (England) 2006 SI 1738
www.opsi.gov.uk/si/si**2006/2006**1738.htm

Get It Sorted: Providing Effective Advocacy Services for Children and Young People making a Complaint under the Children Act 1989.
http://publications.teachernet.gov.uk/eOrderingDownload/GIS04.pdf

Regulations and guidance on providing effective advocacy services for children and young people making a complaint under the Children Act 1989 LAC (2004) 11
http://www.dh.gov.uk/en/Publicationsandstatistics/Lettersandcirculars/Localauthoritysocialservicesletters/DH_4078372

Data Protection Act 1998
www.hmso.gov.uk/**act**s/**act**s**1998/1998**0029.htm

Freedom of Information Act 2000
www.hmso.gov.uk/**act**s/**act**s**2000/2000**0036.htm

Human Rights Act 2000
www.hmso.gov.uk/si/si**2000/2000**1851.htm

'Principles of Good Complaint Handling' The Parliamentary and Health Service Ombudsman (November 2008)
http://www.ombudsman.org.uk/improving-public-service/ombudsmansprinciples

'Guidance on running a complaints system' The Local Government Ombudsman (March 2009)
http://www.lgo.org.uk/publications/advice-and-guidance

'Access to Health Records Act 1990'
http://www.legislation.gov.uk/ukpga/1990/23/contents

'NHSLA Risk Management Standards for NHS Trusts providing Acute, Community, or Mental Health & Learning Disability Services and Independent Sector Providers of NHS Care (2011-2012)'
http://www.nhsla.com/RiskManagement