

**NHS England**  
**Complaints Policy**

**NHS England INFORMATION READER BOX****Directorate**

Medical	Operations and Information	Specialised Commissioning
Nursing	<b>Trans. &amp; Corp. Ops.</b>	Commissioning Strategy
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**Document Status**

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# **NHS England Complaints Policy**

## **NHS England Policy and Corporate Procedures**

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## 1 Introduction

This document outlines our commitment to dealing with complaints about the service provided by NHS England and the services we commission. It also provides information about how we manage, respond to and learn from complaints made about our services and the way in which they are commissioned.

In doing so, it meets the requirements of the Local Authority Social Services and National Health Service Complaints [England] Regulations (2009), conforms to the NHS Constitution and reflects the recommendations from the Francis report (2013)

NHS England will treat complaints seriously and ensure that complaints, concerns and issues raised by patients, relatives and carers are properly investigated in an unbiased, non-judgmental, transparent, timely and appropriate manner. The outcome of any investigation, along with any resulting actions will be explained to the complainant by the investigating organisation.

The key issues taken into consideration when formulating this policy are that a complainant<sup>1</sup> needs to:

- Know how to complain;
- Feel confident that their complaint will be dealt with seriously.
- Understand that their concerns will be investigated and they will be informed of the findings of that investigation.
- Trust that NHS England will learn from complaints, feedback and praise and apply those lessons whilst also learning from and sharing best practice.

## 2 Aims

We are committed to *high quality care for all* as a core principal of our vision and purpose. We will ensure that patients and their representatives can seek advice, provide feedback or make a complaint about the services we commission or the policies we have developed and implemented.

When dealing with complaints we aim to adhere to NHS England's organisation value's principles and follow the 'Good Practice Standards for NHS Complaints Handling' (Sept 2013) outlined by the Patients Association:

- Openness and Transparency - well publicised, accessible information and processes, and understood by all those involved in a complaint.
- Evidence based complainant led investigations and responses. This will include providing a consistent approach to the management and investigation of complaints.
- Logical and rational in our approach.

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<sup>1</sup> Wherever we refer to a complainant we also mean their authorised representative

- Sympathetically respond to complaints and concerns in appropriate timeframes.
- Provide opportunities for people to offer feedback on the quality of service provided.
- Provide complainants with support and guidance throughout the complaints process.
- Provide a level of detail appropriate to the seriousness of the complaint.
- Identify the causes of complaints and to take action to prevent recurrences.
- Effective and implemented learning - use 'lessons learnt' as a driver for change and improvement.
- Ensure that the care of complainants is not adversely affected as a result of making a complaint.
- Ensure that NHS England meets its legal obligations.
- Act as a key tool in ensuring the good reputation of NHS England.

We support the Parliamentary and Health Service Ombudsman's Principles of Good Complaints Handling (2009), My Expectations (2014) and the NHS Constitution which includes a number of patient rights relating to complaints. In summary, these include patients' rights to:

- Have their complaint acknowledged and properly investigated.
- Discuss the manner in which the complaint is to be handled and know the period in which the complaint response is likely to be sent.
- To be kept informed of the progress and to know the outcome including an explanation of the conclusions and confirmation that any action needed has been taken on.
- Take a complaint about data protection breaches to the independent Information Commissioners Office (ICO) if not satisfied with the way the NHS has dealt with this.

### **3 Definition of a complaint or concern**

A complaint or concern is an expression of dissatisfaction about an act, omission or decision of NHS England, either verbal or written, and whether justified or not, which requires a response.

### **4 Scope**

This policy applies to the handling of complaints or concerns relating to directly commissioned services or services provided by NHS England. This would include primary care (GPs, dentists, pharmacists and optometrists), health and justice and military health services, specialised services or a service directly commissioned by NHS England. For complaints about services other than those commissioned by NHS England, please refer to the complaints service of the provider concerned.

### **5 Who can make a complaint**

A complaint may be made by the person who is affected by the action, or it may be made by a person acting on behalf of a patient in any case where that person:

- is a child; (an individual who has not attained the age of 18)

In the case of a child, we must be satisfied that there are reasonable grounds for the complaint being made by a representative of the child, and furthermore that the representative is making the complaint in the best interests of the child.

- has died;

In the case of a person who has died, the complainant must be the personal representative of the deceased. NHS England needs to be satisfied that the complainant is the personal representative. Where appropriate we may request evidence to substantiate the complainant's claim to have a right to the information.

- has physical or mental incapacity;

In the case of a person who is unable by reason of physical capacity, or lacks capacity within the meaning of the Mental Capacity Act 2005, to make the complaint themselves, NHS England needs to be satisfied that the complaint is being made in the best interests of the person on whose behalf the complaint is made.

- Has given consent to a third party acting on their behalf;

In the case of a third party pursuing a complaint on behalf of the person affected we will request the following information:

- Name and address of the person making the complaint;
- Name and either date of birth or address of the affected person; and
- Contact details of the affected person so that we can contact them for confirmation that they consent to the third party acting on their behalf.

This will be documented in the complaint file and confirmation will be issued to both the person making the complaint and the person affected.

- Has delegated authority to act on their behalf, for example in the form of a registered Power of Attorney which must cover health affairs.
- Is an MP, acting on behalf of and by instruction from a constituent.

If the Senior Customer Contact Centre Manager or equivalent officer in the Regional Team is of the opinion that a representative does or did not have sufficient interest in the person's welfare, or is not acting in their best interests, we will notify that person in writing.

## 6 Complaints that cannot be dealt with under this policy

The following complaints will not be dealt with under the Local Authority Social Services and National Health Service Complaints (England) Regulations (2009):

- A complaint made by any NHS organisation or private or independent provider or responsible body.
- A complaint made by an employee about any matter relating to their employment.
- A complaint, the subject matter of which has previously been investigated under these or previous NHS Regulations.
- A complaint which is made orally and resolved to the complainant's satisfaction no later than the next working day.
- A complaint arising out of an NHS body's alleged failure to comply with a request for information under the Freedom of Information Act 2000.
- A complaint which relates to any scheme established under Section 10 (superannuation of persons engaged in health services) or Section 24 (compensation for loss of office) of the Superannuation Act 1972 or to the administration of those schemes.

## 7 How to complain

Information about giving feedback or making a complaint can be found on [NHS England's website](#).

A complaint can be made:

By telephone: 03003 11 22 33

By email: [england.contactus@nhs.net](mailto:england.contactus@nhs.net)

By post: NHS England, PO Box 16738, Redditch, B97 9PT

In British Sign Language (BSL): BSL users can talk to us via a video call to a BSL interpreter.

We will endeavour to make the necessary reasonable adjustments in order to receive, investigate and respond to any complaint. For people whose first language is not English, we have access to a translation and telephone interpreting service. We can also accept and respond to complaints in alternative formats such as braille.

## 8 Timescales for making a complaint

Complaints must be made not later than:

- twelve months after the date on which the matter which is the subject of the complaint occurred; or

- twelve months after the date on which the matter which is the subject of the complaint came to the notice of the complainant.

If there are good reasons for not having made the complaint within the above timeframe and, **if it is still possible to investigate the complaint effectively and fairly**, NHS England may decide to still consider the complaint, for example, longer periods of complaint timescales may apply to specific clinical areas.

## 9 The NHS England complaint process

All complaints will be acknowledged no later than three working days after the day the complaint is received (the acknowledgement will usually be in writing but can be verbally in some circumstances although this should be the exception rather than the norm). An offer should be made to discuss with the complainant the following:

- The handling of the complaint.
- Timescales for responding.
- Expectations and desired outcome if unclear

If the complaint has been made verbally, the complainant should be given a copy of their verbal statement which is considered the formal complaint and asked to confirm that it represents the issues they wish to raise.

Additionally the complaint should be provided with information in relation to the provider of independent advocacy services in their geographical area.

The complainant will be asked for consent for NHS England to handle the complaint in the event that the complaint requires input or investigation from parties or organisations outside of NHS England.

The complainant should be given a named contact/their contact details (either regionally or nationally) who will be their point of contact throughout the complaints process.

Where relevant we will outline the complainant's rights as set out by the NHS Constitution.

The case officer will capture relevant information about the case and ensure this is accurately recorded, including the recognised national NHS complaints data collection.

The complainant can expect that:

- They will be kept up to date with the progress of their complaint.

- If a case has passed the 40 working day target (or the timescale agreed with the complainant if different), the complainant (and advocate if relevant) should receive an update every 10 working days thereafter the target has been surpassed. This could be by telephone, email or letter but the format should be agreed with the complainant
- They can expect to receive a quality response with assurance that action has been taken to prevent a recurrence.
- They will be informed of any learning.

Our response to a complainant will be wherever possible by their preferred method of communication (email correspondence will only be responded to by email when the complainant has expressly requested this as their method of communication and security measures will be implemented in line with office policy to protect personal information sent via email).

On receipt of the investigation report a response to the complaint will be prepared and the Case officer will include information on the next stages of the complaints procedure should the complainant wish to take matters further.

Where the complaint involves more than one NHS or social care body, NHS England will adhere to the duty to cooperate contained in the legislation. Where complaints involve more than one body, discussions will take place between the bodies concerned about the most appropriate body to take the lead in coordinating the complaint and communicating with the complainant.

Where NHS England receives a complaint involving several bodies, permission will be sought from the complainant before sharing or forwarding a complaint to another body. Consent will need to be obtained to forward the complaint to any provider.

As soon as it is reasonably possible after completing the investigation, and within the timescale agreed with the complainant, NHS England will send a formal response in writing to the complainant which will be signed by the National Director or Nominated regional sign off. We have extended the sign off for standard primary care complaints (and including Health and Justice and Armed Forces healthcare) to Director of Commissioning Operations (DCO), Nurse Director and Medical Director. This can be flexed within each region. For Specialised Commissioning complaints the 3 above signatories are acceptable but additionally sign off can be completed by the Director of Specialist Commissioning.

The response will include:

- An explanation of how the complaint has been considered.
- An apology if appropriate
- An explanation based on facts.
- Whether the complaint in full or in part is upheld.

- The conclusions reached in relation to the complaint including any remedial action that the organisation considers to be appropriate.
- Confirmation that the organisation is satisfied any action has been or will be actioned.
- Where possible, we will respond to people about any lessons learnt.
- Information and contact details of the Parliamentary and Health Service Ombudsman as the next stage of the NHS complaints process.

A key consideration is to make arrangements flexible; treating each case according to its individual nature with a focus on satisfactory outcomes, organisational learning and those lessons should lead to service improvement.

We are very committed to quality responses and as such, we will be carrying out regular reviews of complaints handling including internal quality monitoring and external peer reviews.

If at any time during the complaint process the complainant or their representative or advocate decides they would like to withdraw the complaint this request can be made either verbally or in writing. The withdrawal of a complaint will be acknowledged in writing.

If the complainant has not been provided with a response after six months from receipt of the complaint (taking into account late provision of consent) we will notify the complainant of their right to go straight to the Parliamentary and Health Service Ombudsman without waiting for local resolution to be completed.

## **10 Confidentiality**

Complaints will be handled in the strictest of confidence in accordance with the NHS England Confidentiality Policy, and will be kept separately from patient medical records. Care will be taken that information should only be disclosed to those who have a demonstrable need to have access to it.

Suitable arrangements are in place for the handling of patient identifiable data to meet the compliance of the Data Protection Act and other legal obligations such as the Human Rights Act 1998 and the common law duty of confidentiality. The Caldicott Report sets out a number of general principles that health and social care organisations should use when reviewing its use of patient or client information.

The designated Caldicott Guardians are responsible for ensuring that confidentiality is maintained.

Confidentiality will be maintained in such a way that only managers and staff who are leading the investigation know the contents of the case. Anyone disclosing information to others who are not directly involved in this may be dealt with under disciplinary procedures.

## 11 Consent

There is an expectation that when capturing consent for the use and sharing of information, that the patient has made an informed decision and clearly understands the processing and potential sharing of their information. Staff must also understand the expectations of confidentiality that the information is provided under.

Information will not be disclosed to third parties unless the complainant or appropriate authorised party who has provided the information has given consent to the disclosure of that information.

Consent should be pursued. If by the 40<sup>th</sup> working day consent has not been received the complaint should be closed and categorised as a concern.

## 12 Advocacy Services

Since April 2013, individual local authorities have a statutory duty to commission independent advocacy services to provide support for people making, or thinking of making, a complaint about their NHS care or treatment. Arrangements will vary between local authority areas. Complainants will be advised to contact local Healthwatch, or local authority for information about how this service is provided in their area.

## 13 Exceptions to the Policy

There may be circumstances in which information disclosure is in the best interests of the patient, or the protection, safety or wellbeing of a child or vulnerable adult. In these circumstances, a complaint will be escalated as necessary in line with NHS England Safeguarding policies and procedures.

Any allegations of fraud or financial misconduct should be referred to the National Fraud Reporting line at NHS Protect. Full details of the methods for reporting are on their website: <https://www.reportnhsfraud.nhs.uk/>

## 14 Roles and Responsibilities

The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009 includes statutory responsibilities for senior management. Appendix 1 outlines these in detail.

## 15 Referrals to the Parliamentary and Health Service Ombudsman

If a complainant remains dissatisfied with the handling of the complaint by NHS England, they can ask the Parliamentary and Health Service Ombudsman (PHSO) to review the case.

The PHSO may investigate a complaint where, for example:

- A complainant is not satisfied with the result of the investigation undertaken by NHS England.

- The complainant is not happy with the response from NHS England and does not feel that their concerns have been resolved.
- NHS England has decided not to investigate a complaint on the grounds that it was not made within the required time limit.

NHS England will provide information on how to contact the PHSO when issuing the formal written response.

When informed that a complainant has approached the PHSO, NHS England will cooperate fully with the PHSO and provide all information that has been requested in relation with the complaint investigation. The relevant director will be informed that a request for investigation has been made so that the staff involved can be informed.

NHS England can also refer a complaint to the Parliamentary Health Service Ombudsman for a final decision.

## 16 Record Keeping

Keeping clear and accurate records of complaints is important and these should be retained for a period of ten years.

A link to the full records management policy can be found below:

<http://www.england.nhs.uk/wp-content/uploads/2014/02/rec-man-pol.pdf>

## 17 Monitoring and Reporting

NHS England will demonstrate how we use feedback to learn and improve. An annual report will be produced for the NHS England Board, which will detail:

- Numbers of complaints received.
- Numbers of complaints received considered to be based on solid evidence or good reasons (complaints upheld).
- Issues and key themes that the complaints have raised.
- Lessons learnt.
- Actions taken, or being taken, to improve services as a result of the complaints made.
- Number of cases which NHS England has been advised are being considered or referred to the Parliamentary and Health Service Ombudsman.
- Include reporting on praise and other feedback and how that information has been shared.

The Customer Contact Executive Group will monitor performance regionally and nationally via a suite of reports it will review on a six weekly basis.

## 18 Safeguarding

Safeguarding is a key element of complaints management and review. It may be necessary to identify if any of the following elements are evident in

the information/complaint:

- Safeguarding concerns to the person, to include their ability to manage with daily living
- Safeguarding concerns regarding the adequacy of care/support being provided to the person
- Safeguarding concerns regarding the behaviour of a professional to a patient or carer
- Safeguarding concern regarding the behaviour of the person/complainant to professional staff

All complaints staff must have at least Level 2 training in safeguarding to enable them to identify the key safeguarding concerns.

All complaints handlers from tiers one to three will require a DBS check as part of their recruitment process.

### **Safeguarding Patients/Complainants**

The NHS England Safeguarding policy identifies the key elements of safeguarding to support those working in complaints.

The Patient and Public Participation Policy – A Safeguarding Focus will aid those undertaking any form of participation or engagement with complainants. Complaints staff should be aware of the Safeguarding Policy and the identified section for complaints staff.

Each NHS England region has a safeguarding lead and further support and guidance should be sought from the regional lead as required. The Complaints Manager in each region (supported by their Operational Lead) is responsible for ensuring that all staff in their regional complaints team have access to the NHS England Safeguarding policy, the Patient and Public Participation Policy – A Safeguarding Focus and all current contact details and local escalation processes.

Guidance and support should be sought from the regional Safeguarding Leads as required. Managers should ensure that contact details are reviewed regularly to ensure that the details remain current. This information should be shared with any newly recruited member of the complaints team as part of their local induction. This local information in terms of contact details should also be made available to the Customer Contact Centre teams at tier one (Redditch) and tier two (Leeds). It is the responsibility of the regional Complaints Manager to provide this information and ensure it is up to date.

An appropriate summary of any action or escalation in respect of safeguarding upon receipt of a complaint/concern, or at any stage of the process, should be recorded on CRM to ensure all staff who may handle the enquiry are aware.

### **The safety of complaints staff**

The majority of contact with our complainants is via telephone, email or white mail. However, there may be either planned or unscheduled meetings face to face with complainants and appropriate measures need to be in place to support staff in the engagement, the NHS England Safeguarding policy, the Patient and Public Participation Policy – A Safeguarding Focus gives guidance and support to staff and managers.

Most regional complaints offices are not considered spaces appropriate for meeting complainants and have not been designed with suitable public meeting rooms. If a complainant makes an unscheduled visit to a regional office it is important that upon being made aware of their arrival, a check should be made on CRM to see if there is any Customer Message about restricted communications/or any possible risks or issue the complainant may pose.

Whilst the complainant may wish to discuss a confidential matter it is essential that, based upon the knowledge of the complainant, the complaints staff make a considered decision about where they speak to the complainant. In these circumstances complaints staff should not meet the complainant alone and if possible should be accompanied by a colleague with clinical experience.

If the decision is taken that the complainant does not pose a threat to staff safety, complaints staff should again not meet with the complainant alone. Good practice would suggest that the complaints staff advise other colleagues of where they are meeting with the complainant and to request that they check on them at regular points. A documented record of the discussion which takes place should be made by one of the staff in attendance.

Within the complaints process there is scope for a planned local resolution meeting. Complaints staff should never attend such meetings on their own and should be supported by a colleague with appropriate experience according to the nature of the complaint. A neutral and safe venue should be sought for such a meeting. Managers should be aware of the location and duration of the meeting. A colleague should be identified as a key point of contact and the complaints staff undertaking the engagement should make contact with this colleague prior to the start of the meeting and then again upon conclusion. Complaints staff should ideally check the suitability of the any suggested meeting space and an awareness of any security measures at the venue are recommended in advance of the meeting.

## **19 Distribution**

NHS England will ensure that appropriate information is available in relation to the complaints policy and procedures.

## **20 Quality Assurance**

NHS England will monitor both the effectiveness of the complaints process, and how complaints information is being used to improve services and delivery of care. Specifically, the National Customer Contact Centre will aim

to provide a system to:

- Disseminate learning from complaints across the relevant parts of the organisation.
- Include the use of complaints procedures as a measure of performance and quality.
- Use complaints information to contribute to practice development, commissioning and service planning.

## **21 Equality Impact Assessment**

An initial assessment of the potential impact of the policy in relation to the protected characteristics of the Equality Act 2010 has been carried out. The intention of the equality impact assessment is to eliminate unlawful discrimination, advance equality of opportunity and foster good relations as stated in the Equality Act.

Equality and diversity are at the heart of NHS England's values. Throughout the development of the policies and processes cited in this document, we have given due regard to the need to eliminate discrimination, harassment and victimisation, to advance equality of opportunity, and to foster good relations between people who share a relevant protected characteristic (as cited in under the Equality Act 2010) and those who do not share it.

## **22 Compliance and Review**

Compliance with the policy and procedures laid down in this document will be monitored by the Senior Customer Contact Centre Manager, together with independent reviews by both Internal and External Audit on a periodic basis.

The Head of Corporate Services and the Senior Customer Contact Centre Manager are responsible for the monitoring, revision and updating of this document. This policy will be kept under review in light of operational experience and national guidance. The first review will take place one year from issue.

## **23 Persistent and Unreasonable Contact**

Detailed guidance on the management of persistent and unreasonable contact is set out in Appendix 2.

## **24 Associated Documents**

Data Protection Technical Guidance Note: Disclosures to Members of Parliament carrying out constituency casework. Data Protection (Processing of Sensitive Personal Data) (Elected Representatives) Order 2002. S.I.2002 No. 2905

NHS England Complaints Procedures April 2014

[NHS Constitution updated March 2013](#)

NHS England Confidentiality Policy June 2016

NHS England Data Protection Policy June 2016

NHS England Incident Management Policy March 2015

NHS England Whistleblowing Policy April 2016

NHS England Risk management strategy and risk management policy (review in progress)

A Quality Framework for Managing Complaints December 2015

[Our 2016/2017 Business Plan March 2016](#)

## **25 References**

[A Review of the NHS Hospitals 'Putting Patients Back in the Picture' - Clwyd Hart, October 2013](#)

[Caldicott Report 1997](#)

[Equality Act 2010](#)

[Freedom of Information Act 2000](#)

[Human Rights Act 1998](#)

[Listening, Responding and Improving – A Guide to Better Customer Care \(2009\)](#)

[Principles of good administration. Parliamentary and Health Service Ombudsman \(2009\)](#)

[Principles of good complaints handling. Parliamentary and Health Service Ombudsman \(2009\)](#)

[Principles for remedy. Parliamentary and Health Service Ombudsman \(2009\)](#)

[Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry Executive Summary February 2013](#)

[Superannuation Act 1972](#)

[The Data Protection Act 1998](#)

[The Local Authority Social Services and National Health Service Complaints \(England\) Regulations 2009](#)

[PHSO- 'My expectations for raising a concern or complaint'](#)

## Appendix 1: Allocation Of Responsibilities

Role	Key Responsibilities
Chief Executive Officer	<ul style="list-style-type: none"> <li>• Overall accountability for ensuring that the NHS England Complaints Policy meets the statutory requirements as set out in the regulations.</li> <li>• Responsible for approving and signing complaints response letters. Regulation 4 (2) allows the functions of the responsible officer to be performed by any person authorised by NHS England to act on the responsible officer's behalf. For primary care complaints, NHS England has delegated responsibility in place for signing complaints responses – this responsibility is delegated to either the appropriate National Director (for national complaints) and the following Regional Directors (for complaints managed in region):               <ul style="list-style-type: none"> <li>• Director of Commissioning Operations</li> <li>• Nurse Director</li> <li>• Medical Director</li> <li>• Specialised Commissioning Director</li> </ul> </li> </ul>
Head of Corporate Operations	<ul style="list-style-type: none"> <li>• Consider emerging themes and learning from the complaints reporting mechanism and identify service improvements as a result of complaints and concerns being raised</li> <li>• Annually review the internal complaints policy</li> <li>• Awareness of escalated complaints</li> <li>• Consideration of quarterly internal complaint analysis Oversees NHS England arrangements for complaints handling.</li> </ul>
Chief Nursing Officer	<ul style="list-style-type: none"> <li>• Ensure information from complaints is reported into appropriate clinical quality and risk committees and forums to enable organisational review and learning.</li> </ul>
Senior Customer Contact Centre Manager	<ul style="list-style-type: none"> <li>• Management of the procedures for handling complaints and concerns through the National Customer Contact Centre, and for consideration of complaints made under the regulations</li> <li>• Central management of complaints as stated in the regulations</li> </ul>

Customer Contact Staff	<ul style="list-style-type: none"> <li>• Explain the complaints process to a complainant</li> <li>• Facilitation of the resolution of complaints and concerns through the National Customer Contact Centre</li> <li>• Attempt to resolve informally wherever appropriate to do so</li> <li>• Recording details of the complaint on a database, the outcome, and any learning from the complaint</li> </ul>
<p>Subject Matter Experts (SME's)</p> <p>SME's are identified by the National Customer Contact Centre as having specific knowledge or expertise relating to a complaint</p>	<ul style="list-style-type: none"> <li>• Provision of response for particular issues requiring specialist knowledge.</li> </ul>
Regional Teams	<ul style="list-style-type: none"> <li>• Management of the procedures for handling complaints and concerns through the Regional Teams and for consideration of complaints made under the regulations.</li> <li>• Investigating and resolving complaints about local commissioned services in line with the NHS England Complaints Policy and process.</li> <li>• Delegated responsibility for signing off complaint responses on behalf of the NHS England CEO for complaints relating to primary care and specialised commissioning.</li> <li>• Use complaints information to assist organisational learning.</li> <li>• Use complaints information to inform local service commissioning.</li> <li>• Case officers should record details of the complaint on a database, the outcome, and any learning from the complaint. Including the inputting the complaints categorisation required for the statutory reporting requirements.</li> <li>• Within the regions changes in commissioning may (Delegated commissioning and Devolution) affect NHS England's handling of complaints within that region.</li> </ul>

## Appendix 2: Guidance for dealing with persistent and/or unreasonable contact

### 1. Introduction

This guidance covers all contacts, enquiries and complainants. It is intended for use as a last resort and after all reasonable measures have been taken to try and resolve a complaint within the NHS England Complaints Policy.

Persistent contact may be as a result of individuals having genuine issues and it is therefore important to ensure that this process is fair and the complainant's interests have been taken into consideration.

### 2. Purpose of the guidance

To assist the organisation to identify when a person is persistent or unreasonable, setting out the action to be taken.

### 3. Definition of persistent and/or unreasonable complainants

There is no one single feature of unreasonable behaviour. Examples of behaviour may include those who:

- Persist in pursuing a complaint when the procedures have been fully and properly implemented and exhausted.
- Do not clearly identify the precise issues that they wish to be investigated, despite reasonable efforts by staff, and where appropriate, the relevant independent advocacy services could assist to help them specify their complaint.
- Continually make unreasonable or excessive demands in terms of process and fail to accept that these may be unreasonable e.g. insist on responses to complaints being provided more urgently than is reasonable or is recognised practice.
- Continue to focus on a 'trivial' matter to an extent that it is out of proportion to its significance. It is recognised that defining 'trivial' is subjective and careful judgment must be applied and recorded.
- Change the substance of a complaint or seek to prolong contact by continually raising further issues in relation to the original complaint. Care must be taken not to discard new issues that are significantly different from the original issue. Each issue of concern may need to be addressed separately.
- Consume a disproportionate amount of time and resources.
- Threaten or use actual physical violence towards staff.
- Have harassed or been personally abusive or verbally aggressive on more than one occasion (this may include written abuse e.g. emails).
- Repeatedly focus on conspiracy theories and/or will not accept documented evidence as being factual.
- Make excessive telephone calls or send excessive numbers of emails or letters to staff.

#### **4. Actions prior to designating a person's contact as persistent and/or or unreasonable.**

It is important to ensure that the details of a complaint are not lost because of the presentation of that complaint. There are a number of considerations to bear in mind when considering imposing restrictions upon a complainant.

These may include:

- Ensuring the person's case is being, or has been dealt with appropriately, and that reasonable actions will follow, or have followed, the final response.
- Confidence that the person has been kept up to date and that communication has been adequate with the complainant prior to them becoming unreasonable or persistent.
- Checking that new or significant concerns are not being raised, that requires consideration as a separate case.
- Applying criteria with care, fairness and due consideration for the client's circumstances – bearing in mind that physical or mental health conditions may explain difficult behaviour. This should include the impact of bereavement, loss or significant/sudden changes to the complainant's lifestyle, quality of life or life expectancy.
- Considering the proportionality and appropriateness of the proposed restriction in comparison with the behaviour, and the impact upon staff.
- Ensuring that the complainant has been advised of the existence of the policy and has been warned about, and given a chance to amend their behaviour.

Consideration should also be given as to whether any further action can be taken prior to designating the person's contact as unreasonable or persistent.

This might include:

- Raising the issue with a Director with no previous involvement, in order to give an independent view.
- Where no meeting with staff has been held, consider offering this at a local level as a means to dispel misunderstandings (only appropriate where risks have been assessed).
- Where multiple departments are being contacted by the complainant, consider a strategy to agree a cross-departmental approach.
- Consider whether the assistance of an advocate may be helpful.
- Consider the use of ground rules for continuing contact with the complainant.

Ground rules may include:

- Time limits on telephone conversations and contacts.
- Restricting the number of calls that will be taken or agreeing a

timetable for contacting the service.

- Requiring contact to be made with a named member of staff and agreeing when this should be.
- Requiring contact via a third party e.g. advocate.
- Limiting the complainant to one mode of contact.
- Informing the complainant of a reasonable timescale to respond to correspondence.
- Informing the complainant that future correspondence will be read and placed on file, but not acknowledged.
- Advising that the organisation does not deal with calls or correspondence that is abusive, threatening or contains allegations that lack substantive evidence. Request that the complainant provides an acceptable version of the correspondence or make contact with a third party to continue communication with the organisation.
- Ask the complainant to enter into an agreement about their conduct.
- Advise that irrelevant documentation will be returned in the first instance and (in extreme cases) in future may be destroyed.
- Adopting a 'zero tolerance' policy. This could include a standard communication line, for example: "The NHS operates a zero tolerance policy, and safety of staff is paramount at all times. Staff have a right to care for others without fear of being attacked either physically or verbally."

## **5. Process for managing persistent and/or unreasonable behaviour**

Where a person's contact has been identified as persistent and/or unreasonable, the decision to declare them as such is made jointly by the Senior Contact Centre Manager and the Head of Corporate Operations or equivalent in a Regional Team.

The Senior Contact Centre Manager (or equivalent in an Regional Team) will write to the complainant, informing them that either:

- Their complaint is being investigated and a response will be prepared and issued as soon as possible within the timescales agreed.
- That repeated calls regarding the complaint in question are not acceptable and will be terminated, or;
- Their complaint has been responded to as fully as possible and there is nothing to be added.
- That any further correspondence will not be acknowledged.

All appropriate staff should be informed of the decision so that there is a consistent and coordinated approach across the organisation.

If the declared complainant raises any new issues then they should be dealt with in the usual way.

Review of the status should take place at six monthly intervals.

## **6. Urgent or extreme cases of persistent and/or unreasonable behaviour**

In urgent or extreme cases, adopt safeguarding and zero tolerance policies and procedures. Discuss the case with the appropriate Director to develop an action plan that may include the use of emergency services in some circumstances. In these circumstances, carry out a review of the case at the first opportunity after the event.

## **7. Record keeping**

Ensure that adequate records are kept of all contact with persistent and/or unreasonable contact.

Consideration should be given as to whether the organisation should take further action, such as reporting the matter to the police, taking legal action, or using the risk management or health and safety procedures to follow up such an event in respect of the impact upon staff.

## Appendix 3: NHS England's regional team structure

The regional teams cover healthcare commissioning and delivery across their geographies (shown on the map below) and provide professional leadership on finance, nursing, medical, specialised commissioning, patients and information, human resources, organisational development, assurance and delivery.



## OFFICIAL

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