

## Complaints Policy

Reference No:	P_CIG_08
Version:	5.1
Ratified by:	Lincolnshire Community Health Services Trust Board
Date ratified:	12 <sup>th</sup> September 2017
Name of originator/author:	Senior PALS and Complaints Officer
Name of responsible committee/individual:	Patient Safety and Safeguarding Group
Date issued:	February 2018
Review date:	July 2019
Target audience:	All Lincolnshire Community Health Services' staff
Distributed via:	Website

## Complaints Policy Version Control Sheet

Version	Section/Para/ Annex	Version/Description of Amendments	Date	Author/Amended by
1		New Policy		
2		Changed to reflect new organisation and processes.	January 2012	Angela Webster
3	Whole Document	Full review of process	July 2014	Karen Stinson
4	Whole Document	Updated to reflect new processes and guidance	June 2015	Nicola Jackson
4.1	New Complaints Process	Minor alterations to process	September 2016	Nicola Jackson
5		Full review	June 2017	Nicola Jackson
5.1	11.4.1	Minor amendment – inclusion of response time	February 2018	Richard Shrimpton
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				

Copyright © 2018 Lincolnshire Community Health Services NHS Trust, All Rights Reserved. Not to be reproduced in whole or in part without the permission of the copyright owner.

# Complaints Policy

## Policy Statement

- Background** In 1992 a review committee, chaired by Professor Alan Wilson was set up to review complaints procedures within the NHS. The report of the review committee, "Being Heard" was published in 1994. In March 1995, the Government issued their revised policy and proposals for a new NHS Complaints Procedure entitled "Acting on Complaints". Guidance was issued in March 1996 for the new procedures to come into effect from 1 April 1996. Since then the regulations have undergone a number of further reviews such as the Clwyd Hart Report 2013 which reviewed NHS hospital complaints and its aim was "putting patients back in the picture". From April 2015 the new Duty of Candor was implemented which imposed the duty to be open and transparent with service users.
- Statement** As an organisation LCHS are committed to a compassionate approach with our patients and when we fall short the trust expect to be held to account and believe it is important to listen carefully to what people tell us, and that we are open, honest and transparent when responding to concerns or complaints. The Trust do all they can to resolve concerns and complaints in a timely way and to learn from our mistakes, put things right for the future, and improve the services and care the trust provide.
- Complaints will be viewed as valuable feedback and lessons learned will be shared across the organisation in order to rectify mistakes and to improve the quality of services for the future.
- Responsibilities** Lincolnshire Community Health Services NHS Trust must ensure that all concerns are fully investigated, and an open and honest explanation and response is provided to the complainant.
- Complainants will be treated with dignity and know that their complaint will be taken seriously. The organisation must assure complainants that their care and service provision will not be affected by the fact they have made a complaint.
- Lincolnshire Community Health Services NHS Trust will have in place strong internal structures for the investigation of complaints, instigating action, monitoring the effectiveness of resultant action, supporting practitioners and maximizing complainants' satisfaction, which are fundamental to effective complaints handling.
- Training** Managers must ensure that they, and the staff for whom they are responsible, are fully aware of the Lincolnshire Community Health Services Complaints Policy.
- All new members of staff will be introduced to the organisation's procedures for the handling complaints, through the Lincolnshire Community Health Services Induction programme and bespoke training that can be accessed through the ESR System.
- Dissemination** Website

## NHSLA Monitoring Template

This template should be used to demonstrate compliance with NHSLA requirements for the policy where applicable and/or how compliance with the policy will be monitored.

Minimum requirement to be monitored	Process for monitoring e.g. audit	Responsible individuals/group /committee	Frequency of monitoring /audit	Responsible individuals / group / committee (multidisciplinary) for review of results	Responsible individuals / group / committee for development of action plan	Responsible individuals / group / committee for monitoring of action plan
<b>Acknowledgement time scales</b>	Audit Report	Quality and Risk Committee	Annually	Quality and Risk Committee	Quality and Risk Committee	Quality and Risk Committee
<b>Response Time scales</b>	Audit report	Quality and Risk Committee	Annually	Quality and Risk Committee	Quality and Risk Committee	Quality and Risk Committee
<b>Annual Report</b>	Audit report	Quality and Risk Committee	Annually	Quality and Risk Committee	Quality and Risk Committee	Quality and Risk Committee

## **Complaints Policy Contents**

<b>Index</b>	<b>Content</b>	<b>Page</b>
1	Introduction	3-6
2	Legal Framework	6
3	Aim of the Policy	6
4	Scope	6
5	Roles and Responsibilities	7
6	Sources of support for patients	9
7	NHS Complaints process	9
8	Who may make a complaint?	10
9	Consent	11
10	Verbal concerns and complaints	11
11	Formal complaints	12
12	Confidentiality	15
13	Vexatious, habitual and persistent complainants	16
14	Service Improvements, Performance Monitoring, Reporting and Learning	17
15	Disciplinary, Litigation and Criminal Procedures	18
16	Accountability	19
17	Support for staff	19
18	Training	19

**Appendix 1 Verbal Concern & Complaint Form**

**Appendix 2 Flow chart - Process for dealing with Formal complaints**

**Appendix 3 Risk management Matrix**

**Appendix 4 Flow chart – Risk Grading for complaints**

**Appendix 5 Statement template**

**Appendix 6 Guidelines for professional preparing a report/statement for a complaint or claim**

**Appendix 7 Complaint Action Plan template**

**Appendix 8 Guidance for handling habitual or persistent complainants**

**Appendix 9 Equality Analysis**

# Complaints Policy

## 1. Introduction

Following the introduction of the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009, from 1 April 2009, a single two-stage approach to complaints handling has been introduced to provide a service user-focused service. This approach gives greater flexibility to organisations in how they handle and respond to complaints and encourages a culture that seeks and uses people's experience of care to improve quality, as detailed within *Making Experiences Count – Reform of the Health and Social Care Complaints Arrangements*. The NHS Constitution makes clear what people expect when they complain. The Care Quality Commission (CQC) requires registered Providers of services to investigate complaints effectively and learn lessons from them from their report Complaints Matters report.

## 2. Legal Framework

In 1992 a review committee, chaired by Professor Alan Wilson was set up to review complaints procedures within the NHS. The report of the review committee, "Being Heard" was published in 1994. In March 1995, the Government issued their revised policy and proposals for a new NHS Complaints Procedure entitled "Acting on Complaints". Guidance was issued in March 1996 for the new procedures to come into effect from 1 April 1996.

The regulations have been subsequently updated, and the NHS (Complaints) Regulations 2004, Statutory Instrument No. 1768 which apply in England alone, came in to force on 30 July 2004. These were then further amended by the NHS (Complaints) Amendment Regulations 2006 which came into force on 1 September 2006. Updated legislative framework was subsequently introduced to support the new complaints approach for Health and local authority adult social care services complaints (England) regulations 2009.

This policy is written in accordance with the complaints regulations and also takes into account related national and organisational guidance issued to complement these regulations.

## 3. Aim of the Policy

It is the aim of this policy,

- To ensure that a full, open and honest response is provided to all complainants, whether made orally, in writing or electronically.
- To ensure all complaints are handled and investigated thoroughly, impartially and appropriately.
- To ensure all staff are supported through the process of a complaint investigation.
- To ensure that lessons learned are shared across the organisation in order to rectify mistakes and to improve the quality of services for the future.

## 4. Scope

This policy applies to a complaint which is:

- In relation to services provided by Lincolnshire Community Health Services NHS Trust, in accordance with the 2009 Complaints Regulations, on or after 1 April 2009.

- Involves the service(s) of Lincolnshire Community Health Services and other NHS Health and Social Care organisations.

In accordance with regulations, complaints **not** required to be dealt with in accordance with the NHS complaints procedure include those:

- Made by a responsible body.
- Made by an employee about any matter relating to employment.
- Under investigation, or already investigated, under these or previous relevant regulations or complaints procedures.
- Arising out of the alleged failure to comply with a request for information under the Freedom of Information Act 2000.

## 5. Roles and responsibilities

### 5.1 Responsible Person

The Chief Executive is ultimately responsible for the handling of complaints within Lincolnshire Community Health Services.

### 5.2 Complaints Management

Complaints management in Lincolnshire Community Health Services NHS Trust is overseen by the Deputy Director of Nursing.

Day to day management of the complaints function is managed by the Senior PALS and Complaints Officer as part of the work carried out by the Chief Executive's Office. The investigation of all complaints and the identification and dissemination of learning falls under the responsibility of the Clinical Assurance Managers, who ensures that all complaints are investigated and responded to in a timely and appropriate manner, action plans are agreed and that all learning is disseminated and integrated into practice, across the organisation. The Trust Complaints Team are responsible for the handling and processing of the complaints within Lincolnshire Community Health Services NHS Trust and will:

- Co-ordinate the procedures and administration for handling and considering complaints.
- Receive all written complaints, log and acknowledge the complaint, agree with the service ensuring that an offer to meet with the investigating officer in the first instance, and agree a time scale with the complainant for the complaint response to be provided.
- Ensure relevant and appropriate consent is sought prior to commencing any investigation into concerns raised.
- Ensure all formal complaints are forwarded to an appropriate investigating officer, via the Deputy Director of Nursing and liaise closely with them and other agencies to ensure these are completed within the required timescales, ensure the safeguarding team are informed if appropriate.
- Notify the relevant service about complaints that are complex, identified as extreme or high risk or raise cause for concern. All cases referred to the Parliamentary Health Service Ombudsman (PHSO) will be discussed with the relevant service. Complaints likely to progress to claims will be discussed with the relevant service and the Corporate Assurance Manager responsible for claims management.
- Liaise with fellow NHS and social care organisations when a complaint crosses services e.g. acute trusts, Social Services or ambulance services, and agree a lead who will co-ordinate a joint response.

- Forward all written responses, via the Deputy Director of Nursing to the Chief Executive for final approval and signing within the required time scales.
- Liaise with the services to ensure appropriate arrangements are made when the complainant wishes to receive a response via a meeting and support the services as required to ensure meeting notes are made and circulated to all parties involved once approved.
- Following a meeting with a complainant the investigator will liaise with the services to ensure the service formulate a letter of response, which following approval by the Head of Clinical Service and Deputy Director of Nursing Chief. The letter will be sent to the Complaints Team and sent to the Chief Executive together with the notes or recording of the meeting for final approval/signing.
- Establish any outstanding concerns complainants might have, advise on further options available under the local resolution process and ensure the relevant service is informed of the concerns in order to agree a course of action.
- Provide information and reports in relation to complaints received within the Trust, including the production of an Annual Complaints Report.
- Provide guidance on handling complaints and following best practice.
- Co-operate and liaise with the Parliamentary and Health Service Ombudsman and services in respect of any enquiries or investigations being undertaken.

### 5.3 Services

- Ensure they report all concerns and formal complaints to the complaints team on receipt into the organisation.
- Ensure the timescale for responses are renegotiated with complainants if original timescale is not likely to be met.
- Attempt to resolve non-formal complaints within 24 hours of the concern being raised and inform the Complaints Team of these, using the Concerns & Complaints Form (Appendix 1).
- Undertake a full investigation of complaints referred to them, ensuring comprehensive investigation notes are completed (using the complaint investigation tool, Appendix 4) and returned to the Complaints Team within the specified time scales, along with any and all supporting documentation e.g. statements from staff, records of interviews, Root Cause Analysis notes.
- Formulate a complaint response, on behalf of the Chief Executive, and forward to the Complaints Team. The response requires Head of Clinical Service approval prior to being forwarded to the Complaints Team within the required timescale.
- Be responsible for supporting staff during the investigation process and keeping them informed, ensuring that any lessons learnt are fed back and shared within their area of responsibility and to the Patient Safety and Safeguarding Group for wider dissemination.
- Keep the Complaints Team informed of any reasons for any delays and advise them of any revised dates and deadlines.
- Be prepared to meet with complainants and discuss their concerns as a means of responding to or addressing outstanding issues following a written response.
- Produce and implement any necessary action plans, keep a record of these and ensure a copy is sent to the Complaints Team within the required time scale.
- Participate in the conciliation process as required.

### 5.4 All Staff

- Must comply with this policy and should treat all complaints seriously and address them as a matter of priority.

- Have a responsibility to respond to and resolve any voiced and unvoiced expressions of dissatisfaction by users of the service promptly.
- Should, in the first instance, discuss any concerns raised by service users with their immediate line manager who will attempt a local resolution. Where the complaint is regarding their line manager, this should be escalated to the next managerial level.
- Seek advice from the Complaints Team if unsure of how to proceed.

## 6. Sources of Support for Patients

### Patient Advice and Liaison Service (PALS)

If service users need advice that does not constitute a complaint being made, they can contact PALS, a confidential service to:

- Advise and support patients, families and carers.
- Provide information on and signposting to NHS services.
- Listen to concerns, suggestions or queries and pass to relevant managers.
- Help to resolve problems quickly on behalf of the enquirer.

This service does not handle complaints, but acts as a point of contact to enable guidance for patients, and can often direct them to the appropriate organisation or member of staff best placed to deal with the queries raised.

PALS can be contacted on 0845 602 4384 and calls are welcomed via text Relay.

### POhWER – NHS Complaints Advocacy Service

POhWER are part of a national service that provides assistance to those who want to make a complaint about the NHS. They offer confidential, independent support, to anyone who wishes to make a complaint about the service, care or treatment provided by the NHS.

POhWER can be contacted by telephone on 0300 456 2370, or via email: pohwer@pohwer.net.

## 7. NHS Complaints Procedures

The NHS complaints process consists of the following clearly defined stages:

### 7.1 Local Resolution

The purpose of local resolution is to provide an opportunity for the complainant and organisation to reach a rapid and fair resolution to the problem. The process should be open, honest, fair, and flexible and should facilitate communication on all sides. A meeting will be offered with the complainant and conciliation may be used to help the parties reach a common understanding.

### 7.2 Parliamentary and Health Service Ombudsman (PHSO)

The Ombudsman is independent of the NHS and of government and derives powers from the Health Service Commissioners Act 1993.

The Ombudsman considers complaints made by or on behalf of people who have suffered an injustice or hardship because of unsatisfactory treatment or service by the NHS, or by private health providers who have provided NHS funded treatment to

the individual.

The Ombudsman will not usually investigate complaints until the organisation's local complaints process has been exhausted, unless in a particular case when they consider that this would be unreasonable.

### 7.3 Care Quality Commission (CQC)

The Care Quality Commission regulates the complaints process and the organisation will provide a summary of complaints to the commission when requested and within the timescale set.

Complainants may contact the Care Quality Commission to inform them of any concerns they may have about the carrying out of a regulated activity.

## 8. **Who may make a complaint?**

A complaint may be made by:

- A person who receives or has received services from the Trust.
- A person who is affected, or likely to be affected, by the action, omission or decision of the Trust.

A complaint may be made by a person acting on behalf of a person mentioned above whom:

- Has died.
- Is a child under the age of 18
- Is unable to make the complaint themselves because of:
  - Physical incapacity;
  - Lack of capacity within the meaning of the Mental Capacity Act 2005(a);
- Has requested that representative act on their behalf.

Where a representative makes a complaint on behalf of a child, the organisation:

- Must only consider the complaint when it is satisfied that there are reasonable grounds for the complaint being made by a representative instead of the child; and
- If the Trust is not satisfied, the Trust must notify the representative in writing, and state the reason for its decision.

This also applies where a representative makes a complaint on behalf of:

- A child.
- A person who lacks capacity within the meaning of the Mental Capacity Act 2005; and

The Complaints Procedure is not designed for professionals from other agencies to make complaints about the level of service. Such complaints should be addressed by the manager of that service. However, the same approach should be taken and the same standards applied.

## 9. Consent

When the complainant is not the patient, in order to maintain patient confidentiality, the patient's consent must be obtained before any details are discussed with or any information is disclosed to any other party. Consent could be obtained in writing or verbally and recorded. The Complaints Team will provide the appropriate consent form to facilitate consent in writing.

If a patient has died, there will be a need to clarify who the next of kin is or whether any other person has been identified by the patient prior to their death as being eligible to receive information on their behalf. This again should be obtained in writing and proof of identity and relationship to the patient provided. The Complaints Team will provide advice on this process.

Should a patient be unable to give consent due to lack of mental capacity, consideration needs to be given to any instructions the patient may have made when they had capacity with regard to disclosure of information. If they have appointed an Attorney with a Health & Welfare - Lasting Power of Attorney, a copy of this should be obtained and retained on the complaint file.

If it is considered the complainant is an 'interested party' in a patient's life and care, information disclosed must be focused on the complaint and not involve issues outside of the scope of the complaint in order to maintain patient confidentiality as much as possible. Any response to the complainant should not include any personal details relating to the patient of which the complainant is not already aware.

If the complainant is raising issues they personally witnessed, then consent should not be an issue, as confidential information of this nature would not be included in the complaint.

## 10. Verbal Concerns and Complaints

Patients and carers may highlight concerns directly and informally to the service.

Members of staff who receive complaints orally should aim to resolve them to the complainant's satisfaction within 24 hours. The nature of the complaint must be fully understood and complainants should be encouraged to speak openly about their concerns. Their views should be treated with appropriate confidentiality and sensitivity and a verbal explanation and/or an apology should be offered as appropriate. A written response should not routinely be made in these circumstances. If a written response is requested advice should be sought from the Complaints Team.

Wherever possible, the person receiving the complaint should seek to deal with the complaint and reassure the complainant that they will be treated with appropriate confidentiality and sensitivity.

Complaints or concerns raised orally that are resolved to the complainant's satisfaction within 24 hours, are not required to be managed under the NHS complaints process. However, these should be recorded as on a Concerns & Complaints Form (Appendix 1) and indicated as 'resolved'. They will be logged for trends to be identified and to bring about service improvements.

Verbal complaints that cannot be resolved within 24 hours, and all written/electronic complaints, constitute a formal complaint. Formal complaints can be submitted orally, or in written or electronic form.

Formal complaints should be reported to the Complaints Team immediately upon identification to the organisation.

## 11. Formal Complaints

Following the NHS Complaints Regulations 2009, Lincolnshire Community Health Services will accept complaints for investigation within a time limit of 12 months. However, where it is evident the complainant would not have been aware they had reason for complaint exceptions can be made at the discretion of the Deputy Director of Nursing in liaison with the Head of Clinical Service of the relevant service or Complaints Team.

It is vital that any investigations are efficient and effective. Any independent review will look for an open and flexible approach to this and the Trust may be required to provide rationale for refusing to investigate a case.

Complaints will be investigated thoroughly, fairly and as quickly as circumstances allow within agreed timescales

Verbal complaints that cannot be resolved within 24 hours should be recorded on the Concerns & Complaints Form (Appendix 1) and indicated as 'not resolved'. This should be faxed to the Complaints Team that day and the Complaints Team will make contact with the complainant to discuss their concerns further.

Where a verbal complaint cannot be resolved, complainants should also be given the option to speak directly with the Complaints Team and advised about support they can access in raising a complaint, through POhWER.

A flow chart detailing how formal complaints will be handled can be seen in Appendix 2.

### 11.1 Acknowledgement

- The Complaints Team will acknowledge all formal complaints within 3 working days of receipt.
- The Complaints Team will, wherever possible, contact and offer the complainant the opportunity to meet with the investigating officer to discuss this. If they do not accept this, the Investigating Officer will contact the complainant to agree the complaint plan. The complaint plan will detail the issues involved, whether the response will be in writing or via a meeting and an agreed timescale for responding the complainant's desired outcome.
- The time scale agreed with the complainant for responding to their complaint will take into consideration the issues involved, complexity and service(s).
- Where complaints involve other agencies, e.g. Social Services, other NHS Trusts, the complainant will be notified of the other agency's involvement. Whenever possible a coordinated response will be provided and a lead will be agreed between the agencies. Complaints will be forwarded to other agencies with the patient's permission.

### 11.2 Risk Assessment

Once all issues have been established, the complaint will be evaluated by the Deputy Director of Nursing/Clinical Assurance Manager using the Risk Assessment Matrix (Appendix 3) and given a risk grading.

The Deputy Director of Nursing/Clinical Governance Manager will alert the service to any incident that would require the completion of an Incident Report Form (IR1)

If there are indications that the complaint may give rise to a potential claim, details should be forwarded to the Corporate Assurance Manager.

Should information from complaints and/or evidence from other sources, including that provided by staff, indicate that patients could be at risk, the Deputy Director of Nursing will advise the most appropriate course of action.

### 11.3 Investigation

- The investigation will be undertaken by a person (investigating officer) appointed by the Clinical Assurance Manager/Deputy Director of Nursing.
- The Investigation findings and any supporting documentation such as staff statements, copies of health records, reports etc. should be completed and returned to the Complaints Team along with the investigating officers approved written response within the allocated time frame.
- Statements may be requested from staff to assist the investigation process and should provide a factual account of what happened. A template for writing a statement and guidance on how to do so can be found in Appendices 5 and 6.
- Complaints which highlight significant risk (scoring 8 or more in accordance with the Risk Matrix) or those that fall within the Serious Incident criteria should attract a higher investigation level and a Root Cause Analysis should be undertaken. The Complaints Team will ensure that complaints with a risk assessment score of 8 or more are reported to the Corporate Assurance Manager, Quality & Risk Committee, Executive Leadership Team and Trust Board in the monthly Quality and Risk Report.
- Further assistance with the complaint investigation can be obtained through the Complaints Team or the relevant service or Clinical Assurance Manager.
- The Investigation will identify actions to be taken as a result of the complaint. Where appropriate a detailed action plan should be developed; see Appendix 8 for the Action Plan template. The investigating officer should sign and date this, forward a copy to the Complaints Team within the required time scale and ensure they keep their own file for future reference. If the investigating officer does not deem it necessary to develop an action plan the Complaints Team should be informed of this within the required time scale.
- During the course of the investigation, the investigating officer/service must keep the Complaints Team informed of any reasons for a delay in them responding, as a revised timescale may need to be agreed with the complainant.
- The service will seek agreement from the complainant for any extensions to the timescale and provide an explanation for the delay.

### 11.4 Responding

A full open and honest response will be made via a meeting or in writing, depending on the complainant's wishes. The outcome of each complaint will be categorised as either 'upheld', 'partially upheld' or 'not upheld'. In cases where one or more, but not all parts of a complaint are upheld, this will be classified as partially upheld.

#### 11.4.1 *Written response*

- The services will, on behalf of the Chief Executive, provide a written response to the complainant within 35 days from the date of receipt of the complaint.

- On occasion, an extension to the complaint response date may be required but must be negotiated and agreed with the complainant. The Complaint response should include an apology where appropriate and details of any action taken to prevent a recurrence of the incident and information about the further options available under the local resolution process. The service Head of Clinical Service must approve the response prior to it being forwarded to the Complaints Team within the required time scale.
- The Complaints Team will forward the response to the Chief Executive, via the Deputy Director of Nursing, for final approval and signing.
- The response will be signed by the Chief Executive or a person designated to sign on their behalf.
- A copy of the signed response will be sent to the service by the Complaints Team to the service.
- It is the responsibility of the investigating officer/service to communicate the outcome of the complaint to the staff, and to ensure that support is provided for those involved.

#### 11.4.2 *Response via a meeting*

- It is acknowledged that the most appropriate way to resolve many complaints may be to arrange a personal meeting between the complainant and the appropriate investigating officer. This is regarded as best practice and should be considered when dealing with each complaint individually.
- The Complaints Team will liaise with the services who will make arrangements for the meeting and ensure this is done within a time scale agreed with the complainant.
- A member of the Complaints Team will, when requested by the services, attend the meeting and make a digital recording or take notes, which will be first circulated internally for approval and then sent to the complainant(s). Complainants will be given the opportunity to comment on or add to the notes but not amend them.
- Following the meeting the service will formulate a letter on behalf of the Chief Executive which must be approved by the Clinical Services Manager prior to being forwarded to forward to the Deputy Director of Nursing. The letter should offer apologies where appropriate and detail any actions to be taken as a result of the complaint. The letter will also include information on the further options available under the local resolution process.
- The Complaints Team will forward the letter and meeting notes to the Chief Executive, for final approval and signing.
- A copy of the signed response will be forwarded to the service by the Complaints Team.

#### 11.5 Further steps at local resolution

- A final response meeting should be offered to all complainants in order that they can discuss the complaint response in person.
- Independent conciliation, mediation or advice will be considered and offered, where appropriate, as an alternative means of assisting the complaints process. Conciliators are lay people who are committed to resolving complaints to the satisfaction of everyone concerned. They will speak or meet with complainants as part of this undertaking.
- The service/Complaints Team will follow any further steps taken with a letter to finalise the local resolution process.
- Should complainants remain dissatisfied with the final response to the complaint they should be informed of their rights to refer the complaint response to the Parliamentary and Health Service Ombudsman.

## 11.6 Action

- Action to be taken as a result of a complaint investigation will be detailed in the investigation findings and included in the response made.
- In cases where significant actions are required to be undertaken, these should be detailed on an Action Plan as seen in Appendix 8. The Complaints Team will, where appropriate, prompt the need for an action plan and a final copy should be sent to the Complaints Team within the required time scale to be recorded on the complaint file. In instances where the Investigating Office does not feel an action plan is required they should inform the Complaints Team of this within the required time scale so this can be recorded on the complaint file.
- Investigating officers must keep their own record of action taken as a result of complaints for future reference and as evidence in the event of internal or external inspection.

## 11.7 Parliamentary & Health Service Ombudsman (PHSO)

When a complaint has not been resolved to the satisfaction of the complainant following the local resolution process, the complainant has the right to request that the Parliamentary & Health Service Ombudsman (PHSO) consider their complaint. The Ombudsman will not usually investigate complaints until the local resolution process has been exhausted, unless in a particular case he/she considers that this would be unreasonable.

Should the PHSO agree to investigate a complaint they will contact the Complaints Team directly to request a copy of the relevant documentation. The Complaints Team will liaise with the relevant service to confirm this and ensure that all relevant information has been included on the complaint file.

## 12. Confidentiality

The requirement to maintain confidentiality during the complaints procedure is absolute and all complaints, whether verbal or written, will be treated in the strictest confidence.

Complaint records will be kept separate from the service user's health and social care records, subject to the need to record information that is strictly relevant to the patient's health and social care.

Staff are reminded, however, that such records are subject to the Data Protection Act 1998 and must be treated with the same rules of confidentiality as normal client records and would be open to disclosure in legal proceedings. Further information on the law, confidentiality and consent can be found in the DOH Good Practice Toolkit for Complaints at [www.dh.gov.uk](http://www.dh.gov.uk).

Confidential complaint information, findings, recommendations, conclusions, and actions will not be available to unauthorised persons or organisations.

Patient identification will be protected in reports submitted to the Trust Board through the use of anonymised information.

Records will be kept in a secure environment and will be accessible only to those directly responsible for investigating and responding to the complaint.

### **13. Vexatious, habitual and persistent complainants**

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

If a complainant is abusive or threatening, it is reasonable to request they communicate only in a particular way e.g. in writing and not by telephone – or solely with one or more designated members of staff; but it is not reasonable to refuse to accept or respond to communications about a complaint until it is clear that all practical possibilities of resolution have been exhausted.

It is good practice to make clear to a complainant regarded as unreasonably persistent or vexatious, the ways in which their behaviour is unacceptable and the likely consequences of refusal to amend their behaviour, before taking further action.

Decisions to treat a complainant as unreasonably persistent or vexatious should be taken by the Deputy Director of Nursing in liaison with the Security Management Specialist and Complaints Team.

#### **13.1 Vexatious complainants**

Complaints from vexatious complainants are often difficult to investigate, time-consuming and difficult to conclude. It is important to have a consistent approach for identifying and establishing a vexatious complainant and for handling it. The following criteria are offered as guidance for establishing a 'vexatious complaint':

- The complainant has been personally abusive or aggressive towards staff/practitioner who is dealing with the complaint.
- The complainant is unwilling to accept documented evidence as being factual.
- The complainant insists that they have not had an adequate response to their complaint despite the significant efforts being made to specifically address their complaints.
- The complainant constantly raises new issues that were not detailed in original correspondence, in order to prolong the complaint.
- The complaint details change as time goes on.

If, having followed the local resolution process, the above concerns come to light then it will be deemed to be vexatious and should be escalated to the Deputy Director of Nursing and Security Management Specialist.

An incident report should be completed by any staff member who is subject to aggressive/abusive behavior and after discussion with relevant line manager, if deemed appropriate, the matter escalated to the security management service for advice/future management.

Having established a complaint is vexatious and every effort has been made to respond in good faith, the Chief Executive or his designated deputy will write to the complainant, stating that:

- A full response has been given to all the issues raised in the complaint.
- The organisation has tried to resolve the complaint and there is nothing further that can be done hence the correspondence will end. Further letters will be acknowledged but no further investigation undertaken.
- The complainant has the right to refer their complaint to the Parliamentary & Health Service Ombudsman.

### 13.2 Habitual complainants

Occasionally complainants will persist with a grievance which staff consider has reached a conclusion through the complaints procedure. Guidance for handling such situations has been developed to protect both staff and the complainant. This guidance is included as Appendix 9.

## 14. Service Improvements, Performance Monitoring, Reporting and Learning

The organisation will:

- Monitor the management of complaints in respect of acknowledgement, response rates and the effectiveness of local resolution.
- Monitor the performance of individual services and departments and consider trends and the subject of complaints.
- Monitor action being taken to resolve complaints and prevent recurrence by Services and corporate departments.
- Consider any lessons that can be learned from complaints in order to improve the service provided across the organisation;
- Take action where serious clinical governance concerns are raised that come to light as a result of a complaint.

### 14.1 Monitoring of the Complaints Process

A monthly Quality and Risk Report and Annual Complaints Report will be submitted to the Lincolnshire Community Health Services Executive Leadership Team, Quality and Risk Committee and Trust Board.

Reports will be sent to the Parliamentary and Health Service Ombudsman as requested, and annual returns will be made to the Department of Health (DOH). A quarterly activity is completed via a KO41 report.

Customer satisfaction surveys link or survey will be sent to complainants when the complaint response has been completed in order to obtain feedback on the handling of their complaint.

### 14.2 Reporting and Learning from Complaints

Complaints are entered onto a secure database. This database provides comprehensive reports and trend analysis for use for both Lincolnshire Community Health Services NHS Trust and for audit and research purposes.

Learning will be identified through the investigation of complaints. Action plans will be developed in response to them and these will be monitored in the first instance by the investigating manager and services. The services will develop processes to monitor the completion of action plans, ensuring that lessons learned are captured.

Managers should use the issues raised in individual complaints to explore and

initiate service improvements where appropriate. It may be appropriate to involve the service Clinical Assurance Manager in this process to support and to advise on quality improvement and analysis techniques.

Managers should share complaints information and lessons learned at their clinical governance forums. Lessons will also be disseminated through Lincolnshire Community Health Services Patient Safety and Safeguarding Group, through professional forums and via Team Brief, Emails and the Trusts website.

A monthly Lesson Learnt report will be compiled by the Clinical Assurance Manager and submitted to Patient Safety and Safeguarding Group, Quality and Risk Committee and Trust Board.

A copy of the Action Plan must be sent to the Complaints Team and a copy will be kept on the complaints file.

## **15. Disciplinary, Litigation and Criminal Procedures**

Further clarification should be sought from the Complaints Team regarding the management of complaints where legal action and criminal or disciplinary procedures are contemplated.

### **15.1 Possible claims**

If a complainant explicitly indicates an intention to take legal action, the Corporate Assurance Manager should be notified of the complaint details for consideration of possible further action.

### **15.2 Police investigations**

When a complaint is also the subject of a police investigation; wherever possible, copies of the medical records should be obtained to allow the internal investigation to be conducted as usual. Discussion on how to proceed will need to be considered on an individual basis together with the service, Head of Clinical Service, Deputy Director of Nursing and the Practitioner Performance Team when appropriate. Refer to the Guidelines for the NHS in support of the Memorandum of Understanding 2006, regarding police investigations.

### **15.3 Inquests**

Where it has been identified that the complaint is also the subject of an inquest, discretion will be applied to determine when a response will be provided in relation to the inquest. The Complaints Team will liaise with Practitioner Performance who will consider the need to contact the Coroner to discuss the case and the possibility of responding to the complainant ahead of the inquest.

### **15.4 Complaints and disciplinary procedures**

The complaints procedure is concerned with resolving complaints and not with investigating disciplinary matters. The complaints procedure is not designed to apportion blame amongst staff; however, some complaints may identify information about serious matters, which may lead to a disciplinary investigation and in these cases the Practitioner Performance Team should be notified and involved. There should be no delay in responding to the complainant, once the complaint can be answered, because of any disciplinary procedure.

## 16. Accountability

- Lincolnshire Community Health Services NHS Trust Board is ultimately accountable for the operation of the complaints policy.
- Lincolnshire Community Health Services NHS Trust will publish complaints statistics in its Annual Report.
- Lincolnshire Community Health Services NHS Trust will have written information, easily accessible to the public, giving advice on how to use the complaints procedure. Complaints leaflets will be available at each NHS site. These are available in different languages and formats including Braille, audio and large print. Further information regarding these can be sought from the Lincolnshire Community Health Services NHS Trust Complaints Team.

## 17. Support for Staff

Support for staff during a complaint is vital. Complaints and incidents can vary significantly in their nature and the appropriate action to be taken in response will vary accordingly. Staff who handle complaints regularly can benefit from the chance to talk about their experiences through regular supervision.

### 17.1 Duties/Referral Process

- Immediate support should be provided by the staff member's line manager.
- In the absence of the Line Manager an alternative senior manager should be identified to provide immediate support to the staff member. Thereafter necessary steps will be taken (by the alternative senior manager) to ensure that the staff member's line manager is informed of the incident to enable any ongoing support needs to be identified and responded to.
- Staff members may also access ongoing support through a number of different channels, including:
  - Organisations Complaints Team
  - Occupational Health Service
  - Counselling Service
  - Own GP
  - Relevant Professional body or Union.

Staff may wish to access these sources of support directly or seek support in accessing them from their manager. This support applies to all staff within Lincolnshire Community Health Services. No single method of support is ideal for each individual, so staff should be informed of the different types of help available to them and told how to access these readily.

- Line Managers will assess the effectiveness of the support measures through management reviews with their individual staff member.
- Further external sources of support may be considered when ongoing support needs are identified. Advice / support regarding these are available through the Lincolnshire Community Health Services Complaints Team.

## 18. Training

- All new members of staff will be introduced to the principles of risk management, including complaints management, incident reporting procedures and serious untoward incident reporting, during Lincolnshire Community Health Services induction programme.

- Root Cause Analysis (RCA) and Complaints training will be established within services for service/line managers to enable them to fulfill their investigatory responsibilities.
- It is the responsibility of every staff member supported by their line manager, to ensure that they are familiar with Lincolnshire Community Health Services NHS Trust Complaints, Incident reporting, Serious untoward incident and Investigation policies and to identify training needs in relation to these policies. Such training needs should be reported through staff member's line management.

**IN STRICT CONFIDENCE: VERBAL CONCERN & COMPLAINT FORM**

*This form should be completed under guidance from the Complaint Policy and faxed to the Complaints Team on the day of completion to 01529 220411. Verbal concerns or complaints should be actioned/resolved by no later than the next working day after the day on which the concern/complaint is taken. Please contact 01529 220356 for further advice and to request an electronic version.*

<b>Complaint taken by:</b> (name and title)	
<b>Method taken by:</b> (please tick)	Telephone      Face to face
<b>Date and time taken:</b>	___/___/___    ___.___ hrs
<b>Name of complainant:</b> (first and surnames and title)	
<b>Full postal address:</b>	
<b>Telephone number:</b> (include mobile if possible)	
<b>Name of patient:</b> (if different from	
<b>Full postal address:</b>	
<b>Details of the concern or complaint:</b>	

Action taken to resolve the concern/complaint (including any investigation, response made and actions):

Has the matter been resolved?	Yes _____ No _____	
If no, please give reason and detail what further action is required:		
Date Manager informed:	____/____/____	Name of Manager

Signature of person completing form \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

***For Complaints Team use only:***

***Date received by complaints team: .....***

***Notes on a further action required and taken:***

***Date: \_\_\_\_/\_\_\_\_/\_\_\_\_                      Signature: \_\_\_\_\_***

**Complaints Process**

- 1) Complaint received by Complaints Team who contact Complainant and acknowledge Complaint
- 2) Complaint sent to Governance Manager and discussed with Deputy Director of Nursing then sent to service or other to investigate. Investigators take ownership of the complaint and are advised by the Deputy Director of Nursing the level at which the complaint will be investigated at from the following:

<b>Level 1</b>	<b>Internal investigation (within service)</b>
1	HoCS to determine who will investigate within their service and communicate the agreed timescales
<b>Level 2</b>	<b>Internal investigation but outside of service</b>
2	Investigator to be determined by Deputy Director of Nursing/Governance Manager
<b>Level 3</b>	<b>External investigation (outside of LCHS)</b>
3	Investigator to be determined by Deputy Director of Nursing/Governance Manager

**Complaints Handling Process**

On receipt of the complaint the Governance Manager allocates the Owing service HoC who then identifies a Complaint Investigator. The Governance Manager will also risk grade the complaint.

The Complaint Investigator to contact the complainant as soon as possible to offer initial apologies and to offer an opportunity to discuss the complaint further prior to the investigation, agree complaint plan and inform and discuss with the complaints team. This needs to be file noted and a copy sent to the Complaints Team.

The discussion may be by telephone or preferably face to face where possible, the investigator should be included in this discussion so that additional issues are included in the investigation from the start. If a face to face meeting does take place a member of the Complaints Team should be present to take notes. The complaint plan should then be drafted between the Investigator and the Complaints Team.

As part of the discussion with the complainant it should be explained what will happen next and a meeting to discuss the investigation findings will be offered. The meeting should be arranged within the agreed timescales

If a final meeting does go ahead notes should be taken with the support of the Complaints Team. The covering letter accompanying the meeting notes will be along the lines of: *At our meeting on XXXXX we discussed XXXXX and agreed that we would XXXXX (repeat for each point).*

If a meeting is declined, a written response should be drafted and sent to the Complaints Team after the HoC and GM has approved it within 14 days of receiving the complaint.

**Complaints Investigation Process**

**Level 1 – Internal investigation (within the service)**

- Governance Manager to determine who will investigate the complaint within the service
- HoCS to share complaint with Matron/Locality Lead and agree who will investigate. Investigation pro-forma should be used
- Following the investigation the HoCS will compile a complaint response based on the investigation findings and agree contents with their Manager within the agreed timescale
- **Return completed response to the Complaints Team along with the completed action plan showing lessons learned and any investigation findings.**

**Level 2 - Internal investigation but outside of the service**

- Owing service HoCS to consider who, outside of their service, could investigate (unless investigator has been recommended by Deputy Director of Nursing)
- Owing service HoCS to liaise with HoCS colleague of proposed 'Investigating' service to ensure proposed investigator has capacity to conduct the investigation
- Owing service HoCS to share complaint with own matron/Locality Lead and request statements asap
- Owing service HoCS to ensure investigator has access to all information including records and statements which (if necessary) should be sent via NHS.net
- Investigator to send completed investigation pro forma to Owing service HOCS
- Following the investigation the Owing HoCS to compile a response based on the investigation findings and agree the contents with their Manager within the agreed timescale
- **As above return the completed response to the Complaints Team along with the**

Investigation findings, meeting notes, covering letters, action plans, names of employees involved and any statements to be sent to the Complaints Team 14 days after receiving complaint.

Complaint response checked by Complaints Team and Deputy Director of Nursing before being signed by Chief Executive. (If amendments are needed then letter to be sent back to the investigator with sheet detailing what parts of the letter are not clear or answered and returned to Complaints Team within 1 day)

Copy of final complaint letter to be sent to complainant and investigating Team for information.

**investigation pro-forma, statements, records and action plan**

If the response is delayed the service HoCS must notify the Complaints Team at least 7 days before the response due date

**Table 1 Incident Definitions / Risk management Matrix - Consequence**

	Consequence score (severity levels) and examples of descriptors				
	1	2	3	4	5
Domains	Negligible	Minor	Moderate	Major	Catastrophic
<b>Impact on the safety of patients, staff or public (physical/psychological harm)</b>	Minimal injury requiring no/minimal intervention or treatment.  No time off work	Minor injury or illness, requiring minor intervention  Requiring time off work for >3 days  Increase in length of hospital stay by 1-3 days	Moderate injury requiring professional intervention  Requiring time off work for 4-14 days  Increase in length of hospital stay by 4-15 days  RIDDOR/agency reportable incident  An event which impacts on a small number of patients	Major injury leading to long-term incapacity/disability  Requiring time off work for >14 days  Increase in length of hospital stay by >15 days  Mismanagement of patient care with long-term effects	Incident leading to death  Multiple permanent injuries or irreversible health effects  An event which impacts on a large number of patients
<b>Quality/complaints/audit</b>	Peripheral element of treatment or service suboptimal  Informal complaint/inquiry	Overall treatment or service suboptimal  Formal complaint (stage 1)  Local resolution  Single failure to meet internal standards  Minor implications for patient safety if unresolved  Reduced performance rating if unresolved	Treatment or service has significantly reduced effectiveness  Formal complaint (stage 2) complaint  Local resolution (with potential to go to independent review)  Repeated failure to meet internal standards  Major patient safety implications if findings are not acted on	Non-compliance with national standards with significant risk to patients if unresolved  Multiple complaints/independent review  Low performance rating  Critical report	Totally unacceptable level or quality of treatment/service  Gross failure of patient safety if findings not acted on  Inquest/ombudsman inquiry  Gross failure to meet national standards
<b>Human resources/organisational development/staffing/competence</b>	Short-term low staffing level that temporarily reduces service quality (< 1 day)	Low staffing level that reduces the service quality	Late delivery of key objective/service due to lack of staff  Unsafe staffing level or competence (>1 day)  Low staff morale  Poor staff attendance for mandatory/key training	Uncertain delivery of key objective/service due to lack of staff  Unsafe staffing level or competence (>5 days)  Loss of key staff  Very low staff morale  No staff attending mandatory/ key training	Non-delivery of key objective/service due to lack of staff  Ongoing unsafe staffing levels or competence  Loss of several key staff  No staff attending mandatory /key training on an ongoing basis
<b>Statutory duty/inspections</b>	No or minimal impact or breach of guidance/statutory duty	Breach of statutory legislation  Reduced performance rating if unresolved	Single breach in statutory duty  Challenging external recommendations/improvement notice	Enforcement action  Multiple breaches in statutory duty  Improvement notices	Multiple breaches in statutory duty  Prosecution  Complete systems change required

				Low performance rating Critical report	Zero performance rating Severely critical report
<b>Adverse publicity/reputation</b>	Rumours Potential for public concern	Local media coverage – short-term reduction in public confidence Elements of public expectation not being met	Local media coverage – long-term reduction in public confidence	National media coverage with <3 days service well below reasonable public expectation	National media coverage with >3 days service well below reasonable public expectation. MP concerned (questions in the House) Total loss of public
<b>Business objectives/projects</b>	Insignificant cost increase/schedule slippage	<5 per cent over project budget Schedule slippage	5–10 per cent over project budget Schedule slippage	Non-compliance with national 10–25 per cent over project budget Schedule slippage Key objectives not met	Incident leading >25 per cent over project budget Schedule slippage Key objectives not met
<b>Finance including claims</b>	Small loss Risk of claim remote	Loss of 0.1–0.25 per cent of budget Claim less than £10,000	Loss of 0.25–0.5 per cent of budget Claim(s) between £10,000 and £100,000	Uncertain delivery of key objective/Loss of 0.5–1.0 per cent of budget Claim(s) between £100,000 and £1 million Purchasers failing to pay on time	Non-delivery of key objective/ Loss of >1 per cent of budget Failure to meet specification/slippage Loss of contract / payment by results
<b>Service/business interruption Environmental impact</b>	Loss/interruption of >1 hour Minimal or no impact on the	Loss/interruption of >8 hours Minor impact on environment	Loss/interruption of >1 day Moderate impact on environment	Loss/interruption of >1 week Major impact on environment	Permanent loss of service or facility Catastrophic impact on environment

### Table 2 Likelihood score (L)

What is the likelihood of the consequence occurring?

The frequency-based score is appropriate in most circumstances and is easier to identify. It should be used whenever it is possible to identify a frequency.

Likelihood score	1	2	3	4	5
Descriptor	Rare	Unlikely	Possible	Likely	Almost certain
Frequency How often might it/does it happen	This will probably never happen/recur	Do not expect it to happen/recur but it is possible it may do so	Might happen or recur occasionally	Will probably happen/recur but it is not a persisting issue	Will undoubtedly happen/recur, possibly frequently

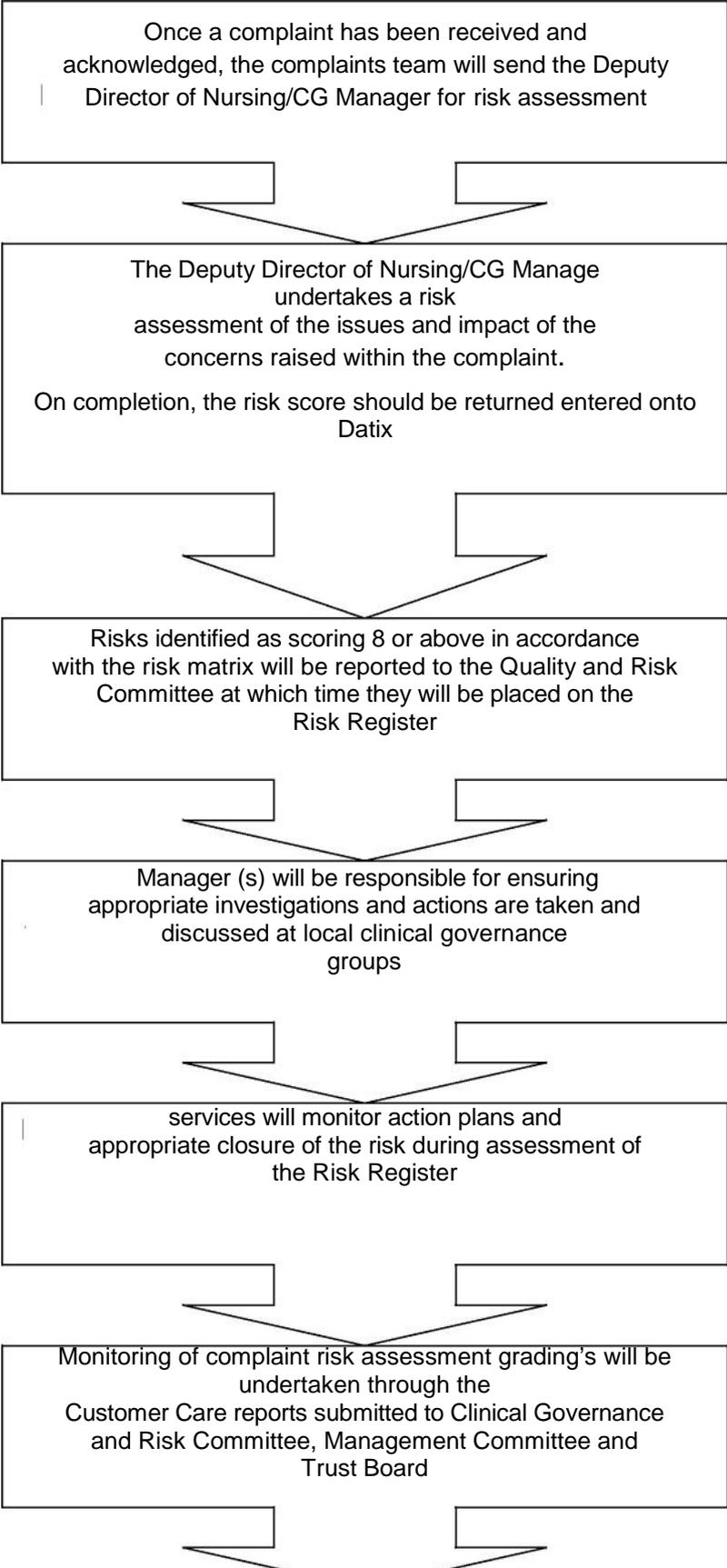
### Table 3 Risk scoring = consequence x likelihood ( C x L )

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

For grading risk, the scores obtained from the risk matrix are assigned grades as follows

	1 - 3	Low risk
	4 - 6	Moderate risk
	8 - 12	High risk
	15 - 25	Extreme risk

**Risk assessment of a complaint**



**CONFIDENTIAL REPORT/STATEMENT REGARDING A COMPLAINT**

**Statement requested by:**

**MEMBER OF STAFF DETAILS:** From:

Post Held:

Qualifications:

Area of Work & experience:

Date of Incident:

**PATIENT**

**DETAILS:** Name:

Address:

Hospital No:

Date of Birth:

Reason for Report:

"I, (INSERT NAME), believe that the facts stated are true"

**Signed:**

**Print name:**

**Date:**

**Chronology of Events:**

*e.g. (to be deleted)*

10/12/09      *Patient attended clinic and saw Dr Jones Prescribed Cefuroxime 100mg TD*

(Expand as necessary)

**"I, (INSERT NAME), believe that the facts stated are true"**

**Signed:**

**Print name:**

**Date:**

**Description of my Involvement in the complaint:**

(Expand as necessary)

**"I, (INSERT NAME), believe that the facts stated are true"**

**Signed:**

**Print name:**

**Date:**

**Conclusion:**

(Expand as necessary)

**"I, (INSERT NAME), believe that the facts stated are true"**

**Signed:**

**Print name:**

**Date:**

***NB: Every page must be signed***

**COMPLAINTS & CLAIMS DEPARTMENT GUIDELINES FOR PROFESSIONALS PREPARING A REPORT/STATEMENT FOR A COMPLAINT OR CLAIM****Reports should include the following:**

1. Name, post held, qualifications, years' experience in the relevant field and where based.
2. Identify the name of the case, the claimant's name and address, and date of birth if known.
3. Details of how long the patient has been known to you, whether seen by any predecessor, details of any relevant history, information received from other departments or the patient/family.
4. A chronological account of your involvement with the patient and should be as accurate as possible, particularly with regard to dates, times, dosages of drugs etc. (Timings can often be confirmed from additional sources, computer systems, investigations, registers, diaries etc. where appropriate).
5. Details of relevant policies or protocols, or service level agreements and how these have been followed.
6. Hearsay evidence (evidence given by a witness based on information received from others rather than personal knowledge) is acceptable. If you refer to other staff, they should be identified by name and status.
7. Conclude the statement by stating ***"I believe the facts set out in the statement are true"*** and then date and sign.

**Remember:**

- **Using the department's template for statements will help ensure you include the relevant information.**
- The report should **not** be written without access to the relevant health records. Other documents should also be used to assist the report, such as accident report forms, diaries, rotas, protocols and policies.
- The report should be typewritten.
- If using abbreviations ensure the full terminology is given at least once, followed by the conventional abbreviation in brackets, which can then be used in the remainder of the document. It is acceptable to use technical words but also try to explain these in layman's terms wherever possible.
- It may be of assistance to annex to your report a diagram, plan or pertinent article, protocol or policy.
- Details of relevant policies or protocols, or service level agreements should be used to benchmark against and identify if good practice has been adhered to. This will assist in defending the case.
- **If in any doubt please contact the department who will be happy to help and/or advise.**

Complaint Number: .....



**COMPLAINT ACTION PLAN**

Recommendation/issue from complaint	Actions required	Person responsible for actions	Date action due	Evidence of sharing actions
1.				
2.				
3.				
4.				

Name: ..... Job Title: .....

Signature: ..... Date: .....

## GUIDANCE FOR HANDLING VEXACIOUS AND HABITUAL COMPLAINANTS

### **1 Introduction**

The management of habitual complainants can be challenging. The difficulty in handling such complaints can place a strain on time and resources and cause undue stress for staff who may need support in such circumstances. Whilst every effort is made to meet the needs of the complainant, to resolve their concerns, there are times when there is nothing further that can reasonably be done to assist them or to rectify a real or perceived problem. It is also recognised that persistent complainants should still receive a response to all genuine grievances.

In determining arrangements for handling habitual or persistent complaints, staff should consider the following:

- Ensuring that the complaints procedure has been correctly implemented as far as possible and that each aspect of a complaint is overlooked or inadequately addressed.
- Appreciating that habitual and persistent complainants have grievances that may contain some genuine substance.
- Ensuring there is an equitable approach to such complaints.
- Identifying the stage at which a complainant has become habitual or persistent.

### **2 Purpose of this Guidance**

All complaints handled by Lincolnshire Community Health Services are processed in accordance with the NHS complaints process. During this process, staff inevitably have contact with a small number of complainants who absorb a disproportionate amount of NHS resources in dealing with their concerns. The aim of this guidance is to help staff recognise situations where the complainant might be considered to be habitual or persistent and to suggest ways of responding to these situations, which are fair both to staff and complainant.

It is emphasised that this policy 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 process, and in accordance with the Lincolnshire Community Health Services NHS Trust Complaints Policy, making the best possible use of the local resolution options, conciliation, or involving an independent advocate or mediator as appropriate.

Judgment and discretion must be used in applying the criteria to identify potential habitual or persistent complainants and in deciding the action to be taken in specific cases. This policy should only be implemented in relation to a specific complainant, following careful consideration by, and with the authorisation of the Chief Executive.

### **3 Definition of a Habitual Complainant**

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

- a) They persist in pursuing a complaint where the NHS complaints process has been fully and properly implemented and exhausted.

- b) They seek to prolong contact by changing the substance of a complaint or continually raising new issues and questions while the complaint is being addressed. (Care must be taken not to discard new issues which are significantly different from the original complaint. These might need to be addressed as separate complaints.)
- c) They are unwilling to accept documented evidence as being factual, e.g. drug records, GP records, and nursing notes.
- d) They deny receipt of an adequate response despite evidence of correspondence specifically answering their questions.
- e) They do not accept that facts can sometimes be difficult to verify when a long period of time has elapsed.
- f) They do not clearly identify the precise issues that they wish to be investigated, despite reasonable efforts of staff and, where appropriate, independent advocacy, to help them specify their concerns, and/or where the concerns identified are not within the remit of Lincolnshire Community Health Services to investigate.
- g) They 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 a 'trivial' matter can be subjective, so careful judgment must be used in applying this criteria.)
- h) They have, in the course of addressing a registered complaint, had an excessive number of contacts with Lincolnshire Community Health Services NHS Trust, placing unreasonable demands on staff. (A contact may be in person or by telephone, letter, E-mail or fax. Discretion must be used in determining the precise number of "excessive contacts" applicable under this section, using judgment based on the specific circumstances of each individual case).
- i) They are known to have recorded meetings or conversations [face to face, or telephone] without the prior knowledge and consent of the other parties involved.
- j) They display unreasonable demands or expectations and fail to accept that these may be unreasonable, for example, insisting on responses to complaints or enquiries being provided more urgently than is reasonable or is normal practice.
- k) They have threatened or used actual physical violence towards staff or their families or associates at any time. This will, in itself, cause personal contact with the complainant and/or their representatives to be discontinued and the complaint will, thereafter, be addressed only through written communication. (All such incidents should be documented in line with the Zero Tolerance Campaign).
- l) They have harassed or been personally abusive or verbally aggressive on more than one occasion towards staff dealing with their complaint. Staff must recognise that complainants may sometimes act out of character due to stress, anxiety or distress, and should make reasonable allowances for this. Staff should document all incidents of harassment in line with the Zero Tolerance Campaign.

#### **4 Procedure for Dealing with Habitual Complainants**

- i. Check to see if the complainant meets sufficient criteria to be classified as a habitual or persistent complainant.
- ii. Where there is an ongoing investigation, the Chair\* should write to the complainant, setting parameters for a code of behaviour and the lines of communication. If these terms are contravened, consideration will then be given to implementing other action. *It would be inappropriate for the Chief Executive to set these parameters at this stage as he / she will be involved in the ongoing complaints process.*

- iii. Where the investigation is complete, the Chief Executive or Chair should write a letter at an appropriate stage informing the complainant that:
- The Chief Executive has responded fully to the points raised, and
  - has tried to resolve the complaint, and
  - there is nothing more that can be added, therefore the correspondence is now at an end.

Lincolnshire Community Health Services NHS Trust will state that future contact or correspondence will be acknowledged but not answered.

- iv. In extreme cases, Lincolnshire Community Health Services NHS Trust should reserve the right to take legal action against the complainant.

### **5 Withdrawing 'Habitual' or 'Persistent' Status**

Once complainants have been determined as 'habitual' or 'persistent', there needs to be a mechanism for withdrawing this status at a later date if, for example, complainants subsequently demonstrate a more reasonable approach or if they submit a further complaint for which the normal complaints process would appear to be appropriate. Staff should previously have used discretion in recommending 'habitual' or 'persistent' status, and discretion should similarly be used in recommending that this status be withdrawn

## Equality Analysis

**Name of Policy: Complaints Policy**

**Equality Analysis Carried out by: Nicola Jackson**

**Date: March 2017**

**Equality & Human rights Lead: Rachel Higgins**

**Director\General Manager: Susan Ombler**

**\*In this template the term policy\service is used as shorthand for what needs to be analysed. Policy\Service needs to be understood broadly to embrace the full range of policies, practices, activities and decisions: essentially everything we do, whether it is formally written down or whether it is informal custom and practice. This includes existing policies and any new policies under development.**

## Section 1 – to be completed for all policies

A.	Briefly give an outline of the key objectives of the policy; what it's intended outcome is and who the intended beneficiaries are expected to be	To provide a co-ordinate approach to the management of complaints throughout Lincolnshire Community Health Services NHS Trust, in line with the Local Authority Social Services and National Health Services Complaints (England) Regulations 2009.		
B.	Does the policy have an impact on patients, carers or staff, or the wider community that we have links with? <b>Please give details</b>	This policy impacts on all patients, carers and staff who wish to make a complaint about services provided by Lincolnshire Community Health Services NHS Trust.		
C.	Is there is any evidence that the policy\service relates to an area with known inequalities? <b>Please give details</b>	This policy relates to all patients, carers and staff.		
D.	Will/Does the implementation of the policy\service result in different impacts for protected characteristics?	No		
		Yes	No	
	Disability		X	
	Sexual Orientation		X	
	Sex		X	
	Gender Reassignment		X	
	Race		X	
	Marriage/Civil Partnership		X	
	Maternity/Pregnancy		X	
	Age		X	
	Religion or Belief		X	
	Carers		X	
<b>If you have answered 'Yes' to any of the questions then you are required to carry out a full Equality Analysis which should be approved by the Equality and Human Rights Lead – please go to section 2</b>				
The above named policy has been considered and does not require a full equality analysis				
<b>Equality Analysis Carried out by:</b>		Nicola Jackson		
<b>Date:</b>		March 2017		