

**NEWHAM HEALTH COLLABORATIVE (NHC)
COMPLAINTS POLICY**

SUMMARY:	This policy details the process for dealing with complaints and concerns received about any aspect of the care, treatments and services provided by Newham Health Collaborative (NHC). As an NHS and Local Authority contract holder, NHC has reviewed this policy in accordance with the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009.
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Document Control

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Complaints policy

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1. INTRODUCTION

This policy details the process for dealing with complaints and concerns received about any aspect of the care, treatments and services provided by Newham Health Collaborative (NHC). As an NHS and Local Authority contract holder, NHC has reviewed this policy in accordance with the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009.

NHC encourages patients, relatives, carers and service users to express concerns and complaints about the treatment and services that they receive in the knowledge that:

- They will be taken seriously
- They will receive a timely response
- Their views will inform learning and improvements to services
- Their care will not be compromised

The aim of this policy is to ensure there is a systematic approach to the management and handling of complaints at NHC. This policy sets out the framework for the management of complaints.

The policy outlines the procedures to resolve complaints both formal and informal as quickly as possible either through local resolution by front-line staff and practitioners who are empowered to deal with complaints as they arise in an open, transparent and non-defensive way, or through subsequent investigation.

NHC is committed to responding openly and sensitively to complainants. Being open to feedback from our patients and service users is one of the core values of NHC, which aims to be an open and accountable organisation. The feedback gained from the complaints process will be used to further improve the quality of the care and services provided by NHC.

2. DEFINITIONS

Complaint

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

3. PRINCIPLES

The management of patient/public dissatisfaction is an important part of the governance framework by ensuring that information about complaints and their causes are an integral part of the system that ensures safe, high quality care.

NHC's vision for a successful complaints process is one that meets the needs of our patients / relatives / carers, staff and the organisation and follows the six principles of good complaint handling set out by the Parliamentary and Health Service Ombudsman:

- Getting it right
- Being customer focused
- Being open and accountable
- Acting fairly and proportionately
- Putting things right
- Seeing continuous improvement

NHC has a responsibility to establish a complaints process in line with the statutory requirements set out in the regulations and take steps to publicise those arrangements. The process must be accessible and ensure that complaints are dealt with speedily and efficiently and that complainants are treated respectfully.

4. RESPONSIBILITIES

The Chief Executive is the designated responsible person whose duty it is to ensure overall compliance with the Statutory Regulations and for ensuring that lessons are learnt from complaints.

The Governance & Quality Assurance Manager is the designated complaints manager who is responsible for managing the procedures for handling and considering complaints in accordance with the Statutory Regulations. The Manager will also ensure that lessons learnt and follow up actions are captured and implemented.

The Governance and Quality Assurance Manager will liaise with all executives (CEO, Medical Director, Director of Nursing and Finance Director) on receipt of a complaint and agree to appoint an investigation manager for that complaint. Executives are responsible for investigation of complaints for them their area and routinely will be considered as an investigation manager.

The **Investigating Manager** is responsible for ensuring thorough investigation is undertaken, ensuring that the complainant's concerns are fully addressed and are available within the agreed timeframe. If a named member of staff has left NHC, the Investigating Manager is responsible for ensuring all efforts are made to obtain their comments as part of the investigation. The Governance and Quality Assurance Manager and Investigating Manager may be the same person. If a complaint involves a GP, Practice Nurse, HCA or any other clinician, then the Investigating Manager must obtain a review from an NHC Clinical Lead that has been taken from the clinician.

All staff have a responsibility to resolve any concerns expressed by patients, their relatives and carers and to escalate to their line manager any concerns which they cannot resolve locally or where the individual indicates they wish to make a complaint.

5. WHO CAN COMPLAIN?

Complaints can be made by anyone who has used NHC services and facilities or has the patients consent to do so. Complaints can also be raised by a person who is affected by, or likely to be affected by, the action, omission or decision of NHC.

A complaint may be made by a representative acting on behalf of an existing or former patient where that person:

- Is unable by reason of physical or mental incapacity (within the meaning of the Mental Capacity Act 2005) to make the complaint themselves or
- Has requested the representative to act on his/her behalf
- Is a child
- Has died

If the complainant is not the patient, the consent of the patient should be requested. If a complaint from a carer or relative relates to the care of a patient, care must be taken not to disclose personal health information without the express consent of the patient.

In cases where a complaint is received on behalf of the patient from a local councillor, Member of Parliament (MP) or Member of the European Parliament (MEP), then the complaint can be responded to in full without the need to gain consent. Where the complaint is not on behalf of the complainant but a third party then consent from the patient must be obtained prior to responding to the complaint.

In cases of a representative complaining on behalf of a child NHC must ascertain whether the child has the maturity to make their own decisions and to understand the implications of those decisions in line with Gillick competencies and Fraser Guidelines. NHC must not consider the complaint unless it is satisfied there are reasonable grounds for the complaint to be made by representatives instead of the child.

In cases where the service user lacks capacity or has died NHC must be satisfied that there is either a legal requirement to disclose information or it is clear that the representative has the best interests of the service user concerned. Each case will be judged on its own merit.

In cases where it has been decided that without authorisation we cannot respond to the complainant, a letter must be sent to the complainant explaining the reason for this decision.

Who may not complain?

Staff who have complaints about other staff/patients, or their own employment should forward their concerns through the relevant HR procedures.

Complaints which fall outside the NHS Complaints Procedure

- Complaints which have already been investigated in accordance with NHC's formal Complaints procedures
- Complaints relating to an alleged failure to comply with a request for information under the Freedom of Information Act 2000.
- Complaints raised by an NHS Trust, Clinical Commissioning Group, Local Authority or independent provider
- Complaints that are, or have already been, investigated by the Care Quality Commission or the Parliamentary and Health Service Ombudsman
- Complaints raised verbally and resolved to the complainants satisfaction by the end of the next working day.

Complaints to the Clinical Commissioning Groups (CCG)

Complaints can be made directly to Commissioners. When a complaint is received by the Commissioner they will ask the complainant for permission to forward the complaint to NHC. If consent is received and the CCG feel it is appropriate they will ask NHC to investigate and manage the complaint in accordance with the NHS Complaints Regulations 2009.

Complaints to the Care Quality Commission (CQC)

Patients who are detained under the Mental Health Act may also raise their complaint with the Care Quality Commission (CQC). The CQC can help with complaints about health services received if a patient has been:

- Detained in hospital
- Subject to a Community Treatment Order
- Subject to guardianship

The CQC can be contacted at the following address:

CQC Mental Health Act

Citygate

Gallowgate

Newcastle

NE1 4PA

Tel: 03000 616161 and press 1 to speak to the mental health team

Email: enquiries@cqc.org.uk

Disciplinary procedures

A complaint can be investigated at the same time as disciplinary proceedings however NHC must keep its complaint process separate from its disciplinary procedure.

The purpose of the complaints process is not to apportion blame amongst staff but to investigate complaints to the satisfaction of the complainant whilst being fair to staff and to learn any lessons to improve services. However, sometimes in a complaints investigation, serious issues emerge which need to be addressed through NHC's disciplinary procedures. Consideration as to whether disciplinary action is warranted must be subject to a separate process of investigation.

Evidence that has been collated during the investigation of a complaint may be passed to the appropriate person who will be considering the need for disciplinary or any other form of investigation.

As a principle, when disciplinary or other procedures are invoked, the complainant should receive the same consideration and level of information as if the matter had been dealt with through the complaints procedure. The complainant should be able to understand what happened, why it

happened, what lessons have been learnt and what action NHC has taken to ensure that it does not happen again. The complainant should be informed in general terms of disciplinary actions imposed on any staff member. A judgement will need to be made between reassuring the complainant that the matter they raised has been taken seriously and dealt with satisfactorily, whilst protecting the confidentiality of the member of staff.

Cases involving legal action

Where a complaint has been made and legal action is being pursued at the same time, or where police or counter-fraud investigators are involved, discussion should take place with NHC's solicitors and relevant authorities to determine whether investigating the complaint might prejudice subsequent legal proceedings. If this is the case then the complaint will be suspended and the complainant advised of this. If this is not the case the investigation into the complaint will take place.

If a complaint reveals a prima facie case of negligence, or if it is thought that there is a likelihood of legal action being taken, the person in receipt of the complaint should inform NHC's Chief Executive, who can then liaise with the solicitors accordingly.

It should not be assumed that a complaint made via a solicitor means that the complainant has decided to take legal action. If proper consent has been received, a response should be made in the normal manner. An apology is not necessarily an admission of liability.

Serious Incident Procedure

The Serious Incident procedure is separate from the Complaints process. If a complaint has been received by NHC during an investigation under the Serious Incident procedure then the latter will take precedent.

The complaint should be acknowledged and suspended and the complainant kept informed throughout the process with a final response explaining the outcome of the investigation when completed.

When a complaint alleges serious misconduct or a criminal offence including:

- Physical abuse
- Sexual abuse
- Financial misconduct

This will be a formal complaint. It should also be reported as an incident and investigated in accordance with NHC's Incident procedure.

Statutory Duty of Candour

If during the course of a complaint investigation NHC identifies that an incident causing moderate or major harm as happened, they have a duty to inform the patient about it swiftly and honestly in accordance with the Duty of Candour. For further guidance please refer to NHC's 'Being Open' policy.

Safeguarding Children and Safeguarding Vulnerable Adults Procedure

The Safeguarding Children and Safeguarding Vulnerable Adults Procedures are separate from the Complaints process. If a complaint is received that raises safeguarding concerns the member of staff receiving the complaint should immediately report their concerns in line with current safeguarding procedures. Any safeguarding investigation will take precedent over the complaint investigation.

The complaint should be acknowledged and suspended and the complainant kept informed throughout the process with a final response explaining the outcome of the investigation when completed.

Cross boundary complaints

Where a complaint relates to NHC and another organisation such as:

- Local Authority (Social services)
- NHS Social Care provider
- Independent provider

NHC has a duty to co-operate. This is to ensure the handling of the complaint is co-ordinated and a single response is sent to the complainant. There is a duty for each organisation to agree which of the two bodies will take the lead in co-ordinating the handling of the complaint and communicating with the complainant. If NHC receives the complaint first it will seek consent from the complainant before it forwards the complaint to the other organisations. If the Complainant does not consent the Complaints Department should advise them of the parts of the complaint it is able to respond to.

Time limit on initiating complaints

A complaint should be made within 12 months from the incident that gave rise to the complaint or within 12 months of the date of discovering the problem. The time limit should be used sensitively and with flexibility according to the seriousness of the incident, the practicality of carrying out an investigation and the circumstances of the complaint.

Patient confidentiality

The patient's express consent is not required to use information pertaining to the patient to investigate a complaint. Care must be taken at all times throughout the complaints procedure to ensure that any information disclosed about the patient is confined to that which is relevant to the investigation of the complaint and only disclosed to those people who have a demonstrable need to know it for the purpose of investigating the complaint.

It is good practice to explain to the patient that information about their health records may need to be disclosed to relevant investigators in order to thoroughly investigate the issues raised.

Where a complaint is made on behalf of a patient who has not authorised someone to act for him/her, care must be taken not to disclose personal health information to the complainant, unless the patient has expressly consented to its disclosure.

Third party confidence

The duty of confidentiality applies equally to third parties who have given information or who are referred to in the patient's records.

Care must be taken where the patient's records contain information provided in confidence, by or about, a third party who is not a health professional. Only that information which is relevant to the complaint should be considered for disclosure and then only to those in the NHS who have a demonstrable need to know it in connection with the complaint investigation. It must not be disclosed to the service user unless the person who provided the information has expressly consented to the disclosure.

Support for complainants

It is important that all patients, carers or relatives are aware of their right to complain and have equal access to the complaints procedure, Independent Complaints Advocacy Service (ICAS) and

local advocacy services. Local advocacy services have an important role in assisting complainants at each stage of the complaints process.

Coroner's cases

The reporting of a death to the Coroner's office does not mean that all investigations into a complaint need to be suspended. It is important to initiate proper investigations regardless of the Coroner's inquiries and where necessary, to extend these investigations if the Coroner so requests.

Support for staff

An effective complaints procedure needs the confidence of staff employed by NHC. It is important that staff experience the investigation of complaints as being fair and objective. It is also important that NHC has a clear policy and procedure for managing habitual and/or vexatious complainants (see Appendix 4). This includes provision for protecting staff from complainants who abuse or harass staff.

The outcome and any recommendations relating to a particular complaint should be fed back to all staff/service areas concerned via the relevant investigator and governance structures.

Publicity

NHC will ensure that all users of its services will have access to information on its complaints policy and procedures including posters and information leaflets. Translated, audio and other appropriate formats for client groups such as children will be made available on request.

6. REPORTING LEARNING AND SERVICE IMPROVEMENTS

When lessons have been identified as a result of a complaint, the complainant will be told and advised of any changes that have been made to prevent the problem recurring. This will occur at the time when the results of the investigation are shared with the complainant via a formal letter of response.

Quarterly and Annual reports are prepared for the NHC Board. The report will include:

- Statistics on the number of complaints received
- The number considered to have been upheld

- Known referrals to the Ombudsman
- A summary of the issues giving rise to the complaints
- Learning points that came out of the complaints and the changes to procedure, policies or care which have resulted

Care must be taken to ensure that the report does not inadvertently disclose any confidential data or lead to the identity of any person becoming known.

7. PROCEDURE

- All complaints will be acknowledged within 3 working days following receipt of the complaint.
- NHC will have systems in place to ensure that patients, their relatives and carers have suitable and accessible information on how to make a complaint.
- NHC will maintain information about, and clear access to, the complaints procedure.
- NHC will be able to register formal complaints and feedback on the quality of services NHC provides.
- NHC will have systems in place to ensure that patients, their relatives and carers are assured that the organisation acts appropriately on any concerns and where appropriate, make changes to ensure improvements in service delivery or practice
- To ensure that patients and carers feel able to complaint without the fear of care being compromised no complaint information must be recorded on the patient's medical records. Anything written as part of a complaint investigation may become disclosable if the complainant chooses to make a Subject Access Request or legal action is initiated.

Local Resolution – Stage 1 of the NHS Complaints Process

NHC is committed to responding to complaints quickly and sensitively. The majority of complaints will be resolved through local resolution.

The main aim of local resolution is to provide an opportunity for investigation, fact finding and resolution of the complaint, as quickly as possible in order to satisfy the complainant whilst being fair to staff.

NHC will promote active approaches to resolving complaints locally, alongside the formal complaints investigation.

Informal complaints

Many complaints made in person or by phone can be resolved immediately or by the end of the next working day. These complaints should be logged (see Appendix 1). The information recorded should include the name of the complainant and patient (if different), what the complaint was about and the action taken. Informal complaints may be raised verbally with front line staff and if appropriate should be resolved quickly and informally with staff being supported by clear lines of authority and decision making which are flexible enough to respond to complaints effectively and authoritatively.

Any staff member who receives a complaint must:

- Check the patient's immediate health care needs are being met. This may require urgent action before any matters relating to their complaint are addressed.
- Give complainants the opportunity to discuss their concerns in private and encourage them to speak openly and freely about them.
- Where the complainant raises a clinical matter, ensure this is discussed with the clinician concerned.
- Know when to refer a complaint to the Governance and Quality Assurance Manager for advice or direct handling.
- Inform the complainant that they can make their complaints to the Governance and Quality Assurance Manager.
- Inform the complainant of available support from advocacy services and how to contact them.

If a complainant has made a verbal complaint and is dissatisfied with the response the complaint should be passed to the Governance and Quality Assurance Manager for investigation.

It is important that people who wish to make comments or informal complaints about NHC's services are encouraged to do so.

Formal complaints

A complaint may be made verbally, in writing or electronically.

Where a complaint is made verbally, the recipient of the complaint must make a written record of the complaint and provide a copy of this to the complainant (see Appendix 1).

All written complaints must be forwarded immediately to the Governance and Quality Assurance Manager. The Governance and Quality Assurance Manager will acknowledge the complaint within three working days following receipt of the complaint.

On receipt of a written complaint the Governance and Quality Assurance Manager will acknowledge the complaint verbally, in writing or by email if the complainant has consented to be contacted by email. If the complaint has been raised by someone other than the patient consent will be sought in order to release information relating to their care and treatment. Complainants will also be advised of their right to seek help and advice from the Independent Complaints and Advocacy Service (ICAS).

The complaint will be initially triaged using a risk assessment tool looking at the severity of the complaint and any related risks to ensure the investigation is proportionate. The complaint will then be allocated to an Investigating Manager.

As part of the investigation the Investigating Manager should review the records and interview the relevant staff. Records of staff interviews and statements should be entered into the complaint file.

As part of the local resolution process and alongside the investigation, a meeting or discussion may be offered with the complainant and any representative to clarify the issues involved and effect mediation if possible before the final response letter is sent. This meeting/discussion should be minuted. The Investigating Manager should consider who may be best placed to meet the complainant e.g. someone from the care team or someone external to the team. The timeframe for both the investigation and response should be discussed and agreed with complainant before the process is initiated. A further meeting should always be offered to the complainant, if appropriate, in the response letter.

The response to the complainant should address all the issues raised in the complaint (see Appendix 2).

If due to the complexity of some complaints an extension of the agreed time limit is required the Governance and Quality Assurance Manager should contact the complainant and gain their agreement, explaining the reasons for the extension. No pressure must be placed on the complainant to agree to the extension but the Governance and Quality Assurance Manager may, in suitable cases, consider it appropriate to explain that a comprehensive response may not be possible to achieve within the original agreed timeframe. All reasons for such a delay must be well

documented and a record made of any details surrounding discussions concerning agreed/disagreed extensions.

Upon receipt of a response letter complainants may request further clarification in writing or in person. This is an integral part of local resolution.

Completion of Local Resolution

When the local resolution process has been completed the complainant will be advised of the right to request an Independent Review of their complaint by the Parliamentary and Health Service Ombudsman and that such a request should be made within twelve months of receipt of the letter.

Local resolution will normally be exhausted when a complainant is dissatisfied with the response of NHC following the initial investigation, the outcome of a meeting subsequent to NHC response and the provision of information in response to reasonable requests for clarification of the issues involved in a complaint.

Independent Review – Stage 2 of the NHS Complaints process

Complainants who are dissatisfied with NHC's response at the Local Resolution stage may ask the Parliamentary and Health Service Ombudsman (PHSO) for an independent review of their complaint. The Parliamentary and Health Service Ombudsman is an independent body established to promote improvements in health care through the assessment of the performance of those who provide services.

The Parliamentary and Health Service Ombudsman can be contacted at:

The Parliamentary and Health Service Ombudsman
Millbank Tower
Millbank
London
SW1P 4QP

Phone: 0345 015 4033 (Customer Helpline from 8:30am to 5:30pm, Monday to Friday, except bank holidays. Calls are charged at local or national rates)

E-mail: phso.enquiries@ombudsman.org.uk

Website: https://ombudsman.achieveservice.com/en/AchieveForms/?form_uri=sandbox-publish://AF-Process-b77f3f05-e520-4972-87f3-6bb886e1854c/AF-Stage-ea91961a-ded8-44ae-9590-4d46970f8cde/definition.json&redirectlink=%2F&cancelRedirectLink=%2F&category=AF-Category-13e3cfb0-fd6c-4c42-8919-7cc00b146262

The Complainant must write within 12 months of the final response being sent. The Complainant must say what they are still not happy about and why they feel Local Resolution did not work for them. They will tell the Complainant, in writing, what they will do.

What happens when the Parliamentary and Health Service Ombudsman (PHSO) receives a Complaint?

The PHSO can investigate complaints about

- Poor service
- Failure to provide a service a patient has a right to receive
- Administrative failures
- Complaints about the care and treatment provided by a healthcare professional, providing that the events complained about occurred after 31 March 1996.

Following the notification of review by the PHSO the Complaints Department will forward all relevant documentation relating to the complaint to the PHSO. The PHSO will then review the complaints file and decide if NHC has done everything possible to resolve the complaint. The PHSO will notify NHC if they intend to conduct their own investigation or not. Both NHC and complainant will be notified of this decision. Following receipt of the PHSO's decision NHC will write to the complainant to advise them of any action taken as a result of the review.

8. COMPLAINTS SATISFACTION QUESTIONNAIRE

A complaints satisfaction questionnaire will be sent to each complainant on conclusion of the complaint unless it is excluded under the exceptions, which are as follows:

- The complainant is re-opened and still under investigation
- The complaint is subject to an ongoing clinical review

9. MONITORING

This Policy will be monitored according to 'Policy Management Policy'.

10. EQUALITY IMPACT ASSESSMENT

		Yes/No	Comments
1.	Does the policy/guidance affect one group less or more favourably than another on the basis of:		
	• Race	NO	
	• Ethnic origin (including gypsies and travellers)	NO	
	• Nationality	NO	
	• Gender	NO	
	• Culture	NO	
	• Religion or Belief	NO	
	• Sexual orientation including lesbian, gay and bisexual people	NO	
	• Age	NO	
	• Disability – learning disabilities, physical disability, sensory impairment and mental health problems	NO	
2.	Is there any evidence that some groups are affected differently?	NO	
3.	If you have identified potential discrimination, are any exceptions valid, legal and/or justifiable?	N/A	
4.	Is the impact of the policy/guidance likely to be negative?	NO	
5.	If so can the impact be avoided?	N/A	
6.	What alternatives are there to achieving the policy/guidance without the impact?	N/A	
7.	Can we reduce the impact by taking different action?	N/A	

APPENDIX 1 – INVESTIGATION REPORT TEMPLATE

Complaint Reference No:

Report by Name of Investigator into a complaint made by

Name of complainant

Address of complainant

On behalf of

Name of patient

Complaint about

Service

Complaint Summary

Please set out summary of the points in the complaint that is being investigated and the desired outcome.

Our Decision

Please set out the final decision and briefly why this was reached e.g. not upheld because there were no failings in NHC's care and treatment of the patient

Background to the complaint

Brief summary of patient's contact with services that led to the complaint

Evidence we considered

Summary of all evidence considered e.g. complaint correspondence, health records, comments from staff, clinical advice sought etc.

What we found

Summary of the investigation and findings into each point raised in the complaint

Recommendations

If upholding or partially upholding the complaint please list recommendations and actions that are to be taken, if any, as a result of the complaint investigation.

Please ensure that all actions are SMART and that updates to the complainant are built in i.e. Governance and Quality Assurance Manager to write to complainant within 3 months of the date of this report with progress against identified actions and recommendations.

Conclusion

APPENDIX 2 – COVER LETTER TEMPLATE

In Confidence

Name

Address/Via Email

Dear

I write in response to your letter/email/telephone call dated ****. I am sorry that you had cause to raise concerns regarding ****.

Your concerns have been fully investigated by **** and we have decided to *uphold/partially uphold/not uphold* your complaint. This is because *brief summary of findings*. A copy of the investigation report is attached for your information.

Offer an apology at this point, where appropriate. An apology is not an admission of liability. Offer reassurances that the problem will not reoccur if you are confident that this is the case.

Set out the action that will be taken to remedy any failings identified and indicate how this will rectify the situation.

Offer to meet with the complainant, if appropriate, if they require further information or are not happy with the response.

If you're not happy with our final response to your complaint, and would like to take the matter further, you can contact the Parliamentary and Health Service Ombudsman. The Ombudsman makes final decisions on complaints that have not been resolved by the NHS, government departments and some other public organisations. The service is free for everyone. To take a complaint to the Ombudsman, go to www.ombudsman.org.uk/making-complaint or call 0345 015 4033. It is important that you make your complaint to the Ombudsman as soon as you receive our final response as there are time limits for the Ombudsman to look into complaints.

Yours sincerely

Name

Job Title

APPENDIX 3 – MANAGING COMPLAINTS TIMESCALES AND FLOWCHART

INCIDENT

Original Complaint	12 months from event or 12 months of becoming aware of a cause for complaint
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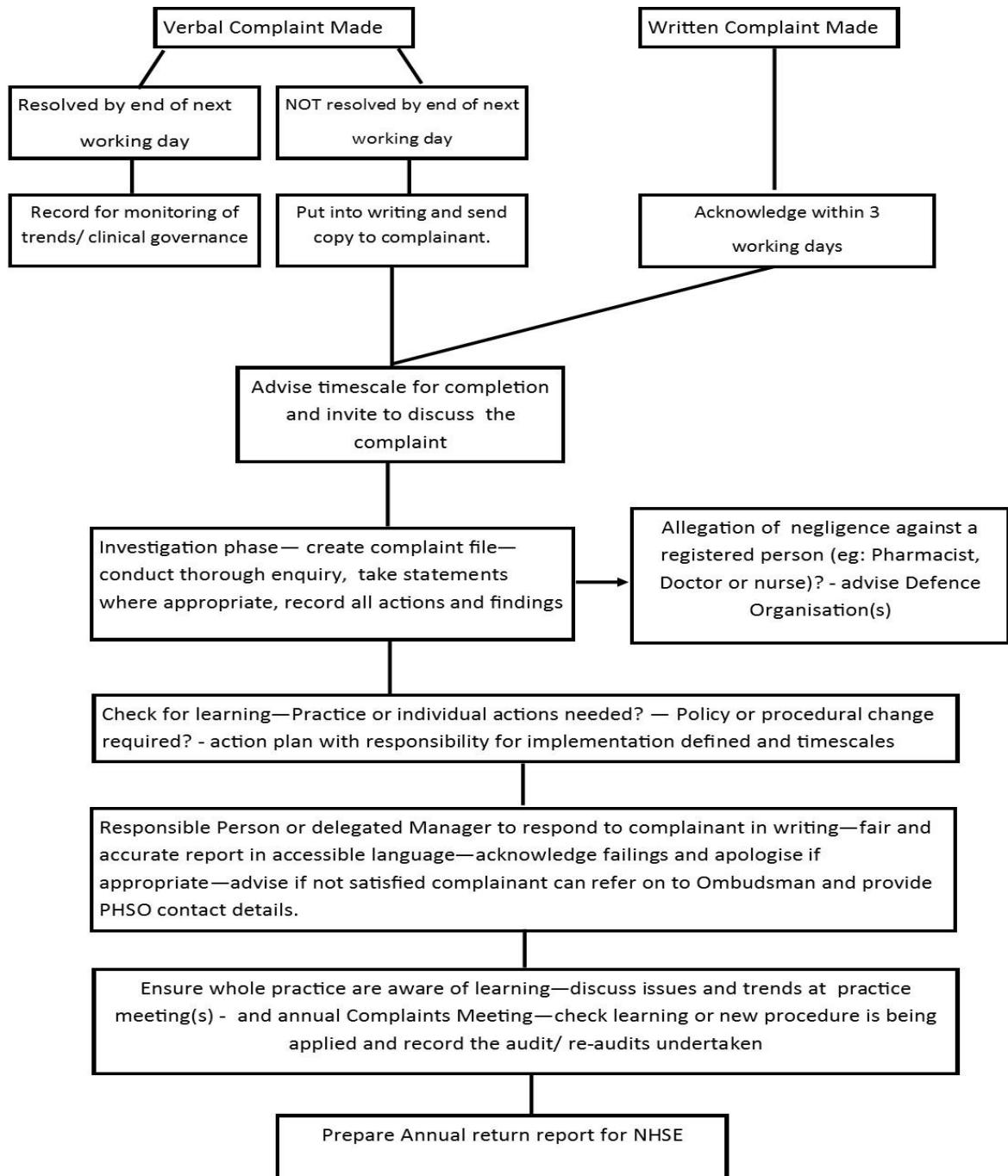
LOCAL RESOLUTION

Verbal complaint	Dealt with immediately or by the end of the next working day. If unresolved referred to the Governance and Quality Assurance Manager.
Acknowledgement	3 working days following the date on which the complaint is received.
Drafts Due	Drafts sent from services to Governance and Quality Assurance Manager no later than 15 working days following the date of the complaint
Final Quality Assurance Check	Days 15 - 20 Governance and Quality Assurance Manager checks drafts to ensure all concerns have been addressed and prepares the response for signing.
Full Response	Days 20 – 25 Chief Executive reviews final responses and approves for signing
Complainant to apply for Independent	25 working days following the date of the complaint or within agreed timescale with complainant
Review	Within 12 months of final NHC response

Independent Review

Acknowledgement	2 working days of receipt
Parliamentary and Health Service Ombudsman report	Complainant will be updated throughout the process

Managing Complaints Flowchart



APPENDIX 4 – PROCEDURE FOR MANAGING HABITUAL AND VEXATIOUS COMPLAINTS

Procedure for managing habitual and vexatious complainants

Introduction

Habitual and/or vexatious complainants, although they represent a small part of the complaints NHC receives, represent a particular problem in the resolution of complaints. The difficulty in handling such complainants involves a significant amount of time and resources and can be demoralising for staff.

Staff are trained to respond sensitively to the needs of all complainants, but there are times when there is nothing further that can be done to assist them or to rectify a real or perceived problem.

Purpose of this procedure

This procedure should only be used as a last resort and after all reasonable measures have been taken to try to resolve the complaints following NHC's policy and procedure.

The procedure is also designed to protect and support staff who are the subject of habitual and/or vexatious complaints and to maintain the integrity of the complaints procedure.

Definition of a habitual or vexatious complainant

Complainants may be considered to be habitual or vexatious where current or previous contact with them shows that they have met two or more (or are in serious breach of one) of the following criteria;

- Persisting in pursuing a complaint that has been fully and properly investigated and the NHS complaints procedure has now been exhausted
- The substance of a complaint is changed or a new issue is raised persistently or complainants seek to prolong contact by unreasonably raising further concerns or questions upon receipt of a response whilst the complaint is being dealt with. Care must be taken not to disregard new issues which differ significantly from the original complaint – these may need to be addressed as separate complaints.
- Complainants are unwilling to accept documented evidence of treatment given as being factual or deny receipt of an adequate response despite correspondence specifically answering their questions/concerns. This could also extend to complainants who do not

accept that facts can sometimes be difficult to verify after a lengthy period of time has elapsed since the incident referred to in the complaint.

- Complaints do not clearly identify the precise issues they wish to be investigated despite reasonable efforts to help them do so by NHC staff and where appropriate, ICAS or appropriate Advocacy Services; and/or where concerns identified are not within the remit of NHC to investigate.
- Complaints focus on a trivial matter to an extent that is out of proportion to its significance and continue to focus on this point. It should be recognised that determining what is trivial can be subjective and careful judgement must be used in applying the criteria.
- Physical violence has been used or threatened towards staff or their families/associates at any time. This will in itself cause personal contact with the complainant and/or their representative to be discontinued and the complaint will only be pursued through written communication. All such incidents should be documented and reported, as appropriate, to the police.
- Complainants have, in the course of pursuing a complaint, had an excessive number of contacts with NHC placing unreasonable demands on staff. Such contacts may be in person, by telephone, letter, fax or electronically. Discretion must be exercised in deciding how many contacts are required to qualify as excessive, using judgement based on specific circumstances of each individual case.
- Complainants have harassed or been abusive, including racist, sexist or homophobic abuse, or verbally aggressive on more than one occasion towards staff dealing with their complaint. If the nature of the harassment or aggressive behaviour is sufficiently serious, this could, in itself, be sufficient reason for classifying the complainant as vexatious. Staff must recognise that complainants may sometimes act out of character at times of stress, anxiety or distress and make reasonable allowances for this. All incidents of harassment or aggression must be documented and dated.
- Complainants are known to have electronically recorded meetings or conversations without the prior knowledge and consent of the other party involved. It may be necessary to explain to a complainant at the outset of any investigation into their complaint(s) that such behaviour is unacceptable and can, in some circumstances be illegal.
- Complainants have made defamatory comments about staff to the press
- Complainants display unreasonable demands or expectations and fail to accept that these may be unreasonable once a clear explanation is provided to them as to what constitutes an unreasonable demand (e.g. insisting on responses to complaints or enquiries being provided more urgently than is reasonable or recognised practice).

Options for dealing with habitual or vexatious complainants

When complainants have been identified as habitual vexatious, in accordance with the above criteria, the Chief Executive will decide what action to take. The Chief Executive will implement such action and notify complainants promptly and in writing the reason why they have been classified as habitual or vexatious and action to be taken.

This notification must be copied promptly for the information of others already involved in the complaints, a record must be kept, for future reference, of the reasons why a complainant has been classified as habitual or vexatious and action taken.

The Chief Executive may decide to deal with habitual or vexatious complainants in one of the following ways:

- Once it is clear that complainants meet any of the aforementioned criteria it may be appropriate to inform them in writing that they are at risk of being classified as habitual or vexatious. A copy of this procedure should be sent to them and they should be advised to take account of the criteria in any further dealings with NHC. In some cases it may be appropriate at this point to copy this notification to others involved in the complaint and suggest that complainants seek advice in taking their complaint further e.g. the Independent Complaints Advocacy Service.
- Try to resolve matters before invoking this procedure, and/or the sanctions detailed within it, by drawing up signed agreement with the complainant setting out a code of behaviour for the parties involved if NHC is to continue dealing with the complaint. If this agreement is breached consideration would then be given to implementing other actions as outlined below.
- Decline further contact with the complainant either in person, by telephone, fax, letter or electronically – or any combination of these – provided that one form of contact is maintained. Alternatively, further contact could be restricted to liaison through a third party.
- Inform complainants that in extreme circumstances NHC reserves the right to refer unreasonable or vexatious complaints to their solicitors and/or, if appropriate, the police.
- Temporarily suspend all contact with complainant(s), or investigation of a complaint, whilst seeking legal advice.

Withdrawing habitual or vexatious status

Once complainants have been classified as habitual or vexatious, there needs to be a mechanism for withdrawing this status if, for example, complainants subsequently demonstrate a more reasonable approach or if they submit a further complaint for which the normal complaints procedure would be appropriate.

Staff should have already used careful judgement and discretion in recommending or confirming habitual or vexatious status and similar judgement/discretion will be necessary when recommending that such status should be the case, discussions will be held with the Chief Executive and subject to his/her approval, normal contact with complainants and application of the NHS complaints procedures will be resumed.

Staff operational guidance for handling habitual or vexatious complainants

The following form of words – or a very close approximation – should be used by any member of NHC staff who intends to withdraw from a telephone conversation with a complainant. Grounds for doing so could be that the complainant has become unreasonable aggressive, abusive, insulting or threatening to the individual dealing with the call or in respect of other personnel. It should not be used to avoid dealing with a complainant’s legitimate questions/concerns which can sometimes be expressed extremely strongly. Careful judgement and discretion must be used in determining whether or not a complainant’s approach has become unreasonable. Attention is drawn to the fuller provisions sets out in the body of this procedure for handling habitual or vexatious complainants.

Form of words

“I am sorry but we have reached the point where your approach has become unreasonable and I have no alternative but to discontinue this conversation. Your complaint(s) will still be dealt with by NHC in accordance with the NHS complaints procedure. I am now going to terminate the call but wish to assure you that the situation will shortly be confirmed in writing to you.”

Follow up action

The incident should immediately be reported to the Governance and Quality Assurance Manager and agreement reached on the future methods of communication with the complainant together with any further action deemed necessary.