

Concerns and Formal Complaints Handling Policy

Northern, Eastern and Western Devon Clinical Commissioning Group

South Devon and Torbay Clinical Commissioning Group

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Version	Date	Comments (i.e. reviewed/amended/approved)
1.1	04/10/2017	Amended – New policy, combining previous CCG’s concerns and complaints policies
1.2	05/10/2017	Amended – Included links to both CCG’s webpage for Equality, Diversity & Inclusion policies
1.3	05/10/2017	Amended – Included Hall Healthwatch contact details
1.1	10/10/2017	Amended – changed template to joint CCG template

Both Commissioning Groups promote equality, diversity and human rights and is committed to ensuring that all people and communities it serves have access to the services we provide. In exercising the duty to address health inequalities, the CCG has made every effort to ensure this policy does not discriminate, directly or indirectly, against patients, employees, contractors or visitors sharing protected characteristics of: age; disability;

NHS organisations involved:

Northern, Eastern and Western Devon Clinical Commissioning Group
South Devon and Torbay Clinical Commissioning Group

gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion and belief; sex (gender); sexual orientation or those protected under the Health and Social Care Act 2012 and Human Rights legislation.

All CCG policies can be provided in large print or Braille formats; translations on request; language line interpreter services are available; and website users can use contrast, text sizing and audio tools if required. For any other assistance, please contact either CCG at NEW Devon CCG 01392 205205 or South Devon and Torbay CCG sdtccg@nhs.net or 01803 652500.

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1. Introduction

- 1.1 The purpose of this policy is to provide a consistent interpretation and clear guidance of the statutory duties set out within the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009 – Statutory Instrument 2009/309, and to conform with the NHS Department of Health Guidance and Regulations, and guidance from the Parliamentary and Health Service Ombudsman ensuring the management of complaints is clearly defined, embedded and understood by all organisations commissioned by the NHS Northern, Eastern and Western Devon Clinical Commissioning Group (NEW Devon CCG) and NHS South Devon and Torbay Clinical Commissioning Group. (SDT CCG) NEW Devon CCG and SDT CCG within this policy will be referred to as the CCG(S).
- 1.2 Both CCGs regularly review the recommendations set out from public inquiries, reviews and guidance on good handling of complaints to ensure the processes followed aim to commission safe, high quality care and treatment to meet the needs of the local population in the right place at the right time within our available resources.
- 1.3 The policy is to ensure that individuals, their families, carers, patient representatives or anyone using our services have their concerns and complaints heard, handled and investigated in confidence with impartiality and without it impacting on their current or future care. We believe that the individual should be at the centre of everything we do.
- 1.4 The role and responsibilities of the CCGs are described in the Health and Social Care Act 2012. These include receiving, investigating and replying to complaints and concerns received by patients, the public, service users, relatives and carers about services commissioned by the CCGs. There is a statutory obligation placed on all NHS organisations to provide a complaints service. It states that a complaint can either be raised with the service provider or the commissioning organisations. Members of the public contacting the CCGs will be offered the choice of either the service provider or the commissioners investigating their complaint.
- 1.5 Both CCGs commission a range of health services for the local population in Devon. Other services are commissioned nationally by NHS England principally specialised services and primary care services. This policy refers only to those services that are the responsibility of the CCGs.
- 1.6 We also acknowledge that some concerns and complaints received will involve a number of different health and social care organisations. We believe that the person giving the feedback has one experience and want to be assured that all departments and/or organisations involved in that care have worked together to ensure that any changes are made in a consistent and sustainable way and seeks to ensure an improved patient experience for others. When a complaint or informal feedback is received by the CCG, we will lead the co-ordination of a single response.

2. Definitions

- 2.1 For the purpose of this policy, the following definitions apply:
- **Patient:** The person whose care and treatment is the subject of the concern, complaint
 - **Complainant:** The person who is raising the complaint
 - **Client:** The person who has raised a concern
 - **Concern:** An expression of dissatisfaction from a user or an agency on their behalf.
 - **Complaint:** An expression of dissatisfaction from a user or agency on their behalf identifying a perceived issue or failing in the service NEW Devon CCG provides or commissions that requires a formal response in writing.
 - **Positive feedback:** This can be received from any member of the public. If the feedback is negative this may require NEW Devon CCG to follow up and provide a response.
 - **Central Team:** The CCGs has an in-house Complaints and Patient Advice team to handle any complaints, comments, compliments and concerns received by the CCG. NEW Devon CCG team is branded as Patient Advice and Complaints Team and SD&T CCG team is branded as Patient Experience Team.

3. Information Governance

- 3.1 Confidentiality will be maintained when handling a concern or formal complaint. The central team will keep all related records in a confidential and secure manner and in accordance with related ¹national and local policy e.g. Caldicott; it may be necessary to access clinical records and other information to ensure that an investigation into a complaint is managed effectively. Where this happens, the central team will clearly explain to people that information from their health record may need to be disclosed for the purposes of an investigation.
- 3.2 The central team will store all records of concerns and formal complaints on a secure database (Datix) and in accordance with data protection rules and regulations.
- 3.3 A consent form will be sent with an acknowledgement letter to the complainant for all formal complaints. It will detail which department of the CCG and/or the organisation the assigned case manager will make contact with in order to complete the investigation. Consent is necessary from the complainant or the person raising the formal complaint on their behalf, or in relation to a deceased person to enable other organisations to release information relevant to the complainant to the CCG in accordance with data protection rules and regulations.
- 3.4 There may be times when, for the sake of patient or public safety, it is necessary to breach confidentiality, for example in relation to child protection or adult safeguarding, if the person is posing a risk to themselves or others or is at risk

¹ <http://systems.hscic.gov.uk/infogov>

themselves due to the behaviours of others. Any such action will be taken with advice from the Information Governance team within the CCGs.

- 3.5 Any persons subject to, or involved in an investigation should be made aware that, unless legally exempt, the contents of any information held as part of an investigation may be subject to public disclosure under the NHS Code of Openness or the Freedom of Information Act 2000.
- 3.6 Staff should be aware that their reports and any covering letters or emails, will not be legally privileged (i.e. cannot be withheld) and may be disclosed to the complainant if requested. All communications must not include any personal remarks.
- 3.7 Organisations that the CCG's commission should ensure all information shared with the PACT is via secure means.

4. Equality and diversity

- 4.1 Both CCGs are firmly committed to the principles of equality and diversity and have considered the Human Rights Act 1998 and the Equality Act 2010 based approach when handling concerns and complaints in all areas of its work, both in the services they commissions and those it provides a service.
- 4.2 If English is not a person's first language, this policy and information about the process for raising a concern or formal complaint can be made available in a range of languages and easy read formats. For NEW Devon CCG please contact the Patient Advice and Complaints Team on 07392 267655 or email on pals.devon@nhs.net. For SDT CCG please contact the Patient Experience Team on 01803 652 578 or email patientfeedback.sdtccg@nhs.net.
- 4.3 Individuals and/or their representatives will be treated with dignity and respect when their concern or formal complaint is being dealt with. We will assure the person who is raising a concern or complaint will not prejudice the treatment and care provided, either at the time or in the future.
- 4.4 As well as capturing the purpose, principles and values of the NHS, the ²NHS Constitution brings together a number of rights, pledges and responsibilities for staff and individuals. These rights and responsibilities are the result of extensive discussions and consultations with staff, patients and the public.
- 4.5 We believe that we can learn from diverse cultures and different perspectives and that diversity will make us more effective in meeting the needs of all our population and stakeholders. We are committed to developing and maintaining an organisation in which differing ideas, abilities, backgrounds and needs are nurtured, encouraged and valued in line with our CCGs' ³Equality and Diversity Policies.

³ <https://www.newdevonccg.nhs.uk/information-for-patients/equality-diversity-and-inclusion-100158>
<http://www.southdevonandtorbayccg.nhs.uk/about-us/equality-and-diversity/Pages/workplace-equality-diversity.aspx>

5. Who can raise a concern or formal complaint?

- 5.1 Both CCGs recognise that people raise concerns or formal complaints for many different reasons. Individuals, or their representatives, do not set out to become complainants, so when they do express a concern, or raise a formal complaint, we acknowledge that it is usually a significant thing for them to do.
- 5.2 A concern or formal complaint may be made by a service user or any person affected by or likely to be affected by the action, omission or decision of the NHS body, independent provider or local authority that is the subject of the complaint.
- 5.3 A concern or formal complaint can be raised either with the organisation providing the service or to the organisation that commissions the service. Where a concern or complaint has already been investigated by a service provider and a full written response provided, the commission organisation will be unable to re-investigate the same complaint.
- 5.4 Where the person is unable to raise a concern or formal complaint themselves, the representative will need to have sufficient interest in their welfare, and be identified as the appropriate person to act on their behalf. In most cases this would be the patient's next of kin. In the case of a deceased patient, a copy of the patient's Will identifying the complainant as an Executor or Beneficiary, or Probate will be required, to ensure that they are entitled to information about the patient.
- 5.5 If someone, other than the patient or the person affected by the issues, raises a concern or formally complains on their behalf, the CCGs will need to satisfy themselves that the person affected has agreed to their information being shared with the person raising the concern or formal complaint. Where consent is not forthcoming, an investigation will still take place but only non-patient specific summary information will be shared.

6. Timeframe for raising a concern or formal complaint

- 6.1 Both CCGs will accept and investigate a concern or formal complaint that has been made within 12 months from the date the incident occurred, or within 12 months of the date of discovering the problem. There is discretion for the teams within both CCGs to extend this time limit where it would be unreasonable in the circumstances of a particular case for the concern or formal complaint to have been made earlier and where it is still possible to investigate the facts of the case effectively. Where it is decided not to investigate, the complainant has the right to raise this further with the Ombudsman.

7. Investigation timeframe of a formal complaint

- 7.1 There has been a change in the Local Authority Social Services and NHS Complaints (England) Regulations 2009 of the removal of the former requirement of 25 working days to respond to a formal complaint. The current requirement is to

resolve concerns and formal complaints in the most suitable and appropriate timeframe.

- 7.2 The CCGs will liaise with the complainant throughout the process of the complaint, confirming with the complainant the stages of the investigation:
- Send the acknowledgement letter to the complainant
 - Send the information investigation sheet and consent forms to complainant
 - Send the information investigation sheet to the organisation(s) to investigate and respond
 - Collect responses and write draft final response
 - Check to ensure all contributory departments/organisations are in agreement of the draft response letter
 - Arrange for the draft response to be quality check
 - Arrange for the final response to be agreed and signed
- 7.3 The recommended maximum timeframe for resolving a formal complaint is six months. Any formal complaint investigations that exceed this time must be communicated and agreed with the complainant. Complainants will be advised at this time of the new date that they will be expecting to see a final response.

8. Communication of concerns and formal complaints

- 8.1 Concerns and formal complaints raised to the CCGs will be led and carried out by the central teams who will endeavour to communicate with the complainants in their preferred manner. This may be by telephone, e-mail, a written letter, or a combination of all of these, or by meeting with them. It may need to be in a language other than English or in another format, for example, Braille. All formal complaints raised verbally will be required to be documented and returned to the complainant to agree factual accuracy and content prior to an investigation commencing.
- 8.2 All concerns and formal complaints are risk scored on receipt and those scored as high or very high will be notified to the relevant Patient Safety and Quality Manager and responsible Executive Lead.
- 8.4 As all concerns and complaints are centrally managed, all communication regarding concerns and formal complaints should be sent to that central team to ensure information regarding the clients/complainants enquiry is dealt with effectively and efficiently, ensuring the final response captures all known knowledge.
- 8.5 Should a Member of Parliament make a formal complaint behalf of their constituent, the correspondence will be handled in line with this Policy.

9. Management of concerns and formal complaints

- 9.1 All enquiries made the CCGs will be triaged and resolved in the most appropriate manner and in agreement with the client. All concerns and formal complaints are taken seriously and investigated thoroughly offering remedies that are fair and proportionate to the client's original concern or complaint. All types of feedback

received which suggests cause for concern will be investigated and responded to, to the same level as a formal complaint, even if the enquirer has not suggested this.

- 9.2 The central teams within the CCGs are responsible for acknowledging receipt of all concerns and formal complaints. Concerns received are instantly acted upon and can be resolved quickly. For formal complaints there is a national key performance indicator of three working days, which both CCG adheres to.
- 9.3 Each complainant will be assigned a named case manager which has been identified as best practice within the NHS England “Guide to good complaint handling for CCGs”.
- 9.4 The central teams within the CCGs are responsible for managing the process for all concerns and formal complaints but are not responsible for the investigation itself. If a concern or formal complaint is regarding a service the CCGs provide, the department of that service within the CCG will complete the investigation. In the case of a complaint being raised about a provider of services e.g. a hospital, contact would be made by central team requesting that the provider initiate an internal investigation and provide a response to central team.
- 9.5 In order for the central team to progress with a formal complaint, consent must be received from the complainant to allow permission for those completing the complaint investigation access to all relevant medical records and relevant information. For informal concerns, verbal consent is usually sufficient; however it may be that written consent is required.
- 9.6 Where a concern or complaint is regarding multiple agencies, the CCGs will facilitate discussions relating to who is the most appropriate organisation to take responsibility for co-coordinating the investigation process of a concern or formal complaint.
- 9.7 All complainants will be given an indication of timescales for dealing with the concern or formal complaint. In the case of concerns, this will be made verbally. Complainants raising a formal complaint will have an agreed timescale for their complaint investigation, following the completion of the complaint scope and signed consent received.
- 9.8 There may be occasions where the CCG might offer a face to face (local resolution) meeting if thought appropriate to the investigation.
- 9.9 Conciliation and mediation can often be very helpful in resolving disputes between healthcare providers and a person or their carer/s. Members within the central team with a mediation qualification can assist with issues and formal complaint resolution or, alternatively, they may feel it more appropriate to direct the parties to an external mediation service.

10. What the CCGs will do when managing a concern or formal complaint

- 10.1 When a concern or formal complaint is received the CCGs will provide an honest and open response to all the concerns/complaints received, ensuring the following:

- Actively listen to the experience of the complainant with regard to the services we provide or commission, with a view to resolving any issues, investigating concerns or formal complaints and identifying where service improvements are required;
- If the issue relates to the CCGs, invite the client/complainant to have a say in how the case is handled and listen to suggestions from the complainant on how things might be put right;
- Where appropriate agree to an informal resolution to speed up resolution for the complainant, or, if the case does progress as a formal complaint, the process will be explained and realistic outcomes discussed and agreed;
- Within the final response to the complainant we will provide them with a clear response to the concerns they raised and state whether we have upheld, not upheld or partly upheld their complaint, providing an unreserved apology where things have gone wrong;
- Provide a full and comprehensive explanation to the client/complainant or their representative, regarding what the CCGs will learn from that person's experience, with the reassurance that action will be taken where possible so that other people will have a better experience as a consequence of them raising their concerns;
- Consider whether redress is appropriate. This will be assessed on a case by case basis in line with the Ombudsman Principles for Remedy (2007) and the CCGs⁴ Redress Policy.

11. Closure of formal complaints

- 11.1 Closure of a formal complaint will take place once all investigations are complete and the draft response letter to the complainant is quality checked, ensuring all questions have been answered as outlined within the original investigation scope.
- 11.2 The case is then closed on the central team's electronic database (Datix) at the time when the final response letter is sent to the complainant. Should the complainant have any additional concerns the case will either be re-opened on Datix or when appropriate a new case be created.
- 11.3 If the complainant is dissatisfied with the final response from the commissioner, they have the right to take their formal complaint to the Parliamentary Health Service Ombudsman. Details on how to do this is provided within the complainant's final response letter.

⁴ <https://www.newdevonccg.nhs.uk/information-for-patients/patient-advice-and-complaints-100143>

12. Formal complaints not covered within this policy

- 12.1 In accordance to the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009 – Statutory Instrument 2009/309 this policy shall not be used for formal complaints regarding the following:
- Health organisations or local authorities to make a formal complaint about another health organisation or local authority;
 - It cannot be used by staff working within the CCGs or contracted to it to complain about employment, contractual or pension issues;
 - Complaints regarding privately funded healthcare;
 - A matter that has already been investigated under the complaints regulations;
 - Matters which are being or have been investigated by the Ombudsman;
 - A matter arising out of an alleged failure to comply with a data subject access request under the Data Protection Act 1998;
 - A matter arising out of an alleged failure to comply with a request for information under the Freedom of Information Act 2000.
- 12.2 In addition concerns or formal complaints made by patients relating to treatment funding /commissioning arrangements unless their case has been considered by the treatment funding review panel.
- 12.3 Concerns or formal complaints made by another organisation which are not made on behalf of a patient, these will be directed to the most appropriate senior manager.
- 12.4 Concerns or formal complaints about the non-disclosure of information requested under the Freedom of Information Act 2000 or the failure to comply with a data subject access request made under the Data Protection Act 1998. Applicants have the right to appeal directly to the Information Commissioner's Office.
- 12.5 If the complainant believes that they have suffered a loss as a result of the negligence of a health care professional, the CCGs will be unable to deal with this through the NHS complaints process. The complainant should seek independent legal advice regarding the care received to determine whether a clinical negligence claim would be a more appropriate course of action rather than through the NHS concerns and formal complaints process.
- 12.6 The central team will clearly communicate in writing the reasons for not dealing with the formal complaint raised and where possible and with consent redirect the person to the most appropriate organisation to deal with their concerns.

13. Persistent and unreasonable complainants

- 13.1 Persistent and unreasonable complainants as defined within the CCGs ⁵policy will have the opportunity to continue with their complaint investigation or raise new concerns and formal complaints; however the communication method may be restricted if agreed within the persistent and unreasonable member of the public

⁵ <https://www.newdevonccg.nhs.uk/information-for-patients/patient-advice-and-complaints-100143>

panel. All complainants that are defined as persistent and/or unreasonable will be informed.

14. Relationship with disciplinary and other processes

- 14.1 If a concern or formal complaint has identified wider patient safety issues with wider implications, for example unsafe clinical practice, the concern/formal complaint will be investigated in line with relevant processes and actioned as appropriate.
- 14.2 If a concern or formal complaint is part of an ongoing safeguarding, police or coroner investigation or legal action it will only continue as a formal complaint if it does not compromise the investigation.
- 14.3 The CCGs disciplinary procedures are to be kept separate from any concerns or formal complaints procedure. The purpose of the Concerns and Complaints Policy and associated procedures is to investigate concerns raised by patients and the public and provide a suitable explanation and apology as appropriate. Should a concern or formal complaint investigation identify any misconduct, this will be pursued in accordance with the relevant CCGs Human Resources policies.
- 14.4 If disciplinary procedures are instigated, the formal complaint investigation will continue to completion and run in parallel to any Human Resources process.

15. Analysis and feedback from concerns and formal complaints

- 15.1 The CCGs central team provides quarterly reports to Quality Committee. Data within these reports include:
- Opened and closed concerns and formal complaint cases;
 - Concerns and complaints received by risk score;
 - Emerging trends and themes;
 - Key performance indicators relating to compliance of the process;
 - Service improvement based on the outcomes and lessons learnt from concerns and formal complaint investigations; and
 - Any formal complaints considered by the Parliamentary Health Service Ombudsman (PHSO).
- 15.2 In addition the CCGs will complete a quarterly KO41 return to NHS Digital who monitors written hospital and community health service complaints received by the NHS.
- 15.3 The electronic database (Datix) illustrates live dashboard reports regarding all concerns and formal complaints to the Patient Safety Quality Managers within the CCG.
- 15.4 In line with the statutory guidance the CCGs Complaints Teams also publishes an annual report on their CCG's website. In addition it is the responsibility of the central team to ensure the complaints page on the CCG's website is reviewed quarterly,

ensuring the information is current and provides anonymous examples of complainant's outcomes.

16. Monitoring and assurance

- 16.1 Information gathered from concerns and formal complaints enables the CCGs to determine the standard of the services they provide and commission. It provides an opportunity for action to be taken to prevent similar issues/incidents recurring and to further improve patient experience.
- 16.2 As commissioners it is our responsibility to ensure that we provide and commission the highest quality care, treatment, level of services and facilities for the local community, within the available resources. To assist in this we will gather concerns and formal complaints data regarding the health services we commission to ensure service improvements happen and patients have a good experience.
- 16.3 In addition the central team will regularly audit the data it holds for compliance with process against national standards, internal standards and complainant's experience of the process, monitored via questionnaires sent to complainant with their agreement following the closure of a concern/formal complaint.
- 16.4 It is the responsibility of the central team to follow up any actions identified from the concern or formal complaint investigation that are outstanding at the time of which the case is closed on Datix. These outstanding actions are recorded and monitored on a module within Datix.

17. Patient information

- 17.1 The purpose of this section is to provide patients, their families and carers, additional information and contact numbers that may be helpful when raising a concern or complaint with the CCGs.

IHCA: The Independent Health Complaints Advocacy Service provides free help and support for people bringing formal complaints to the NHS. This is an independent and confidential service available in this area through Support, Empower, Advocate and Promote (SEAP)

SEAP: Torbay or Devon can be contacted using the following contact details:

- Telephone: 0300 343 5730
- Email: torbay@seap.org.uk
- Email: devon@seap.org.uk

Healthwatch: Healthwatch is the independent consumer champion. They have wide ranging powers. People are able to raise concerns directly with Healthwatch.

Healthwatch can be contacted using the following details:

- Telephone, Healthwatch Devon: 0800 520 0640
- Email, Healthwatch Devon: info@healthwatchtorbay.org.uk
- Telephone, Healthwatch Torbay: 0800 052 0029 Email,
- Healthwatch Torbay, info@healthwatchdevon.co.uk

- Telephone, Healthwatch Plymouth: 0800 923 0039
- Healthwatch Plymouth, info@healthwatchplymouth.co.uk

NHS England: Formal complaints about NHS GPs, dentists, pharmacists and opticians as well as specialised commissioning should be handled by NHS England; they can be contacted using the following details:

- Telephone: 0300 311 22 33
- Email: england.contactus@nhs.net

Parliamentary and Health Service Ombudsman (PHSO): The PHSO considers formal complaints when complainants are unhappy with the response to their complaints. Complainants should contact the PHSO within 12 months of the response. The Ombudsman can be contacted using the following details:

- Telephone: 0345 015 4033
- Email: phso.enquiries@ombudsman.org.uk
- Fax: 0300 061 4000
- Address: The Parliamentary and Health Service Ombudsman, Millbank Tower, Millbank, London, SW1P 4QP

Useful websites:

- Office of the Public Guardian (Power of Attorney) www.justice.gov.uk/about/opg
- Parliamentary and Health Ombudsman www.ombudsman.org.uk
- Mental Capacity Act www.justice.gov.uk/protecting-th-vulnerable/mental-capacity-act