

Complaints Policy

DRAFT

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1. Introduction

- 1.1. This policy has been created to ensure a consistent approach to complaints received by NHS Sussex Integrated Care Board (ICB). This policy will be applied uniformly across the ICB.
- 1.2. NHS Sussex ICB is committed to providing an accessible, equitable and effective means for people (and/or their representatives) to express their views about the services the ICB provide or are responsible for commissioning. If a person is unhappy about any matter reasonably connected with the exercise of the function of NHS Sussex ICB they are entitled to:
 - Make a complaint
 - Have it considered
 - Receive a response.
- 1.3. We aim to provide a complaints process which has easy access, is supportive and open, which results in a speedy, fair and, where possible, local resolution. Local resolution provides an opportunity for the complainant and the ICB to achieve fair resolution to the complaint and to put things right for complainants, as well as improving services as a result of feedback. Local resolution should be open, honest, fair, flexible and conciliatory.
- 1.4. The ICB aims to promote a culture which fosters openness and transparency for the benefit of all stakeholders, including staff, and in which all forms of feedback are listened to and acted upon. Such information is invaluable as a means of identifying problems, issues, and areas of good practice and, therefore, can be used as a means of improving services. The ICB recognises complaints as a valuable tool for improving the quality of health services.
- 1.5. The Patient Experience team, together with the other members of staff at the ICB will work closely with complainants to find a resolution to complaints and every opportunity will be taken to resolve complaints as close to the source as possible, through discussion and negotiation.

2. Purpose and objectives

- 2.1. This policy outlines the principles to be followed during the process for handling complaints generated by patients or their representatives and the public.
- 2.2. Enquiries about commissioning decisions that are of a general nature, for example from Members of Parliament, will be treated as enquiries and handled outside of this policy. This correspondence will be handled through a separate process and managed through the Chief Executive's Office.
- 2.3. All staff of the ICB are responsible for co-operating with the development and implementation of the Complaints policy as part of their normal duties and responsibilities. Temporary and agency staff, contractors and subcontractors will be expected to comply with the requirements of the Complaints policy.

- 2.4. Any concerns or complaints about a dentist, pharmacist or optician that cannot be resolved locally must be referred to NHS England (contact details in Appendix A).
- 2.5. Complaints about a GP that are of a clinical nature will be referred to NHS England. However, if the complaint is about a commissioning issue (for example the suspension of a GP list or the closure of a practice) then NHS Sussex ICB will investigate.
- 2.6. If a complaint contains elements of safeguarding the two processes (complaint and safeguarding investigation) would run in tandem.
- 2.7. There are a small number of complaints that are excluded from this policy. These include:
- A service commissioned by NHS England
 - A complaint made by an NHS body, independent provider, or local authority about the ICB or any matter relating to arrangements made by the ICB with that provider.
 - Safeguarding vulnerable adults or children
 - A complaint which has previously been investigated and closed under these or previous regulations
 - A complaint which is being, or has been, investigated by the Parliamentary and Health Service Ombudsman
 - Any matter relating to a ICB member of staff's contract of employment
 - Appeal against a ICB **decision** for Individual Funding Request (IFR) or Continuing Healthcare (CHC)
 - A complaint arising out of the alleged failure to comply with a data subject request under Data Protection legislation or a request for information under the Freedom of Information Act 2000
 - Correspondence from an MP
- 2.8. NHS Sussex ICB would like to assure complainants that any future treatment will not be adversely affected by making a complaint.
- 2.9. The Inquiry into the Mid Staffordshire NHS Foundation Trust Hospital (The Francis Report, 2013) identified that the "system" did not put the patient first.
- 2.10. A statutory requirement to implement Duty of Candour was introduced in October 2014 and this forms part of Care Quality Commission (CQC) registration requirements. This applies to certain patient safety incidents that occur during care provided under the NHS Standard Contract and result in moderate harm, severe harm, or death.
- 2.11. It is recognised that a culture of openness is essential in improving patient safety and the quality of health care systems:
- Open and effective communication with patients should begin at the start of their care and continue throughout their time within the healthcare system
 - Being Open when things go wrong is key to the partnership between patients and those who provide their care
 - Discussing what happened promptly can decrease the trauma felt and help patients cope more effectively with any after-effects of a patient safety incident

2.12. This policy has been developed to ensure that NHS Sussex ICB meet their obligation to patients, their representatives and the public by ensuring that all providers of care commissioned by the ICB implement the Being Open and the Duty of Candour guidance when a patient safety incident occurs and harm is caused to a patient.

3. Definitions

3.1. The Parliamentary and Health Service Ombudsmen (PHSO) definition of a complaint is:

- “People do not have to use the term ‘complaint’ themselves. For example, they may use terms such as ‘feedback’, ‘issue’, ‘concern’, ‘tell you about’ or ‘complaint’”

3.2. The current Local Authority Social Services and NHS Complaints (England) Regulations 2009 section 8(1)(c) do not require the ICB to include any complaint that is made verbally and is resolved ‘to the complainant’s satisfaction not later than the next working day after the day on which the complaint was made’. However, the ICB include these complaints in this procedure as they may be a very valuable source of learning for our organisations.

4. National and legislative context for this policy

4.1. The NHS Sussex ICB Complaints policy is written in accordance with the [Local Authority Social Services and NHS Complaints \(England\) Regulations 2009](#).

4.2. **The role of the Parliamentary and Health Service Ombudsman (PHSO):**

- The PHSO is completely independent of the NHS and of government and derives its powers from the [Health Service Commissioners Act 1993](#)
- The role of the PHSO includes the scrutiny of clinical and non-clinical complaints against GPs, NHS Dentists, NHS Opticians, Pharmacists, NHS ICBs and commissioners
- The PHSO will normally only consider complaints once the local resolution procedure has been exhausted. The PHSO is the final arbiter in the complaints process where it has not been possible to resolve concerns locally
- The ICB will provide every complainant with information regarding how to request a review by the PHSO and will co-operate fully with any investigation undertaken by the PHSO’s officers.

5. Roles and responsibilities

5.1. **Chief Executive Officer**

Under the [Local Authority Social Services and NHS Complaints \(England\) Regulations 2009](#), the ICB Chief Executive Officer is designated as the “responsible person” for ensuring compliance with the regulations, and in particular for ensuring that any action is taken if necessary in the light of the outcome of the complaint. The Chief Executive Officer has overall responsibility for ensuring that an effective complaints system is in place.

5.2. The **Chief Nursing Officer**, **Chief Medical Officer** and **Chief Delivery Officer** are responsible for complaints that fall within their areas of responsibility and are responsible for signing off complaints under delegated authority from the Chief Executive Officer.

- 5.3. The **Chief Nursing Officer** is responsible for ensuring that the ICB's legal duties in respect of complaints handling are adhered to and that there is an adequately resourced Patient Experience team in place to support complaints handling.
- 5.4. A person designated as **Patient Experience Lead** will be responsible for managing the procedures for handling and considering complaints in accordance with the regulations.
- 5.5. The **Patient Experience Committee** will receive reports on the number and nature of complaints in progress together with the outcomes and learning from closed complaints.
- 5.6. The **Patient Experience team** will liaise with the **Safeguarding team** if a complaint contains an allegation or suspicion of any safeguarding issue.
- 5.7. The **Patient Experience team** will liaise with the **Quality team** if a potential Serious Incident (SI) is involved.
- 5.8. **Chief Officers, Executive Managing Directors, Directors, Senior Managers and Managers** are responsible for:
- Ensuring that their staff comply with the ICB Complaints policy and procedures within their areas of responsibility and prioritise responding to complaints as an improvement and learning tool for their teams
 - Implementing and monitoring any actions within their designated area that are part of the learning process that are the outcome of a complaint
 - Ensuring that staff undertake all mandatory training related to complaints handling
 - Ensuring staff compliance with this document.
- 5.9. All **ICB Staff** whether permanent, temporary, contracted, or contractors are responsible for ensuring that they are aware of, and comply with, the requirements of this policy.

6. What can people complain about?

6.1 Complaints can be made:

- About any NHS service provided by the ICB or the commissioning of any service by the ICB on behalf of the population served
- About provision of the services that the ICB commission, either to the provider or the commissioner
- By someone, or on behalf of someone, who has received, is receiving, is affected by or likely to be affected by any service provided or commissioned by the ICB as above, or a patient or person affected or likely to be affected by the actions, omissions, or decisions of the ICB.

1) ICB commissioning decisions

This covers all the decisions the ICB make about where and how they will purchase health and social care services from NHS, private, independent, community and

voluntary sector providers. Complaints could be regarding a wide ranging decision taken on behalf of the whole population or a specific decision the ICB took about an individual patient's care. Enquiries about commissioning decisions that are of a general nature will be treated as an enquiry and handled outside this policy.

2) ICB appeals process

This covers the process by which a patient or their representative can ask for an appeals panel to consider issues they have about an ICB commissioning or funding decision. In cases regarding funding requests to the ICB Individual Review Panel or Continuing Healthcare Panel, a complaint can be made about the appeals panel process but **not** the decision. However, if the complaint investigation shows the process was flawed it may affect the panel's decision and an outcome of the complaint may be to review that decision.

An appeal against a funding decision must go through the appropriate review and / or appeal process.

3) ICB commissioned services

Under section 7 of the NHS Complaints Regulations, the person raising the complaint has a choice of complaining to the provider of the service, or to the commissioner of the service. If a complaint is made to the ICB, the ICB will determine how to handle the complaint in discussion with the person raising the complaint.

In some cases, it may be agreed between the person raising the complaint and the commissioner that the provider of the service is best placed to deal with the complaint. If so, the ICB will seek consent from the person raising the complaint. If that consent is given the ICB will forward the complaint to the provider who will treat the complaint as if it has been made to them in the first place; if this is the case, the ICB will request a copy of the response letter for quality and monitoring purposes. In other cases, the ICB may decide that it is best placed to handle the complaint itself. It will do so following the expectations set out in the Complaints Standards and in a way that is compatible with this procedure. The provider will be expected to co-operate fully in the investigation.

4) Exclusions

There are a small number of complaints that are excluded from this policy, these are detailed in section 2.7.

7. Complaints Investigation Procedure

7.1. Under complaints regulations 2009, a patient can choose to approach either the provider or the commissioner of a service to make a complaint, however they are unable to approach both. Each provider has its own procedure.

7.2. Complainants will be advised to contact the relevant provider directly or provide written consent for their complaint to be redirected to the relevant provider by the ICB.

7.3. The provider will be asked to acknowledge receipt of the complaint from the ICB and to carry out a full investigation according to their own complaint procedures.

7.4. Complaints will:

- Be acknowledged within three working days of receipt.
- The ICB will aim to provide a written response within a timeframe agreed with the complainant. If longer is required to ensure a full investigation can be completed, the extended timescale will be sought by agreement with the complainant.
- Upon receipt, all complaints will be logged onto the complaints system and provisionally triaged in accordance with seriousness.
- Where the complaint is deemed to be a Serious Incident (SI) then the Quality team must be notified and different timescales will need to be agreed to allow for an SI investigation, which is a process managed outside of this policy. Please refer to the Serious Incident policy for more information.

7.5. Acknowledgement Letters

- Acknowledgement letters will be issued within **three working days of receipt**. The acknowledgement letter will offer a direct point of contact to the complainant by giving the name of a member of the Patient Experience Team (PET).
- The PET is responsible for recording and assessing the complaint and sending for investigation to the relevant managers and staff members who can best respond, with the outcome of their investigation, into the issues raised. It may still be possible that early resolution may be attempted but this would be agreed with the complainant and depends entirely on the issue being raised.
- The acknowledgment letter will include information about how to contact Complaints Advocacy Services.
- The acknowledgement letter will advise the complainant that the ICB will aim to respond within a timeframe, dependent on the complexity of the complaint. The acknowledgement letter will advise that the ICB may seek a longer timescale in agreement with the complainant if the investigation is complex or the Investigating Officer requires more time to complete their enquiries.

7.6. Investigation of Complaint

- Complaints will be thoroughly investigated in a manner appropriate to resolving the issues speedily, efficiently, and appropriately within the agreed timeframe.
- The PET will distribute the complaints to the relevant senior managers within relevant service areas who are best placed to offer a response. Senior staff members will receive the complaint relevant to their area or care provided by staff members for which they are responsible.
- The NHS Complaints Regulations do not stipulate any timescale for complaints investigations and responses, the ICB aims to respond to all statutory complaints within 30 – 60 working days from formal acknowledgment of the complaint.
- The timeframe for response will be dependent on the complexity of the complaint, for example if it is being investigated with involvement of other providers and is a multipoint complaint, timescales will be negotiated with the complainant.

- **Where a complaint has been passed on to a provider to investigate, the target timeframes set out in that provider’s complaints policy and procedures will be adopted for the management of that complaint and complainants will be informed of these as part of the agreed timescale for response.**
- There may be times when extensions to investigation timeframes are required. Extensions should be obtained as soon as possible and not left to near the date of the agreed timescale.
- Valid reasons for an extension include:
 - Complexity – once an investigation commences it may become apparent that additional time is needed to undertake a thorough investigation.
 - Number and type of points raised by the complainant. Where there is a high number of concerns raised covering several areas, it may be necessary to grant an extension.
- Responses provided will be open, honest, and factual, referring where appropriate to best practice. Care will be taken to ensure the response answers all the points raised in the complaint and offer the response using clear language.
- If it is not possible to respond to an issue raised, it will be explained why this is the case.
- The response will advise the complainant of any changes to practice, development plans or training needs that have been identified following the complaint investigation.

7.7. The PHSO Principles for Good Complaint Handling are that organisations get the response right, with responses focused on the service user, and that organisations are open and accurate, fair, and proportionate in responses and that we put things right and seek continuous improvement.

8. Confidentiality

8.1. All ICB staff must be aware of their legal and ethical duty to protect the confidentiality of personal information. The legal requirements are set out in [Data Protection legislation](#) and the [Human Rights Act 1998](#). The [common law duty of confidentiality](#) must also be observed. The ICB have a duty of care to protect staff confidentiality when investigating complaints. Ethical guidance is provided by the respective professional bodies.

8.2. It may not be necessary to obtain the service user’s explicit consent to the use of their personal information to investigate a complaint. However, if the ICB need to share their details outside the ICB Patient Experience team (where relevant) it is good practice to explain to the service user that information from their health records may need to be disclosed to the people investigating the complaint, on a need-to-know basis for the purposes of investigating.

8.3. If the complainant objects to this, it must be explained to them that this could compromise the investigation and their hopes of a satisfactory outcome to the

complaint. The complainant's wishes will always be respected unless there is an overriding public interest in continuing with the matter. However, depending on the nature of the complaint, it may be possible to provide a generic response which eliminates the need to reveal the patient's personal details.

8.4. The duty of confidence 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 must be considered for disclosure and then only to those within the ICB (or their agents as specified in section 1 above) who have a demonstrable need to know in connection with the complaint investigation.

8.5. Third party information must not be disclosed to the complainant unless the person who provided the information has expressly consented to the disclosure.

8.6. Disclosure of information provided by a third party outside the ICB also requires the express consent of the third party. If the third-party objects, then it can only be disclosed where there is an overriding public interest in doing so. Third party is defined in relation to personal data as meaning any person other than:

- (a) The data subject
- (b) The data controller
- or
- (c) Any data processor or other person authorised to process data for the data controller or processor

9. Publicity

9.1. NHS Sussex ICB will ensure that the complaints process is well publicised locally and will make information available to the public on its arrangements for dealing with complaints and how further information can be obtained.

9.2. This means that complainants must be made aware of:

- Their right to complain
- All possible options for pursuing a complaint, and the types of help available (including advocacy and interpreters)
- The support mechanisms that are in place
- Their right to receive information in a suitable format to ensure they are not required to share it with others just to get it explained, wherever possible.

9.3. Information must also be made available about services and what to expect, the various stages involved in the complaints process and response targets. Independent support and advice must be available. Clear lines of communication are required to ensure complainants know who to communicate with during the lifetime of their complaint. The provision of information will improve attitudes and communication by staff as well as support and advice for complainants.

9.4. Information must:

- Be visible, accessible, and easily understood

- Conform to the Accessible Information Standard that the ICB have implemented
- Be available in other formats or languages as appropriate
- Be provided free of charge
- Outline the arrangements for handling complaints, how to contact complaints staff, the availability of support services, and what to do if the complainant remains dissatisfied with the outcome of the complaints process.
- It must be clear that future treatment will not be adversely affected by making a complaint.

10. Training

- 10.1. Relevant staff must be trained to deal with complaints. Appropriately trained staff will recognise the value of the complaints process and, as a result, will welcome complaints as a source of learning.
- 10.2. Staff have a responsibility to highlight training needs to their Line Managers. Line Managers, in turn, have a responsibility to ensure that training needs are met to enable the individual to function effectively in their role and the ICB has a responsibility to create an environment where learning can take place.
- 10.3. It is essential that staff recognise that their initial response can be crucial in establishing the confidence of the complainant.
- 10.4. Where ICB complaints mandatory training is available, this must be completed by staff.

11. Ensuring equity and fairness for complainants

- 11.1. Making a complaint does not mean that a patient, carer, member of the public or staff member will receive less care or that things will be made difficult for them within any aspect of the NHS.
- 11.2. Patients, carers, members of the public and staff members must also have their human rights respected at all times. No aspect of the handling of any complaint must prejudice their human rights.
- 11.3. For people who need language or signed interpreting or other forms of communication, this can be arranged. The ICB Complaints policy, along with all ICB policies, is assessed for its impact on any patients, carers, members of the public, communities and staff affected by discrimination under the nine protected characteristic groups set out in the section on Equality below.

12. Habitual complainants

- 12.1. It is recognised that barriers to communication and understanding from, for example, language barriers, learning disabilities, trauma, people with memory loss or dementia may be contributing factors to complainants appearing to be habitual complainants.
- 12.2. However, there are times where nothing further can reasonably be done to assist a

caller or complainant to rectify a real or perceived problem. On rare occasions, complainants may repeatedly contact Patient Experience Team, regarding the same issue, or become persistent in their contacts with the ICB. These may be classed as habitual complainants.

12.3. The difficulty in handling such contacts can place a strain on time and resources, while also causing undue stress on staff who may need support in difficult situations. Staff are trained to respond in a professional and helpful manner to the needs of all complainants and implementation of this policy would only occur in exceptional circumstances.

12.4. Please refer to Appendix B Procedure for Identifying and Managing Habitual Complainants for full details and guidance.

13. Communication with stakeholders

13.1. This policy was considered by the senior managers and heads of departments with responsibility for the investigation of complaints. The policy will be available on the staff Intranet and on the ICB websites.

14. Equality Impact Assessment

14.1. In applying this policy, the ICB will have due regard for the need to eliminate unlawful discrimination, promote equality of opportunity, and provide for good relations between people of diverse groups, in particular on the grounds of the following characteristics protected by the Equality Act (2010); age, disability, sex, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, and sexual orientation, in addition to offending background, trade union membership, or any other personal characteristic.

14.2. This policy has been reviewed and assessed as having a positive overall impact as it recognises the protected characteristics and provides various mechanisms to ensure equal access to the complaints process.

15. Monitoring compliance and effectiveness

15.1. Compliance with this policy will be informed by the complaints process and will be monitored through the complaints reporting systems. All complaints will be recorded on either the ICB database and complaint files maintained in line with the [NHS Records Management Code of Practice for Health and Social Care 2016](#).

15.2. Any formal action relating to staff non-compliance with this policy will be handled through the relevant HR procedures.

15.3. How the ICB respond to complaints will be reported to ICB Patient Experience Committee on a periodic basis and at least twice a year. This reporting should cover, as a minimum, the number of complaints made, the subject matter of those complaints, key performance indicators covering the ICB responses, and the learning

and actions taken in response to complaints received.

15.4. This policy will be reviewed every two years, or sooner if required. Where review is necessary due to legislative change, this will happen immediately.

APPENDIX A

Contact Details

1. NHS Sussex

Anybody wishing to initiate a formal complaint can do so either verbally or in writing (including by telephone or email) to NHS Sussex. Any complaints received by the NHS Sussex ICB will be forwarded on to the ICB Patient Experience Team.

The ICB Patient Experience Team's email address is: sxicb.complaints@nhs.net

2. NHS England

Any concerns or complaints about a GP, dentist, pharmacist, or optician that cannot be resolved locally with the practice manager must be referred to NHS England (NHSE).

Complaints about a GP that are of a clinical nature will be referred to NHSE as above. However, if the complaint is about a GP practice contractual issue, then the ICB will investigate.

England.contactus@nhs.net

Phone: 0300 311 2233

NHS England Customer Contact Centre

PO Box 16738

Redditch

B97 9PT

3. The Parliamentary and Health Service Ombudsman (PHSO)

Further information on the role and work of the PHSO is available from:

www.ombudsman.org.uk

Phone: 0345 015 4033

4. The Independent Health Complaints Advocacy Service (IHCAS)

The Independent Health Complaints Advocacy Service is a free, independent, confidential advocacy service that can help individuals to make a complaint about any aspect of their NHS care or treatment. This includes treatment in a private hospital or care home that is funded by the NHS.

Under the Mental Capacity Act 2005, in the event that a patient lacks capacity and does not have an appropriate nearest relative to act on their behalf, an IMHA (Independent Mental Health Advocate) can be allocated. Complainants may also receive support from specialist advocacy services or from the Citizens Advice Bureau.

i. Brighton and Hove

Locally this service is provided by POhWER.

POhWER can be contacted via the following contact details:

Phone: 0300 456 2370

Email: pohwer@pohwer.net

Web: <https://www.pohwer.net/brighton-and-hove>

ii. East Sussex

SEAP Advocacy is able to offer support through their self-help pack or through working with an Advocate. Contact details for SEAP Advocacy are:

Post: PO Box 375, Hastings, East Sussex, TN34 9HU

Phone: 0330 440 9000

Email: info@theadvocacypeople.org.uk

Website: <https://www.theadvocacypeople.org.uk/seap>

Text: 80800, starting message with PEOPLE

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iii. West Sussex

Healthwatch has been set up to give people a powerful voice locally and nationally. At a local level, Healthwatch West Sussex is there to help people who live in the county get the best out of their local health and social care services whether it's improving them today or helping to shape them for tomorrow.

The contact details for Healthwatch West Sussex Independent Health Complaints Advocacy Service are:

Post: PO Box 1343, Crawley, RH10 0QH

Phone: 0300 012 0122

Email: helpdesk@healthwatchwestsussex.co.uk

5. Independent Mental Health Advocate (IMHA)

Access to an IMHA is a statutory right for people detained under most sections of the Mental Health Act, subject to Guardianship or on a community treatment order (CTO). IMHAs are independent of mental health services and can help people get their opinions heard and make sure they know their rights under the law.

Patients should be informed of their right to access an IMHA. This is the responsibility of the person who oversees their care at the time.

i. Brighton and Hove

Mind in Brighton and Hove works to promote good mental health in the city and across Sussex. It seeks to empower people to lead a full life as part of their local community.

The contact details are:

www.mindcharity.co.uk

info@mindcharity.co.uk

Phone: 01273 66 69 50

ii. East Sussex

SEAP Hastings

Upper Ground Floor Aquila House

Breeds Place

Hastings

East Sussex. TN34 3UY

<https://www.theadvocacypeople.org.uk/seap>

info@seap.org.uk

Phone: 0330 440 9000

iii. West Sussex

Mind in West Sussex works to promote good mental health the across Sussex. It seeks to empower people to lead a full life as part of their local community.

The contact details are:

www.mindcharity.co.uk

info@mindcharity.co.uk

Phone: 01273 66 69 50

APPENDIX B

Procedure for Identifying and Managing Habitual Complainants

1. Introduction

1.1. It is recognised that barriers to communication and understanding resulting from issues such as language barriers, learning disabilities, and others may be contributing factors to complainants appearing to be vexatious.

1.2. This procedure could disproportionately impact on people with significant mental health conditions. It could also disproportionately impact people with memory loss or dementia who may repeatedly raise the same issue.

1.3. Staff will be trained to respond with patience and understanding to the needs of all complainants and vexatious individuals.

1.4. However, there are times when there is nothing further which can reasonably be done to assist them or to rectify a real or perceived problem.

1.5. The implementation of this procedure would, therefore, only occur in exceptional circumstances.

2. Purpose of this Procedure

2.1. All complaints from members of the public must be processed in accordance with the NHS Sussex ICB Complaints policy. During these processes, staff may have contact with a small number of people who absorb a disproportionate amount of resources for dealing with their issues.

2.2. The aim of this procedure is to identify those people who need additional support and ensure they receive this, whilst also identifying those people who might be considered to be habitual or vexatious.

2.3. In determining arrangements for handling such people, staff must ensure that:

- NHS Sussex ICB policies have been correctly implemented so far as possible and no material element of a person's issues has been overlooked
- The ICB appreciates that even habitual complainers or vexatious individuals may have issues which contain some genuine substance
- An equitable approach has been followed
- All ICB staff must be able to identify the stage at which a person has become a habitual complainer or vexatious individual
- All support needs have been met for complainants who may face barriers to communication or understanding as a result of their culture, language, a physical, sensory or learning disability or a mental health issue

Please note that judgment and discretion must be used in applying the criteria below to identify potential habitual complainers or vexatious individuals and in deciding what action to be taken in

specific cases. The procedure that follows is only to be implemented following careful consideration.

3. Definition of a Habitual Complainant

Complainants (and / or those acting on their behalf) may be deemed to be habitual where previous or current contact with them shows that they meet **TWO OR MORE** of the following criteria:

- Persist in pursuing a complaint or issue when the ICB complaints procedure has been fully and properly implemented and exhausted or when the ICB has made all reasonable efforts to address the issue being raised
- Change the substance of a complaint or continually raise new issues or seek to prolong contact by continually raising further concerns or questions on receipt of a response. (Care must be taken not to dismiss new issues which are significantly different from the original complaint. These must be treated as separate complaints)
- Are unwilling to accept documented evidence of treatment given as being factual such as drug records, manual or computer records, and nursing records
- Deny receipt of an adequate response in spite of correspondence specifically answering their questions
- Do not clearly identify the precise issues which they wish to be investigated or responded to, despite reasonable efforts of ICB staff and, where appropriate, the aid of advocacy services to help them specify their concerns
- Focus on a trivial matter to an extent that is out of proportion to its significance and continue to focus on this point. (It is recognised that determining what a “trivial” matter is can be subjective. Careful judgment must be used in applying this criterion)
- Have, in the course of the ICB addressing a registered complaint, placed unreasonable or excessive demands upon staff. Such contact may be in person or by telephone, letter, email or social media. 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
- Have harassed, threatened, or used actual physical violence, been personally abusive or verbally aggressive on more than one occasion towards staff, their families, or associates. This will cause personal contact with the complainant or individual and / or their representatives to be discontinued and any complaint will thereafter only be pursued through written communication. Staff must recognise that people may sometimes act out of character at times of stress, anxiety or distress and must make reasonable allowances for this. Similarly, behaviour may be perceived as unreasonable or aggressive as a result of a complainant or individual’s culture, language, physical, sensory or learning disability or mental health condition. Staff may check this with any clinicians treating the complainant or individual or with any advocates supporting them
- Reasonable and appropriate efforts must be taken to ensure that the communication needs of complainants or individuals are met so that they fully understand the complaints process and its outcomes. Staff must document all incidents of harassment on using the ICB incident reporting system.
- Have significantly disrupted, overly dominated, been rude, vexatious, or violent in meetings
- Have threatened to disrupt or be violent at a meeting

Please note: It is important that staff who deal with habitual complainants, or individuals whom they believe to be vexatious, must be able to provide evidence to this effect and therefore it is important to retain notes of conversations and correspondence.

4. Options for Dealing with Habitual Complainants and Vexatious Individuals

4.1. Where habitual complainers or vexatious individuals (and / or anyone acting on their behalf) have been identified as vexatious in accordance with the above criteria, the Chief Executive Officer (in consultation with the staff involved) will determine what action to take.

4.2. Staff must be able to show clearly that all appropriate support has been offered to complainants to ensure they have full understanding of the complaints process and its outcomes, and that a lack of understanding is not the cause of vexatious or habitual complaints.

4.3. Where cases include an advocacy service, a representative of that organisation must be involved in determining the action.

4.4. The **Chief Executive Officer** will implement such action and will notify individuals and complainants in writing of the reasons that they have been classified as “habitual” or “vexatious” and the action to be taken.

4.5. This notification may be copied for the information of others already involved in the case such as carers, advocates, practitioners, conciliators, ICAS, and Members of Parliament.

4.6. A record must be kept for future reference of the reasons why a person (and / or anyone acting on their behalf) has been classified as a habitual complainer or vexatious individual.

4.7. The Chief Executive Officer and member(s) of staff may decide to deal with complaints or issues in one or more of the following ways:

- Try to resolve matters, before invoking this procedure, by drawing up a signed “agreement” with the person (and if appropriate involving the relevant advocate / clinician in a two-way agreement) which sets out a code of behaviour for the parties involved if the ICB are to continue the complaints process with them. If these terms are contravened, consideration would then be given to implementing other action as indicated in this section
- Once it is clear that a person meets any two of the criteria in section 3 above, it may be appropriate to inform them (and / or anyone acting on their behalf) in writing that they may be classified as a habitual complainer or vexatious individual. This procedure must be shared with them, and they must be advised to take account of the criteria in any further dealings with the ICB
- Decline contact with the person either in person, by telephone, e-mail, fax, letter or any combination of these, provided that one form of contact is maintained. (If staff are to withdraw from a telephone conversation with the person the following statement may be used: “I’m sorry I am unable to deal with your call. I understand your issue is being dealt with by (name of staff member), and future contact with you will only be made in writing”
- Notify the person in writing that the ICB have responded fully to their issues and have tried to resolve them but there is nothing more to add and continuing contact on the matter will serve no useful purpose. The person must also be notified that the correspondence and contact is at an end and that further letters received or other

contacts will be acknowledged but not answered. 4.8. Inform the person that in extreme circumstances the NHS SUSSEX ICB s reserve the right to pass habitual complainers or vexatious individuals (and / or anyone acting on their behalf) to the ICB's solicitors or, ultimately, to the police (and has done so in the past).

4.9. Temporarily suspend all contact with the complainant or individual and the investigation of any complaint whilst seeking legal advice or guidance from relevant agencies.

4.10. Where the complainant or individual has a physical, sensory, learning or developmental disability or does not speak English, staff will need to ensure that any correspondence is sent in the appropriate formats and consider using interpreters where necessary.

5. Victims of Harassment

5.1. Where staff or members of the public have been assaulted, verbally abused or harassed the ICB will consider whether it is appropriate to report the facts to the police with a view to criminal prosecution.

6. Face-to-face Meetings with Habitual Complainers or Vexatious Individuals

6.1. Where it is necessary to meet with a habitual complainer or vexatious individual the staff member must:

- Ensure that the individual's needs are addressed if they have a physical, sensory, learning or developmental disability or do not speak English
- Meet them with a colleague
- Meet them at the ICB headquarters and liaise with the Facilities Management team to arrange security
- Ensure that they have the contact details of a senior manager on call
- Meet in a room with glass frontage and ensure people can see into the room
- Arrange the room so that the complainant is furthest from the door and the staff are nearest to the door
- If necessary, leave the door open
- If the situation becomes verbally aggressive call the senior manager on call
- If the situation becomes violent call security and the police.

7. Withdrawing Vexatious Status

7.1. Once habitual complainants or vexatious individuals (and / or anyone acting on their behalf) have been identified as such, there needs to be a mechanism for withdrawing this status at a later date. This could be appropriate if, for example, they subsequently demonstrate a more reasonable approach, or if they submit a further complaint for which the normal complaints procedures would appear appropriate.

7.2. As a general rule, habitual complainant and vexatious individual status should be reviewed by the Executive Complaints Panel every 12 months.

7.3. Staff must have used discretion in recommending habitual complainant or vexatious individual status at the outset and discretion must similarly be used in recommending that this status be withdrawn when appropriate.

7.4. Where this appears to be the case, discussion will be held with the Chief Executive Officer. Subject to their approval, contact with the person and / or application of the ICB complaints procedures will then be resumed.

7.5. Following implementation of this procedure, a review will be carried out by the Patient Experience Team with appropriate members of staff to ensure any learning from events can be taken forward.

APPENDIX C

Legislation

Accessible Information Standard: www.england.nhs.uk/ourwork/accessibleinfo/

Data Protection legislation: www.gov.uk/data-protection/

Equality Act 2010: www.legislation.gov.uk/ukpga/2010/15

www.equalityhumanrights.com/en/equality-act/equality-act-faqs

Freedom of Information Act 2000: www.legislation.gov.uk/ukpga/2000/36/contents

Health Service Commissioners Act 1993: www.legislation.gov.uk/ukpga/1993/46/contents

Human Rights Act 1998: www.legislation.gov.uk/ukpga/1998/42/contents

Mental Capacity Act 2005: www.legislation.gov.uk/ukpga/2005/9/contents

www.nhs.uk/conditions/social-care-and-support/mental-capacity/

Mental Health Act 1983: www.legislation.gov.uk/ukpga/1983/20/contents

www.nhs.uk/NHSEngland/AboutNHSservices/mental-health-services-explained/Pages/TheMentalHealthAct.aspx

Mental Health Act 2007: www.legislation.gov.uk/ukpga/2007/12/contents

National Health Service (Complaints) Regulations 2009.

www.legislation.gov.uk/uksi/2009/309/pdfs/uksi_20090309_en.pdf

NHS England

Assurance of Good Complaints Handling for Primary Care – a toolkit for commissioners: ccc-toolkit-primary-care.pdf (england.nhs.uk)

Assurance of Good Complaints Handling for Acute and Community Care – A toolkit for commissioners: ccc-toolkit-acute.pdf (england.nhs.uk)

Complaints cases subject to litigation, inquests and other serious investigations– renewed clarification of position:

[assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/314769/Complaints litigation clarification note March 2014.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/314769/Complaints_litigation_clarification_note_March_2014.pdf)

Learning from patient safety incidents:

<https://www.england.nhs.uk/patient-safety/patient-safety-improvement-programmes/>

Other Documents

Caldicott principles: [The Caldicott Principles - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

Citizens Advice Bureau: www.citizensadvice.org.uk/

The Common Law Duty of Confidentiality:

www.health-ni.gov.uk/articles/common-law-duty-confidentiality

Department of Health and Social Care - Listening, Responding, Improving – a guide to better customer care:

webarchive.nationalarchives.gov.uk/+www.dh.gov.uk/en/publicationsandstatistics/publications/publicationspolicyandguidance/dh_095408

Independent Mental Health Advocacy:

<https://www.theadvocacypeople.org.uk/seap>

SEAP (Support, Empower, Advocacy and Promote):

<https://www.theadvocacypeople.org.uk/seap>

Sussex Complaints Protocol for NHS ICBs, NHS Clinical Commissioning Groups and Social Services Departments: Joint working on complaints:

www.westsussex.gov.uk/media/3788/pan_sussex_joint_working_on_complaints.pdf

Ombudsman:

Parliamentary and Health Service Ombudsman (PHSO): www.ombudsman.org.uk/

Principles for Remedy: www.ombudsman.org.uk/about-us/our-principles/principles-remedy

Principles of Good Complaint Handling:

www.ombudsman.org.uk/about-us/our-principles/principles-good-complaint-handling

My Expectations for Raising Concerns and Complaints. Published jointly by the Parliamentary and Health Service Ombudsman, Healthwatch England, and Local Government Ombudsman:

www.ombudsman.org.uk/publications/my-expectations-raising-concerns-and-complaints