

Complaints Policy

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Implementation Plan

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Dissemination:	<p>Staff can access this document via the website and will be notified of new / revised versions via the staff briefing.</p> <p>This document will be included in the organisation's Publication Scheme in compliance with the Freedom of Information Act 2000.</p>
Training:	<p>The following training will be provided to make sure compliance with this document is understood:</p> <ul style="list-style-type: none"> ▪ Role specific training will be provided to the Complaints & Freedom of Information Team including refresher training. ▪ Corporate induction programme.
Monitoring:	<p>Monitoring and compliance of this document will be carried out via:</p> <ul style="list-style-type: none"> ▪ Monthly, quarterly and annual reports to evidence Key Performance Indicators (KPIs) have been met.
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Equality, Diversity and Privacy:	<p>Appendix 1 - Equality Impact Assessment Appendix 2 - Data Protection Impact Assessment</p>
Associated Documents:	<p>The following documents must be read in conjunction with this document:</p> <ul style="list-style-type: none"> ▪ Information Governance Policy ▪ Records Management and Information Lifecycle Policy ▪ Safeguarding Policy
References:	<p>The following articles were accessed and used to inform the development of this document:</p> <ul style="list-style-type: none"> ▪ The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009 ▪ The NHS Constitution for England ▪ Caldicott Guidelines ▪ Gillick Competence & Fraser Guidelines ▪ Freedom of Information Act 2000 ▪ Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry Executive Summary February 2013 ▪ The Data Protection Act 2018 ▪ Records Management – Code of Practice 2021 ▪ NHS England Violence Prevention & Reduction Standard 2020

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1.0 Introduction

- 1.1 NHS Bedfordshire, Luton and Milton Keynes Integrated Care Board (ICB) aims to ensure robust governance through its formal written procedural documents, such as this document, which communicate standard organisational ways of working. These documents help clarify operational requirements and consistency within day-to-day practice. They can improve the quality of work, increase the successful achievement of objectives and support patient safety, quality and experience. The ICB aims to ensure its procedural documents are user friendly, up-to-date and easily accessible.
- 1.2 The ICB must design and implement procedural documents that meet the diverse needs of our service and workforce, ensuring that none is placed at a disadvantage over others, in accordance with the Equality Act 2010. The Equality Impact Assessment initial screening, which was used to determine the potential impact this policy might have with respect to the individual protected characteristics is incorporated at Appendix 1.
- 1.3 A Data Protection Impact Assessment is a process which helps assess privacy risks to individuals in the collection, use and disclosure of personal information. The Data Protection Impact Assessment initial screening, which was used to determine the potential impact this policy might have with respect to an individual's privacy is incorporated at Appendix 2.
- 1.4 This document outlines the ICB's commitment to dealing with complaints and how we manage, respond to, and learn from complaints, and in doing so meeting the requirements of the regulatory bodies and The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009.

2.0 Scope

- 2.1 This policy applies, as appropriate, to the following relevant persons:
- All ICB employees
 - All Members of the Board of the Integrated Care Board (including Participants)
 - All NHS, but non-ICB employees when serving on a joint committee / Board level committee or sub-committee with the ICB or when involved in a joint procurement / commissioning / decision
 - All non-NHS employees, for example, Local Authority staff when serving on a joint committee / Board level committee or sub-committee with the ICB or when involved in a joint procurement / commissioning / decision
 - All voluntary individuals, for example, patient or public representatives or residents who serve as members of ICB Board level committees or sub-committee or are regular Participants.
- 2.2 Complaints relating to dentists, pharmacy or opticians should be directed to that service in the first instance or to NHS England, PO Box 16738, Redditch B97 9PT, telephone 0300 311 2233, email england.contactus@nhs.net.

2.3 The following complaints will **not** be dealt with under the NHS Complaints Regulations 2009:

- A complaint made by any NHS organisation or private or independent provider or responsible body.
- A complaint made by an employee about any matter relating to their employment.
- A complaint where the subject matter has previously been investigated under NHS Regulations.
- A complaint which is made and resolved to the enquirer's satisfaction in one working day.
- A complaint which is being or has been investigated by the Parliamentary and Health Service Ombudsman.
- A complaint arising from an NHS body's alleged failure to comply with a request for information under the Freedom of Information Act 2000.
- Where criminal proceedings have been commenced in relation to the complaint where it may prejudice the proceedings.

2.4 All subject access requests (SAR) and Access to Health Records requests must be directed to the ICB's Information Governance Team.

3.0 Definitions

3.1 What is a complaint?

A complaint is an expression of dissatisfaction about an act, omission, or decision by the ICB in relation to treatment, attitude or other influences which directly or indirectly affect the patient and requires a response.

3.2 Who can complain?

Anyone can complain (including the patient, child/young person, family member, carer, friend, MP) if they are or are likely to be affected by the ICB's action, omission, decision. A person can complain on behalf of the patient if the patient:

- Has died
- Is a child
- Cannot make the complaint themselves due to lack of physical or mental capacity
- Has consented for the person to act on their behalf (see Information Governance Policy).

3.2.1 A child means an individual who has not attained the age of 18. A parent/guardian can make a complaint on behalf of a child providing the child gives permission. The decision as to whether the child is capable of making a complaint or giving permission is assessed on an individual basis and in line with 'Gillick Competency and Fraser Guidelines'.

3.3 Who investigates?

A complaint must follow the NHS Complaints process and be investigated by the organisation directly involved in the complaint. The ICB can act as co-ordinator/facilitator for complex investigations (for example when more than one organisation is involved).

3.4 Timeframe for a complaint:

Complaints can be made up to **twelve months** from the date on which the subject of the complaint came to the notice of the enquirer. However, if appropriate and practical, the issues can be reviewed with the service in the interest of lessons learned.

3.5 Confidentiality:

- Complaints will be handled confidentially in accordance with the ICB's Information Governance Policies
- Complaint records will be kept separate from any medical records
- Only staff directly involved in the investigation will have access to the complaint documents.

4.0 Policy Statement

4.1 The ICB is committed to meeting the requirements of the regulatory bodies and NHS Complaints Regulations.

4.2 The ICB will treat complaints seriously and ensure that complaints, concerns, and enquiries raised by patients, relatives, carers and MPs are properly investigated in an unbiased, non-judgmental, transparent, timely and appropriate manner, and the outcome of any investigation, along with any resulting actions, will be shared with the enquirer.

4.3 The purpose is to implement processes to deliver the six principles of good complaints handling as set out by the Parliamentary & Health Service Ombudsman (PHSO):

- Getting it right
- Being patient focused
- Being open and accountable
- Acting fairly and proportionately
- Putting things right
- Seeking continuous improvement.

4.4 The complaint investigation should:

- Clearly establish what will be investigated
- Be open and transparent and written in plain English
- Be evidenced-based
- Be logical, rational and sympathetic
- Achieve a resolution
- Provide feedback and lessons learned to guide change and improvement.

- 4.5 The enquirer should:
- Receive an acknowledgement within three working days of the complaint being received by the ICB
 - Be supported throughout the investigation and offered advocacy support if appropriate
 - Be provided with a timeframe for the investigation to be completed
 - Be updated about any delays
 - Have opportunities to feedback
 - Experience no adverse effect from making a complaint
 - Receive correspondence in their preferred format
 - Receive a comprehensive report containing the outcome of the investigation, any actions arising, feedback and improvements to service/lesson learned, and apology, if appropriate
 - Be offered a meeting at any time during the investigation as part of the resolution
 - Have the ability to withdraw the complaint at any time.

5.0 Roles and Responsibilities

5.1 The following individuals have specific responsibilities in relation to this policy:

5.2 Chief of System Assurance & Corporate Services

Delegated responsibility from the Chief Executive Officer to ensure compliance with the requirements of the NHS Complaint Regulations.

5.3 Executive Directors

- Responsible for reviewing and approving all correspondence and investigations relating to complaints and final sign off
- Considering emerging themes and learning from complaints within their sphere of responsibility
- Identifying improvements as a result of complaints, feedback and concerns
- Being aware of complaint numbers and trends and taking proactive action where relevant.

5.4 Complaints & FOI Manager

- Managing the process of handling complaints, feedback and concerns
- Managing the resolution of complaints and concerns, including attending local resolution meetings when appropriate
- Managing and co-ordinating multi-organisation complaints
- Providing clear, accurate reports for Committees, Groups and Directorates for audit and safety compliance
- Ensuring national reports and compliance are completed in a timely manner
- Managing formal complaints and PHSO cases.

5.5 All Staff

- Where appropriate to do so, resolving the issues at source
- Being open and candid about issues raised
- Being part of service improvements through complaints.

6.0 Processes and Procedures

The Complaints & FOI Team have controls in place for the management and processing of complaints, feedback and concerns. These operating procedures are based on the requirements of the NHS Regulations, which are detailed in this section.

6.1 Complaint Process

- All complaints and enquiries must be acknowledged within **three working days**
- All complaints **must** be forward to blmkicb.contactus@nhs.net so that the acknowledgement can be completed within the timeframe unless the issues are resolved to the enquirer's satisfaction the same working day
- The Complaints & FOI Team will record all complaints and enquiries and liaise with the enquirer to agree the investigation timeframe and desired outcome.

6.2 Acknowledgment

- The Complaints & FOI Team will record the complaint and assign a unique reference number
- All correspondence will be saved on the shared drive with the enquirer's name and reference number
- The acknowledgement will be sent using the preferred method of communication
- If the complaint involves other organisations, consent will be requested at this stage and, if necessary to complete the investigation, the name, date of birth, NHS number and address of the patient will be requested – other information (GP practice, other organisations etc) will also be requested
- The team's contact details will be provided and a summary about what will happen and the expected timeframes.

6.3 Consent

- Written consent should be requested from the patient for all patient identifiable information sharing
- Occasionally a 'best interest' decision to share patient information may be made but this must be clearly documented and may only be undertaken with the approval of the Chief Medical Officer, as Caldicott Guardian
- If the patient is deceased, the individual making the complaint must demonstrate that they had sufficient interest in the patient's welfare to make the complaint (in legal terms this is usually defined as someone having a legal right to have a claim in the deceased estate)
- If there are concerns about the patient's capacity to consent (i.e., if the patient is too ill or otherwise incapacitated) this should be discussed with the Caldicott Guardian, and guidance taken from the Mental Capacity Act 2000

- When an MP or Councillor makes a complaint on behalf of a constituent, written consent will be needed if patient identifiable data is requested/shared with another organisation
- There may be circumstances where patient consent is not required (it may be beneficial to consult the Caldicott Guardian for these cases), for example:
 - when not revealing the information would be breaking the law
 - where there is a risk of harm to an individual
 - information is requested by HM Coroner, a Court or a Tribunal
 - there are reasonable grounds to suspect a safeguarding issue
- Where a person is transgender, care should be taken not to refer to this in any correspondence or communications unless the person has consented. Similarly, if a person has transitioned or is presenting in a different gender that they were assigned at birth, care should be taken not to refer to the gender that they were assigned at birth and to ascertain how the person prefers to be addressed.

6.4 Third party making a complaint

The following information must be provided by the third party before information is released:

- Name, address and contact details of the person making the complaint and their relationship to the patient
- The patient's name, address, date of birth and NHS number (if known); at least three of these points of identity will be requested
- Patient's signed consent for the third party to act on their behalf or proof of authority to do so (for example, lasting power of attorney for health, executor of the estate).

6.5 How to complain:

- In writing, by contacting the 'Contact Us' email blmkicb.contactus@nhs.net or telephone 0800 148 8890
- In writing to the Governance & Compliance Team, 3rd Floor, Arndale House, The Mall, Luton, LU1 2LJ
- The complaint should be made in writing and include dates and times, people and services involved, what happened, and importantly what resolution the complaint would like (if the enquirer is unable to write or needs additional support, they will be signposted to the NHS Advocacy Service).

6.6 Advocacy

If the enquirer needs advocacy support, the relevant contact details should be provided: POHWER at www.pohwer.net email: pohwer@pohwer.net telephone: 0300 456 2370.

6.7 Investigation

- Ascertain which organisation/service/division would be best placed to resolve the issues raised and forward the relevant details to the known contact

- Provide a summary of the issues and agreed timeframe, clearly advising what information is needed
- Update the status of the case and review this regularly to remind the investigators of the timeframe and to keep the enquirer in contact with how the investigation is progressing and if any delays are likely.

6.8 Reporting and Response

- Ensure all questions have been answered as candidly as possible and contain information in plain English
- Draft a response letter and forward to the investigation lead and Executive Director to review, approve and sign
- Forward the letter and any enclosures to the enquirer.

6.9 Outstanding Issues

- Occasionally the enquirer may come back with comments about the response and seek further information. If this is a new subject, then a new case and reference will need to be opened and the enquirer informed. If questions have not been answered completely the case will be re-opened and completed
- If the case has been appropriately investigated and responded to, the enquirer can be offered a local resolution meeting to address points that are unclear
- After all possibilities have been investigated and the enquirer remains unsatisfied, they should be signposted to:
The Parliamentary and Health Service Ombudsman for England, Millbank Tower,
Millbank, London SW1P 4QP
Telephone: 0345 015 4033
email phso.enquiries@ombudsman.org.uk
webpages: www.ombudsman.org.uk

6.10 Record Keeping

- Records of complaints will be retained for eight years

6.11 Learning from Complaints

- Every opportunity will be taken by the ICB to learn from complaints and to use the experience to ensure the events do not recur
- Where actions have been identified following the investigation of a complaint, the investigator will prepare and agree a robust action plan with a timeframe for implementation
- Learning from complaints will be included in complaint reports and reviews.

6.12 Zero Tolerance

- This guidance is to tackle the increasing problem of violence against staff working in the NHS and ensures staff have a right to work without fear of being attacked or abused

- The ICB employs a zero-tolerance approach to aggression, abuse, violence, vexatious or anti-social behaviour towards staff. Such behaviour or the use of inappropriate words causing distress and/or constituting harassment will not be tolerated, and could lead, in extreme cases, to police involvement
- Some examples are, offensive language, verbal abuse and swearing, racist comments, loud and intrusive conversation, unwanted or abusive remarks, negative, malicious or stereotypical comments, brandishing of objects or weapons, threats or risk of injury, intimidation, stalking, unreasonable behaviour and non-cooperation (this list is not definitive and other matters and events can be considered)
- A standard sentence that can be used in a letter or email is: “The ICB operates a zero-tolerance approach towards anti-social behaviour and, if this persists, we will take action. The safety of staff is always paramount, and staff have a right to work without fear of being attacked either physically or verbally.”
- A telephone script that can be used is: “Caller, I must ask you to refrain from using such language/behaviour otherwise I will need to end this call”. If the language/behaviour persist repeat the sentence and end the call with no further conversation. A summary of the conversation must be recorded in the complaint folder.

6.13 Persistent & Unreasonable Contact

6.13.1 This policy covers all contacts, enquiries, and complaints. It is intended for use only as a last resort and after all reasonable measures have been taken to try and resolve the issue at hand. It is important to ensure that the process is fair, and best interests have been taken into consideration.

6.13.2 Complaints from people experiencing a psychotic episode may be about a person's state of mind rather than an actual experience. These cases will be escalated to the relevant team/service to advise on how to proceed.

6.13.3 There is no simple definition of unreasonable behaviour, examples may include:

- Persistence in pursuing issues when procedures have been fully and properly implemented and exhausted
- Do not clearly identify the issues they wish to be investigated despite reasonable efforts by staff and, where appropriate, an independent advocacy service
- Make unreasonable or excessive demands and fail to accept that these may be unreasonable
- Focus on a ‘trivial’ matter out of proportion to its significance - it should be recognised that defining ‘trivial’ is subjective and careful judgment must be applied and the rationale recorded
- Change the principal of a complaint or prolong contact by raising further issues in relation to the original complaint
- Take up a disproportionate amount of time and resources
- Threaten or use physical violence
- Harassment or abusive/verbal aggression on more than one occasion (this may include written abuse, e.g., emails)

- Repeatedly focus on conspiracy theories and will not accept documented evidence as being factual
- Make excessive telephone calls or emails/letters.

6.13.4 Before implementing contact restrictions, the following must be taken into consideration:

- Ensure all issues have been dealt with appropriately and any actions assigned to the relevant person and there is a clear understanding of timeframes, responsibility, and reporting
- Evidence that the enquirer has been kept up-to-date and all communications recorded appropriately
- Any new or significant concerns have been identified and processed separately
- The circumstances (physical and/or mental health conditions may explain difficult behaviour), including impact of bereavement, quality of life or life expectancy
- If appropriate, a local resolution meeting can be offered
- If multiple organisations are involved, ensure responses have been provided by all
- Consider whether an advocate may be helpful.

6.13.5 The decision about when a persons' contact is unreasonable or persistent should be made by the Executive Director and Complaints & FOI Manager, who will inform the enquirer in writing about the decision and set out the ground rules, which could include the following:

- The agreed method of communicating (usually email or letter) and the number allowed over a certain period
- All contact to be made with a named member of staff (single point of contact)
- Agree the timeframe to respond
- Advise that future correspondence will be read and filed, but not acknowledged unless a new issue arises, and abusive correspondence will not be responded to
- Refer to the 'Zero-Tolerance' guidance in this policy (section 6.12).

6.13.6 All relevant staff should be informed of the decision so that there is a consistent and co-ordinated approach across the organisation. Review of the contact restrictions should take place at six monthly intervals.

6.13.7 Consideration should be given if the enquirer persists or escalates their unacceptable behaviour and the impact this has on staff. Further actions, such as reporting the matter to the police, taking legal action, or using the Health and Safety Procedures may be considered.

6.14 Adult Safeguarding and Child Protection

6.14.1 Occasionally a contact may be received that requires escalating to the Safeguarding Team in the best interest of the enquirer and/or patient. In this event the Safeguarding Policy and Procedures should be followed.

6.14.2 It is recognised that there may be circumstances in which information disclosure is not in the best interest of the patient, in these circumstances, the case will be escalated in line with the ICB's Safeguarding Policies and procedures.

6.15 Fraud

Any allegations of fraud or financial misconduct will be referred to the National Fraud Reporting at NHS Protect: www.reportnhsfraud.nhs.uk.

6.16 Media

Any media involvement will be directed to the ICB's Communication and Engagement Team.

**Appendix 1 - Equality Impact Assessment Initial
Screening**

Please answer the questions against each of the protected characteristic and inclusion health groups. If there are significant impacts and issues identified a full Equality / Quality Impact Assessment (EQIA) must be undertaken. It is against the law to discriminate against someone because of these protected characteristics. For support and advice on undertaking EQIAs please contact: agcsu.equalities@nhs.net

Name of Policy:	Complaints Policy
Date of assessment:	01-02-2022
Screening undertaken by:	Interim Complaints & Freedom of Information Manager

Protected characteristic and inclusion health groups. Find out more about the Equality Act 2010, which provides the legal framework to tackle disadvantage and discrimination: https://www.equalityhumanrights.com/en/equality-act/protected-characteristics	Could the policy create a disadvantage for some groups in application or access? (Give brief summary)	If Yes - are there any mechanisms already in place to mitigate the potential adverse impacts identified? If not, please detail additional actions that could help. If this is not possible, please explain why
Age A person belonging to a particular age (for example 32 year olds) or range of ages (for example 18 to 30 year olds).	no	
Disability A person has a disability if she or he has a physical or mental impairment which has a substantial and long-term adverse effect on that person's ability to carry out normal day-to-day activities.	no	
Gender reassignment The process of transitioning from one gender to another.	no	
Marriage and civil partnership Marriage is a union between a man and a woman or between a same-sex couple. Same-sex couples can also have their relationships legally recognised as 'civil partnerships'.	no	
Pregnancy and maternity Pregnancy is the condition of being pregnant or expecting a baby. Maternity refers to the period after the birth and is linked to maternity leave in the employment context. In the non-work context, protection against maternity discrimination is for 26 weeks after giving birth, and this	no	

includes treating a woman unfavourably because she is breastfeeding.		
Race Refers to the protected characteristic of race. It refers to a group of people defined by their race, colour and nationality (including citizenship) ethnic or national origins.	no	
Religion or belief Religion refers to any religion, including a lack of religion. Belief refers to any religious or philosophical belief and includes a lack of belief. Generally, a belief should affect your life choices or the way you live for it to be included in the definition.	no	
Sex A man or a woman.	no	
Sexual orientation Whether a person's sexual attraction is towards their own sex, the opposite sex, to both sexes or none.	no	
Carers Individuals within the ICB which may have carer responsibilities.	no	
Please summarise the improvements which this policy offers compared to the previous version or position.		
This policy includes reference to transgender people and the need for sensitivity when managing their cases. Guidelines around zero-tolerance for staff and service users, and guidance for persistent/unreasonable contact.		
Has potential disadvantage for some groups been identified which require mitigation?		
No		

Appendix 2 - Data Protection Impact Assessment Initial Screening

Data protection is the fair and proper use of information about people. Before completing this form, please refer to the Data Protection Impact Assessment (DPIA) Guidance in the Information Governance (IG) section on the staff Intranet or contact the Data Protection Officer for support via blmkicb.ig@nhs.net

A DPIA is a process to help you identify and minimise the data protection risks. You must do a DPIA for processing that is likely to result in a high risk to individuals. You can use our screening checklist below to help you decide when to do one. If you have answered 'Yes' to any of the 10 screening questions, you must then carry out a full DPIA using the Stage 2 form, which is also available on the Intranet in the IG section.

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Screening undertaken by:	Interim Complaints & Freedom of Information Manager

Stage 1 – DPIA form

please answer 'Yes' or 'No'

1. Will the policy result in the processing of personal identifiable information / data? This includes information about living or deceased individuals, including their name, address postcode, email address, telephone number, payroll number etc.	Yes
2. Will the policy result in the processing of sensitive information / data? This includes for living or deceased individuals, including their physical health, mental health, sexuality, sexual orientation, religious belief, National Insurance No., political interest etc.	Yes
3. Will the policy involve the sharing of identifiers which are unique to an individual or household? e.g., Hospital Number, NHS Number, National Insurance Number, Payroll Number etc.	Yes
4. Will the policy result in the processing of pseudonymised information by organisations who have the key / ability to reidentify the information? Pseudonymised data - where all identifiers have been removed and replaced with alternative identifiers that do not identify any individual. Re-identification can only be achieved with knowledge of the re-identification key. Anonymised data - data where all identifiers have been removed and data left does not identify any patients. Re-identification is remotely possible, but very unlikely.	No
5. Will the policy result in organisations or people having access to information they do not currently have access to?	No
6. Will the policy result in an organisation using information it already holds or has access to, but for a different purpose?	No
7. Does the policy result in the use of technology which might be perceived as being privacy intruding? e.g., biometrics, facial recognition, CCTV, audio recording etc.	No
8. Will the policy result in decisions being made or action being taken against individuals in ways which could have a significant impact on them? Including profiling and automated decision making. (This is automated processing of personal data to evaluate certain things about an individual i.e., diagnosis and then making a decision solely by automated means - without any human involvement)	No
9. Will the policy result in the collection of additional information about individuals in addition to what is already collected / held?	No
10. Will the policy require individuals to be contacted in ways which they may not be aware of and may find intrusive? e.g., personal email, text message etc.	No

Appendix 3 - Complaints Handling Process Flowchart

Formal Complaints Process Flowchart

