

COMPLAINTS POLICY AND PROCEDURES

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Search summary:

Oxleas NHS Foundation Trust is committed to delivering high quality services based on choice, responsiveness and equity. Complaints must be seen an opportunity to continuously improve the quality of services that we provide and to learn lessons from mistakes that may have occurred.

This policy sets out a framework for the management of complaints. It fulfils the current provisions of the National Health Services (Complaints) Regulations and Social Services Complaints Procedures and reflects developing DH policy to streamline these processes by 2009. The time-scale for response is now 25 days to bring Trust processes in line with national requirements

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PART 1: POLICY

1. INTRODUCTION

General

Oxleas NHS Foundation Trust is committed to delivering high quality services based on choice, responsiveness and equity. Complaints must be seen an opportunity to continuously improve the quality of services that we provide and to learn lessons from mistakes that may have occurred.

This policy sets out a framework for the management of complaints. It fulfils the current provisions of the National Health Services (Complaints) Regulations and Social Services Complaints Procedures and reflects developing DH policy to streamline these processes by 2009. The procedure also takes into account the Healthcare Commission Annual Health Check as it relates to standards in handling complaints.

In line with these requirements the Complaints Procedure provides for complaints, both formal and informal, to be dealt with through Local Resolution at Trust level. Any complainant who remains dissatisfied has the

right to request an Independent Review from the Healthcare Commission and subsequently the Health Service Ombudsman.

The overall aim of this policy is to ensure that complaints are resolved as quickly, appropriately and as close to the source of the problem as possible. People want an easy to use complaints process which enables them to express any dissatisfaction they may have, obtain an explanation about what happened and, where appropriate receive an apology. For the Trust, listening to the concerns of service users and carers and learning from mistakes can help us revise working practices and improve services.

Oxleas NHS Foundation Trust is positive in its approach to equality and diversity. To make sure that all policies and procedures create a positive environment, this policy has been Equality Impact Assessed to ensure that staff and/or service users do not experience a negative impact or disproportionately positive impact as a result of the implementation of the policy.

1.2 Key principles

- The complaints procedure will be accessible and well publicised to service users/complainants
- The procedure will ensure effective links with other bodies involved with the same complaint
- The procedure will be fair to service users, complainants and to staff
- The Trust will respond in a timely and conciliatory manner.
- Responses will be open and transparent
- The complaints procedure will be supportive for those who may find it difficult to complain.
- Staff will be supported to deal effectively with complaints at the point of service delivery.
- Lessons will be learned from complaints and used to improve services
- The trust will ensure that making a complaint will not harm or prejudice the care that is given to service users, relatives and carers.

2. SCOPE OF THE COMPLAINTS PROCEDURE

2.1 What may be complained about?

2.1.1 The complaints process is designed to allow persons to express any concern about the services they receive from Oxleas NHS Foundation Trust. The NHS Complaints Regulations (2004) state that a complaint may be defined as “*an expression of dissatisfaction about any action, omission or decision of the Trust in connection with the provision of health care or any other services.*”

2.1.2 Service users detained under the Mental Health Act 1983 must be informed that in addition to the procedure for raising complaints as outlined here, they can also complain to the Mental Health Act Commission (MHAC). Contact details are given in *Appendix 6*.

Subject to primary legislation in 2007 it is proposed that the work of the MHAC will be integrated with the work of the Healthcare Commission

2.1.3 Complaints about non-disclosure of information under the Data Protection Act 1998 and Freedom of Information Act 2000 may be dealt with under the Complaints Procedure. However complainants should be informed of their right to pursue this separately with the Information Commissioner, the contact details for whom are given in *Appendix 6*.

2.2 What is exempt from the complaints procedure

The complaints procedure does not apply when:

2.2.1 The same complaint has already been investigated in accordance with Trust formal procedures

2.2.2 The complaint is being or has been investigated by the Healthcare Commission

- 2.2.3 The complaint falls outside the set time limits (see 3.1.1 below).
- 2.2.4 The complaint is being dealt with through legal processes.
- 2.2.5 A complaint made by another NHS trust, PCT or independent provider about any matter relating to contracts or arrangement with the Trust.
- 2.2.6 A complaint made by an employee about matters relating to his/her employment.
- 2.2.7 Matters that should be dealt with under other proceedings such as disciplinary, grievance, whistle-blowing or bullying and harassment (see 2.3.6 below.)

2.3 Who may complain

- 2.3.1 A complaint may be made by any person who is affected by or likely to be affected by the action, omission or decision of the Trust which is the subject of the complaint. Complaints may be made by carers and relatives about issues that affect them in their role as carer or relative
- 2.3.2 A complaint may be made by a representative acting on behalf of an existing or former service user where that person:
 - has died
 - is a child
 - is unable by reason of physical or mental incapacity to make the complaint him/herself; or
 - has requested the representative to act on his/her behalf
- 2.3.3 In the case of a service user who has died or is incapable, the representative must be a relative or other person who, in the opinion of the complaints manager, has a sufficient interest in that service user's welfare and is a suitable person to act as a representative. If the representative is considered not to have sufficient interest or to be unsuitable, the Complaints Manager shall notify that person in writing stating the reasons.
- 2.3.4 In the case of a child the representative must be a parent, guardian or other adult who has care of the child. Where the child is in the care of the local authority or a voluntary organisation, the representative must be a person authorised by that body. Children can make a complaint in their own right where it is deemed they have the capacity to do so.
- 2.3.5 Enquiries from M.Ps. The Trust will co-operate with requests for information, in compliance with the Data Protection Act. Where an M.P. acts on behalf of a constituent who has sought assistance from that M.P., this shall be regarded as a form of consent. Careful judgement will be exercised by the Trust to ensure that the information disclosed meets the test of necessity and appropriateness.
- 2.3.6 Staff complaints: Staff who have complaints about other staff or service users and/or relatives should take forward their concerns using Trust policies/procedures for:-

- Grievance
- Bullying and Harassment
- Whistle Blowing

as appropriate. Staff may seek advice in the first instance from their line manager or human resources manager.

- 2.3.7 Anonymous complaints: Anonymous complaints fall outside the scope of the formal procedure. However where an anonymous complaint raises serious concerns the Complaints Manager will refer the matter to the appropriate service director.

3. HANDLING THE COMPLAINT

3.1 Time limit on initiating complaints

3.1.1 A complaint should be made as soon as possible after the event **or** within **6 months** of finding out about the problem - provided this is within 12 months of the event.

3.1.2 There is discretion to extend this time limit where it would be unreasonable for the complaint to have been made earlier **and** where it is still possible to investigate the facts of the case.

3.2 Time scales on responding to complaints

3.2.1 Informal/oral complaints: should be dealt with on the spot where possible or within five working days

3.2.2 Formal complaints: A written response to the complaint will be sent by the Chief Executive within 25 working days of receiving the complaint.

3.3 Serious complaints

3.3.1 Where a complaint alleges serious misconduct or criminal offence including:

- physical abuse
- sexual abuse
- financial misconduct

this will be a formal complaint. It *must* immediately be reported as an incident and investigated in accordance with the Trust's Guidelines for the Reporting and Investigation of Adverse Incidents

3.3.2 When a person discloses any of the above it must be reported even if that person does not wish to make a complaint.

3.3.3 In all the above circumstances the matter must be immediately reported to the line manager or 'On Call Manager' who should then report this to the appropriate service director.

3.3.4 In the case of financial misconduct the Trust's Counter Fraud Policy should be adhered to.

3.3.5 Coroner cases: The reporting of a death to the Coroner's office does not mean that investigation into a complaint should be suspended. It is important to initiate proper investigations regardless of the Coroner's inquiries, and where necessary to extend these investigations if the Coroner so requests. However, where a complaint relates to the cause of death the Trust will only formally respond in writing after the Coroner has delivered its verdict.

3.4 Child and Adult protection

Concerns regarding children and vulnerable adults must follow the Child Protection and Safeguarding Adults procedures which require independent investigation

3.5 Handling unreasonably persistent complainants

Occasionally complainants will persist with a grievance which staff consider has reached a conclusion through the complaints procedure. A policy for handling such situations has been developed to protect both staff and complainant. The full policy is attached at appendix 2.

3.6 Patient confidentiality

3.6.1 Care must be taken throughout the complaints procedure to act in accordance with the Trust's policy on confidentiality.

3.6.2 It is good practice to explain to the service user that information from his/her health records may need to be disclosed to investigate the complaint. This disclosure will usually be to the Investigating Officer and the Complaints Manager. Where there is further investigation by the Healthcare Commission or Health Ombudsman, these bodies will also have access to the service user's health records

3.6.3 Complaints records should be kept separately from health records. Such records must be treated with the same degree of confidentiality as health records and are open to disclosure in legal proceedings.

3.6.4 Complaints files relating to trust complaints investigations will be retained by the Trust for 10 years.

3.7 Consent to disclose confidential information

3.7.1 The service user's express consent is not required to access information about him/her for the purpose of investigating a complaint raised by the service user.

3.7.2 Where a complaint is received from a family member, carer or other person about the care or treatment of a service user the written consent is required

from the service user before personal information about them is disclosed to another person

- 3.7.2 Where a complaint is made by a carer or relative about issues that affect them in their role as carer or relative consent is not required.
- 3.7.3 Where a complaint is made on behalf of a service user who has not authorised access to or discussion of their clinical records, the complaint should still be investigated but care must be taken not to disclose health information.
- 3.7.4 Where a service user lacks capacity and someone with *Lasting Power of Attorney* (LPoA) has been appointed to act on their behalf, then the LPoA should be consulted – as long as the LPoA specifically states that they have the authority to consent on behalf of the patient.
- 3.7.5 Where a service user lacks capacity and has no-one to support them then a referral should be made to the relevant Independent Mental Capacity Advocacy Service (IMCA). See *Appendix 6*.

3.8 Third party confidentiality

- 3.8.1 Particular care must be taken where the service user's records contain information provided in confidence by or about a third party who is not a Trust employee. Only information which is relevant to the complaint should be considered for disclosure and then only to those within the NHS who in connection with the complaint have a demonstrable need to know. It must not be disclosed to the service user unless the person providing the information has expressly consented to the disclosure.
- 3.8.2 Disclosure of information provided by a third party outside the Trust also requires the express consent of the third party. If the third party objects then it can only be disclosed when there is an overriding public interest in doing so.
- 3.8.3 Further detail and guidance on information sharing within the legal and ethical framework can be found in the Information Sharing Policy on the Trust's intranet.

3.9 Dealing with media interest

Any media interest in a complaint should be immediately referred to the Head of Communication or to the Director on call if out of hours.

3.10 Financial redress

Compensation is normally sought through legal processes. However the Trust has discretion to provide financial reimbursement of expenses or losses where fault has been found, e.g. loss of property. Any such financial redress is at the discretion of the Chief Executive or at Director level.

4. Providing support

For complainants

- 4.1 The Trust will make information available on how to complain through information leaflets, posters and the intranet. Advice on how to contact the Independent Complaints Advocacy Service (ICAS) and local advocacy services will be included in this publicity
- 4.2 Complainants should have access to language and sign interpreters when needed

For staff

- 4.3 An effective complaints procedure needs the confidence of the Trust's staff. It is important that staff also perceive the investigation of complaints as being fair and objective. This includes provision for protecting staff from complainants who abuse or harass staff.
- 4.4 Managers and individuals will be informed of a complaint and receive a copy of the response.
- 4.5 Staff should seek advice and support from their line manager and can access advice about the complaints procedure from the Complaints Manager. Line managers will ensure adequate support for staff involved in a complaint through
 - Supervision
 - Team meetings
 - Referral to Employee Assistance Programme where appropriate.
- 4.6 The Complaints Manager will facilitate appropriate training in handling complaints, in conjunction with the Training and Education Department.

5. Relationship with other procedures

5.1 Trust disciplinary procedures

- 5.1.1 The complaints procedure is concerned solely with resolving complaints and not with investigating disciplinary matters. However, complaints can occasionally reveal issues of misconduct and it may be necessary to consider disciplinary procedures. Where there is evidence of a disciplinary case to consider, this must be pursued under the terms of the Trust's Disciplinary Procedure.
- 5.1.2 Where there are a number of complaints about the same member of staff the Complaints Manager will inform the appropriate line manager to allow any necessary action to take place.
- 5.1.3 Where it is decided that disciplinary action is appropriate the complaints investigation **should be suspended** until the disciplinary process has been completed. In that event the complainant must be informed that an internal inquiry is proceeding. Investigation may then be recommenced if necessary.

It is important that any unrelated matters raised in the complaint continue to be investigated.

- 5.1.4 Although the two procedures are entirely separate, information relating to the complaints investigation may be used in any disciplinary investigation. Information may be given to the complainant but within the boundaries of confidentiality.

5.2 Trust grievance procedure

- 5.2.1 Staff have the right to raise a grievance about the way they have been dealt with under the complaints procedure. This will be dealt with under the Trust's formal grievance procedure.

5.3 Serious Untoward Incident Procedure (SUI)

- 5.3.1 The procedure for the investigation of untoward incidents is separate from the complaints procedure.
- 5.3.2 If during the course of investigating an untoward incident a complaint relating to the incident is also received, the incident investigation will take precedence.
- 5.3.3 The complaint should be acknowledged and the complainant kept informed according to the normal time-scales of the Complaints Procedure, even though a detailed response might not be sent until the SUI investigation is complete.
- 5.3.4 If the investigation of a complaint reveals the need to take action under the adverse incident procedure the SUI investigation will take precedence.
- 5.3.5 In these circumstances the complainant should be informed of the incident investigation and, together with the Investigating Officer, kept informed of the progress and outcome.

5.4 Complaints involving a Local Authority

- 5.4.1 Where a complaint is about both Trust and Local Authority, the organisation receiving the complaint should ensure that the complainant receives a co-ordinated response.
- 5.4.2 On receipt of such a complaint the Complaints Manager must, within **10 working days**, seek the consent of the complainant to sending details of the complaint to the local authority.
- 5.4.3 Where the complainant does not want the details to be shared, the Complaints Manager should advise them on the parts of the complaint it is able to deal with.

- 5.4.4 Where the complainant wishes the details to be shared the Complaints Manager should send the relevant details to the local authority as soon as reasonably practicable.
- 5.4.5 The Trust and relevant Local Authority have a duty to co-operate with each other. The lead complaints manager must co-ordinate the handling of the complaint, ensure that the complainant is kept informed and ensure that a comprehensive and co-ordinated response is sent.
- 5.4.6 Irrespective of lead responsibility each body retains its duty of care to the complainant and must handle its part of the complaint in accordance with its own regulated procedures. Joint handling of a complaint should not affect the need to meet statutory deadlines for providing a response.
- 5.4.7 The response should identify which issues relate to the Trust and which to the local authority. It should also advise the complainant of his/her right to pursue the complaint further and provide details of the regulatory organisation that would deal with the different aspects of the complaint.
- 5.4.8 Where a complaint is received that is **solely** concerned with local authority services the Complaints Manager should, within five working days of receipt of the complaint, ask the complainant whether s/he wishes that material to be sent to the local authority. If the complainant agrees, the Complaints Manager should forward the complaint to the local authority as soon as reasonably practicable.

5.5 **Services commissioned by the Trust**

- 5.5.1 Voluntary organisations and independent providers commissioned by the Trust are expected to have their own complaints procedures. Complaints relating to services commissioned by, or provided on behalf of the Trust will, with the complainants consent, be forwarded to the appropriate organisation. External providers will also be encouraged to co-operate in the investigation of any multi-organisational complaints in which they may be involved.

6. **Roles and responsibilities**

6.1 **Trust responsibilities**

The responsibilities of the Trust in handling complaints are to:

- investigate and respond to complaints raised against the Trust within the statutory timeframe (**25 working days**), unless the complainant agrees to an extension of the timeframe. The Chief Executive or a person acting on his/her behalf will sign all formal Trust responses.
- co-operate with any investigation carried out by the Healthcare Commission and the Health Service Ombudsman.
- have a designated person referred to as a Complaints Manager to manage the procedure for the handling and consideration of complaints.
- work with other procedures that have a significant bearing on the Complaints Procedure.

6.2 Complaints Department

6.2.1 The Head of PPI and Complaints has lead responsibility for ensuring a co-ordinated, effective system for reporting, investigating and learning from complaints.

6.2.2 The Complaints Officer will be responsible for the day to day administration of formal complaints. Duties will include

- ensuring that formal complaints are handled within agreed time-scales.
- co-ordinating responses to complaints with appropriate Service Directors, Service Managers or Professional Leads.
- drafting responses to complainants on behalf of the Chief Executive
- maintaining an information system and providing reports which will enable the Trust to monitor performance in relation to the handling of complaints, identify issues for organisational learning and, through these identify areas for review of policy or practice.
- providing training and guidance to staff on the handling of complaints
- providing relevant information to the Healthcare Commission on request as part of the Independent Review

6.3 Service Director

6.3.1 Service Directors are responsible for ensuring that complaints investigations are completed within the agreed time-frames. For each formal complaint received the Service Director or delegated manager will:

- ensure the appointment of an Investigating Officer to establish the facts of the case. This will normally be a senior manager such as a Service Manager, Clinician or Team Manager.
- liaise with Clinical Directors who will provide support to ensure complaints about medical staff are managed and reviewed in a timely fashion.
- meet with the complainant where direct involvement may help in the investigation and resolution of the complaint
- ensure appropriate actions are identified and implemented and provide progress reports as required
- take action on any recommendations arising from a Healthcare Commission review.

6.4 Investigating officer

6.4.1 The Investigating officer will have delegated responsibility for investigating the circumstances of the complaint and providing a written report within the stated time scales. For step by step guidance on completing an investigation refer to the Complaints Investigation File. Duties will include:

- interviewing staff and obtaining copies of statements as necessary
- reviewing clinical records and any other documentation relevant to the complaint
- arranging and attending meetings with the complainant where direct involvement will help in the resolution of the complaint

- informing the Complaints Department of any delay in completing the investigation, stating the reasons and giving a revised completion date.
- on behalf the Service Director, drafting a report on the outcome of the investigation, specifying whether the complaint has been upheld, whether there are lessons to be learned and what actions need to be taken

6.5 Front Line Staff

6.5.1 All staff have a responsibility to be aware of and comply with the Trust's Complaints Policy and Procedure. In following this procedure all staff should ensure that:

- all complainants are listened to and treated with respect and courtesy at all times
- where possible verbal complaints are resolved at local level, making sure that complainants receive a full response with an apology where appropriate.
- line managers are kept informed of any complaint
- Local Complaints Recording Forms are completed

6.6. PALS

6.6.1 Oxleas Patient Advice and Liaison Service (PALS) provides information and support to service users and carers. Service users or carers may go directly to PALS to resolve issues or may be referred by staff. PALS will support the resolution of informal complaints where necessary act as facilitators to help negotiate resolution to concerns raised.

PART 2

COMPLAINTS PROCEDURE

The complaints procedure is divided into two stages – Local Resolution and Independent Review. Complaints are initially dealt with through Local Resolution within the Trust. Any complainant who remains dissatisfied with the outcome of the investigation at local resolution has the right to approach the Healthcare Commission to request an Independent Review.

7. STAGE ONE: LOCAL RESOLUTION

- 7.0.1 The local resolution process lays emphasis on complaints being dealt with quickly and where possible by those on the spot. The intention is that the process should be open, fair, flexible and conciliatory, with the complainant being given the opportunity to understand all possible options for pursuing the complaint.
- 7.0.2 Local resolution includes both the resolution of verbal complaints by front line staff and written complaints through local investigation with a written response by the Chief Executive. *See Appendix 1 for a flowchart representation of the Local Resolution Process (entitled Complaints Management)*
- 7.0.3 Any response to a complaint should aim to satisfy the complainant that his/her concerns have been listened to and taken seriously, to offer an explanation and, where appropriate, an apology if a mistake has been made.
- 7.0.4 It is important that people who wish to make comments or raise concerns about the Trust's services are encouraged to do so. A leaflet for comments will be made available across the Trust's services. The Trust will also continue to develop forums for service users to feedback their concerns

7.1 Verbal (Informal) complaints

<p>The most appropriate route for concerns and issues that do not indicate serious misconduct/negligence and where the complainant agrees</p>
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<p>Should be dealt with by front line staff and PALS</p>
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- 7.1.1 Verbal complaints are most likely to be raised with front-line staff or with the operational manager.
- 7.1.2 The first concern of staff is to ensure that the service user's immediate health care needs are being met and that there is no immediate risk to the complainant or others.
- 7.1.3 Details of the complaint should be recorded on the Local Complaints Form (see Appendix 4) and checked with the complainant for accuracy.

- 7.1.4 Responsibility for responding to a complainant will normally rest with the ward manager or team leader. Most verbal complaints should be resolved on the spot or within two working days.
- 7.1.5 The response should aim to satisfy the complainant that his/her concerns have been taken seriously and an apology and explanation offered as appropriate. The response should also refer to any remedial action that is to be taken.
- 7.1.6 If a complainant wishes to complain to someone not directly involved with their care, s/he should be encouraged to contact PALS or an independent advocate.
- 7.1.7 Where the complainant remains dissatisfied with the response and requests that the concerns be formally investigated, a copy of the Local Complaints Form should be forwarded to the complaints office.
- 7.1.8 Staff have responsibility to help service users who wish to make a formal complaint. Assistance may include referring them to the Complaints Department, helping to draft a letter of complaint, or arranging for an interpreter or translator to assist them.
- 7.1.9 Local records of complaints are to be kept and reported to the complaints office on a monthly basis.

7.2 **Formal Complaints**

Complaints must be formally investigated where there is:

Any allegation or suspicion of abuse, serious neglect, serious misconduct
 Any incident which appears to have resulted in permanent harm
 Any incident which relates to a death
 A possible criminal offence
 Where there is potential for media/political interest.

or

At the request of the complainant

- 7.2.1 A formal complaint can be made in writing, including letter, email or fax, to the Chief Executive or the Head of PPI and Complaints. It can be also made verbally to the Complaints Officer or any member of Trust staff.
- 7.2.2 All formal complaints will receive a written response from the Chief Executive within **25 working days** of receipt of the complaint
- 7.2.3 A record will be made of the name of the complainant, the subject matter and the date the complaint was received,
- 7.2.4 Within the spirit of 'local resolution', complainants who have come directly to the complaints manager will be informed of the availability of PALS to help resolve concerns informally. However complainants should not be made to

feel that their right to make a formal investigation has been compromised or denied.

- 7.2.5 All formal complaints must be referred to the Complaints Officer who will acknowledge them within **2 working days** of receipt of the complaint. Where a complaint is made verbally, the acknowledgement must be accompanied by the written record referred to in 5.2.3.above, with an invitation for the complainant to sign and return it. Complainants should also be informed of their right to seek help and advice from the Independent Complaints and Advocacy Service (ICAS).
- 7.2.6 The Complaints Officer will register the complaint onto a database for central monitoring and reporting purposes.
- 7.2.7 The Complaints Officer will send a copy of the complaints letter to the relevant Service Director and Service Manager. The Service Manager will nominate an Investigating Officer; however responsibility for ensuring that the investigation is carried out thoroughly and in a timely manner remains with the Service Director.

7.3 Investigating and responding to a formal complaint

- 7.3.1 Those investigating complaints may wish to consider using the root cause analysis (RCA) as described in the Trust's Generic Investigation Policy for Incidents, Complaints and Claims. A detailed root cause analysis investigation will be undertaken in relation to the most serious complaints.
- 7.3.2 In resolving formal complaints the first step, is to offer a meeting to the complainant and any representative, where appropriate, to clarify the issues involved and effect mediation. This meeting should be recorded and incorporated in the complaints response.
- 7.3.3 A variety of sources should be utilised when investigating formal complaints. These are outlined in the Complaints Investigation Pack.
- 7.3.4 The Investigating Officer will forward a report summarising the findings of the investigation to the Complaints Officer within **18 days** of receiving the complaint. If this is not possible the Complaints Officer must be advised of the reasons. The Complaints Officer will then inform the complainant of the delay and provide regular updates on the investigation.
Responses not made within 6 months can be referred to the Healthcare Commission for investigation, by the complainant.
- 7.3.5 The report should address all the issues raised in the complaint, state whether the concerns have been upheld and if so identify lessons learned and action taken.
- 7.3.6 The report and any action points will be logged by the Complaints Officer for review and trend analysis.
- 7.3.7 The Complaints Officer will formulate a written response from the report for signature by the Chief Executive. The letter should detail the outcome of the

investigation with information about any action taken to prevent a similar situation occurring. It should include a clear apology if the complaint was found to be justified. The complainant may be offered the opportunity to discuss the contents of the letter further with relevant managers or the Chief Executive.

- 7.3.8 The written response will include information on how the complainant can take the complaint further if they are dissatisfied with the Trust's reply. This will include reference to independent review by the Healthcare Commission.
- 7.3.9 Copies of the response letter will be sent to the appropriate Service Director, Service Manager and Ward/Team Managers.

8. STAGE TWO: INDEPENDENT REVIEW

- 8.1 The Healthcare Commission (HCC) provides independent review of NHS complaints.
- 8.2 A complainant who is dissatisfied with the outcome of the local resolution or who has not had a response within the 6 month timeframe has the right to request an Independent Review by the Healthcare Commission (HCC). Contact details of the Healthcare Commission are given in Appendix 6.
- 8.3 This request should be made within a period of six months of the final response letter from the Chief Executive.
- 8.4 The HCC will review the complaint and where appropriate refer back to the trust for further action.
- 8.5 Where the Healthcare Commission decides that it is not possible to review a complaint the complainant will be advised that they can approach the Parliamentary and Health Service Ombudsman to consider the case.
- 8.6 Should an Independent Review take place, the Healthcare Commission must have access to all the records held by the Trust relating to the handling of the complaint.
- 8.7 Following receipt of the Healthcare Commission's report the Trust will write to the complainant informing them of any action that is being taken as a result of the Commission's decisions. The complainant should also be informed of the right to take the grievance to the Ombudsman if they remain dissatisfied.
- 8.8 The relevant Service Director will be responsible for action planning the Healthcare Commission's recommendations.
- 8.9 The Patient Experience Group (PEG) will receive reports on all complaints that have gone to Independent Review.

9 Complaints to the Ombudsman

- 9.1 If the complainant remains dissatisfied with the outcome of a complaint following Independent Review, they should be informed of their right to raise the matter with the Ombudsman. Contact details are in appendix 6. Generally the Ombudsman will not investigate a complaint until it has gone through an Independent Review. The exception to this is if an independent review has been denied.
- 9.2 There is a one year time limit for raising a complaint with the Ombudsman but this may be extended if there are good reasons for a late complaint.

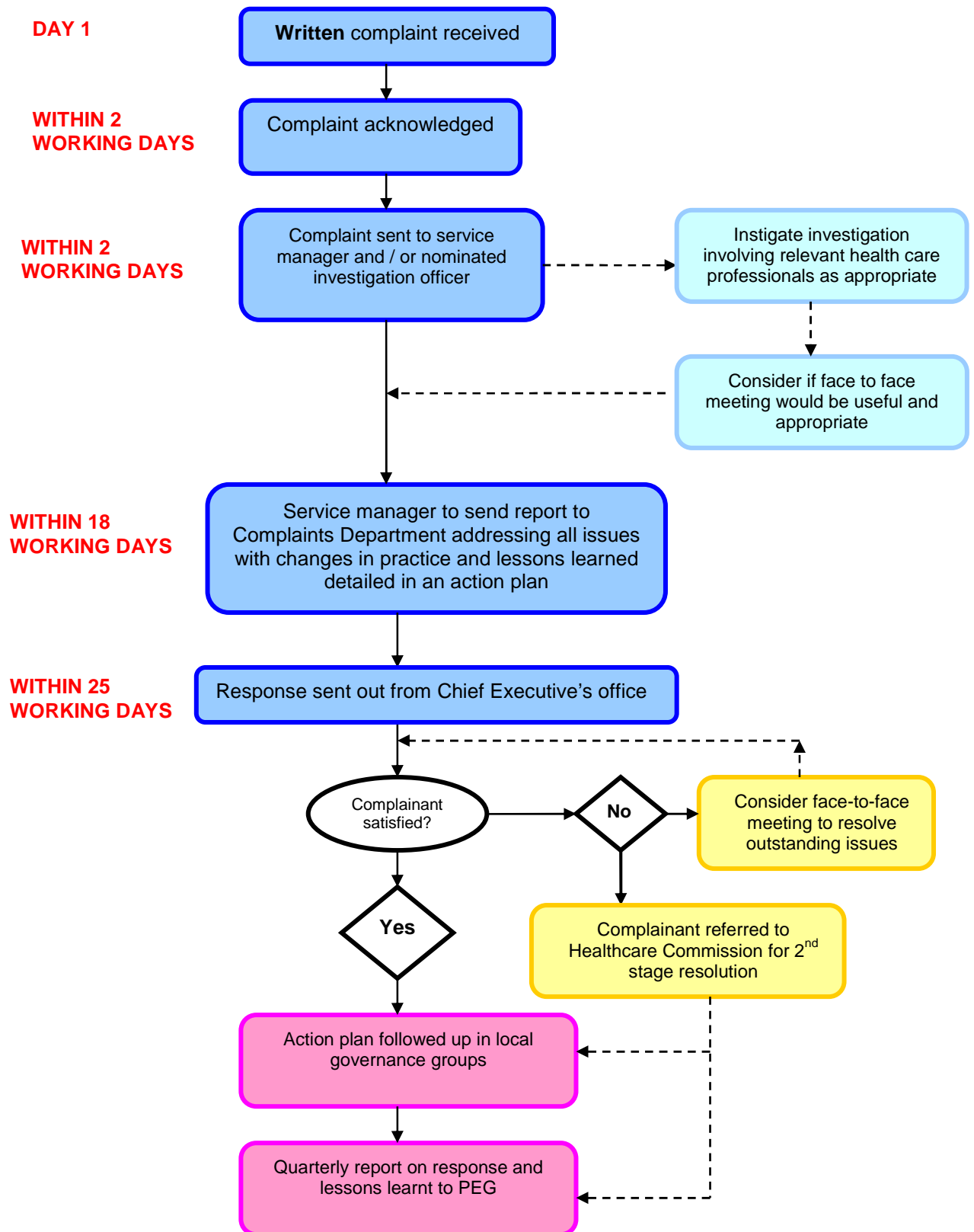
PART 3

REPORTING AND LEARNING FROM COMPLAINTS

- 10.1 The Trust is committed to learning from all forms of patient feedback. Complaints are a positive aid to informing and influencing service improvements.
- 10.2 All complaints will be recorded and monitored.
- 10.3 The overall purpose of monitoring is to enable:
- complainants to see that their concerns are being dealt with and that a thorough and fair investigation has taken place
 - the Trust to demonstrate that complaints are taken seriously and how they are resolved
 - feedback from complaints to lead to improvements in service planning and delivery
- 10.4 The Patient Experience Group (PEG) is the governance group responsible for providing an overview of complaints and ensuring local lessons are applied trust-wide as required.
- 10.5 PEG will ensure compliance with this policy by receiving quarterly reports which will:-
- specify the number of complaints received by the Trust
 - identify the principal issues by complaint category
 - provide analysis of complaints by age, gender and ethnicity
 - identify the numbers of complaints upheld, partially upheld, not upheld
 - identify the outcome of each complaint. i.e. decision made in response to the complaint and any action taken
 - report on compliance with time-frames
 - specify the number of requests for Independent Review (IR).
 - report on the numbers of complaints referred back from IR for further action
- 10.6 The trust will conduct six monthly surveys to ensure that service users, relatives and their carers are not treated differently as a result of their raising a complaint. The Trust will investigate where concerns are identified.
- 10.7 Directorates will have systems in place to review complaints, ensure that lessons are learned and appropriate action taken to prevent re-occurrence.
- 10.8 Quarterly Directorate reports on outcomes of formal reports, including action plans, will be provided to and reviewed by PEG.
- 10.9 Recommendations and action plans from Healthcare Commission investigations/panels and Ombudsman enquiries will be tabled at PEG for approval

10.10 The Trust will provide an annual report on complaints handling to the Healthcare Commission

FORMAL COMPLAINTS PROCESS



Policy for handling unreasonably persistent complainants

1. Introduction

- 1.1 All complaints are dealt with in accordance with the NHS Complaints Procedure. On occasion staff will have contact with a small number of complainants who, because of the nature and/or frequency of their contact with the complaints service, place a significant strain on time and resources and can be demoralising for staff.
- 1.2 The procedure for dealing with complainants who may be defined as unreasonably persistent should only be used as a last resort and after all reasonable measures have been taken to try to resolve complaints following the Trust Complaints Procedure, for example through local resolution and involvement of independent advocacy.
- 1.3 The procedure should only be implemented in relation to a specific complainant following consideration by and authorisation of the Chief Executive of the Trust.

2. Definition of an unreasonably persistent complainant

- 2.1 Complainants may be deemed to be unreasonably persistent where previous or current contact with them shows that they have met at least two of the following criteria:-
 - Persist in pursuing a complaint where the Trust Complaints Procedure has been fully and properly implemented and exhausted.
 - Seek to prolong contact by changing the substance of the complaint or continually raising new issues and questions whilst the complaint is being dealt with. (Care must be taken not to disregard new issues which differ significantly from the original complaint. These may need to be addressed as separate complaints).
 - Are unwilling to accept documented evidence of treatment given as being factual, e.g. drug records.
 - Deny receipt of an adequate response despite evidence of correspondence specifically answering their concerns.
 - Do not accept that facts can sometimes be difficult to verify after a long period of time has elapsed.
 - Do not identify clearly the precise issues which they wish to be investigated despite reasonable efforts to help them do so by Trust staff and, where appropriate, independent advocacy and/or where the concerns identified are not within the remit of the Trust to investigate.
 - Focus on a trivial matter to an extent which is out of proportion to its significance and continue to focus on this point. It should be recognised

that determining what is trivial can be subjective and careful judgement must be used in applying the criterion.

- Have, in the course of pursuing a registered complaint, had an excessive number of contacts with the Trust placing unreasonable demands on staff. Such contacts may be in person, by telephone, letter, fax or electronically. Discretion must be exercised in deciding how many contacts are required to qualify as excessive, consideration being given to the specific circumstances of each case.
- Are known to have recorded meetings or face to face/telephone conversations without the prior knowledge and consent of the other parties involved.
- Have threatened or used actual physical violence towards staff, their families or associates at any time. This will in itself cause personal contact with the complainant and/or their representatives to be discontinued and the complaint will thereafter only be pursued through written communication. (All such incidents should be documented in line with the Trust's policy on Violence and Aggression)
- Have harassed or been verbally aggressive or abusive towards staff dealing with their complaint. Staff must recognise however that complainants may sometimes act out of character at times of stress, anxiety or distress and they should make reasonable allowances for this. All incidents of harassment or aggression must be documented and dated in line with the Trust's policy on the Prevention and Management of Violence and Aggression

3 Procedure for dealing with unreasonably persistent complainants

When complainants have been identified as unreasonably persistent, in accordance with the above criteria, the Chief Executive will decide what action to take. Any restrictions imposed will be appropriate and proportionate and include the following considerations:

- A written warning will normally be sent to the complainant before the decision is made to restrict access to the Trust's complaints process
- Regardless of the manner in which the complaint is made and pursued, the substance of the complaint will be considered in a fair and impartial manner
- That any new complaint will be considered separately with a view to processing it in accordance with the Trust's Complaints Policy and Procedure

3.1 If the Trust decides to treat someone as an unreasonably persistent complainant the Chief Executive will write to them and tell them:

- Why their behaviour falls into that category
- What action we are taking

3.2 Where the investigation into the complaint is ongoing, the Chief Executive should write to the Complainant setting parameters and the lines of communication. If these items are contravened consideration may then be

given to implementing further action, e.g. further contact restricted to liaison through a third party.

- 3.3 Where the investigation into the complaint is complete the Complainant should be informed in writing that:-
- The Chief Executive has responded fully to the points referred to and has tried to resolve the complaint **and**
 - there is nothing more that can be added and the correspondence is now at an end.

4 Withdrawing Unreasonably Persistent Complainant Status

- 4.1 Once complainants have been determined as unreasonably persistent there needs to be a mechanism for withdrawing this status at a later date if, for example:-
- the complainant subsequently demonstrates a more reasonable approach
 - the complainant submits a new complaint for which normal complaints procedures would appear appropriate

The recommendation for withdrawing this status will go to the Chief Executive for approval.

Procedure for extending 25 day response deadline for complex complaints

- A complex complaint is one which covers more than 1 organisation or several departments within the Trust and there is a difficulty in co-ordinating a satisfactory response within 25 working days.
- Consent to extend the deadline may also be negotiated if a key respondent to the complaint is absent from the Trust for more than 5 working days directly after the complaint is received.
- A complaint can only be classified as complex in agreement with the Complaints and Improvements Manager (or Co-ordinator in the absence of the Manager).
- When a complaint is confirmed to be complex the Complaints and Improvements Co-ordinator will work/liase with the Investigating Officer (Matron, Speciality Manager etc.) to ensure that the complainant is contacted by telephone. In needs to be fully explained to the complainant why it is felt that the complaint is complex. If the complainant is in agreement an extension can be negotiated. At this point a meeting should also be considered and arranged if the complainant is happy with this way forward.
- An extension can only be agreed if the complainant fully understands why it is being requested and is happy with this and gives their consent.
- A letter is then sent confirming details of phone conversation and a copy is kept on file by the Complaints and Improvements Department.
- Extensions should be for reasonable periods of time e.g. 2 weeks, which will take a deadline to 35 days.
- If it is recognised during the investigation that the new deadline is not achievable then the Investigating Officer needs to contact the Complaints and Improvements department. A C&I Co-ordinator will work with them to contact the complainant again and see if they are happy for the deadline to be further extended. All new deadlines must be made with the consent of the complainant and confirmed in writing.

LOCAL COMPLAINT RECORDING FORM	
Date:	Time:
Name of person complaining:	
Details of complaint:	
Action taken:	
Person completing the form:	
Job title:	
Ward/ site:	
Signature:	Date:
<p>I agree that the information above is a correct summary of the concerns I have raised.</p> <p>Signed:</p> <p>Date:</p>	

Complaints – Levels of severity

Score	Descriptor	Injury/harm to individual	Service/Trust impact
1	Insignificant	No injury No apparent injury	No impact on service No impact on environment No risk to trust
2	Minor	Any incident which required extra observation or minor treatment and caused minimal harm,	Slight impact on service Slight impact on environment Minimal risk to Trust
3	Moderate	Any incident which resulted in a moderate increase in treatment and which caused significant but not permanent harm.	Some service disruption m Moderate impact on environment Potential for adverse publicity,
4	Severe	Any incident which appears to have resulted in major injury or permanent harm to one or more persons	Service restriction Major impact on environment Adverse publicity and negative impact on Trust reputation
5	Death	Any unexpected or intended incident which directly relates to the death of one or more persons receiving NHS funded care	National media interest Severe loss of confidence in Trust

Contact Details

Complaints Manager

Oxleas NHS Foundation Trust
 Pinewood House
 Pinewood Place
 Dartford DA2 7WG
 Tel 01322 625 751
 Fax 01322 625 711

Patient Advice and Liaison Service (PALS)

Pinewood House
 Pinewood Place
 Dartford DA2 7WG
 Tel 01322 625 013
 Free phone 0800 917 7159
 Email www.pals@oxleas.nhs.uk

Independent Complaints and Advocacy Service (ICAS)

South East London ICAS
 Suite 1.8, Broadway House
 3 High Street
 Bromley
 BR1 1LF
 Tel: 0845 337 3061
 Minicom: 0845 337 3067
 Fax: 0845 337 3062
pohwericas@pohwericas.net

Independent Mental Capacity Advocacy Service (IMCA).

Cambridge House
 131 Camberwell Road
 London SE5 0HF
 Tel. 0207 358 7000

Local advocacy services

MIND in Bexley
 283 Broadway
 Bexleyheath
 DA6 8DG
 Tel. 0208 303 5816

Bromley Advocacy Project
 61 College Road
 Bromley
 BR1 3QG
 Tel 0208 313 0139

Greenwich MIND
 54 Ormiston Road
 Greenwich
 SE10 0LN
 Tel 0208 853 2395

Mental Health Act Commission

Maid Marion House
 56 Houndsgate
 Nottingham NG1 6BG
 Tel: 0115 943 7100
 Fax: 0115 943 7101
 E-mail: chief.executive@mhac.org.uk
www.mhac.org.uk

Healthcare Commission

FREEPOST NAT 18958
 Complaints Investigation Team
 Manchester M1 9XZ
 E-mail:
complaints@healthcarecommission.org.uk
www.healthcarecommission.org.uk

The Health Service Ombudsman

Millbank Tower
 Millbank
 London SW1P 4QP
 E-mail:
phso.enquiries@ombudsman.org.uk
www.ombudsman.org.uk

Information Commissioner

Wycliffe House,
 Wilmslow ,
 Cheshire. SK9 5AF
 Tel. 01625 54 57 45
 Helpline 08456 30 60 60

Complaints time limits

Event

Original complaint	6 months from event <i>or</i> 6 months from discovery of the problem
Local resolution	
Verbal complaint	Dealt with on the spot <i>or</i> referred to PALS <i>or</i> referred to formal complaints
Formal complaint – acknowledgement	2 days of receipt of complaint
- investigation report	18 days of receipt
- Full response	25 days of receipt of complaint
Independent Review	
Complainant application	6 months from date of final response
Acknowledgement by HCC	2 working days of receipt
HCC Investigation Report	6 months or as soon as reasonably practicable
Ombudsman	
Complainant application	1 year from Independent Review

Relevant policies

All policies are to be found on the Trust Intranet.

- Guidelines for the Reporting and Investigation of Adverse Incidents
- Bullying, Harassment and Discrimination
- Grievance and Dispute
- Raising a Matter of Concern (Whistle blowing)
- Counter Fraud Policy
- Confidentiality Code of Conduct
- Information Sharing Policy
- Safeguarding Adults
- Child Protection
- Prevention and Management of Violence and Aggression
- [Claims handling policy](#)
- [Disciplinary procedures](#)