

Complaints Policy

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1. Introduction

Most patients receiving care within the NHS are happy with the care provided. It is recognised however that there will inevitably be circumstances where the expectations of some of the service users are not met and they will need to voice their feelings through the complaints procedure. Complaints are viewed positively within NHS Calderdale CCG (CCG) and every effort is made to identify lessons from complaints to make positive improvements in services for patients

1.2 This Complaints Policy details the arrangements for dealing with NHS complaints about services or care that come under the responsibility of NHS Calderdale CCG. The framework has been developed in line with the Local Authority Social Services and National Health Service Complaints (England) Regulations (2009). NHS Calderdale CCG also adheres to the NHS Constitution including those rights relating to complaints and redress.

1.3 The Complaints Policy sets out the approach in the handling, investigation and learning from complaints.

2. Purpose

2.1 The purpose of the Complaints Policy is to describe the systems NHS Calderdale CCG has in place to effectively manage all complaints received in accordance with the Local Authority Social Services and National Health Service Complaints (England) Regulations (2009). It outlines the responsibilities and processes for a fair and robust receiving, handling, investigating, and resolving of complaints relating to the actions of NHS Calderdale CCG, its staff, and services.

2.2 The Complaints Policy also sets out the process used for complaints received relating to NHS services commissioned by NHS Calderdale CCG. This may be in relation to NHS Acute and Foundation Trusts, Mental Health Trusts, Community NHS Services, Independent Contractors (for example, general practices, dental practices, high street pharmacies and opticians) and Independent Sector Providers.

2.3 The complaints process has four main aims:

1. To investigate

2. To explain
3. To apologise (where appropriate)
4. To identify action to prevent a recurrence

3 Duties, Accountabilities and Responsibilities

3.1 Duties within NHS Calderdale CCG

Chief Operating Officer - The Chief Operating Officer is responsible for ensuring that systems and processes are in place for the delivery of a high-quality complaints service and that the local health and social care system learns from complaints, improving services and preventing the same problems from re-occurring. The Chief Officer is accountable for signing off the responses to the complainant and for ensuring that all the points raised have been covered in the investigation. If the Chief Officer is unavailable to sign off the final complaints response, the nominated deputy will do so on their behalf.

Chief Quality and Nursing Officer - is responsible for ensuring the continuity of a high quality and sustainable complaints service across NHS Calderdale CCG.

Quality Manager – is responsible for the performance management of the complaints service, making arrangements for staff training as appropriate.

Complaints Manager - is responsible for managing a robust complaints handling and co-ordination service to NHS Calderdale CCG in accordance with the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009. This includes the provision of advice and support to investigating officers/managers, quality assurance of complaint responses, production of reports on performance, themes and lessons learned. The Complaints Manager will also ensure that the themes and learning to come out of complaints is passed onto the quality and service improvement teams.

The Complaints Manager will take the lead on all Parliamentary and Health Service Ombudsman cases.

Investigating Officer/Manager - is responsible for ensuring that a high quality and prompt investigation is carried out and comments are provided to the Complaints Manager within an agreed timescale. They are responsible for identify any learning to improve the quality of the commissioned healthcare

services or NHS Calderdale CCG services. In many cases the Investigating Officer/ Manager will be an employee within NHS Calderdale CCG, such as a Head of Service. In other instances, the Investigating Officer/Manager may be a Complaints Manager in an external organisation who will coordinate a response within their organisation that will then be sent back to the Complaints Manager in NHS Calderdale CCG.

All employees - all staff have a responsibility to work in line with NHS Calderdale CCG's Complaints Policy and should:

- be aware of how to access the Complaints Policy
- be aware of who to raise complaints to
- attend any relevant training which is offered in relation to them
- report any issues affecting them to their line manager, in order that these can be taken account of.

Heads of Service must also ensure that, through management lines, all staff have an awareness of all policies, with emphasis given to those that are specifically relevant to their area of work.

3.2 Responsibilities

The Quality, Finance and Performance Committee has delegated authority from the Governing Body to approve the Complaints Policy.

4 Scope of the Policy

This Complaints Policy applies to NHS Calderdale CCG, to all employees, co-opted members and members of the Governing Body and its committees who must comply with the arrangements outlined in this policy.

Member practices are responsible for the development and management of their own complaints processes and for ensuring compliance with relevant legislation.

5 NHS Calderdale CCG's Complaints Procedure and Process

5.1 What is a Complaint/Concern?

NHS Calderdale CCG's definition of a complaint or concern is:

A complaint or concern is an expression of dissatisfaction about an act, omission or decision of NHS Calderdale CCG, or another related NHS organisation, either verbal or written, and whether justified or not, which requires a response and/or redress.

5.2 Who Can Complain?

5.2.1 Anyone who is receiving, or has received, NHS treatment or services or who is affected or is likely to be affected by an action, omission, or decision, can complain.

5.2.2 The majority of complaints are made directly by the patient. Carers, relatives, and other representatives can make a complaint on behalf of a person if that person has given consent for them to do so and if they consent to information being shared with their representative. This is particularly important where the response contains confidential or sensitive information of a clinical nature.

However, if a patient is unable to complain themselves then someone else (for example, a parent, spouse, sibling, MP, local councillor, someone with delegated authority to do so, such as, in the form of Power of Attorney) can complain on their behalf, providing appropriate consent is given by the patient where they have capacity to give consent.

5.2.3 If a complaint is received from a representative of a child under the age of 18 (to whom the complaint relates), NHS Calderdale CCG must be satisfied that there are reasonable grounds for the complaint being made by the representative instead of the child, whether the complaint is being made in the child's best interests and whether the representative is a suitable person to represent that child. If these criteria are not met, the CCG will not respond to the complaint and will write to the representative explaining the decision.

A suitable representative will be a parent, guardian or other adult person who has care of the child or parental responsibility. Where the child is in the care of a local authority or a voluntary organisation, the representative must be a person authorised by the local authority or the voluntary organisation, and in the opinion of the Complaints Manager, is making the complaint in the best interests of the child.

5.2.4 If a patient is unable to complain themselves, for instance due to physical incapacity or lack of capacity within the meaning of the Mental Capacity Act

2005 then NHS Calderdale CCG will consider whether the complainant is a suitable person to represent the patient. If NHS Calderdale CCG believes that the complainant is not a suitable representative, or is not acting in the patient's best interests, NHS Calderdale CCG will not respond to the complaint and will write to the representative explaining the reasons for this decision.

This will be agreed on an individual basis by the Complaints Manager, as the manager for NHS Calderdale CCG's complaints handling and co-ordination service.

When a complaint is made by a representative of a patient who is not able to give their consent to information being shared, it may not be appropriate to share the full details of the investigation with the representative. Particular attention will be given to the need to respect the confidentiality of the patient, and to any known wishes expressed by the patient that information should not be disclosed to third parties.

- 5.2.5** If a complaint is raised concerning a deceased patient, this must be made by a suitable representative. Authority to Act will be sought from this representative, or appropriate other on a case-by-case basis, depending on the circumstances of each complaint.

A suitable representative must be their next of kin, a relative or other person, who had sufficient interest in their welfare.

When a complaint is made by a representative of a deceased individual it may not be appropriate to share the full details of the investigation with the representative. Particular attention will be paid to the need to respect the confidentiality of the deceased, and to any known wishes expressed by the patient when they were alive that information should not be disclosed to third parties.

- 5.2.6** Letters received from solicitors raising a complaint on behalf of an individual should be dealt with in the same way as all other complaints (i.e., evidence of the solicitor's authority to act on behalf of the complainant will be required in addition to appropriate evidence that the complainant has the authority to act on behalf of the patient, if the complainant is a third party).

If the complaint is of significant concern an investigation may need to be undertaken without consent (as an internal investigation).

5.2.7 Member of Parliament (MP) letters: when a complaint has been received from an MP (acting on behalf of and by instruction from a constituent) relating to a specific patient, NHS Calderdale CCG will seek consent on a case-by-case basis from the patient (where they have capacity) or a suitable representative i.e., next of kin, a relative or other person, who had sufficient interest in their welfare.

When an MP raises concerns, or asks a question in general terms, this will be dealt with as an MP Enquiry. Although following a similar investigation pattern, it will not include any reference to a named patient and hence consent will not be necessary.

5.2.8 Correspondence from Media Organisations: if correspondence is received from media organisations regarding a complaint, the Communications Manager should be contacted in the first instance.

5.2.9 Coroner: The fact that a death has been referred to the Coroner's office does not mean that investigations into a complaint should not be commenced (nor should it be suspended if already commenced prior to the Coroner's involvement). It is important for NHS Calderdale CCG to initiate proper investigations regardless of the Coroner's inquiries, and where necessary to extend these investigations if the Coroner so requests. Responses to a Coroner's request do not necessarily match those required in relation to a complaint and hence the Investigating Manager will be asked to provide a separate response to the complaint.

5.2.10 Patient Advice and Liaison Service (PALS) - complaints may be received from Patient Advice and Liaison Services. Any PALS complaints will be triaged by the Complaints Manager and dealt with as a standard complaint to NHS Calderdale CCG. The Complaints Manager will act as the first point of contact for the complaint and will liaise with the external service to ensure the complaint is captured and raised with the correct Investigating Officer/Manager. If the complaint is regarding the commissioning of services from NHS Calderdale CCG, the Complaints Manager will take ownership of the complaint and will contact the complainant.

5.2.11 Occasionally, a complaint will be received where the complainant has no apparent connections with the patient concerned. In such cases, before any investigation commences, the following points should be clarified:

- Does the patient know a complaint has been made on their behalf?
- Has the patient authorised the complainant to make enquiries?

When a complaint is made by a representative of a patient without capacity it may not be appropriate to share the full details of the investigation with the representative. Particular attention will be paid to the need to respect the confidentiality of the patient, and to any known wishes expressed by the patient that information should not be disclosed to third parties.

5.3 Complaints Relating to Specific Organisation Types or Services

5.3.1 Complaints about Primary Care Practitioners

Complaints regarding independent contractors (for example, GPs, dentists, opticians, high street pharmacists) are the responsibility of NHS England or the provider concerned. Where it is identified via complaint triage that the complainant wishes to complain about these services, they will be informed either verbally, by email or in writing that they should contact either the provider concerned or NHS England. As a delegated commissioner, NHS Calderdale CCG is not responsible for complaints made about independent contractors. However, independent contractors are required to keep the CCG informed about complaints and related relevant information.

5.3.2 Complaints about Treatment Provided by any other NHS Service

In line with the Local Authority Social Services and National Health Service Complaints (England) Regulations (2009) complainants will, in the first instance, be provided with an option to complain direct to the provider of the NHS Service they are concerned about. This will normally be the most effective method of complaining as it minimises the need for information to be passed between organisations and the time taken by this. If the complainant is uncomfortable or distressed about complaining directly to their healthcare provider, or feels this is not appropriate for another reason, NHS Calderdale CCG will receive and coordinate the complaint. When a complaint is received, the Complaints Manager will inform the complainant of their options and facilitate the complainant's choice.

5.3.3 Complaints about a Continuing Care Decision (CHC)/Individual Funding Request (IFR)

It is important to recognise that the review procedure for continuing healthcare or individual funding requests is not a complaints procedure. The fact that someone has had their case considered by a continuing healthcare review panel, or individual funding request panel, does not affect their right to make a complaint. They can complain about the original decision of the continuing care review/ special referrals process, through the Local Authority Social Services and National Health Service Complaints (England) Regulations (2009).

5.3.4 Complaints about NHS Choice

The NHS Constitution sets out choice as a right and includes the right to information to support that choice. If a patient complains to NHS Calderdale CCG that they have not been offered a choice, and the complaint is upheld, NHS Calderdale CCG is required to make sure the patient gets that choice.

This does not apply to prisoners (or those on temporary release from prison) or detained in 'other prescribed accommodation' (e.g., a court, a secure children's home, a secure training centre, an immigration removal centre, and a young offender institution) or a person detained in a secure hospital setting.

Certain services are also excluded:

- Where speed of access to diagnosis and treatment is particularly important, for example:
- Emergency attendances/admissions
- Attendances at a Rapid Access Chest Pain Clinic under the two-week maximum waiting time
- Attendance at cancer services under the two-week maximum waiting time
- Public health services commissioned by local authorities.

5.3.5 Complaints about Multiple Organisations

A requirement of the Local Authority Social Services and National Health Service Complaints (England) Regulations (2009) is that complainants should, if they wish, receive one co-ordinated response to their complaint where it concerns several organisations. Where a complaint involves more than one NHS provider, or one or more other bodies (for example Social Services), there should be full co-operation in seeking to resolve the complaint as

outlined in the Local Authority Social Services and National Health Service Complaints (England) Regulations (2009).

If a complaint is made to NHS Calderdale CCG regarding more than one provider, the Complaints Manager will (with the agreement of the complainant) liaise with each organisation and request that a response is forwarded back to NHS Calderdale CCG who will then arrange a combined response.

NHS England has advised in the Guide to Good Complaints Handling for CCGs that where a complaint concerns primary care this should be forwarded to them. NHS Calderdale CCG will therefore advise the complainant to liaise with NHS England regarding the response.

Where complaints are about both NHS and Local Authority services, the Complaints Manager will liaise with the Local Authority (with the consent of the person or their representative in the case of a patient who does not have capacity to consent) to co-ordinate a joint response. Where NHS Calderdale CCG takes the lead on a multi-organisation complaint all organisations will be copied into the final response to facilitate their learning and service improvement functions.

5.3.6 All consent requests made by NHS Calderdale CCG are in line with the General Data Protection Regulations and further information on how to ensure the complainant has the appropriate authority to act on behalf of the patient can be found in Appendix C.

6 How to Complain

NHS Calderdale CCG is committed to treating all complaints equitably and recognises that it is the right of every individual to pursue a complaint.

NHS Calderdale CCG understands that when people feel they need to complain that they might have been through a challenging and difficult experience. However, it requests complainants to treat its staff with respect and courtesy. Further information can be found in Appendix D.

NHS Calderdale CCG will receive complaints in any format which the complainant wishes to use to forward the details relating to their complaint. This will include:

6.1 Written Enquiries / Complaints – letters

Any member of staff working within NHS Calderdale CCG could receive written complaints. All written complaints should be forwarded to the Complaints Manager for acknowledgment as soon as they are received. This should not delay the investigation commencing in general terms. However, it is for the Complaints Manager to liaise with the complainant to identify and agree the specific issues of the enquiry/complaint.

6.2 Written Enquiries / Complaints – email

Enquiries and complaints received via email should be viewed in the same way as written enquiries/complaints (see above 6.1) and processed in the same manner. Patient sensitive information will not usually be sent back to the complainant by email. Correspondence containing patient sensitive information will be sent by post where the complainant has given a postal address; otherwise, correspondence may be emailed to the complainant with the consent of the complainant.

6.3 Written Enquiries / Complaints – complaints form on NHS Calderdale CCG's website

Enquiries and complaints received via the NHS Calderdale CCG's website should be viewed in the same way as written enquiries/complaints (see above 6.1) and processed in the same manner. Patient sensitive information will not usually be sent back to the complainant by email. Correspondence containing patient sensitive information will be sent by post where the complainant has given a postal address; otherwise, correspondence may be emailed to the complainant with the consent of the complainant.

6.4 Verbal Enquiries / Complaints - telephone

Verbal enquiries and complaints received by telephone should be viewed as seriously as written enquiries and complaints. Any member of staff who is approached by a patient or their representative with an enquiry or complaint should endeavour to resolve the matter there and then. Whenever possible, complaints should be resolved at the time. Any verbal complaint that cannot be resolved at the time should be handled in the same timescale as written enquiries and complaints. If the matter remains unresolved, the member of

staff receiving the enquiry or complaint should prepare a clear written record of the details as soon as possible and refer this to the Complaints Manager.

It may be appropriate for the entire process to be resolved verbally, without any written communication. Where this occurs, a complaint contact sheet should be completed and forwarded to the Complaints Manager to ensure the information is recorded for monitoring purposes. However, where the complainant indicates that they are not satisfied with the verbal response, then they should be referred to the Complaints Manager to agree a way forward to deal with their complaint. This may include the Complaints Manager asking the complainant to put their complaint in writing.

6.5 Verbal Enquiries / Complaints - face to face

Face to face verbal enquiries and complaints should be handled in the same way as verbal enquiries and complaints received by telephone (see above 6.4). If a complainant attends the premises, wishing to discuss an enquiry or make a complaint, they should be facilitated to do so. A suitable room should have a table and chairs, have ease of disabled access, and good lighting. In addition, staff safety must be considered when taking details of an enquiry or complaint on a face-to-face basis. Staff must always be accompanied by a colleague and the room used must be easily accessed by other colleagues. No meeting can commence until a senior member of the team is informed that the meeting is going ahead, and they must know where it is being held.

6.6 Out of Office Hours

Should a written complaint be received out of office hours, the complaint should be passed to the Complaints Manager as soon as possible within working hours. Should a verbal complaint be received out of office hours, relevant details should be taken, and the complaint should be passed to the Complaints Manager as soon as possible within working hours. Where applicable, complainants should be advised that NHS 111 is available for out of hour's clinical advice.

6.7 NHS Calderdale CCG seeks to facilitate enquiries and complaints from disabled people and will help appropriate to the individual's disability. For example, if a complainant has a sight disability the complainant should be invited to submit details in Braille, or an audio format and the Complaints Manager should

arrange for this communication to be transcribed and verified by the complainant.

7 Complaints Handling Process

7.1 Receiving Complaints

7.1.1 Any member of staff receiving a complaint must log the information on the correspondence tracker and then notify the Complaints Manager immediately and copies of all correspondence should be forwarded to ensure appropriate acknowledgment. All written complaints and subsequent documentation should be stamped with the date of receipt and a copy scanned to the complaints folder. The original correspondence should then be filed with the appropriate complaints reference number.

7.1.2 The Complaints Manager has responsibility to ensure all correspondence and complaints are logged on the locally held complaints log and given a unique identifier. Key dates, complaint theme and level will all be recorded to ensure the complaints log is maintained to provide statistical returns to the NHS Digital and to facilitate completion of quarterly and annual reports required by internal committees and NHS Calderdale CCG's Governing Body.

7.2 Complaint Levels

Level 1: Simple issues, e.g.

- How to make a complaint
- The correct NHS Trust to deal with a complaint

Acknowledged and Responded to if possible, the same day, or within 3 to 5 working days.

Level 2: Low/simple, non-complex issues, requiring investigation by a provider and a written response from the Complaints Manager (or with agreement of the Complaints Manager) e.g.

- Non-referral/unwillingness to refer/delay in referral
- Prescribing of Medication issues

Acknowledgement if possible, within 3 working days. Response within 5 to 10 working days.

Level 3: Moderate /complex, several issues relating to a short period of care) requiring an investigation by a provider and written response by the Chief Operating Officer (or nominated representative), e.g.

- CCG Continuing Care and CCG funding issues
- Miscommunication or misinformation.

Acknowledgement if possible, within 3 working days. Response time aim of 40 working days following receipt of appropriate consent. Updates on progress of the investigation will be provided to the complainant as appropriate.

Level 4: High/complex multiple issues relating to a longer period of care, often involving more than one organisation or individual requiring a requiring an investigation by a provider and written response by the Chief Operating Officer (or nominated representative), e.g.

- Failure to meet care needs.
- Medical errors.

Acknowledgment where possible within 3 working days. Response time will be agreed with the complainant following receipt of appropriate consent. Final response times where possible will be with the complainant within 40 working days. However, where complaints are particularly complex the complainants team will negotiate an extended response time with the complainant to a maximum of 60 working days, updates on progress of the investigation will be provided to the complainant as appropriate.

7.3 Acknowledgement and Consent Letter

The Complaints Manager will send out an acknowledgement and consent letter if possible, within 3 working days of receiving the complaint. The acknowledgment and consent letter will:

- Confirm when the original complaint was received by NHS Calderdale CCG
- Confirm the basis of the complaint
- Enclose a consent form for the patient / patient and 3rd party to sign
- Contain all contact details as appropriate for the Complaints Manager

- Include an apology if there has been a delay of more than 3 working days from the date the complaint was received, or the date it was received by the Complaints Manager.

The complaint cannot proceed until the consent form is returned from the patient / complainant. If consent is not received after two weeks, the complaints team will issue a reminder. If consent is still not received in one month of the acknowledgment and consent letter, the Complaints Manager will send further correspondence chasing consent. If after a further two weeks no further correspondence is received and/or the consent form is still unreturned it will be considered that the complainant no longer wishes to proceed with their complaint and the complaint will be closed.

7.4 Acknowledgment and Outline of Investigation

When the patient/complainant consent form is received by NHS Calderdale CCG this will be date stamped, recorded on the complaints log, an electronic copy scanned to the complaints folder and the original consent form filed in the appropriate complaints folder.

The Complaints Manager will draft a further acknowledgment letter. This will include:

- Confirmation of dates the consent form was received
- Confirmation of dates the original complaint was received
- Apologies regarding the complaint
- Offer condolences if appropriate
- Outline the areas for investigations from the complaint
- Explain who will be investigating i.e., appropriate head of service
- Ask for further details on the complaint (if relevant)
- Outline the date expected for response from investigation using the complaint levels in 7.2.
- Contain all contact details including phone number, written address and email address of the Complaints Manager handling the complaint.

7.5 The Investigation

7.5.1 Once the complaint has been logged and acknowledged, the Complaints Manager will forward the complaint immediately to the appropriate Head of Service, or provider organisation, which will be responsible for investigation. The Complaints Manager will provide summary of the complaint issues which require investigation where this is appropriate.

7.5.2 The receiving organisation will be responsible for nominating an Investigating Officer/Manager to investigate the issues raised and compile a draft response for submission to NHS Calderdale CCG's Complaints Manager. It is anticipated that the Investigating Officer/Manager will normally be the senior manager responsible for the area concerned. It is desirable that the complaint is dealt with as close to the point of delivery as possible to ensure a prompt reply and appropriate remedial action is taken.

7.5.3 The investigation requires the Investigating Officer/Manager to provide the following information:

- Names and job titles of all parties involved in the investigation
- Details of documentation referred to in order to respond to the concerns
- For each issue of complaint:
 - A detailed investigation of what happened/an explanation of what should have happened
 - Specific apologies where appropriate
 - Confirmation of actions taken, and lessons learnt

7.5.4 The investigation must be independent, and the Investigating Officer/Manager must have the relevant skills to undertake the task and be selected according to the importance and seriousness of the complaint.

On completion of the investigation, the Investigating Officer/Manager should send the findings of their completed investigation to the Complaints Manager.

7.5.5 The Complaints Manager will carry out a quality assurance check of the investigation findings to ensure the steps outlined in 7.5.3 has been provided. Should this not be the case, the Complaints Manager will inform the Investigating Officer/Manager about the gaps found and will ask them to provide NHS Calderdale CCG with revised investigation comments.

7.6 Documentation

7.6.1 All aspects of the investigation will be date stamped, recorded on the complaints log, an electronic copy scanned to the complaints folder and the original consent form filed in the appropriate complaints folder.

7.6.2 Should the complaint proceed to the Parliamentary and Health Services Ombudsman, or litigation, all the complaint documentation will be subject to disclosure.

7.6.3 Copies of complaint correspondence must **NOT** be held on the patient's health records.

7.7 Timescales/Holding Letter

Where there is any delay in receiving back the investigation information, or where gaps have been identified in this through the quality assurance process, the Complaints Manager will send a holding letter to the complainant if it is anticipated that these delays will impact on the timescale set for the final response. Further contact will be made by telephone, email, or by letter as appropriate.

The Investigating Officer/Manager has responsibility to provide a reason for the delay and to provide a revised timescale to the Complaints Manager.

7.8 Final Response Letter

7.8.1 All Level 3 and Level 4 complaints must receive a response in writing from NHS Calderdale CCG's Chief Officer or nominated representative.

7.8.2 The final response letter must be factually correct, and include:

- An apology where appropriate as an acknowledgement of the complainant's feelings about their experience.
- Address each of the points raised by the complainant with a full explanation or give reasons where it has not been possible to comment on a specific matter.
- Provide specific details about the investigation, how it was carried out, by whom and what was discovered.
- Provide details of action taken and learning identified because of the complaint.

- Provide the name and telephone number of the Complaints Manager and or the Investigation Manager/Officer for further queries / discussion.
- Include details of further action available to the complainant (for example, an invitation to meet staff if appropriate).
- Provide the contact details of the Parliamentary and Health Service Ombudsman should the client remain unsatisfied.
- Timescale for referral of complaints to the Parliamentary and Health Service Ombudsman (PHSO) and inform the complainant that, if they take this course of action, they should do so within one year after their receipt of the final response letter as any delay in doing this may prevent the PHSO from reviewing their case.

7.8.3 Where it is clear that there has been a mistake or failure in procedures, this should be clearly stated, and an appropriate apology given. Where this could constitute an admission of legal liability the matter may need to be referred for legal advice. The Complaints Manager will liaise with the Chief Operating Officer for advice on the recommended course of action.

7.8.4 Actual or intended litigation should not be a barrier to the processing or investigation of a complaint at any level. It may be prudent for parties in actual or potential litigation to agree a stay of proceedings pending the outcome of the complaint, but the duties of the system to respond to complaints should be regarded as entirely separate from the considerations of litigation.

7.8.5 The Complaints Manager will draft a response to the complaint for the Chief Officer or their nominated representative.

7.8.6 Once the Complaints Manager has drafted the final response, it is printed off and taken with the complete complaints file to the Chief Officer, or nominated deputy, for agreement and signature.

7.8.7 Where appropriate, the Investigating Officer will be advised and sent a copy of the signed final response for their records.

7.9 Meeting the Complainant

7.9.1 The Investigating Officer/Manager will, in consultation with other senior employees involved, and the Complaints Manager, decide whether it is appropriate to offer the complainant an interview or meeting.

7.9.2 Where the Investigating Officer/Manager arranges a meeting with the complainant, the Investigating Officer and Complaints Manager will determine how the meeting will be structured. The complainant will be offered the opportunity to have someone else present to assist them. The meeting must be formally recorded, and the notes agreed with the complainant.

7.10 If the Complainant is Dissatisfied with the Final Response

7.10.1 If the complainant is dissatisfied with the final response they should be asked to identify their specific concerns. Consideration should be given to how the complaint might be resolved. On a case-by-case basis, either a further investigation by the relevant senior manager or a meeting with staff could be offered.

7.10.2 If the complainant remains dissatisfied, they should be encouraged to request a review of their complaint by the Parliamentary and Health Services Ombudsman.

8 Parliamentary and Health Service Ombudsman

8.1 The Parliamentary and Health Service Ombudsman (PHSO) is the second stage of the complaints procedure and is implemented when the complainant has exhausted the local resolution stage.

8.2 The PHSO makes final decisions on complaints that have not been resolved by the NHS, government departments and some other public organisations. Their service is free for everyone.

8.3 The PHSO has established three sets of principles which outline the approach it believes public bodies should adopt when delivering good administration and customer service, and how to respond when things go wrong: Principles of Good Administration, Principles for Remedy, and Principles for Good Complaints Handling.

The six principles for Good Complaints Handling are:

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

- Seeking continuous improvement

The process for how NHS Calderdale CCG will handle PHSO recommendations follows:

8.4 Actions to be Undertaken When a Complaint is Referred Back or Upheld by the PHSO

8.4.1 When a complaint concerning an organisation providing NHS services is referred back from the PHSO it is usual procedure for the PHSO to request a full copy of the complaint file and all relevant supporting documentation (including medical records), by a specified deadline.

8.4.2 The Complaints Manager will use this opportunity to re-visit the complaint records, identify the points raised and ascertain if there are any points of action required by either NHS Calderdale CCG or the organisation involved. If anything is identified, under the duty of candour, the PHSO must be aware of any shortcomings in the final response or investigation and an offer of further investigation made.

8.4.3 If, having reviewed the case, the PHSO has criticised the handling of a complaint by an organisation providing NHS services the Complaints Manager will comply with the PHSO's requirements which may include:

- Re-investigation of the issues raised, or re-investigation of some of the issues raised.
- Contacting the provider organisation to discuss the issues raised.
- Notifying and seek appropriate clinical advice where necessary.
- Discussing with the organisation an action plan to address the issues raised.
- Responding to the PHSO regarding the action undertaken in line with requested guidelines.

If the PHSO has criticised NHS Calderdale CCG directly, the Complaints Manager will notify the Chief Operating Officer and the Chief Quality and Nursing Officer.

After consideration by the Chief Operating Officer, the Complaints Manager will ensure that a response is made within the deadline set by the PHSO, and,

where necessary, a response is made to the complainant, outlining the action to be taken.

8.5 Other Reviews

The Care Quality Commission (CQC) is an independent regulator of health and social care in England. The CQC monitor, inspect and regulate services to make sure they meet fundamental standards of quality and safety and they publish their findings, including performance ratings to help people choose care. As NHS Calderdale CCG is not a care provider it would not fall under the remit of the CQC directly. However, the CCG will comply with any request for information held on complaints if requested by the CQC.

9 Learning from Complaints

9.1 Following investigation of the complaint, the Investigating Officer/Manager will be responsible for identification of lessons learned and ensuring that actions have been completed within a reasonable timescale. NHS Calderdale CCG must be able to demonstrate that following investigation of a complaint any changes, which are identified and will reduce risk, are considered, and implemented, if appropriate.

9.2 Investigating Officers/Managers are routinely requested to consider and document lessons learned as part of the management of complaints. A key part of the complaints process is to identify how services can be improved because of patient feedback and ensuring that lessons are learned at all levels. Any identified lessons learned will be included in Calderdale CCG's complaints reports which are published on Calderdale CCG's website.

9.3 The Complaints Manager is responsible for maintaining an overview of all complaint cases received by NHS Calderdale CCG. If the Complaints Manager becomes aware of any issues being repeated this will be brought to the attention of the appropriate Head of Service and Quality Lead for further investigation to ensure that action is taken quickly.

10 Reporting Arrangements

10.1 The Complaints Manager will provide reports to the Quality, Finance and Performance Committee and Governing Body on complaints received in NHS Calderdale CCG. Monitoring complaints against providers helps to identify possible themes, issues, or risk to ensure that appropriate action can be taken.

10.2 Committee Reporting

The Quality, Finance and Performance Committee will receive a six-monthly report detailing:

- A summary of the subject matter of complaints
- How many complaints were received; upheld and how many investigated by the Parliamentary and Health Service Ombudsman
- Summarise matters of general importance, action to improve services and the identification of trends
- A commentary of repeats, increases or clusters; any significant risk assessments; and how the impact of any service improvements arising from complaints has been evaluated. It will also provide useful information about the quality of services and the patient experience of those services
- Demonstrate that changes have been made because of acting on feedback

10.3 Annual Reporting

The Annual Report, which will be submitted to the Governing Body, will:

- Summarise the subject matter of complaints
- State how many complaints were received; upheld and how many investigated by the Parliamentary and Health Service Ombudsman
- Summarise matters of general importance, action to improve services and the identification of trends
- Provide a commentary of repeats, increases or clusters; any significant risk assessments; and how the impact of any service improvements arising from complaints has been evaluated. It will also provide useful information about the quality of services and the patient experience of those services
- Demonstrate that changes have been made because of acting on feedback.

10.4 NHS Digital Reporting

On a quarterly basis a return to NHS Digital is completed through the KO41a return.

NHS Calderdale CCG will co-operate with organisations including the Care Quality Commission, NHS England, Monitor and Healthwatch, bearing in mind the need to maintain confidentiality and only share anonymous information, obtain consent from the relevant patient or patients concerned, or ensure a lawful basis exists to share person identifiable information in relation to any request for complaint information and/or documentation.

11 Monitoring Compliance and Effectiveness

This will be included within the six monthly and annual reports to Quality, Finance and Performance Committee, Governing Body and Audit Committee.

Audit Yorkshire will periodically be asked to conduct a review to provide assurance of the Complaints Policy and Complaints Handling Process.

12 Arrangements for Review

A biennial review of the Complaints Policy will be undertaken by NHS Calderdale CCG.

13 Dissemination

This Policy will be published on the CCG's website Training for staff will be arranged by the Complaints Manager as required.

14 Equality Impact Assessment

Complaints handling includes an equality monitoring form which will pick up any issues and learning.

15 Appendices

[Appendix A](#): Complaints Handling Procedure Flowchart

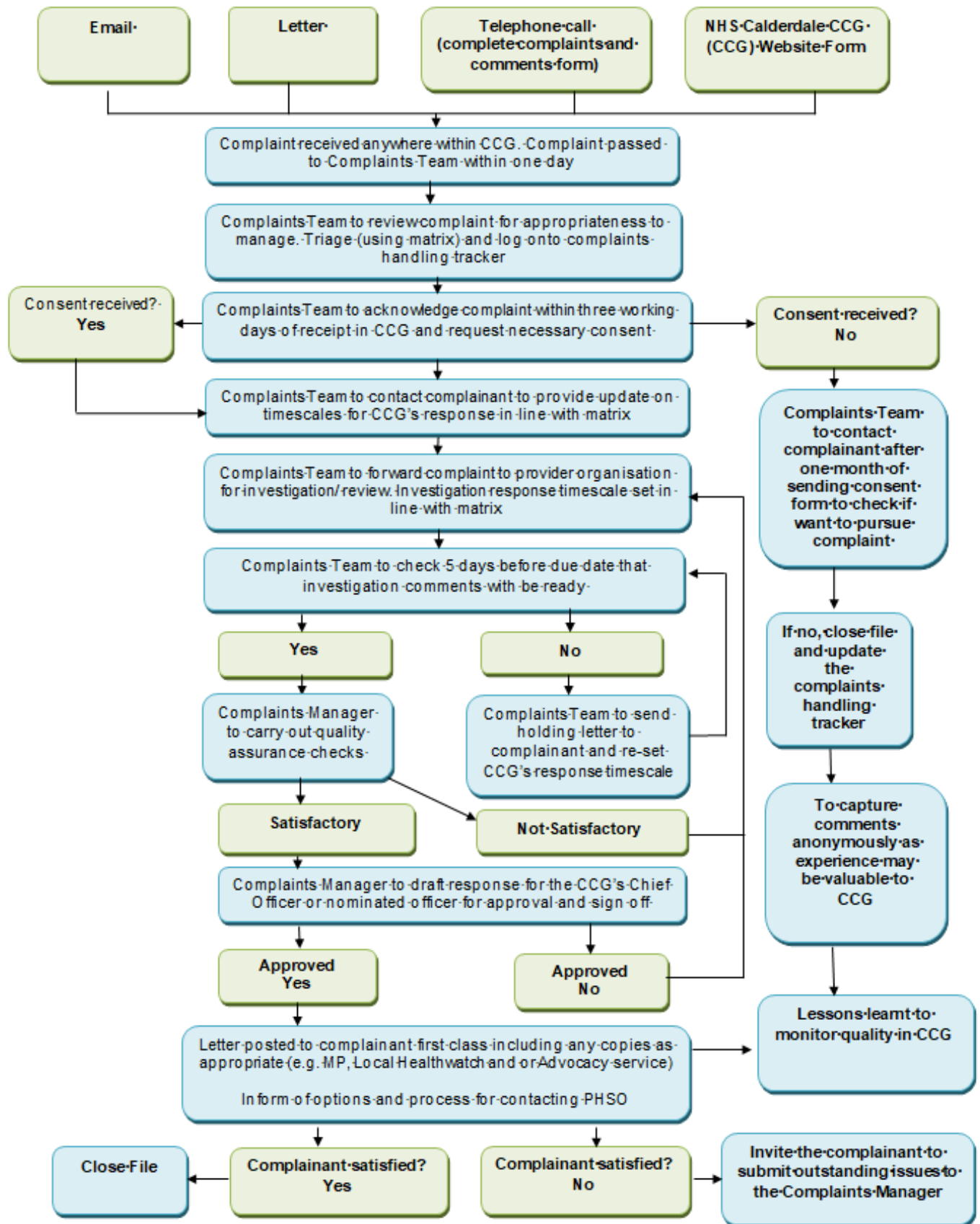
[Appendix B](#): Matters excluded from consideration under the Local Authority Social Services and National Health Service Complaints (England) Regulations (2009).

[Appendix C](#): How to ensure the complainant has the appropriate authority to act on behalf of the patient.

[Appendix D](#): Habitual and Vexatious Complainants Procedure

Appendix A - Complaints Handling Procedure Flowchart

The following flow diagram sets out NHS Calderdale CCG's complaints handling process which is detailed in the document.



Appendix B: Matters Excluded from Consideration under the Local Authority Social Services and National Health Service Complaints (England) Regulations (2009).

1. A complaint made by an NHS body which relates to the exercise of its functions by another NHS body;
2. A complaint made by a primary care provider which relates either to the exercise of its functions by an NHS body or to the contract or arrangements under which it provides primary care services;
3. A complaint made by an employee of an NHS body about any matter relating to their contact of employment;
4. A complaint made by an independent provider or an NHS foundation trust about any matter relating to arrangements made by an NHS body with that independent provider or NHS foundation trust;
5. A complaint that has been previously fully investigated;
6. A complaint which is being or has been investigated by the Parliamentary Health Service Ombudsman;
7. A complaint which is being or has been investigated by another NHS organisation;
8. A complaint arising out of an NHS body's alleged failure to comply with a data subject request under the General Data Protection Regulation (EU) 2016/679 and Data Protection Act or a request for information under the Freedom of Information Act 2000;
9. A complaint about which an NHS body is taking or is proposing to take disciplinary proceedings in relation to the substance of the complaint against a person who is subject of the complaint may be excluded depending on the circumstances of the case;
10. A complaint about a historic matter, specifically a complaint should be made not later than 12 months after the date at which the occurrence (the subject of the complaint) happened, or 12 months after the complainant became aware of the occurrence. This time limit will not apply if the complainant can show good reason for not making the complaint earlier or it is still possible to conduct a fair and effective investigation into the complaint.

Appendix C: How to Ensure the Complainant has the Appropriate Authority to Act on Behalf of the Patient.

In general terms consent can be broken down into 3 areas:

Consent provided by the patient

- Consent provided by the patient, who has nominated someone else to act on their behalf
- Consent provided by a third party who has the legal authority to act on behalf of a named patient

As such the consent form is broken down into these 3 sections. However, there can be complexities which must be considered under all 3.

C.1 Consent provided by the patient (Patient Consent Form)

Does the patient have capacity to understand exactly what consent means? Or do they actually understand what is included in the consent form? The Complaints Manager must be satisfied that the patient understands what they have signed.

One common misconception from patients is that consent is transferrable between different departments in an NHS organisation, or in relation to more than one request from one department. This is not automatically the case.

A patient might make a complaint and request a copy of medical records (which is a subject access request) – it would not be appropriate for the complaints team to transfer their consent to the access to records team as they relate to very different matters.

A patient might raise a complaint about one issue and then 3 months later raise a differing complaint – we must have two separate consent forms if the issues are different. However, if the second complaint is a continuation of the first, i.e. the same issues, the original consent document will be valid.

Patients also may not understand that we must have their consent before we can even approach a differing NHS organisation. We must have consent if we are going to investigate matters outside of the CCG as we have to contact that other organisation.

C.2 Consent provided by the patient, who has nominated someone else to act on their behalf (3rd Party Consent form)

As well as using a family member or a good friend, a patient might approach their MP to act on their behalf. NHS Calderdale CCG will usually need the MP to liaise with the patient to complete a consent form.

If a GP raises a complaint and they are doing this with the full authority of the patient as their advocate this is acceptable. However, if they are doing this in a professional capacity, then it is not, as professional to professional complaints cannot be accepted under the Local Authority Social Services and National Health Service Complaints (England) Regulations (2009).

A review of the documentation will take place to ensure the patient has actually given consent and that the signature is valid. For example: a daughter is raising a complaint about the care provided to her elderly father, the Complaints Manager must be confident that the signature on the form is that of the father.

“Next of Kin” has no authority in law. A husband may be recorded as the next of kin to his wife. Whilst he can raise a complaint on her behalf he cannot have access to the response unless his wife has provided consent.

Completing the consent form: Patient details are completed in the first box and nominated complainant’s details will be completed in the second box. The patient will state their name, the name of the nominated complainant in the blank sections and will sign and date the form.

C.3 Consent provided by a third party who has the legal authority to act on behalf of a named patient

Children under the age of 16

It would be appropriate for a parent (or adult in a legal guardianship role) to make a complaint about the care or treatment of a child. Complaints being made by someone else must have the consent of the parent/guardian.

If a parent lives at an address different to the child - NHS Calderdale CCG will need to ascertain if the parent has retained parental responsibility or not (usually following a divorce or a separation).

As an example: a child lives with mum, but dad has made the complaint – does dad have joint custody / parental responsibility for the child? NHS Calderdale CCG recognises that this can be very emotive. However, the Complaints Manager must be satisfied that appropriate consent has been received.

Evidence: A copy of the child’s full birth certificate (not the abbreviated certificate as this does not name the parent). In a case of a separation there is usually a court document detailing the parental responsibilities that each parent holds.

Children Aged 16 to 18

As above, for a child under 16.

However, for a child aged 16 to 18, it may be more appropriate for the child to give consent. This should be decided on a case by case basis being aware of the circumstances of the complaint and the child's maturity and understanding (described as Gillick competency and explained in the Fraser guidelines).

Thought will be given to the nature of the complaint: it would be preferable to get the child's consent if the complaint related to reproductive health, GUM medicine, contraception or a long term condition which the child has extensive knowledge of such as Cystic fibrosis or diabetes. However for things like trauma and orthopaedics or general medicine it might not be necessary.

Patients lacking capacity

This will include patients with, for example, severe disabilities (physical or learning), dementia, locked in syndrome and those who are unconscious where it is believed that this situation will continue for some time.

Where no evidence can be produced (for example, young healthy patient unconscious following a road traffic accident with nothing in place) it would be appropriate to manage the complaint in the patient's "best interests" by seeking consent from an immediate relative (a parent, spouse or child).

Evidence: Lasting Power of Attorney for Health and Welfare (appropriately authorised and with a court stamp), historic record of patient giving consent for access to their information.

Deceased Patients

If the patient has died, any individual who is a beneficiary of the estate, is the executor of the estate, or is an immediate relative, has a right to raise a complaint.

"Next of kin" has no legal standing, for example, if the patient had nominated their neighbour as their next of kin, it does not make them the appropriate person to raise a complaint on their death.

Evidence: The name of the beneficiaries and executors will be contained within the deceased's 'Will'. Children can present their birth certificate; parents can present the deceased's birth certificate and the spouse can show their wedding certificate.

Appendix D – Habitual and Vexatious Complainants Procedure

NHS Calderdale CCG is committed to treating all complaints equitably and recognises that it is the right of every individual to pursue a complaint.

NHS Calderdale CCG understands that when people feel they need to complain that they might have been through a challenging and difficult experience. However it requests complainants to treat its staff with respect and courtesy.

NHS Calderdale CCG will not tolerate abusive or aggressive behaviour towards any member of its staff.

The Complaints Manager may request that a complainant reviews their tone, or manner in which they are corresponding, in order to ensure that communication is conducive to the best outcome in handling their complaint.

Should this approach continue, it may result in NHS Calderdale CCG refusing to handle the complaint.

On occasion, NHS Calderdale CCG may consider that a complaint is habitual in nature, i.e. the complaint raises the same or similar issues repeatedly, despite having received full responses to all the issues they have raised.

In cases such as these the guidance outlined is intended for use as last resort and after all reasonable measures have been taken to try and resolve a complaint within the complaints policy.

D.1 Definition of Habitual and Vexatious Complaints

There is no one single feature of unreasonable behaviour. Examples of behaviour may include those who:

- Persist in pursuing a complaint when the procedures have been fully and properly implemented and exhausted.
- Refuse to accept documented evidence as fact.
- Do not clearly identify the precise issues that they wish to be investigated, despite reasonable efforts by staff, and where appropriate, the relevant independent advocacy services could assist to help them specify their complaint.
- Continually make unreasonable or excessive demands in terms of process and fail to accept that these may be unreasonable e.g. insist on responses to complaints being provided more urgently than is reasonable or is recognised practice.

- Continue to focus on ‘trivial’ matter to an extent that it is out of proportion to its significance. It is recognised that ‘trivial’ is subjective and careful judgment must be applied and recorded.
- Change the substance of a complaint or seek to prolong contact by continually raising further issues in relation to the original complaint. Care must be taken not to discard new issues that are significantly different from the original issues. Each issues of concern may need to be addressed separately.
- Consume a disproportionate amount of time and resources.
- Threaten or use actual physical violent towards staff.
- Have harassed or been personally abusive or verbally aggressive on more than one occasion (this may include written abuse, for example, emails).
- Repeatedly focus on conspiracy theories and/or will not accept documented evidence as being factual.
- Make excessive telephone calls or send excessive numbers of emails or letters to staff.
- Make inappropriate or personal comments about staff
- Raising issues not relating to the NHS.

D.2 Actions Prior to Designating a Complainant as Habitual and Vexatious

It is important to ensure that the details of a complaint are not lost because of the presentation of the complaint. There are a number of considerations to bear in mind when considering imposing restrictions upon a complainant.

These may include:

- Ensuring the complainant’s case is being, or has been dealt with appropriately and that reasonable action will follow, or has followed, the final response.
- Confidence that the complainant has been kept up to date and that communication has been adequate with the complainant prior to them becoming unreasonable or persistent.
- Checking that new or significant concerns are not being raised that require consideration as a separate case.
- Applying criteria with care, fairness and due consideration for the complainant’s circumstances – bearing in mind that physical or mental health conditions may

explain difficult behaviour. This should include the impact of bereavement, loss or significant/sudden changes to the complainant's lifestyle.

D.3 Dealing with Habitual and Vexatious Behaviour

Stage 1:

Once it is clear that an individual meets the criteria of vexatious, persistent or unreasonable behaviour, it may be appropriate to inform them, in writing, that their conduct is unacceptable and that, if it continues, they may be classified as "vexatious, habitual or unreasonable". The letter should state clearly which elements of their behaviour are causing problems and be accompanied by a copy of this framework.

If the complainant is using the NHS complaints procedure, they should also be advised to seek advice (for example, from their local complaints advocacy service) in presenting their complaint.

Stage 2:

It may be appropriate to try to resolve matters by drawing up an agreement with the person, which sets out a code of behaviour for the parties involved, if NHS Calderdale CCG is to continue communication or to process a complaint. If these terms are contravened consideration will be given to implementing Stage 3 of the Aggressive, Vexatious, Persistent and Unreasonable Complainants Procedure.

A code of behaviour could include the following:

- An agreement relating to appropriate behaviour and conduct. Any such agreement should normally not extend beyond six months without review.
- Restricting contact to one or two individuals within the CCG.
- Restricting the method of communication (for example, by letter only, not telephone/email).
- Offering a meeting to attempt to resolve outstanding issues.

Stage 3:

Where NHS Calderdale CCG has responded fully to the points raised by the person and has tried to resolve the issues but has not achieved this to the complainant's satisfaction, and continuing contact on the matter would serve no useful purpose, the individual will be notified by the Chief Officer that the contact is at an end and that further contact will be acknowledged, but not answered.

In extreme cases, or where the safety of staff is at risk, the individual will be informed that NHS Calderdale CCG reserves the right to pass habitually unreasonable or vexatious behaviour to the police/CCG solicitors. All contact with the person and/or investigation of the complaint will be suspended whilst seeking legal advice or guidance.

Any further complaints received from a person who has been designated as habitually demanding or vexatious under this framework, will be subject to a reasonable investigation as deemed necessary by the Chief Officer in conjunction with advice received from staff dealing with complaints. The Chief Officer (or deputy), in conjunction with the Complaints Manager, may, at their discretion, choose to omit one or two of the above stages.

Janet Smart

Complaints Manager

16 December 2021