

NHS BIRMINGHAM AND SOLIHULL INTEGRATED CARE BOARD

COMPLAINTS POLICY

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Introduction, Legislation and Guidance

This policy sets out the way in which the NHS Birmingham and Solihull Integrated Care Board will deal with any complaint that is made to it. This includes the process for complaint management and the standards that complainants and service providers can expect. It also explains how complaints will be reviewed, monitored and the implementation of lessons learned. The policy aims to provide a fair and effective procedure for the management of complaints and, to try to ensure this, the policy takes account of latest guidance in addition to Regulatory requirements.

This policy is drawn up to ensure compliance with the national ruling Regulation which is Statutory Instrument 2009 no 309 headed '*The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009*'. This includes subsequent amendments. Nothing in this document can over-ride Statutory Instruments.

The ICB will strive to ensure that any complaint is investigated in a transparent way with an unbiased report/letter provided at the conclusion. Care has been taken to ensure that the commitments given in the NHS Constitution are embedded in this policy and the user-led vision set out in the 'My Expectations' document produced by the Ombudsmen and Healthwatch is adhered to. 'Expectations' are:

- *I felt confident to speak up;*
- *I felt that making my complaint was simple;*
- *I felt listened to and understood;*
- *I felt that my complaint made a difference;*
- *I would feel confident making a complaint in the future.*

The Ombudsman's Principles for Good Complaints Handling which set out the administrative aims of the NHS underlie this policy:

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

Aims

The ICB expects that its own organisation and providers of healthcare that it commissions will aim to give the best possible care to patients and their carers, respecting their views and trying to meet their expectations. However, it is acknowledged that, on occasion, patients and/or their representatives may feel dissatisfied with the service they receive and will wish to express this dissatisfaction.

This policy aims to ensure that the complaint process is fair to all involved – patients, complainants, representatives, staff and commissioned organisations. To try to ensure this The ICB will work in an open and transparent manner when dealing with complaints and enquiries, conducting an evidence based investigation into issues of concern.

Patient feedback is an important opportunity for the ICB to measure the quality of healthcare services it commissions and to improve the standard of patient care provided. We welcome all complaints and any other experiences patients would like to share with us.

Scope of the Policy

In respect of any service we commission - any service that a ICB registered patient receives that is funded by the ICB - complainants have the right to bring their concerns directly to the commissioner of the service. However, we recognise that a complaint investigation conducted by a provider (the organisation that provides the care ie an acute hospital) can result in a more timely response due to the direct contact with the organisation. Complainants will always be offered the option to have their complaint referred to the provider for direct management. This policy also covers any action, omission or decision of the ICB.

The policy applies to all complaints received by the ICB, all staff that are employed by, or have a contract of service with, the ICB and all commissioned services.

The ICB is not responsible for complaints in respect of primary care contractors ie GPs, dentists, opticians and pharmacists. However, we will work with the Area Team of NHS England – who has this responsibility – to ensure we receive relevant data to aid in our work in continuously improving the quality of care afforded to patients.

For services not commissioned by the ICB, complainants will need to refer to the complaints policy of the provider/commissioner concerned.

Roles and Responsibilities in the ICB

The Accountable Officer - responsible for ensuring compliance with the arrangements made under the Regulations. The Accountable Officer (or in absence, the deputy) will sign all complaint responses and all responses to Members of Parliament.

Chief Nurse - the Accountable Officer has delegated responsibility to the Chief Nurse to ensure effective complaints management is in place, that policy and procedures are established and learning and improvement actions are implemented as a result.

Complaints Manager - responsible for the operational management of the complaints policy and handling/consideration of complaints. He/she will ensure investigations are undertaken into received complaints and that a responsive service is provided.

ICB staff - have a responsibility to ensure they have an awareness and understanding of this Policy in order that they can provide relevant information to persons wishing to invoke the complaints procedure.

Definition of a Complaint

Within the NHS a complaint is generally defined as “*an expression of dissatisfaction which requires a response.*” A complaint may be made verbally (by telephone or in person) which must be in writing prior to investigation, or in writing (including electronically by e-mail). Concerns can be dealt with without resorting to the complaints policy and complainants will be advised of this pathway.

Who Can Complain

A complaint can be made by:

- someone who receives or has received services from an organisation commissioned by the ICB;
- someone who has received services by the ICB through the CSU;
- a person who is affected, or likely to be affected, by the action, omission or decision of the ICB.

A complaint can also be made by a representative acting on behalf of someone else.

This can be where:

- the patient has died;
- the patient is a child - the Complaints Manager will take steps to be satisfied that there are reasonable grounds for a complaint being made by a representative instead of the child;
- the patient is unable to complain themselves due to physical incapacity or lack of capacity within the meaning of the Mental Capacity Act – the Complaints Manager must be satisfied that the complaint is being made in the best interests of that person;
- the patient has consented for a representative/third party to act on their behalf, including an MP – this must be confirmed by the receipt of a signed consent form or, if this is not possible, the Complaints Manager must be satisfied that the representative is acting on the patient’s behalf and in their best interests.

What Cannot be Complained About Under This Policy

The NHS Regulations set out what cannot be dealt with under the complaints policy by NHS bodies as set out below. If the ICB receives a complaint relating to these issues the Complaints Manager will write to the complainant informing them of the decision not to investigate and the reason.

- a) Any matter concerning employment within the ICB, any other NHS body or Local Authority;
- b) A complaint made by another NHS organisation or Local Authority;
- c) An oral complaint which has been resolved to the patient’s satisfaction by the end of the next working day after receipt;
- d) A complaint the subject matter of which is the same as that of a complaint that has been made and resolved under (c);
- e) A complaint the subject matter of which is the same as that of a complaint that has been investigated previously under the NHS complaints system;
- f) A complaint investigated by the Parliamentary & Health Service Ombudsman;
- g) A complaint regarding failure to comply with a Freedom of Information request;
- h) A complaint regarding the administration of superannuation schemes.

Time Limit for Making a Complaint

The Regulations set out the time limits in which a complaint should be made. In line with these Regulations, a complaint should be made to the ICB within twelve months of the date on which the situation being complained about occurred, or within twelve months of the date on which the complainant became aware of the situation.

The Complaints Manager has discretion to investigate a complaint if satisfied that the complainant had good reasons for not making the complaint sooner and that it would still be possible to investigate the complaint effectively and fairly.

Patient Concerns

If a patient has concerns in respect of a directly commissioned service such as a hospital, clinic, mental health clinic etc then it can be beneficial to raise the matter with the provider concerned directly. This may allow a problem to be solved quickly and easily without resorting to formal complaints.

If this is not appropriate or fails then the patient has a right to raise the matter as a formal complaint with the provider or the commissioner of the service.

The ICB is interested to learn from feedback from patients to help assess the quality of commissioned services. However, the importance of raising a concern locally to try to sort out misunderstandings or issues is also recognised. The ICB encourages patients to work with their healthcare providers to make them aware of problems which may occur in a timely manner to ensure that improvements take place and issues are resolved as quickly as possible. This improves the patient experience of services.

Help and Advocacy

The ICB supports the role and involvement of the national Independent Complaints Advocacy Service (ICAS) and will ensure that all complainants are made aware of this free service and the benefits of support and assistance which is available. Information for complainants will be provided upon first contact with the complainant. Healthwatch England provides information for those making a complaint including template letters and contact details for local support. Healthwatch England information is available at www.healthwatch.co.uk/complaints/guides

Consent

The Complaints Manager must ensure the consent of the complainant to forward details of any complaint to the relevant provider is obtained and this must be done before providers are contacted. Where access to medical records has been identified as part of the investigative process, the consent of the patient for the release of these records must be obtained. A copy of the consent form completed by the complainant must accompany any requests made to service providers to access medical records. Where an investigation of a complaint involves the sharing of personal information across organisations, the lead organisation will ensure the complainant consents to such sharing. Exceptions to this consent will apply in cases of safeguarding.

A complaint may be made on behalf of a patient but written consent for the complainant to act on the patient's behalf must be obtained. The complainant will receive a consent form for completion. In certain circumstances verbal consent will be accepted. In cases where the patient is unable to give consent the Complaints Manager must be assured that the complainant is acting in the best interests of the patient.

Every effort will be made to encourage complainants to return completed consent forms so that investigations may take place with service providers. This will include a minimum of two reminder contacts before advising a complainant that the ICB is unable to investigate the concerns which have been raised and the intention to cease correspondence / contact. Where consent has not been received to progress the complaint, the Complaints Manager will review the risk rating of the complaint. Where this risk rating is classed as "extreme" or "high" the Complaints Manager will consider with the Chief Nurse progressing the complaint from a clinical governance perspective with the investigation being carried out in accordance with this policy. The outcome will not be shared with the complainant until consent is received. This will ensure that the ICB can discuss quality concerns with the relevant provider and ensure appropriate action and learning is implemented.

Formal Complaints – The Initial Process

Regulations make provision for complaints to be passed to providers for that organisation to deal with if it is felt appropriate to do so and the complainant agrees. As a principle the ICB will ensure all complainants are offered this opportunity unless there are exceptional and compelling reasons not to do so. This generally allows for a speedier investigation and response and also allows the provider the opportunity to provide an immediate resolution. This is particularly relevant when a patient is currently undergoing treatment with that provider. If a complaint is passed on and, if appropriate, the ICB will seek permission from the complainant to receive a copy of the final response and details of any actions.

Complaints can be made in person, by telephone, by e-mail or in writing. All complaints will be acknowledged not later than three working days of receipt and this may be in writing, e-mail or verbally.

The Complaints Manager will ensure that the complaint is entered onto the complaints management module. If the complainant wishes the ICB to investigate and this is agreed, then we will write to the complainant sharing the plan for the investigation of the complaint, the understanding of the complainant's desired outcome, setting out a timescale for responding and providing details, if not previously given, of local advocacy support. It is important that the complainant's expectations are identified and managed at the outset and for the duration of the complaint process. This recognises that each complainant is an individual and a standard approach/response may not be appropriate. A consent form will be included if relevant and the complainant will be offered the opportunity to discuss all matters.

If a complaint has been received orally, the Complaints Manager will ensure a written record is made of the complaint and provide a copy of this to the complainant for their signature and return.

The Complaints Manager will ensure a record is made on the database of all details required by the Regulations.

Complaints received by any officer in the ICB must be forwarded to the Complaints Manager within 24 hours.

Formal Complaints – Investigation and Response

Each investigation into a complaint will, by its very nature, be a highly individual exploration of the concerns and events raised. Regulations do not require complaints to be responded to within specific timescales as this can be prejudicial to a full and complete investigation. The Complaints Manager will agree an individual timeframe for the completion and reporting of its investigation with the complainant. The timeframe agreed will be based on the complexity of the complaint and the nature and difficulty of the investigation. The complainant will be informed where any revisions to this timeframe become necessary and agree a revised schedule. Matters which will influence the investigation and associated timeframe could include:

- Meeting with parties;
- Conducting interviews;
- The number of organisations involved;
- Reviewing written records (including medical records) and copies of documents;
- Undertaking site visits when necessary;
- Obtaining expert clinical advice.

Once all the evidence has been gathered it will be assessed by the Complaints Manager, in association with other relevant professionals as appropriate, in order to decide what is fair and reasonable in the circumstances of each case.

At any point the complainant may request an update on their complaint and / or request a meeting to review the status of the investigation and agree any amendments to the received information or response period. The Complaints Manager will ensure the complainant is kept informed at all stages and informed of any delays to the investigation and agree a new response period where appropriate.

Any healthcare professional, manager or member of staff may be involved in the investigation if they would be in a position to progress the investigation and / or provide expert advice. Any requests for information from healthcare professionals and providers will be allocated a timeframe for response. The Complaints Manager is responsible for escalating requests for assistance in obtaining reports from providers to the Chief Nurse if unacceptable delays are encountered.

In certain circumstances the Complaints Manager, having conducted an initial investigation, may suggest that the parties involved in the complaint would benefit from meeting to discuss the complaint and attempt to resolve matters together. Such meetings will only take place if both parties agree. A record of the discussions will be taken and forwarded to both parties, including any agreed outcomes or actions.

Where a meeting with the complainant is arranged, sensitivity will be shown regarding the location of the meeting. In the event that the complainant is unable to leave their home the Complaints Manager/suitable officer may visit but must be accompanied. A complainant may be accompanied at any meeting if they feel it would help to provide support and assist in the process. Such persons are for the complainant to decide and could be an ICAS representative, family member or friend or whoever the complainant feels would be most appropriate. It would not be appropriate or acceptable for a legal representative acting on behalf of the complainant to attend such a meeting.

As soon as reasonably practicable after completing the investigation the Complaints Manager will draft, for signature by the Accountable Officer, a written response to the complainant which must include:

- An explanation of how the complaint has been considered;
- An explanation based on facts;
- The conclusions reached in relation to the complaint which will set out whether the complaint has been upheld or not;
- Confirmation of any action needed as a consequence of the complaint which includes an appropriate apology if necessary;
- Details of the complainant's right to take their complaint to the Parliamentary & Health Service Ombudsman and contact details/leaflet.

It is critical to the success of the complaints procedure that a flexible approach is taken to each case taking account of the needs/wishes of the complainant, focusing on achieving a satisfactory outcome and providing a quality, evidence based investigation and response. Once a written response has been provided to the complainant and all identified actions completed the complaint will be recorded as closed. The complainant is encouraged to return directly to the ICB, preferably within a month of the date of the response, if they are concerned all issues have not been addressed. In such circumstances a discussion will take place with the complainant to establish the nature of the outstanding concerns and agree what action to take at that stage.

The complaints management module will be updated with the outcome (upheld, not upheld, partially upheld) including any relevant actions as a result of the complaint. Where a complaint has been withdrawn or not progressed the appropriate outcome will also be recorded.

Where appropriate, the service provider who is the subject of the complaint will receive a copy of the final letter setting out the results of the investigation and conclusion.

Formal Complaints - If A Complainant Returns

There may be occasions when a complainant is not satisfied with the complaint investigation and/or response. They may return to ask for further consideration of areas; the ICB will always endeavour to work with the complainant to satisfy them and may re-investigate or re-consider areas of complaint. If the ICB believes that nothing further can be provided then the complainant will be reminded of their option to approach the PHSO.

Multi-Agency Complaints

Where the ICB receives a complaint that includes issues relating to the organisation and other providers/services (such as local authority services) the Complaints Manager will ensure permission is gained from the complainant to share the complaint with other bodies. An agreement with all parties will be reached as to who will be responsible for leading the complaint investigation and response. The agreed lead will be responsible for providing the complainant with a single combined response to the complaint.

In deciding the lead organisation such factors as the wishes of the complainant, the seriousness of the various elements of the complaint, which organisation they relate to and the risks associated with the complaint and will be taken into account.

Primary Care Complaint Handling

From 1 July 2023, the ICB will hold delegated responsibility for complaints handling for Primary Care services; this includes GPs, dentists, pharmacists and opticians, and was previously the responsibility of NHS England.

These complaints will be managed by the Office of West Midlands, hosted by BSOL ICB, who will carry out complaint investigations on behalf of the ICB. The ICB will hold overall responsibility for the complaint with sign off by the Chief Executive. (See Appendix I for Primary Care complaints process).

Impartiality

The Complaints Manager will conduct any investigations into complaints in an impartial manner. The Complaints Manager is neither an advocate for the complainant nor a spokesperson for the ICB. If there is a conflict of interest this will be made known to the line manager who will delegate to another appropriate officer.

Confidentiality

Patients making complaints do not waive their right to confidentiality. The ICB, in conjunction with the Complaints Manager, is responsible for ensuring that the personal details relating to complainants and/or patients are handled in accordance with the Data Protection Act and will be kept separately from any other records. Care will be taken to ensure that patient identifiable information is shared only with those who have legitimate cause to be informed as part of the complaints process.

If, during the course of an investigation, the Complaints Manager becomes aware of information, acts or omissions requiring immediate attention they will immediately notify the Chief Nurse.

Withdrawing a Complaint

A complainant may withdraw their complaint at any time. At that point the Complaints Manager will ensure a record of the complainant's wishes and the complaints process will cease. In certain circumstances the investigation will continue where it is deemed in line with the ICB's duty for quality improvement. The outcome of such investigations will not be reported to the complainant.

Persistent/Unreasonable Complaints or Contact

The ICB will endeavour to respond effectively to all complaints but reserves the right to put in place measures, such as limiting contact with the complainant, if the complainant is unreasonable, threatening or abusive towards staff.

However, unreasonable behaviour may be indicative of a patient's clinical condition or as a result of genuine issues of complaint. It is important to ensure that the complaints process is fair and the complainant's interests have been taken into consideration.

Unreasonable behaviour may be exemplified by the following:

- Ignoring documented evidence to concentrate on conspiracy theories;
- Persistence in pursuing an issue when the procedures have been exhausted;
- Failing to identify the issues for investigation despite reasonable attempts to assist them to do so;
- Making excessive demands in terms of visits, calls or letters/e-mails that consumes a disproportionate amount of resources.

Complaints Forwarded by External Organisations

The ICB may receive information from external organisations such as licensing bodies e.g. General Medical Council. In such circumstances the ICB may have a duty to review such concerns from a governance perspective or patient safety perspective but has no authority to deal with the complaint under this Policy unless requested to do so by the patient/complainant.

Discrimination

The CG values the contribution that complaints make to helping our organisation improve services for all patients and users of services. The ICB encourages patients to complain where it is believed services have fallen short of the expected standards of care. No patient should be discriminated against for having complained regardless of race, gender, social class, appearance, religion, sexual orientation, disability or medical condition.

If a complainant feels that discrimination has taken place this may be the subject of a separate complaint and will be discussed further with the complainant.

The ICB will endeavour to capture (where relevant) any protected characteristic status of each complainant to assist in equality monitoring. Complainants will be advised that they do not have to provide this information and their complaint will still be investigated fairly and effectively if they elect not to provide information relating to protected characteristic status.

Serious Untoward Incidents

This Policy should be operated in conjunction with the Serious Incidents Requiring Reporting Policy. Where complaints meet the required parameters the Chief Nurse will request that the provider undertakes a SIRC review.

Parallel External Investigations

The ICB may receive a complaint that is also the subject of an external investigation (eg the Police). In these circumstances the Complaints Manager will consider, with the Chief Nurse and legal advisors if appropriate, what course of action to take to ensure there is no risk of compromising the integrity of any external investigation.

Training Competencies

Complaints Manager - working knowledge of national Regulations; Ombudsman Principles and Guidance; recommendations from national reports and findings (eg Francis).
All staff - general awareness of policy and what to do upon receipt of a complaint/query.

Risk Rating

All complaints will be entered onto the complaints management database and will be risk rated at the time of input, using the Department of Health recommended criteria. Correctly assessing the seriousness of a complaint can assist in ensuring the right action is taken. Risk rating is determined by assessing both the consequence and the likelihood of recurrence. Risk rating will be determined by balancing the consequence to the likelihood of an issue recurring.

Escalation

The Complaints Manager will ensure that the Accountable Officer, Chief Nurse and ICB Chair together with any other appropriate ICB members of staff are advised and kept informed of progress when any complaint is classified as “*extreme*”.

Claims

Where a complainant indicates they are pursuing, or intend to pursue, a claim against the ICB regarding a matter identified within their complaint the complaints process will continue in accordance with this policy. The complainant will not be discriminated against for pursuing a claim and has the right to have their concern investigated fairly and effectively. As part of the complaints process the complainant may ask for reimbursement of out of pocket or other expenses; or any financial outcomes as outlined in the Ombudsman’s Principles. Cases will be considered on a case by case basis.

Parliamentary & Health Service Ombudsman

Where a complainant remains dissatisfied with the outcome of their complaint, or if the ICB feels that everything possible has been done to address and respond to a complaint and the

complainant remains dissatisfied, the complainant should be directed towards the Parliamentary & Health Service Ombudsman (PHSO).

Where a complaint is currently being investigated by the PHSO the case cannot be reopened or reviewed until the matter has been concluded by the PHSO. Where the PHSO has investigated a complaint and makes recommendations for action, the ICB will ensure that all recommendations are implemented and will communicate these to the complainant in accordance with PHSO guidance.

Publicity

The ICB has a responsibility to make information available to the public about its arrangements for dealing with complaints and how further information about those arrangements can be obtained. Information will be available on the ICB website and in writing upon request.

Monitoring

A weekly 'sitrep report' will be completed detailing the number of patient experience contacts, the category of complaint and provider. This will enable a quick overview of trends and will be shared with senior staff and executive board members as necessary.

A report detailing complaints received, the results of investigations and actions implemented will be presented quarterly to the Quality & Safety Committee or equivalent.

An annual report will be presented to the Governing Body which will include information as specified in Regulations. This will include details of:

- the number of complaints received;
- the number of complaints upheld;
- the number of complaints the ICB has been advised have been referred to the Parliamentary & Health Service Ombudsman;
- a summary of the subject matter of complaints received;
- a summary of any matters of general importance arising out of the complaints or the way the complaints were handled;
- a summary of any actions that has been or is proposed to be taken to improve services as a consequence of the complaints.

The report will be presented to the Governing Body as soon after the end of the financial year as is practicable; made available on the website and shared with any other responsible body as set out in the Regulations.

Performance indicators in relation to complaints have been included in all provider contracts with acute providers and community providers. These indicators will be formally monitored through the lead contract manager.

Lessons Learnt

The ICB has a responsibility to address individual patient concerns. A vital aspect of the complaints process is to demonstrate the continued value of receiving complaints to enable

the ICB to continually improve services and ensure on-going confidence in the services it commissions.

The ICB will monitor complaints for trends by theme and provider. Where persistent complaints arise, information will be forwarded to the appropriate team so that commissioning plans and / or contract monitoring processes can be revised / invoked.

Where complaints are upheld and actions required the ICB will ensure these actions are addressed either in-house or through seeking assurance from providers. Where there is a failure to implement appropriate actions or relevant improvements are not made the ICB will invoke the relevant processes for remediation through the contracting arrangements and duly notify the Quality and Safety Committee and Governing Body through the quality report.

Trends and themes arising from complaints may trigger announced/unannounced/themed reviews of provider organisations.

Primary Care Complaints Process

Introduction

From 1 July 2023, BSOL ICB will hold delegated responsibility for complaints handling for Primary Care services across Birmingham and Solihull; this includes GPs, dentists, pharmacists and opticians, and was previously the responsibility of NHS England.

These complaints will be managed by the Office of the West Midlands Primary Care Complaints Team, hosted by BSOL ICB, who will carry out complaint investigations on behalf of the ICB. The ICB will hold overall responsibility for the complaint with sign off by the Chief Executive. (See Appendix I for Primary Care complaints process).

Local Resolution

Any concerns / complaints will be initially received by BSOL ICB's Patient Experience Team to undertake any local resolution in the first instance and only if this is unsuccessful will the complaint be referred into either the relevant primary care provider or referred to the Office of the West Midlands Primary Care Complaints Team to facilitate the complaints handling and investigation of the formal complaint.

Formal Complaints Acknowledgement

Where a complainant has specified the way in which they wish to be addressed, all communication from the acknowledgement stage onwards will follow that request, including the use of pronouns.

An acknowledgement to a complaint:

- Must be within 3 working days;
- Will be in writing unless in exceptional circumstances where it may be verbal (if made verbally it must be followed up in writing as soon as is possible);
- Must include an offer to discuss the handling of the complaint;
- Must include an offer to discuss the timeframe for responding to the complaint;
- Should include a summary of what the complaint is about and, where unclear, offer to discuss the desired outcome;
- When the complaint has been made verbally, it must include the written statement which has been recorded as the formal complaint;
- Must include information about local NHS Complaint Advocacy Services (and consideration be given to providing information about specialist advocacy services such as when the complaint may also be a serious incident or claim);
- Will address any issues of consent; and
- Must include the name and title of the complaints handler who will be the point of contact for the complainant throughout the complaints process.

Investigation

An investigation into a complaint will usually involve the provider of care or service issuing a response to the Office of the West Midlands Primary Care Complaints Team. For clinical complaints, the complaints team will quality assure any response from a provider we commission by seeking a clinical review on a peer to peer basis (so for example a complaint about a GP will be reviewed by one of the independently appointed clinical reviewers who must also be a GP).

For complaints that raise contractual issues about the services BSOL ICB commissions, we would similarly seek a response from the provider but would expect our commissioning colleagues who oversee the contract to comment on that response and provide expert contractual knowledge.

For complaints that raise issues purely about a decision taken by BSOL ICB, we may not need to involve a provider of care directly. For such complaints we would expect senior leadership teams (for the relevant subject matter) to provide a suitable response based upon their expert knowledge.

In the event that our investigation is likely to take longer than the original timeframe identified at the acknowledgement stage, the complainant must be contacted to be advised of a new timeframe for responding and an explanation given as to the reason for the delay.

We will make sure that named providers being complained about are made aware of where they can access support should it be required.

Response

There are two models of complaint response delivered across BSOL ICB. These are:

- One letter of response which incorporates all elements of the investigation
- Two letters of response – one from Practice/Provider, one from the Chief Executive Officer (CEO) or Deputy.

Where a complaint is about a single provider (such as one dental practice) BSOL ICB should send no more than two enclosures when responding. This could be the covering response from the CEO alongside one response from the practice. The Office of the West Midlands Primary Care Complaints Team should not accept multiple responses from one practice.

In the event of a complaint about more than one provider/organisation, it may be necessary to include more than two enclosures.

A response to a complaint must:

- Include an explanation of how the complaint has been considered
- Provide information about who has been involved in the investigation
- Include a meaningful apology where it is due
- Refer to any records, documents or guidelines that have been considered
- Conclude and evidence how a decision was reached
- Tell the complainant what has been done to put things right where appropriate
- Signpost the complainant to next steps including details of the Parliamentary and Health Service Ombudsman (PHSO)

Before sharing a response with the complainant, consideration should be given to any response which may contain sensitive, unexpected and/or potentially harmful information or which may be delivered at a sensitive time (such as the anniversary of a death).

The Office of the West Midlands Primary Care Complaints Team must share a copy of its final response with the provider(s) complained about.

We aim to respond within 40 working days. If BSOL ICB has not provided a response within six months, the Office of the West Midlands Primary Care Complaints Team will write to the complainant to explain the reasons for the delay and outline when they can expect to receive the response. At the same time, we will notify the complainant of their right to approach the PHSO without waiting for local resolution to be completed.

Confidentiality and consent

BSOL ICB has a legal duty to maintain the confidentiality of personal information. BSOL ICB will not access or share information pertaining to complaints without following our standard operating procedure in relation to consent for complaints.

All personal data received is recorded and stored on a secure server with limited authorised access. Information is retained in accordance with BSOL ICB's retention schedule and DHSC guidance.

Exceptions to the policy

1.1 Fraud

Any allegations of fraud or financial misconduct should be referred to the National Fraud Reporting Line at NHS Counter Fraud Authority. Full details of the methods for reporting are available at their website <https://cfa.nhs.uk/reportfraud>

NHS England and NHS Improvement staff as well as Primary Care Contractors should refer to the '[Tackling Fraud Bribery and Corruption Policy](#)' The policy includes details of the organisational response to Counter Fraud and mechanisms to report or discuss concerns.

1.2 Safeguarding and patient safety

There may be circumstances in which information disclosure is in the best interest of the patient, or the protection, safety or wellbeing of a child or adult at risk. In these circumstances, a complaint will be escalated as necessary in line with BSOL ICB's safeguarding policy and procedure.

1.3 The safety of complaints staff

Most of the contact with complainants is via telephone, email or white mail. However, there may be either planned or unscheduled meetings face to face with complainants and appropriate measures need to be in place to support staff in the engagement.

Most complaints offices are not considered spaces appropriate for meeting complainants and have not been designed with suitable public meeting rooms. If a complainant makes an unscheduled visit to a complaints office, it is important that upon being made aware of their arrival, a check should be made to see if any reasonable adjustments are recorded in order to provide the complainant with the best possible outcome when meeting. It would also be advisable to see if there is any information recorded about restricted communications/or any possible risks the complainant may pose. Depending on the information, it may be the case it is not advisable to enter into any meeting of an unscheduled nature and this should be explained to the visitor.

Whilst the complainant may wish to discuss a confidential matter, it is essential that based upon the knowledge of the complainant, the complaints staff make a considered decision about where they speak to the complainant. In these circumstances complaints staff should not meet the complainant alone and if possible should be accompanied by a colleague with clinical experience.

If the decision is taken to proceed with an unscheduled meeting, complaints staff should be accompanied by a colleague. Good practice would suggest that the complaints staff advise other colleagues of where they are meeting with the complainant and to request that they check on them at regular points. A documented record of the discussion which takes place should be made by one of the staff in attendance.

Within the complaints process there is scope for a planned local resolution meeting. Complaints staff should be supported by a colleague with appropriate experience according to the nature of the complaint. A neutral and safe venue should be sought for such a meeting. Managers should be aware of the location and duration of the meeting. A colleague should be identified as a key point of contact and the complaints staff undertaking the engagement should make contact with this colleague prior to the start of the meeting and then again upon conclusion. Complaints staff should ideally check the suitability of the any suggested meeting space and an awareness of any security measures at the venue are recommended in advance of the meeting.

Persistent and unreasonable contact

Detailed guidance on how we will manage persistent and unreasonable contact is set out at Appendix 1

Compliance and reporting

BSOL ICB will use a variety of ways to report and review compliance with the policy. These will include:

- BSOL ICB will provide an annual complaints report via the organisation's broader annual report and accounts

Appendix 1 - Guidance for dealing with persistent and/or unreasonable contact

1. Introduction

This guidance covers all contacts, enquiries and complaints. It is intended for use as a last resort and after all reasonable measures have been taken to try to resolve an issue.

Persistent contact may be as a result of individuals having genuine issues and it is therefore important to ensure that this process is fair and the person's interests have been taken into consideration.

2. Purpose of the guidance

To assist the organisation to identify when a person is persistent or unreasonable, setting out the action to be taken.

3. Definition of persistent and/or unreasonable contact

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

- Persist in pursuing an issue when the procedures have been fully and properly implemented and exhausted.
- 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 a 'trivial' matter to an extent that it is out of proportion to its significance. It is recognised that defining 'trivial' is subjective and careful judgment must be applied and recorded.
- Change the substance of a complaint/concern or seek to prolong contact by continually raising further issues in relation to the original contact. Care must be

taken not to discard new issues that are significantly different from the original issue. Each issue of concern may need to be addressed separately.

- Consume a disproportionate amount of time and resources.
- Threaten or use actual physical violence towards staff.
- Have harassed or been personally abusive or verbally aggressive on more than one occasion (this may include written abuse e.g. 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.

4. Actions prior to designating a person's contact as persistent and/or or unreasonable.

It is important to ensure that the details of a complaint/concern are not lost because of its presentation. There are a number of points to bear in mind when considering imposing restrictions upon a person.

These may include:

- Ensuring the person's case is being, or has been dealt with appropriately, and that reasonable actions will follow, or have followed, the final response.
- Confidence that the person 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 requires consideration as a separate case.
- Applying criteria with care, fairness and due consideration for the person'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 person's lifestyle, quality of life or life expectancy.
- Considering the proportionality and appropriateness of the proposed restriction in comparison with the behaviour, and the impact upon staff.
- Ensuring that the person has been advised of the existence of the policy and has been warned about and given a chance to amend their behaviour.

Consideration should also be given as to whether any further action can be taken prior to designating the person's contact as unreasonable or persistent.

This might include:

- Raising the issue with a senior manager, with no previous involvement, in order to give an independent view.
- Where there are multiple contact points, consider a strategy to agree a cross-departmental approach.
- Consider whether the assistance of an advocate may be helpful.

Consider how communication with the person could be managed, which may include;

- Time limits on telephone conversations and contacts.
- Restricting the number of calls that will be taken or agreeing a timetable for contacting the service.
- Requiring contact to be made with a named member of staff and agreeing when this should be.
- Requiring contact via a third party e.g. advocate.
- Limiting the person to one mode of contact.
- Informing the person of a reasonable timescale to respond to correspondence.
- Informing the person that future correspondence will be read and placed on file, but not acknowledged.
- Advising that the organisation does not deal with calls or correspondence that are abusive, threatening, offensive or discriminatory.
- Asking the person to enter into an agreement about their conduct.

5. Process for managing persistent and/or unreasonable behaviour

Where a person's contact has been identified as persistent and/or unreasonable, the decision to declare them as such must be evidence based. It is important that all relevant information be made available before a decision is made, in order to ensure the person is treated fairly when considering imposing of restrictions.

Once a decision has been made, depending on where the main focus of communication has taken place, a senior manager will write to the person informing them that:

- Their complaint/concern is being investigated and a response will be prepared and issued as soon as possible within the timescales agreed or;
- Their complaint/concern has been responded to as fully as possible and there is nothing to be added.

Additionally:

- That repeated contact regarding the complaint/concern in question is not acceptable and that further calls will be terminated and;
- That any further correspondence will not be acknowledged.

All appropriate staff should be informed of the decision so that there is a consistent and co-ordinated approach across the organisation (ensuring that only information pertaining to the restriction is made available rather than information relating to the subject of the case).

If the person raises any new issues then they should be dealt with in the usual way.

A review of the status should take place at six monthly intervals.

There may be rare occasions when the nature of the contact requires immediate and urgent action such as involving emergency services in order to safeguard either the person or staff member (or both). In these circumstances follow usual safeguarding processes and retrospectively apply the persistent and/or unreasonable as necessary.

6 Record keeping

Ensure that adequate records are kept of all contact with persistent and/or unreasonable contacts.

Consideration should be given as to whether the organisation should take further action, such as reporting the matter to the police, taking legal action, or using the risk management or health and safety procedures to follow up such an event in respect of the impact upon staff.

