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NHS South East London Integrated Care Board

Complaints policy and procedure (CG05)

V1.0

Approved by	SEL Transition Board
Date approved	22 June 2022
Name and title of originator/author	████████████████████ Head of Patient Experience & Complaints
Name and title of sponsor	████████████████████ Chief of Staff
Review date	Two years This policy will be reviewed no later than two years from the date of original ratification, if necessary, more frequently as required by national or local change.
Description	The aim of this policy is to provide a framework for, and commitment to, dealing with complaints about the services commissioned by NHS South East London ICB
Target audience	All Staff of NHS South East London (including members of the Unitary Board), Integrated Care Partnership, contractors and bidders

Version Control

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Implementation

Implementation plan in place?	Yes
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Document Review Control Information

Version	Date	Reviewer Name(s) and Job title	Change/amendment
0.1	15/06/2022	████████████████████ Head of Patient Experience & Complaints	New Policy for the implementation of the ICB

Controlled Document

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Equality, diversity and inclusion statement

NHS South East London Integrated Care Board (SEL ICB) is committed to the promotion of equal opportunities, addressing health inequalities and fostering of good relations between people protected under the terms of the Equality Act 2010, the Health and Social Care Act 2012 and Human Rights legislation. We are equally committed to the elimination of unlawful discrimination, harassment and victimisation. To demonstrate this commitment we develop, promote and maintain policies, strategies and operating procedures.

Throughout the production of this document, due regard has been given to eliminate discrimination, harassment and victimisation, to advance equality of opportunity, and to foster good relations between people who share a relevant protected characteristic (as cited under the Equality Act 2010) and those who do not share it.

If you, or any groups, believe you are discriminated against by anything contained in this document or you need this document in an alternative format e.g. large print, easy read or other languages; please contact our Patient Experience Team (PET).

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Complaint values

NHS South East London Integrated Care Board (SEL ICB) takes very seriously all concerns it receives and has a set of values we promote when handling complaints.

Our ***complaint values*** are:

- A commitment to ensure that all complaints and concerns are accepted and treated in a non-judgemental way, thereby ensuring that service users/ complainants feel their concerns have been taken seriously and that this will not compromise future relationships between the user and the ICB;
- A commitment to ensure that all complaints are handled as quickly as possible. With sensitivity, maintaining confidentiality and ensuring fairness to both the complainant and member(s) of staff;
- A commitment to ensure that staff and the complainant are kept informed of progress and developments throughout any complaint investigation and to ensure the organisation learns from the experience;
- A recognition that service users /complainants need to be involved at all stages of the complaints procedure and the importance of their role in the planning and development of services;
- Acknowledgement and recognition that service users/complainants need to be involved at all stages of the complaints procedure and the importance of their role in the planning and development of services;
- Acknowledgement and recognition of the role of the patients, relatives and carers in informing the ICB about services, that enables lessons to be learned and actions to be taken to minimise the risk similar occurrences in the future;
- Commitment to ensure that complainants feel able to inform the ICB should they feel like they have been treated differently as a result of raising a concern or complaint.

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1. Introduction

NHS South East London Integrated Care Board (hereafter known as the ICB) is committed to having effective procedures in place to handle complaints brought to the attention of staff, which are simple, easy to understand and widely publicised.

In addition to issues that occur when genuine mistakes are made, complaints often arise from differences of understanding, perceptions or beliefs but they provide a valuable indication of the quality of services and this information can and will be used to help improve services and inform commissioning decisions. This enables us to find a better way to meet the needs of our patients to ensure that there is learning from mistakes and to prevent them happening again.

The ICB will treat all complaints seriously, will listen to what service users have to say and provide assistance and advice on the processes we follow. All complaints will be properly investigated and receive a timely and appropriate response; the outcome of the investigation will be explained along with any actions which are taken in light of the complaint.

Our approach to complaints is structured around the Parliamentary and Health Service Ombudsman's Principles of Good Administration, Good Complaints Handling and Remedy 2009. Investigations will be objective, impartial and open, they will provide an explanation, an apology where appropriate, a description of lessons learned and the identification of guidance/ policy/ systems requiring review or amendment. This will enable the CCG to;

- Handle complaints objectively, consistently and fairly
- Bring complaints to a rapid and satisfactory conclusion
- Be open and accountable
- Act fairly and proportionately
- Maintain a positive relationship with the complainant
- Seek continuous improvement – implement changes in practice/ services

2. National requirements – Legal, Statutory and Mandatory.

This policy meets the requirements of the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009 (hereinafter referred to as 'the Regulations') which came into force on 1 April 2009 and reflects the reforms to the health and social care system brought about by the Health and Social Care Act 2012. The policy also conforms to the NHS Constitution and takes account of the principles laid out in the *Parliamentary and Health Service Ombudsman Principles of Good Complaints Handling* (2009).

The Health Act 2009 draws attention to the NHS Constitution, which sets out the following rights for patients.

- A right to have a complaint about services dealt with efficiently and to have it properly investigated

- A right to know the outcome of any investigation into the complaint
- A right to take a complaint to the independent PHSO if not satisfied with the way the complaint has been dealt with by the NHS

Further details can be obtained from www.dh.gov.uk/nhsconstitution

The above recommendations and principles are supported by the **Duty of Candour** which ensures that providers of NHS Health services are open and honest with service users when things go wrong with their care and treatment and that they provide them with reasonable support, truthful information and a written apology.

3. Purpose

The purpose of this policy is to:

- Set out the ICB's approach to receiving, handling and responding to complaints made under the provisions of the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009.
- Ensure our procedure is easy to understand and simple to use
- Make sure our investigations are thorough, fair, responsive, open and honest
- Demonstrate we will learn from complaints and concerns
- Endeavour to resolve issues in a timely manner and as soon as possible
- Outline the statutory requirements all staff must adhere to regarding any comment, concern, compliment or complaint received

4. Scope

This policy applies to the handling of compliments, complaints, queries or concerns including those raised by a Member of Parliament (MP) on behalf of their constituent relating to services directly commissioned by the ICB.

This policy applies to all individuals working for, or on behalf of, the ICB including those employed on permanent or fixed term contracts, interims, self-employed contractors, Board members and Clinical Leads.

A concern or complaint may be raised under this policy by any person who is affected by, is likely to be affected by, or is aware of, either through direct experience or observation, an action, omission or decision of the ICB.

For complaints about services other than those commissioned by the ICB, the ICB will refer the complainant to the complaints service of the provider concerned. Where the complaint is in part about a service commissioned by the ICB, if given consent to do so by the complainant, the ICB is willing to take on the co-ordinator role where appropriate and possible to ensure a single response is co-ordinated to the complainant.

5. Definitions

Complaint

A complaint is defined as ‘an expression of dissatisfaction’ received from a patient, carer, service user or third party representative about any aspect of the local health service which requires a response and/or redress.

Complainant

Refers to the individual who raises or makes a complaint

Parliamentary Health Service Ombudsman (PHSO)

Referral body for complainants: when a complaint cannot be resolved at local level.

6. Roles and Responsibilities

The **Chief Executive Officer** (CEO) is the delegated executive within the organisation who has overall accountability for ensuring that the ICB Complaints Policy meets the statutory requirements as set out in the NHS Complaint Regulations. The CEO is also responsible for approving and signing complaint response letters but may be delegated to:

- *Borough directors* where the issue is borough specific
- *Medical Director or Chief Nurse* for any clinical complaints
- *Chief of Staff or other delegated Executive* for all other ICB related matters as appropriate

The **Chief of Staff** is:

- Responsible for ensuring the ICB applies the principles of this policy and that there are suitable resources to support its implementation
- Responsible for managing the procedures for handling and considering complaints in accordance with the Regulations and local policy
- Ensures that where a complaint may need to be escalated as a serious incident that the complaint is discussed and reviewed at the relevant committee
- Ensures that information from complaints is reported into appropriate committees and forums to enable organisational review and learning.

The **Head of Patient Experience and Complaints** is the subject matter expert (**SME**) within the ICB for the NHS complaints process. This post has overall responsibility for the strategic and operational management, development and implementation of complaints and this policy; they will ensure:

- day to day provision of complaints handling arrangements
- all complaints are investigated in line with National Regulations and processes identified in this policy
- the Board is advised of the effectiveness of this policy and any shortfalls in meeting standards

The **Head of Patient Experience and Complaints** will provide expert advice and support to ICB staff involved at all stages of the complaint process.

They will also present regular reports to relevant committee's and the Board in relation to complaints and patient experience intelligence, to disseminate learning across relevant parts of the organisation in the most appropriate way and use complaints information to contribute to development, commissioning and service planning.

Patient Experience Team

- Recording details of the complaint on a database, the outcome, and any learning from the complaint
- Facilitation of the resolution of complaints and concerns
- All patient experience staff must have at least Level 2 training in safeguarding to enable them to identify the key safeguarding concerns.

Directors and Associate Directors are responsible for investigating complaints as appropriate. They will ensure that all investigations relating to complaints are tracked and target dates for draft responses are met. They will also ensure that all committed actions are fulfilled and that their teams and line reports are aware of the ICB policy for management of complaints.

The ICB Board members are responsible for considering emerging themes and learning from complaints reporting mechanisms and identify service improvements as a result of complaints and concerns being raised.

All staff have a responsibility to ensure that they are aware of the contents of this policy and have undertaken any training as appropriate. All individuals working for, or on behalf of the organisation, including those employed on permanent or fixed term contracts, interims, contractors and Board Members are responsible for complying with this policy.

All Line Managers are responsible for ensuring that their teams comply with this policy.

7. Complaints that cannot be dealt with under the scope of this policy

The following complaints **cannot** be dealt with in line with the regulations and scope of this policy:

- a) A complaint about privately funded care and treatment
- b) A complaint made by another responsible body, including complaints by third party organisations about contracts arranged by the ICB under its commissioning arrangements
- c) A complaint made by an employee of a local authority or NHS body about their employment
- d) A complaint which is made orally and resolved to the complainants satisfaction no later than the next working day
- e) A complaint the subject matter of which has previously been investigated under these or previous regulations
- f) Investigations and enquiries arising out of an ICB's alleged failure to comply with a data subject requests under the Data Protection Act 1998 or a request for

information under the Freedom of Information Act 2000. The respective ICB's FOI Policy will take precedence in the case of Freedom of Information (FOI)

- g) A complaint which is being or has been investigated by the Health Service Ombudsman
- h) A complaint made by an NHS body, local authority, primary care provider or independent provider
- i) Management of claims

Where the ICB considers a complaint falls within the above exclusions it must, as soon as reasonably possible, notify the complainant in writing of its decision and the reason for the decision.

Staff complaints

Complaints and grievances by members of staff relating to their contract of employment also fall out of the scope of this policy. Members of staff should raise issues with their line manager or the HR Business partner in accordance with the Grievance and Disciplinary Policy.

Provider contract and commissioning complaints

Complaints raised by providers and third party organisations about contracts arranged by the ICB under its commissioning arrangements fall outside the scope of this policy.

8. Independent Advocacy Services

Since April 2013 local authorities have a statutory duty to commission independent advocacy services to provide support for people making, or thinking of making, a complaint about their NHS care or treatment.

This service will be focused on helping individuals to pursue complaints about the NHS and will aim to ensure that complainants have access to the support they need to articulate their concerns and navigate the complaints system.

Arrangements will vary between local authority areas and Complainants should therefore be advised to directly contact their local Healthwatch or local authority for information about how this service is provided in their area.

9. Confidentiality

It is essential when dealing with complaints that the ICB observes the legal obligations not to release information to a third party without consent. Should a complainant choose to make their complaint by email they should be made aware that this system of communication is not considered secure whilst in transit and therefore, no guarantee of privacy can be given.

Care must be taken at all times to ensure any information disclosed about the patient is confined to that which is relevant to the investigation of the complaint and only disclosed to those people who have a demonstrable need to know it for the purpose of investigating the complaint.

10. Storage and retention of records

All complaints communications are entered onto a confidential database maintained by the Patient Experience Team. It is important that all issues relating to complaints are fully and accurately documented, dated and retained. Complaints records will be stored in accordance with the NHS records management code of practice – and must be kept separate from a patient’s medical records. Hard copy (paper) records will be kept securely locked and accessible only to the Patient Experience Team.

Complaint records are disclosable documents under legal processes and will be accessible to the Parliamentary Health Service Ombudsman (PHSO) in the event of further investigation. All Files (hard copy and electronic) should be appropriately maintained, updated and will be held by the ICB for a minimum of ten years.

In accordance with the Department of Health guidelines, files must be destroyed under confidential conditions in accordance with the ICB’s Information Governance Policy.

11. Claims and legal action

The patient experience team will refer all complaints that explicitly indicate the intention to take legal action to the Associate Director of Corporate Operations, though this intention will not affect the progress of a complaints investigation.

The Complaints Regulations 2009 no longer states that a complaint should be halted where legal action has started (or is implied). In addition, it should not necessarily be assumed that a complaint made via a Solicitor means that the complainant has decided to take legal action. A complainant has the right to be represented by whomever they chose throughout the complaints process. If consent has been received a response should be made in the normal manner.

12. Policy implementation plan

The ICB will ensure that all employees are aware of the existence of this policy. The following will be undertaken to ensure awareness.

- Annual reminder of the existence and importance of the policy via internal communication methods
- Publication on the ICB website and intranet site

13. Policy review and archiving

This policy will be reviewed initially after one year and every two years thereafter, or following publication of revised national guidance, or when required, whichever is the sooner. Compliance will be informed by the complaints process and will be monitored through the complaints reporting system.

The ICB will ensure that archived copies of superseded policy documents are retained in accordance with Records Management code of practice.

14. External references

- *Local Authority Social Services and National Health Service Complaints (England) Regulations (2009)*
- *NHS Constitution*

- *Parliamentary and Health Service Ombudsman Principles of Good Complaints Handling (2009) PHSO*
- *Health and Social Care Act (2012)*

15. Equality Impact Assessment

An Equality Impact Assessment has been completed for this policy and no negative impact upon person with protected characteristics has been identified.

PROCEDURE AND PROCESS

This section outlines the standard operating procedure for managing complaints including internal and external communication and collaboration with other organisations when necessary.

Who can make a complaint?

A complaint can be raised by **a patient** or anyone who is receiving or has received a service from, or commissioned, by the ICB or any person who is affected by the action, omission or decision of the ICB.

A complaint may also be made by someone acting on behalf of a patient where that person;

- **Is a child**
In the case of a child, the representative must be a parent, guardian or other adult person who has care of the child. Where the child is in the care of a local authority the representative must be a person authorised and making the complaint in the best interest of the child.
- **Has died**
In the case of a patient or person affected who has died the representative must be a relative or other person who had sufficient interest in their welfare and is a suitable person to act as a representative.
- **Has physical or mental incapacity**
In the case of a person who is unable by reason of physical capacity, or lacks capacity within the meaning of the Mental Capacity Act, to make the complaint themselves, the representative must be a relative or other person who has sufficient interest in their welfare and is suitable person to act as a representative.
- Has been given the **complainants consent** to act on their behalf
- Has **delegated authority** to do so, e.g. power of attorney
- Is an **MP** acting on behalf of and by instruction from a constituent

A complaint can be raised by a relative, carer or friend on behalf of a patient where they have been asked to act on their behalf and the ICB is in receipt of a valid consent form.

If the ICB is of the opinion that a representative does not have sufficient interest in the person's welfare or is unsuitable to act as a representative the head of patient

experience must notify that person in writing, with an explanation stating the reasons.

Representing a child

If a complaint is being made by a person stating they are representing a child under the age of 18, it must be verified that this person is the legal guardian or formally nominated by the legal guardian to represent the complainant. The same applies where a representative makes a complaint on behalf of a person who lacks capacity under the Mental Capacity Act 2005.

A child or young person under 18 is entitled to make a complaint in their own right.

For all complaints regarding children or young people under 18, whether made by the parents, other family or friends or the children themselves, the circumstances of the complaint will need to be handled sensitively and advice sought from the ICB safeguarding children lead as to any concerns for the child's immediate or future safety.

Representing an adult at risk who does not have capacity to consent to an investigation

Where a representative makes a complaint on behalf of an adult who it is thought, under the Mental Capacity Act 2005, to be unable to represent themselves the ICB must be satisfied that appropriate procedures have been followed to verify this is the case. In circumstances where the individual does lack the capacity to consent to the investigation it should be confirmed whether the person raising the concern, or any other party, has the legal powers to act for the person. Where there is no one with the legal powers to represent the individual then a decision can be made in the person's best interest as to who should advocate for them

Consent

The ICB will assume that when acquiring consent for the use and sharing of information the patient has made an informed decision and clearly understands the processing and potential sharing of their information.

Information will not be disclosed to third parties unless the complainant or appropriate authorised party who has provided the information has given consent to the disclosure of that information (unless the complaint or concern is an allegation of abuse).

It is recognised that there may be circumstances in which information disclosure is in the best interests for the patient, or the protection, safety or wellbeing of a child or vulnerable adult. In these circumstances information will be escalated as necessary in line with safeguarding policies and procedures.

How complaints can be raised.

A complaint may be made in writing (by e-mail, letter) or verbally. If the complaint is made verbally the person accepting the complaint should record this in writing, the complainant should sign this record to confirm accuracy. The Complaints Procedure must be followed for every complaint and the person making the complaint should be treated with respect and sensitivity and encouraged to be open about their concerns.

All staff must ensure that patients, carers, and relatives are not discriminated against as a result of having raised a concern or a complaint. In light of this, complaints correspondence is not to be placed on the patient's medical records.

The complaints procedure can continue even if the complainant indicates an intention to take, or does indeed take, legal action and makes a claim for clinical negligence. Advice can be sought from the ICB's Head of Patient Experience and Complaints.

Time limits for raising a complaint

A complaint should be made no later than 12 months after;

- a) The date on which the matter which is the subject of the complaint occurred; or
- b) If later, the date on which the matter which is the subject of the complaint came to the notice of the complainant

The time limit shall not apply if the organisation is satisfied that;

- a) The complainant had good reasons for not making the complaint within that period; and
- b) Notwithstanding the delay it is still possible to investigate the complaint effectively and fairly

Flexibility and sensitivity should be used when considering late complaints e.g. where a complainant has suffered such distress or trauma that prevented him/her from complaining earlier.

Discretion may be used to extend the time limit in agreement by the head of patient experience. If a decision to process a complaint is turned down on the 'out of time' basis then a complainant can use this policy to complain about that decision.

Informal resolution of complaints within 24 hours

A complaint does not have to be dealt with under the formal Complaints Procedure if it is resolved to the complainant's satisfaction no later than the next working day after the complaint was made. However, it is important that the organisation learns from all feedback, and the person who resolves the complaint informally must provide, in writing, or by e-mail, brief details of the actions they have taken to resolve an informal complaint. The patient experience team will record the information on the complaints database.

Formal complaint process

First stage – Local Resolution

Once it is clear that an individual wishes to make a formal complaint the processes set out in this policy should be followed.

When a complaint has been received the Patient Experience Team will ensure appropriate arrangements for investigation are initiated, this includes liaising with the complainant and all relevant Managers, Commissioners, Service Providers so that all parties involved agree on the way the complaint will be managed.

All complaints must be acknowledged within **three working days** of receipt. At this time the patient experience team may liaise with the complainant to clarify their concerns and to find out how they would like their complaint resolved.

Options may include:

- Written response/report
- Face to face meetings with the complainant and parties involved
- Verbal resolution of the complaint by telephone

N.B. This list is not exhaustive and a combination of several methods can be used when handling a complaint, until it is resolved to the complainant's satisfaction.

The patient experience team will also clarify a timeframe for investigating the complaint which is both realistic and acceptable to the complainant and within the statutory time frame of six months.

Timescales for investigation of complaints are not intended to be rigid; it is the aim of the ICB to respond to complaints in a timely manner and as soon as possible depending on the complexity of the complaint.

If the agreed deadline cannot be met, the complainant will be informed of this at the and provided with an explanation for the extension and apology. The need for an extension should be identified at the earliest possible opportunity and not be left until the deadline nears.

Complaint investigation

Once a complaint is made and consent (if appropriate) received the patient experience team will liaise with the team or teams concerned to identify an investigation lead.

In cases where complaints relate to commissioned services the Patient Experience Team will liaise with the Complaints Team in the organisation where the incident occurred. The investigation lead or leads will then make arrangements to collate facts and information relevant to the complaint, this will require:

- Gathering of information
- Reviewing patient records
- Reviewing organisational records and
- Interviewing staff, managers and others involved in the complaint

The investigation lead will then construct and send a suitable response/ report covering all the aspects of the complaint to the Patient Experience Team for review and further processing. Where it is necessary for a response to be collated from each borough to inform a ICB response, the Senior patient experience officer or

patient experience manager will collate the borough response and combine these into a single co-ordinated response on behalf of the ICB.

A clear record should be maintained of the investigation detailing any meetings or discussions with staff and complainant, covering what was asked and the responses given. Copies of all correspondence and associated file notes will be kept securely and separately from medical records/case files.

Delays in agreed timescale for investigation

If a response cannot be sent within the agreed timescale, an explanation should be given for the delay and an extension agreed with the complainant.

A holding letter should be sent giving the reason for the delay, apologising for the delay and an indication of when a response will be sent. It is expected that most complaints will be resolved at local resolution (first stage).

Response

Upon completion of the investigation the Head of Patient Experience and Complaints will quality assure a draft response verifying the information provided and addressing all aspects of the complaint. A response should:

- Explain how the complaint has been considered
- Address the concerns expressed by the complainant and show that each element has been fully and fairly investigated
- Report the conclusion reached including any matters for which it is concerned remedial action is needed
- Include an apology where things have gone wrong
- Report the action taken or proposed to prevent recurrence
- Indicate that a named member of staff is available to clarify any aspect of the letter
- Advise the complainant who to contact in the first instance if they are not happy with the response

The letter or response should be written in plain English and clinical/ other technical information should be clearly explained.

Sign off

The Patient Experience Team will ensure each complaint letter and a draft complaint response for approval and sign off is forwarded to:

- The relevant borough director for single borough specific complaints
- The ICB Medical Director or Chief Nurse for complaints relating to clinical practice or issues
- The ICB Chief Executive Officer or other delegated Executive for any other issues as appropriate.

Closure of complaint

The Patient Experience Team will close the complaint after the final response has been sent. However, this can be re-opened (subject to statutory deadlines) if there is further communication from the complainant.

If a complainant contacts the ICB after receiving the response to their complaint requesting further information or explanation, every effort should be made to answer these enquiries at local resolution. For example further information or explanation can be provided. Alternatively, a meeting to discuss the issues raised in the complaint could be offered. It is important to note that this should not be considered a review or appeal of the complaint. If the complainant remains unhappy with the response following local resolution and any further efforts to explain they should be advised of their right to take their complaint to the Ombudsman and/or given a copy of the stage two complaint factsheet.

Should a complainant raise new issues at this stage that were not included with the original complaint these must be investigated as a new complaint

Action plans

An action plan should be put into place for any improvements that are identified as a result of a complaint. The service/team manager should monitor the action plan and provide the Head of Patient Experience and Complaints with a progress report after three months, which will be entered on the complaints database. If there are any concerns about the monitoring of action plans the Patient Experience Team will inform the relevant commissioning and quality lead.

Mediation

Sometimes successful local resolution requires all parties to meet and discuss the issues complained about.

The Head of Patient Experience and Complaints may fulfil the role of mediator and provide a confidential service with experience in managing meetings, handling conflict and dealing with emotional situations where this is agreeable by all parties.

Second stage – the Ombudsman

Referral to the Parliamentary and Health Service Ombudsman (PHSO) is the second and final stage of the complaints procedure. However, all efforts should be made locally to resolve a complaint before the complainant is directed to the Ombudsman.

The PHSO provides a service to the public by undertaking independent investigations into complaints that the NHS in England has not acted properly, fairly or has provided a poor service.

The PHSO will normally only accept a complaint after the NHS organisation complained about has first tried to resolve the issues and has responded to the complainant.

Any such requests must be made to the PHSO no later than one year from the date of the completion of local resolution (date of final response). However, the PHSO has discretion to extend this time limit in special circumstances.

There is no appeal against a decision made by the Ombudsman, although a complainant is able to seek a legal remedy.

All staff should be aware that where a complaint is referred to the Ombudsmen any information received as part of their investigation may be used to assess the organisation's performance.

The ICB will provide positive and active support to the Ombudsman via the Head of Patient Experience and Complaints, who is the nominated senior manager responsible for co-ordinating an investigation.

The Ombudsman can be contacted at the following address:

The Parliamentary & Health Service Ombudsman
Milbank Tower
Milbank
London SW1 4QP

Helpline: 0345 015 4033

Email: phso.enquiries@ombudsman.org.uk

Website: www.ombudsman.org.uk

Monitoring, Data collection, Reviewing and Reporting

All complaints will be risk assessed and graded according to the actual consequences and the potential for future complaints on a similar issue

The Patient Experience Team should grade the complaint on receipt. The Patient Experience Team will also maintain a centrally held database to record and monitor complaints, concerns and compliments.

The Head of Patient Experience and Complaints will produce an annual report of complaint handling sufficient to satisfy the criteria set out the Regulations, which will demonstrate:

- Number of complaints received
- Number of complaints resolved and upheld
- NHS England & NHS Improvement referrals
- MP complaints on behalf of constituents
- Themes and trends
- Summary of action taken as a result of complaints
- Performance against the agreed timescales for acknowledgement and response
- Details of complaints referred to the PHSO
- Whether the PHSO upheld the complaint
- Consolidated themes, trends and learning from other anonymised data

The Head of Patient Experience and Complaints will also prepare quarterly reports to demonstrate:

- Number and type of complaints received and upheld
- Number of complaints referred to Ombudsman
- Summary of actions to improve services as a result of complaints

Reports and verbal intelligence may be presented and discussed at relevant committees and the ICB Board in order to:

- Monitor arrangements for local complaints handling
- Consider trends in complaints
- Consider complaints data in relation to patient experience data, quality and safety data and identify any trends to inform the commissioning and improvement of services

In addition to the above the Head of Patient Experience and Complaints will ensure that complaints data is provided to the Health and Social Care Information Centre (KO41a) in the format and timeframes (currently quarterly) requested.

Improving quality and service improvements

A service improvement monitoring form (action plan) should be sent to the Investigation lead with the initial complaint. This should be completed in conjunction with the investigation in order to identify areas of improvement and returned to the Patient Experience Team within 10 working days of the completion of the investigation.

Complaints will be monitored to identify if there are any wider issues that need to be addressed. This information will be presented within reports to relevant committees across the ICB.

ADDITIONAL GUIDANCE & INFORMATION

Individual funding request (IFR) decisions

If a complaint is received about an IFR decision the complainant will be advised that they are entitled to appeal this decision and a copy of the appeal process will be provided if requested. If the complainant still wishes to make a formal complaint the Patient Experience Team will investigate the process in line with the NHS complaints procedure.

Joint complaints handling

The new Complaints Regulations (2009) require a duty to co-operate where a complaint involves another NHS trust or other bodies, such as the local authority or a service provider. When the Patient Experience Team receives a complaint involving other organisations there will be an agreement between the organisations as to who will take the lead in co-ordinating the handling of the complaint and communicating with the complainant. It may be that the complainant wishes to deal with each organisation individually and this will be respected. Where there is an agreed lead that organisation will be responsible for monitoring progress, keeping the complainant informed, co-ordinating information from the other organisations involved and sending the final joint response. The complaints professionals will communicate regularly and ensure that any lessons needing to be learnt are identified by the relevant organisations.

Consent must be obtained from the complainant in order to share the relevant information. Discussions will take place between the Patient Experience Team and complainant as to whether the issues should be handled separately or as part of a

joint response. When the issues raised in complaints are interconnected, it is usually better to arrange a joint response. The Head of Patient Experience and Complaints will ensure that the response letter clearly informs the complainant which organisation is responsible for each part of the complaint.

Where a joint response is acceptable to the complainant the other organisations involved should provide the relevant information within an agreed timescale, relevant to the consideration of the complaint to ensure that a single full response is provided.

Joint responses should generally be signed off by the relevant Chief Executive Officer of the lead organisation.

Complaints about social care

The Patient Experience Team will seek consent from the complainant to pass the complaint on to the respective council's complaint team for investigation of concerns regarding adult social care or children's services. It should be noted that complaints about adult social care are dealt with under the same 2009 Regulations as NHS complaints but complaints about Children's services are dealt with through the procedures set out in the Children Act 1989.

Complaints about provider organisations

Complainants may direct their concerns to a ICB rather than the provider organisation that delivered the relevant service. In situations such as this the Patient Experience Team will liaise with the complainant and advise them to either:

- Complain directly to the organisation or,
- The ICB will forward the complaint to the relevant organisation, once consent to do this has been confirmed/ received.

This will enable the organisation that is being complained about to manage the complaints process under local resolution, in accordance with the complaints regulations.

Should there be a need the ICB will consider facilitating the complaints process between a provider that it commissions and the complainant should they wish not to communicate directly with the provider

The ICB is not obliged to accept a complaint under these circumstances and normally will direct the complaint to the responsible organisation. In cases where there is a compelling reason, the ICB may oversee the complaint throughout.

The final decision on who should investigate a complaint should always be discussed with the Head of Patient Experience and Complaints before any agreement is made to accept and investigate the concerns raised.

Complaints about commissioned services

NHS South East London ICB commissions a range of services. The service provider should have their own complaints process mirroring that of the Regulations. Complainants may take their complaints directly to the service provider or to the ICB.

Where the ICB does not lead on an investigation then it will monitor the number and the type of complaints made, and outcomes of the complaints.

Complaints from MPs or elected representatives

From time to time the ICB receives complaints from MPs on behalf of their constituents.

Where a complaint is raised by MP consent does not need to be sought unless the complaint is made by a constituent on behalf of a third party, or when the complainant is not the constituent of the elected person. Responses to such complaints are sent to MPs with copies provided to the patient or constituent whenever possible and appropriate.

Persistent complainants

Occasionally our services may be faced with persistent, serial or vexatious complainants. Staff are trained to respond with patience and sympathy but it is recognised that there are times when there is nothing further that can reasonably be done to rectify a real or perceived problem. It is important to appreciate that such complainants may have genuine grievances that should be properly investigated. However, under exceptional circumstances action will be taken to limit their contacts.

If a complainant is considered persistent, serial or vexatious staff should contact the Head of Patient Experience and Complaints for advice.

The ICB has guidance for dealing with persistent, serial, or vexatious complainants. This guidance should only be implemented by the Head of Patient Experience and Complaints following consultation with the Director of Corporate Operations and with approval of the Chief of Staff (see appendix B).

Anonymous complaints

Anonymous complaints will be accepted which may arise from a telephone call or letter. Where possible the person will be encouraged to provide their name and other relevant details. If the person is unwilling to provide contact details the Patient Experience Team will follow the agreed complaints procedure but will be unable to provide a formal written response.

Freedom of information (FOI) & Data Protection Act (DPA)

Complaints can contain request for information under either the Freedom of Information Act 2000 (FOI) or Data Protection Act 1998 (DPA). Requests which may include access to the complaint file need to be in writing in both cases. These must be handled under the policies and procedures relevant to FOI and DPA requests.

Requests relating to DPA will be referred to the Information Governance Lead, most commonly this will relate to patient record access requested by their representative or relative. Requests under FOI should be referred to the ICB FOI Lead.

Complaints which contain only FOI or DPA requests should be passed formally to the correct team within the ICB and the complainant informed of who will be handling their request.

Withdrawal of a complaint

If a complainant withdraws a complaint at any stage the service complained about should be informed immediately in writing. The complainant should also be sent a letter confirming that the decision of the complainant has been noted by the ICB. Any identified issues or improvement should be followed up within the service area and any learning cascaded in the normal manner.

Publicity

It is important that patients and their relatives or carers know about the ICB's Complaint Policy and how to make comments, compliments, suggestions or complaints about services which the ICB commissions and provides.

Information on how to make a complaint is available to patients, members of the public and their relatives and carers in leaflet/ factsheet form and is available on the ICB website. Information about the complaints procedure can also be requested from the Patient Experience Team in different languages or in other formats.

A copy of the ratified Complaints Policy will also be available on the ICB website for access by members of the public and on the intranet for members of staff.

Media/ press

Complainants shall be dealt with on a strictly confidential basis. However, some cases may come to the attention of the media through the actions of complainants, staff or unconnected third parties.

Any media interest in a complaint should not be handled by any member of staff and should be referred to the Director of Communications, who will determine if this should be responded to from the central ICB team or referred to the borough communications lead. Any response should be developed jointly between the communications and patient experience teams. Patient confidentiality must remain a top priority in any dealings with the media.

Training and additional support

The ICB requires all staff to be familiar with the Complaints Policy and Procedure and to know who they should contact for advice on handling complaints. To facilitate continual learning and improvement in the handling of complaints training will be available to all ICB staff.

The Head of Patient Experience and Complaints is available to work with individual departments/teams to address their specific training and learning needs. Managers should contact the Head of Patient Experience and Complaints for further information if this is required.

Staff may also seek help and support from their line manager or Director and from their professional representative body, defence organisation, clinical lead or staff side representative.

An overview of this policy and its procedures should be incorporated into the ICB handbook for new staff and should be part of their corporate induction.

APPENDICES

Flow Chart for Handling Complaints

Appendix A

When complaint received:-

- **risk assess** (serious incidents to be notified to Quality Team)
- **identify any consent or safeguarding issues** (safeguarding issues to be escalated immediately)
- **agree with complainant route for process of their complaint** (formal or informal)
- **if provider complaint agree how investigation will be managed**

Provider Complaints

Contact complainant within 3 working days to acknowledge concerns and agree how complaint will be managed.

If ICB to manage refer to ICB Formal Complaint local resolution

→

If Provider to manage investigation request consent for details of complaint to be forwarded and include advocacy information

Once consent received forward to relevant complaints department and request a copy of final response for ICB records.

**ICB Formal Complaint
First stage – local resolution**

Contact complainant within 3 working days to acknowledge and explain agreed process for managing complaint and identify timescales
Obtain consent if appropriate and share details of advocacy providers

Refer to ICB team or relevant provider(s) for investigation and report

In all cases if reports are delayed the complainant / MP must be contacted and an explanation provided with confirmation of new timescales to conclude enquiries. Send holding letter

Check investigation report for quality and to ensure all aspects addressed and draft response

Draft to be reviewed by Head of Patient Experience within 5 working days from receipt of report

Draft response sent to designated signatory for final approval and sign off

Signed response to be sent to complainant (Unless otherwise specified by complainant)

Close complaint 10 working days after final response if no further communication has been received.

Forward copy of satisfaction survey to complainant

MP Enquiry/ concerns

Contact MP within 3 working days to acknowledge concerns and confirm action

Refer to ICB team or relevant provider(s) for investigation and report

Check investigation report for quality and to ensure all aspects addressed

Draft response

Within 10 working days

Approved final response to be signed appropriate designated signatory

Send to MP by first class post with copy to constituent

In all cases if the complainant or MP has further concerns or is dissatisfied explore possibility of further investigation or consider a local resolution meeting with staff.

If after completion of local resolution a complainant makes a request for independent review

Refer to second stage Ombudsman (PHSO)

GUIDANCE FOR HANDLING PERSISTENT COMPLAINANTS

Dealing with persistent, serial or vexatious complainants

This guidance should only be implemented by the ICB following approval by the Chief of Staff. If a member of staff feels that a complainant is persistent, serial or vexatious then they should contact the Head of Patient Experience and Complaints for advice in the first instance. This guidance should also be read in conjunction with the ICB Persistent and Unreasonable Contacts policy.

Occasionally staff can be faced with persistent, serial or vexatious complainants. Staff are trained to respond with patience and sympathy to complainants, but it is recognised that there are times when there is nothing further that can reasonably be done to rectify a real or perceived problem. It is also recognised that a persistent complainant should be protected by ensuring they receive a response to all genuine grievances and are provided with details of independent advocacy.

In determining arrangements for handling such complaints, staff are presented with the following key considerations:

- To ensure that the complaints procedure has been correctly implemented as far as possible and that no material element of a complaint is overlooked or inadequately addressed.
- To appreciate that even a habitual complainants may have grievances which contain some genuine substance.
- To ensure an equitable approach.
- To be able to identify the stage at which a complainant has become habitual.

Guidance for dealing with persistent, serial or vexatious complainants

The aim of this guidance is to identify situations where the complainant might be considered to be persistent and to suggest ways of responding to these situations which are fair to both staff and complainant.

It is emphasised that this guidance should only be used as a last resort and after all reasonable measures have been taken to try to resolve complaints following the NHS complaints procedures, for example through local resolution, conciliation, and involvement of independent advocacy as appropriate. Judgement and discretion must be used in applying the criteria to identify potential habitual complainants and in deciding the action to be taken in specific cases.

This policy should only be implemented in relation to a specific complainant, following careful consideration by, and with the authorisation of, the Chief of Staff.

DEFINITION OF A PERSISTENT COMPLAINANT

Complainants (and/or anyone acting on their behalf) may be deemed to be persistent where previous or current contact with them shows that they meet at least TWO of the following criteria:

Where complainants:

- a) Persist in pursuing a complaint where the NHS complaints procedure has been fully and properly implemented and exhausted.
- b) Seek to prolong contact by changing the substance of a complaint or continually raising new issues and questions whilst the complaint is being addressed. (Care must be taken not to discard new issues which are significantly different from the original complaint. These might need to be addressed as separate complaints).
- c) Are unwilling to accept documented evidence of treatment given as being factual e.g. drug records, GP records, nursing notes.
- d) Deny receipt of an adequate response despite evidence of correspondence specifically answering their questions.
- e) Do not accept that facts can sometimes be difficult to verify when a long period of time has elapsed.
- f) Do not clearly identify the precise issues which they wish to be investigated, despite reasonable efforts of staff and, where appropriate, independent advocacy, to help them specify their concerns, and/or where the concerns identified are not within the remit of the Trust to investigate.
- g) Focus on a trivial matter to an extent which is out of proportion to its significance and continue to focus on this point. (It is recognised that determining what a 'trivial' matter is can be subjective and careful judgement must be used in applying this criteria).
- h) Have, in the course of addressing a registered complaint, had an excessive number of contacts with the ICB placing unreasonable demands on staff. (A contact may be in person or by telephone, letter, E-mail or fax. Discretion must be used in determining the precise number of "excessive contacts" applicable under this section using judgement based on the specific circumstances of each individual case).
- i) Are known to have recorded meetings or face to face/telephone conversations without the prior knowledge and consent of the other parties involved.
- j) Display unreasonable demands or expectations and fail to accept that these may be unreasonable (e.g. insist on responses to complaints or enquiries being provided more urgently than is reasonable or normal recognised practice).

- k) Have threatened or used actual physical violence towards staff or their families or associates at any time - this will in itself cause personal contact with the complainant and/or their representatives to be discontinued and the complaint will, thereafter, only be pursued through written communication. (All such incidents should be documented in line with Trust policy and procedure for reporting incidents)
- l) Have harassed or been personally abusive or verbally aggressive on more than one occasion towards staff dealing with their complaint or their families or associates. (Staff must recognise that complainants may sometimes act out of character at times of stress, anxiety or distress and should make reasonable allowances for this.) Staff should document all incidents of harassment in line with the Zero Tolerance Procedures, completing an incident form.

PROCEDURE FOR DEALING WITH PERSISTENT COMPLAINANTS

- a) Check to see if the complainant meets sufficient criteria to be classified as a habitual complainant.

Where there is an on-going investigation.

- b) The Head of Patient Experience and Complaints can write to the complainant setting parameters for a code of behaviour and the lines of communication. If these terms are contravened consideration will then be given to implementing other action.

Where the investigation is complete

- c) At an appropriate stage, the Chief Executive Officer, Chief of Staff or relevant Director should write a letter informing the complainant that:
 - the ICB has responded fully to the points raised, and
 - has tried to resolve the complaint, and
 - there is nothing more that can be added and correspondence is now at an end,
 - The ICB may wish to state that future letters will not be acknowledged or answered.

In extreme cases the ICB should reserve the right to take legal action against the complainant.

5 WITHDRAWING 'PERSISTENT' STATUS

Once complainants have been determined as 'persistent' there needs to be a mechanism for withdrawing this status at a later date if, for example, complainants subsequently demonstrate a more reasonable approach or if they submit a further complaint for which normal complaints procedures would appear appropriate. Staff should previously have used discretion in recommending 'persistent' status and discretion should similarly be used in recommending that this status be withdrawn.

Appendix C - Equality & Equity Impact Assessment Checklist

This is a checklist to ensure that relevant equality and equity aspects of proposals have been addressed either in the main body of the document or in a separate Equality & Equity Impact Assessment (EEIA)/ Equality Analysis. It is not a substitute for an EEIA which is required unless it can be shown that a proposal has no capacity to influence equality. The checklist is to enable the policy lead and the relevant committee to see whether an EEIA is required and to give assurance that the proposals will be legal, fair and equitable.

The word “proposal” is a generic term for any policy, procedure or strategy that requires assessment.

Equality Analysis Screening Tool

Date of Assessment	14/06/22
Assessor Name(s) & Job Title(s)	AD Corporate Operations
Organisation	SEL CCG
Name of the project/decision	SEL ICB Complaints Policy
Aim/Purpose of the project/decision	The purpose of this policy is to explain how the ICB responds to, and escalates as necessary, complaints received.

1. Do you consider the project/decision to have an *adverse workforce equality impact and/or health inequality impact* on any of the protected groups as defined by the Equality Act 2010? Write either ‘yes’ or ‘no’ next to the appropriate group(s).

Protected group	Yes/No	Protected group	Yes/No	Protected group	Yes/No
Age	No	Pregnancy/Maternity	No	Marriage/Civil Partnership (employment only)	No
Disability	No	Race	No	Socio-economic / Deprivation	No
Gender	No	Religion/Belief	No	Carers	No
Gender reassignment	No	Sexual orientation	No		

2. If you answered 'yes' to any of the above give your reasons why

n/a

3. If you answered 'no' to any of the above give your reasons why

No anticipated detrimental impact on any equality group. The policy adheres to best practice. This Policy will be applied to all NHS staff employed by the organisation and there is no evidence that the policy will impact, disadvantage or discriminate against any particular protected characteristic group.

4. Please indicate if a Full Equality Analysis is recommended:		NO	YES
Signature of Project Lead: <div style="background-color: black; width: 100%; height: 20px;"></div>	Date completed 14/06/22	NO	
Signature of reviewing member of Equality Team: <div style="background-color: black; width: 100%; height: 20px;"></div>	Date reviewed:	IF YES, BEGIN TO GATHER DATA FOR COMPLETION OF A FULL EQUALITY ANALYSIS	