

# **Policy to Support People To Share Their Story Raise a Concern or Make a Complaint**

## Listening, Responding & Learning

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## AMENDMENT HISTORY

VERSION	DATE	AMENDMENT HISTORY
V1	Oct 2014	Amendments & contributions made by L Broster.
V2	Oct 2014	To Quality & Safety Committee
V3	Oct 2014	For Q&S incorporating views of Paul Maubach & Rebecca Bartholomew
V4	Oct 2014	Comments from Q&S
V5	Oct 2014	New sections 7.9 and 5.2.1 added
V6 Final	Dec 2014	New objective and consistency amends
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V7.1	October 2016	Formatting
V7.2	May 2018	GDPR update, updated expectations on response times, included SI process pause, included requirement to be registered with Dudley Practice.
V7.3	Sept 2018	Information added relating to allegations/concerns raised against those in a position of trust (POT) who work with vulnerable children/young adults.
V7.4	Oct 2018	Amendment to wording of response times following patient query and agreement at Q&S to clarify wording

## REVIEWERS

This document has been reviewed by:

NAME	DATE	TITLE/RESPONSIBILITY	VERSION
Paul Couldrey	October 2014	Director PCIG Consulting Ltd	V1
Laura Broster	October 2014	Head of Communications & Public Insight	V1/ V2
Quality & Safety Committee	October 2014		V3
Audit Committee	Dec 2014		V6
Chief Nursing Officer	May 2015		V7
Emma Smith	October 2016	Governance Support Manager	<b>V7.1</b>
Laura Broster	May 2018	Director of Communications	<b>V7.1</b>
Quality & Safety Committee	July 2018		<b>V7.2</b>
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## APPROVALS

This document has been approved by:

VERSION	WHERE	DATE
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V3-5	Quality & Safety Committee	October 2014
V6	Audit Committee	December 2014
V7.1	Quality & Safety Committee	November 2016
V 7.2	Quality & Safety Committee	October 2018

NB: The version of this policy posted on the intranet must be a PDF copy of the approved version.

**DOCUMENT STATUS**

This is a controlled document. Whilst this document may be printed, the electronic version posted on the intranet is the controlled copy. Any printed copies of the document are not controlled.

**RELATED DOCUMENTS**

These documents will provide additional information:

Whistle blowing policy Safeguarding policy	This document refers to these policies in some areas
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## Foreword

We are here to support anyone who has a concern or complaint about the services we provide or those which we plan and buy (commission).

We think a subtle and important point to start with is the title of this policy, we believe that there are far too many negative connotations with the word complain... so we want to focus on raising concerns as we believe it will encourage more dialogue and improve the way we respond.

According to the Oxford dictionary to **complain** is synonymous with the following words,  
*protest, protestation, objection, remonstrance, statement of dissatisfaction, grievance, charge, accusation, criticism, quibble, grumble, moan, whine*

To raise a **concern** however is synonymous with the following words,  
*anxiety, worry, disquiet, apprehension, apprehensiveness, unease, uneasiness*

It is far softer, evokes a less defensive reaction and allows for more sympathetic handling.

In reality, a concern or complaint is a statement made by someone who is unhappy with the care or service they have received. These can be expressed in a number of ways – in person, by telephone, in writing, by email or through a third party. What we must do is understand why that person is unhappy, and then act upon it. Many people contacting our team to raise a concern will be emotional, in handling any concern or complaint, we owe it to these people to acknowledge that emotion.

Our core value of respecting others means that we should place a value on that emotion, hearing it and feeling it in order that we properly understand the true impact of what has happened.

Our core value of being open to receiving feedback means that we must fully listen to the complainant and be open to acknowledging if services or care have not met the standards we expect.

Our core value of consistency means we should treat every complainant equitably and undertake all due diligence that is required.

Our core value of professionalism means that we should also seek to impartially obtain all the relevant facts to any case so that we can offer a comprehensive assessment of what has happened and what lessons might need to be learned.

Our core value of taking responsibility means we should ensure that we follow through on each and every case fully, to ensure that the best possible outcome and resolution is reached for each individual.

This policy is intended as a guide, a minimum standard to be achieved. We will commit to treating each concern raised individually, validating those emotional exchanges where necessary to enable people to move on.

This policy sets the minimum standards we expect, but we will ensure that each person who contacts us has the opportunity from the start and throughout to clarify what timescales and response would be right for them. The success of our concerns service will not be measured on

how quickly we can issue a final letter, it will be measured on the feedback that people using it give as to how well we helped address their concerns.

We are also committed to making the recommendations in the Francis & Berwick Reports, 'normal business'. We are working with our providers to increase the openness and transparency around complaints information and ensuring that we act on the feedback that we receive from the public through these channels.

Any complaint or concern raised with us is an opportunity to listen, respond and learn from experiences of people using the services we deliver or commission. This policy helps us to make the most of that opportunity and for us to meet the needs of those raising concerns with us.

Best wishes

**Laura Broster, Director of Communications & Public Insight**  
**Viv Vasey, Complaints Officer**

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## **POLICY OVERVIEW**

### **1.0 INTRODUCTION**

If a patient is not happy with the care or treatment they have received, they have the right to complain, have a concern or complaint investigated, and be given a full and prompt reply.

The NHS Constitution explains these rights when it comes to making a concern or complaint. Patient's or their representatives have the right to:

- Have their concern or complaint dealt with efficiently, and be properly investigated
- Know the outcome of any investigation into their concern or complaint
- Take their concern or complaint to the independent Parliamentary and Health Service Ombudsman if they're not satisfied with the way the NHS has dealt with the concern or complaint
- Make a claim for judicial review if they think they've been directly affected by an unlawful act or decision of an NHS body
- Receive compensation if they have been harmed

Most issues can be resolved without people having to make a formal concern or complaint. We encourage people in the first instance to have an informal chat with us or the service provider.

*For example, if you have problems booking a GP appointment speak to the practice manager about it. If you are worried about something during your hospital outpatient appointment talk to one of the nurses or the clinic manager.*

NHS England calls this informal process 'local resolution' and urges everyone to see if things can be solved there and then before they escalate to a real problem.

However, if despite everything this doesn't solve their problem, or even if it does but they would still like to raise a concern or make complaint, then they should follow the NHS concern or complaints procedure as set out by this Dudley CCG Policy.

### **2.0 PURPOSE**

The purpose of this policy is to make it clear how Dudley CCG will listen, respond & learn from patient and public concerns or complaints.

The Clinical Commissioning Group (CCG) is committed to working within the legislation to achieve sustainable improvement in the health and well-being of the population. The CCG intends to use this Policy to underpin the work to commission the highest standard and quality of healthcare as a means to help achieve the ambition of the CCG.

Effective concern/ complaint management is a key element of the CCG's approach to quality.

The Policy is to support people to raise a concern, tell us their views or make a complaint. The policy will enable all staff to deal effectively with all concerns raised by patients encouraging a culture of openness, transparency and willingness to re-evaluate and change service delivery to meet the highest standards of quality of care.

### **3.0 WHO THIS POLICY APPLIES TO**

This policy applies to anyone wishing to raise a concern or make a complaint.

With an active lead from all managers at all levels to ensure that concern or complaints are resolved efficiently, in an open and transparent way we should forge a high level of confidence in the services that the CCG commissions. If followed, the policy, should ensure that the CCG captures and acts on any learning opportunity.

### **4.0 KEY PRINCIPLES**

Key points we will remember when handling concerns

- We welcome comments, concerns and complaints, and can use them to further improve services.
- We must make it as easy as possible for people to raise concerns and then we must respond as quickly as possible.
- Everyone has a responsibility to deal with concerns, but nobody is on their own. The Communications & Public Insight Team has the specific role to manage the concerns system properly and to support the patients, carers and staff involved.
- Remember, just because something has always been done in a certain way, doesn't mean that it is always right! Concerns are often the catalyst for reviewing and improving the way that services are provided.

What are the objectives of our policy?

- It will be easy to use and widely accessible
- It will be fair and impartial to all involved
- It will be honest and thorough in looking into concerns
- It will deal with concerns as close as possible to the point at which they arise and will keep everyone informed
- It will deal with all of the points raised and provide a full response
- It will respect confidentiality and privacy
- It will provide the option to further review ongoing concerns
- It will help us & our providers to monitor and improve standards
- It will help us to learn and make improvements to benefit patients and staff
- It will identify changes made as a result of the concerns, and make sure the person raising the concern, and staff, are told about the changes
- It will make sure that improvements are recognised and adopted.



## 5.0 THE POLICY

### 5.1 Introduction

The purpose of this policy is to outline the way in which Dudley Clinical Commissioning Group (DCCG) will manage concerns and complaints within the guidance of,

- The Local Authority Social Services and National Health Service Concern or complaints (England) Regulations 2009 (No 309).  
[http://www.opsi.gov.uk/si/si2009/uksi\\_20090309\\_en\\_1](http://www.opsi.gov.uk/si/si2009/uksi_20090309_en_1)
- amendments 1st September 2009 (No 1768);  
[http://www.opsi.gov.uk/si/si2009/uksi\\_20091768\\_en\\_1](http://www.opsi.gov.uk/si/si2009/uksi_20091768_en_1)
- The Parliamentary and Health Service Ombudsman Principles of Good Concern or complaint Handling.

DCCG's Governing Body believes that a proactive approach to investigation and resolution of concerns raised regarding its commissioned services, will enable the organisation to continually monitor and improve the services that commissions for our local population.

### 5.2 Objectives

DCCG aims to create a culture where patient/public concerns or complaints are welcomed and are resolved in a spirit of co-operation and openness.

DCCG are committed to:

- Proactively building continuous and meaningful engagement with the public and patients to shape services and improve health;
- Managing concern or complaints in accordance with our statutory and contractual obligations, our stated vision, goals, promises and objectives;
- Ensuring that concerns or complaints are managed promptly and efficiently;
- Properly investigating and treating complainants with respect
- Acting from a point of emotion rather than process
- Resolving the problem relating to the concern/ complaint, not just managing the complaint.

DCCG will comply with the Health Act 2009 and the NHS Constitution and ensure that patients have the right to:

- An independent concern or complaints Advocacy Service;
- Have any concern or complaint about NHS services dealt with efficiently and have it properly investigated;
- Know the outcome of any investigation into their concern or complaint;
- Take their concern or complaint to the Independent Parliamentary and Health Service Ombudsman if they are not satisfied with the way their concern or complaint has been dealt with by the NHS.

Dudley CCG is firmly committed to the principles of **equality and diversity** in all areas of our work. We believe that we have much to learn from diverse cultures and perspectives and that diversity will make our organisation more effective in meeting the needs of all our patients and stakeholders.

Staff will treat patients and/or patients nominated representatives with dignity and respect when

dealing with their concern or complaint. We will assure complainants that raising concerns will not prejudice the treatment and care provided. We will not discriminate on the grounds of gender, marital status, race, ethnic origin, colour, nationality, national origin, disability, sexuality, religion or age.

Dudley CCG recognises that staff provide professional care, often under challenging circumstances and are affected by concern or complaints made against them. It is important that all staff receive training, support and feedback to enable them to deal with concern or complaints in an open, courteous manner whilst at the same time being supported by the organisation they work for.

### **5.3 Which Complaints/ Concerns will/ will not the CCG Investigate?**

DCCG will investigate all concerns brought to them, by Dudley registered patients, regarding all commissioned and directly provided services and all DCCG policies and decisions. We will also play a role, where required, in co-ordinating complex concerns or complaints involving more than one organisation.

DCCG will also monitor the complaint management of all commissioned services, monitoring themes and trends in provider services. This will be reported to the Quality & Safety Committee.

Key themes and serious concerns/ complaints will be raised with the Quality and Safety Team to ensure they are raised at Clinical Quality Review Meetings with the relevant provider organisation.

The following concerns or complaints will not be dealt with under the NHS Complaints Regulations 2009:

- A concern or complaint made by a local authority, NHS body, primary care provider or independent provider;
- A concern or complaint made by an employee of a local authority or NHS body about any matter relating to employment;
- A concern or complaint made orally and resolved to the complainant's satisfaction within 24 hours;
- A concern or complaint which has previously been made and resolved to the same complainant and where local resolution has been exhausted;
- A concern or complaint which is, or has been, investigated by a Health Service Commissioner under the 1993 Act;
- A concern or complaint arising out of the alleged failure by the CCG to comply with a request for information under the Freedom of Information Act 2000;
- A concern or complaint made about primary medical services including GPs, Opticians, pharmacy or dental services.

### **5.4 What about concerns/ complaints about Primary care services?**

Primary care services are responsible for the local resolution of concerns or complaints through operating practice-based procedures, which they are required to establish under their contract.

If local resolution cannot resolve the concern or complaint, the NHS England Area Team lead for primary care or complaints is responsible for organising the conciliation.

NHS England is responsible for purchasing primary care services such as GPs, dentists, pharmacists, optical services and some specialised services, and patients should contact them if they wish to complain about any of these services. A primary care contractor may seek the help of a lay conciliator to assist in the process of resolving a concern or complaint at local level. This process will be provided by the local area office of NHS England.

Primary Care Practitioner/Providers can be described as:

- General Medical Practitioners
- General Dental Practitioners
- Pharmacists
- Ophthalmic Optician or Ophthalmic Medical Practitioner
- Out of Hours Service

## **6.0 WHO THIS POLICY APPLIES TO**

This policy applies to anyone wishing to raise a concern or make a complaint. It is also a crucial guide for all CCG staff on how we can get the most out of the complaints process.

With an active lead from all managers at all levels to ensure that concerns or complaints are resolved efficiently, in an open and transparent way we should forge a high level of confidence in the services that the CCG commissions. If followed, the policy should ensure that the CCG captures and acts on any learning opportunity.

### **6.1 Specific Responsibilities**

#### **6.1.1 The Governing Body**

Is responsible for reviewing on an annual basis the concern or complaints received by the CCG, for monitoring themes and trends in concern or complaints about services it commissions and ensuring that the agreed procedures are followed. Details will be published in the CCG Annual Report.

#### **6.1.2 The Chief Executive Officer**

Is responsible for overseeing the concern or complaints handling process, viewing the correspondence related to each individual concern or complaint and agreeing and signing the written response to all complainants.

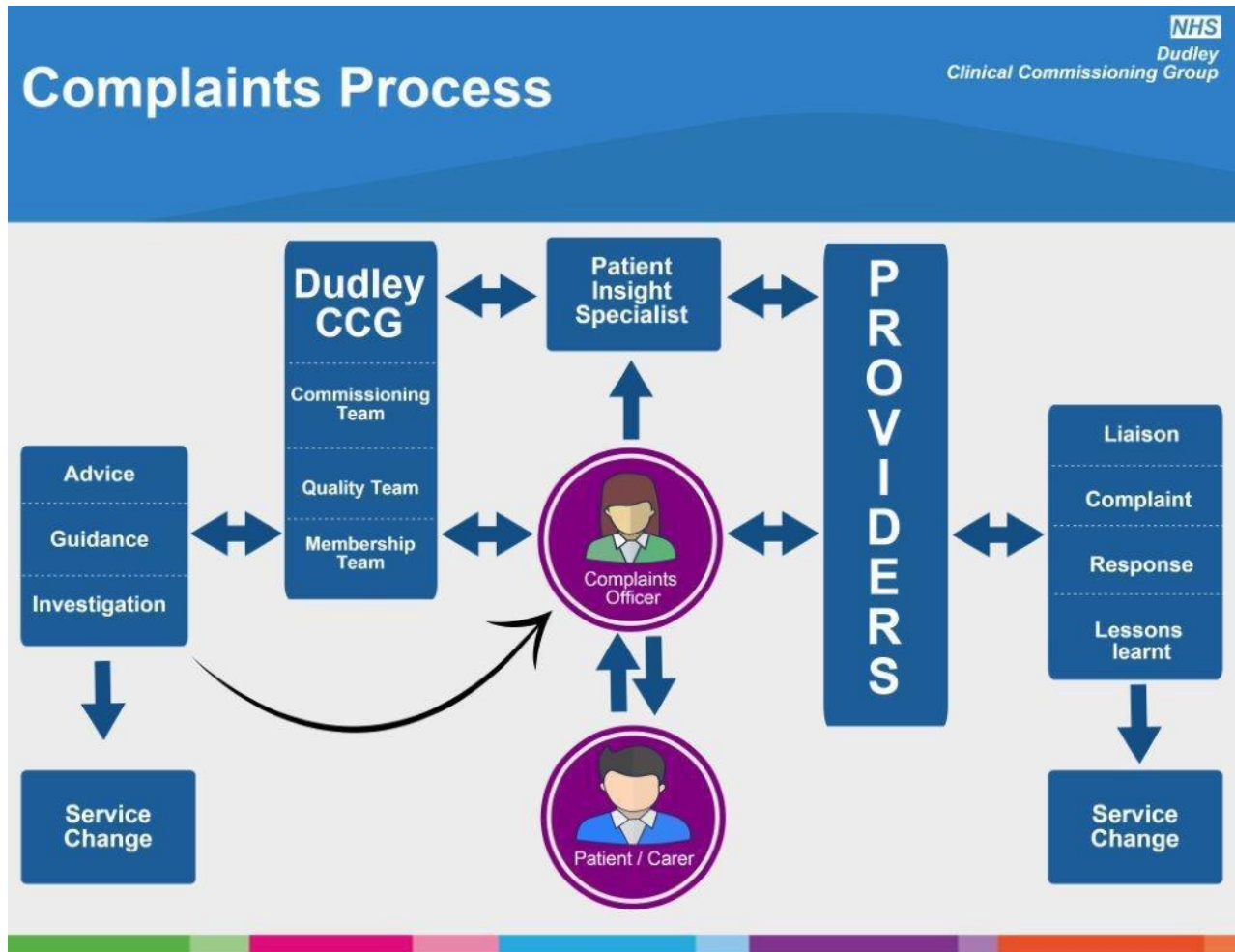
#### **6.1.3 Quality and Safety Committee**

The Quality and Safety Committee are responsible, together with the Chief Executive Officer for overseeing the management of the CCG's concern or complaints procedures, reviewing the concern or complaints received by the CCG, reviewing concern or complaints received by services the CCG commissions and agreeing the action to be taken to ensure that lessons are learnt throughout the organisation from the results of the reviews.

This is done through review of the CCG and provider organisation's quarterly and annual concern or complaints reports. The Registered Nurse, Governing Body Lay Member, the Director Of Communications and Executive GP Lead for Quality are core members of this Committee which is a

sub-committee of the Governing Body.

The diagram below explains the relationship between the CCG internal teams and their role in managing people's concerns.



## 6.2 Systems and Processes for Concern or complaint Investigation

The procedure for handling concern or complaints has two stages:

### 6.2.1 Local Resolution

Relates to internal action by staff and managers of the CCG to investigate and resolve any concern or complaint to the satisfaction of the complainant, within an agreed reasonable timescale that has been agreed with the complainant. If no agreement of a reasonable timescale is available, a reasonable timescale as determined by the concern or complaints manager.

### 6.2.2 Independent Review

If the complainant remains dissatisfied after the concern or complaint has been investigated thoroughly at Local Resolution stage, they have the right to refer their concern or complaint to the Parliamentary and Health Service Ombudsman for review

### **6.3 What is a concern or complaint?**

A concern or complaint is an expression of dissatisfaction from:

- (a) A person who receives or has received services from a responsible body; or
- (b) A person who is affected, or likely to be affected, by the action, omission or decision of the responsible body which is the subject of the concern or complaint, or their representative.

### **6.4 Who can raise a concern or make a complaint?**

In the case of concerns or complaints it is paramount that the needs of the complainant are acknowledged. Concerns or complaints will be accepted from patients, relatives, carers or friends of patients, their MP, staff, PALS, Healthwatch or external organisations, such as Social Services. Concerns or complaints received from others on behalf of the complainant will only be pursued with the knowledge and written consent of the complainant.

All members of staff are patients and may well have concern or complaints of their own. They shall be made aware that they too have the right to raise an issue for formal investigation through the Concern or Complaints Procedure, where this is not part of the Grievance and Disciplinary Procedure.

### **6.5 Requests can be made by individuals acting on behalf of the patient**

Requests can be made by individuals acting on behalf of the patient, but they must declare on the consent form (appendix B), why they have this entitlement and provide proof if required. This is generally where they have parental responsibility for a child. It may also be where an individual has been legally appointed by a Court of Protection or Guardianship order – in such circumstances the complaint's officer will seek further advice about the purpose and the details of what should be released.

If the requestor is not the patient, and has an enduring power of attorney registered with the court of protection, these details should be conformed before releasing information.

### **6.6 How can people raise a concern or make a complaint?**

A concern or complaint may be made in writing, electronically, or verbally.

Where the complaint is made verbally the complaints officer must take a written record of the concern or complaint and the date on which it was made together with, a record of the name of the complainant and the subject matter of the concern or complaint.

The acknowledgement must be accompanied by the written record with a request to the complainant to advise if it is a correct record of events. Verbal concerns or complaints will be dealt with and given due attention and all complainants must be made aware of the assistance that the ICAS and/or the Patients Advice and Liaison Service or Healthwatch can give in supporting and resolving concerns locally.

If a complaint is received by the CCG that involves an allegation or concern against a person who works with children/young people/adults with care and support needs and the concerns or allegations include, for example, that the person in a position of trust has:

- Behaved in a way that has harmed or may have harmed an adult or child;
- Possibly committed a criminal offence against, or related to, an adult or child;
- Behaved towards an adult or child in a way that indicates they may pose a risk of harm to adults with care and support needs.

This would need to be discussed with the Dudley CCG Safeguarding Team for advice and then Dudley Safeguarding Boards procedures should be followed. These can be accessed below

<http://westmidlands.procedures.org.uk/ykpyz/statutory-child-protection-procedures/allegations-against-staff-or-volunteers/#s578> Children

<http://safeguarding.dudley.gov.uk/adult/work-with-adults/safeguarding-policies-and-procedures/> Adults

### **6.7 Important points of the process**

- All concerns or complaints will be acknowledged by telephone contact, (where possible) and in writing with the complainant within three working days, all records should be kept in written or electronic form.
- All concerns or complaints will receive a response as soon as possible. If the complaint relates solely to a CCG item then it will be within 25 working days (from consent received). We strive to achieve this target with complaints relating to our providers, however this is not always possible and in these instances the complainant will be kept informed of a likely response time.
- The complainant should submit the concern or complaint within twelve months of the occurrence of the concern.
- Under no circumstances will a concern or complaint directed to the Chief Executive Officer be dealt with in an entirely verbal context, unless it is with the knowledge and agreement of the complainant. It will be the responsibility of the Complaints Officer dealing with the concern or complaint to maintain a written record of all conversations which will be kept on file.
- Where appropriate a face to face meeting may be arranged between a complainant and a designated representative of the CCG.
- The CCG will measure success by the feedback from complainants as to how well their complaint was dealt with. A form will be sent out to complainants after a 2 week period of time to capture this.
- After receipt of each concern/ complaint the CCG will call the complainant to establish the next steps and clarify the intended outcome. At this point a recording of any emotions will be made. These will be relayed to any investigating officer and to the Chief Executive Officer to frame the response we want to give back. We believe that this will ensure that each concern or complaint is dealt with emotionally first and should improve our ability to connect with the complainant and respond appropriately.

### **6.8 Secondary Care Providers concern or complaint Investigations**

When the CCG receive a concern or complaint about the services it commissions from a secondary care provider, the CCG shall record the complaint/concern and forward to the provider for investigation and response to the CCG (not to the complainant directly). The CCG will need to gain consent from the complainant before sharing the complaint/concern with the provider and agree a timescale for the provider to respond to the complaint.

Providers should be given the appropriate timescale (see classification below) to respond to complaints with the ability to extend this timescale due to complaint complexities, any extension should be agreed with the complainant and with the advice from the Quality Team.

Since October 2014, NHS providers are required to comply with the duty of candour. Meaning providers must be open and transparent with service users about their care and treatment, including when it goes wrong.

The duty has been introduced as part of the fundamental standard requirements for all providers. It applies to all NHS trusts, foundation trusts and special health authorities.

DCCG expects its providers to comply with the duty of candour and to be open and transparent with us too. Providers should provide reporting on number and type of concerns/complaints raised, the average time taken to respond to complaints and any trends identified.

## **6.9 Closure of a concern or Complaint**

Each concern/ complaint is closed once the final response is issued.

Each response letter will identify how the complainant can get in touch with the concern or complaints team to notify them if they are not satisfied their concern or complaint has been addressed fully. In some cases this may result in a complaint being reopened.

A response letter will provide information about how to contact the Ombudsman if unhappy with the outcome of the concern or complaint investigation and handling by the CCG.

On closure of the case the case review documentation will be completed and databases will be updated to ensure accurate and full records are maintained.

## **6.10 Withdrawn Concern or complaints**

Any concern or complaint received by the CCG, either verbally or in writing, can be withdrawn at any stage of the procedure. This should be confirmed in writing by the complainant and then closed on the system.

If a complainant does not complete the relevant consent forms within 2 months of issue we will close the complaint. This does not prohibit it being reopened should the person make contact again as it will not have been investigated.

## **6.11 Pausing an Investigation**

If at any stage during the investigation it is established that there may be a requirement for a safeguarding or serious incident investigation the complaints process will pause in order for this process to take place. At all times the complainant will be advised on what is happening and a full response will be issued once any subsequent investigation is complete.

## **7.0 ADDITIONAL INFORMATION**

### **7.1 Publicity/Information**

The means of making a concern or complaint will be widely publicised to patients and staff. Information on the CCG Concern or complaint Policy together with a guide to making a comment, suggestion, concern or complaint is available on the CCG Internet Site.

Notices will be displayed in all public areas within CCG and member practice premises informing individuals wishing to make a concern or complaint how and to whom concern or complaints should be addressed. Information on how to make a concern or complaint will be included in all patient information leaflets.

Additional information will be available on the website or via the designated concern or complaints manager to assist those people who wish to raise a concern or complaints as to the correct process to be followed. This will include information about the advocacy service. The information will also detail the processes that will be followed to ensure that each concern or complaint is an opportunity to learn and to improve services.

### **7.2 Resolution Meetings**

These should be considered when investigations and response letters have failed to resolve the complainant's questions and concerns.

### **7.3 Monitoring and Review**

The CCG Quality and Safety Committee will receive a quarterly concern or complaints report which will:

- Outline the number of concern or complaints received
- Identify the subject matters
- Identify trends and areas of concern
- Highlight any improvements put into place resulting from lessons learnt
- Contain details of any concern or complaints referred to the Parliamentary and Health Services Ombudsman, if these were upheld and any recommendations made to the CCG.

An annual concern or complaints report will be produced and included in the CCG Annual Report. A copy will also be available on the CCG website.

### **7.4 Organisational Learning**

National guidance indicates that one of the primary goals for most complainants is to ensure that their concerns have been listened to and that the same thing will not happen again.

As a result of concern or complaints received, the CCG will:

- ✓ Review and analyse concerns or complaints received
- ✓ Take action to improve service delivery as a result of individual concerns or complaints





- ✓ Take action to improve service delivery using the analysis of trends from concerns or complaints data
- ✓ Report regularly on the number, type and outcome of concerns or complaints received.

Concerns or complaints are a rich source of information and the CCG should clearly demonstrate that positive action has been taken as a result of a concern or complaint being raised. Also that learning from a concern or complaint is embedded across the organisation.

## **7.5 Independent Concern or complaints Advocacy Service (ICAS)**

ICAS can help individuals make a concern or complaint or express a concern about the CCG or Primary Care Services. Staff at ICAS can support individuals if they wish to make a concern or complaint, and give advice about using the concern or complaints process. They can also write letters on an individual's behalf and attend meetings.

## **7.6 Independent Review – Health Service Ombudsman**

If the complainant remains dissatisfied with the actions undertaken following the investigation/response received they have the right to ask the Health Service Ombudsman to review their concern or complaint. The Health Service Ombudsman is independent of the NHS.

## **7.7 Disclosing Information in Complaints process**

Responding to a complaint may involve providing information that relates both to the requester and another individual.

The Data Protection Act (DPA)/ General Data Protection Regulations (GDPR) 2018 says you do not have to comply with a request if to do so would mean disclosing information about another individual who can be identified from that information, except where the other individual has consented to the disclosure or it is reasonable in all the circumstances to comply with the request without that individual's consent.

Therefore, in regards to complaints requests, requests from a complainant about themselves will be that their information can be disclosed directly to them subject to conditions below.

If however the complaint is made of behalf of another there needs to be considerations given as to the disclosure of the patient data to the requester. You should make decisions about disclosing third-party information on a case-by-case basis. You must not apply a blanket policy of withholding it.

To help you decide whether to disclose information relating to a third-party individual, it helps to follow the three-step process described below.

## **7.8 Requests for medical records**

Requests for medical records are to be considered under the General Data Protection Regulations 2018 and for deceased patients under the Access to Medical Records Act 1990 S10, this should be administered by the Governance Department.

### **Step 1 – Does the request require the disclosure of information that identifies a third party?**

You should consider whether it is possible to comply with the request without revealing information that relates to and identifies a third-party individual. Bear in mind that the names of clinical staff involved with the care of the individual are not considered third party data in this context.

## **Step 2 – Has the third-party individual consented?**

In practice, the clearest basis for justifying the disclosure of third party information in response to a complaint is that the third party has given their consent. If a complaint is being made on behalf of a child below the age of 12 then this consent is automatic, children aged above 12 the appropriate consent forms should be in place to support the complaint, the same process is followed where an adult raises a complaint on behalf of another.

Difficulties can arise when disclosing the personal information of a deceased patient when another has complained about their care/treatment.

If you don't have consent to disclose patient information to another in a complaint response the following should be considered:-

- Any duty of confidentiality owed to the third-party individual;
- Any steps you have taken to try to get the third-party individual's consent;
- Whether the third-party individual is capable of giving consent;
- Any stated refusal of consent by the third-party individual.

## **7.9 Confidentiality**

Confidentiality is one of the factors you must take into account when deciding whether to disclose information about a third party without their consent. A duty of confidence arises where information that is not generally available to the public (that is, genuinely 'confidential' information) has been disclosed to you with the expectation it will remain confidential. This expectation might result from the relationship between the parties. For example, the following relationships would generally carry with them a duty of confidence in relation to information disclosed.

- Medical (doctor and patient)
- Employment (employer and employee)
- Legal (solicitor and client)
- Financial (bank and customer)
- Caring (counsellor and client)

In dealing with patient data confidentiality MUST be assumed, this duty continues after death.

As such no personal data of a deceased individual should be passed to a complainant unless they can demonstrate a legal power for this access, power of attorney etc. Each disclosure should be on a case-by-case basis.

## **7.10 Complaints System**

Complaints will be logged on the CCG Datix system.

The CCG will ensure that it reports quarterly to the NHS Information team via the K041 return to

ensure complaint numbers, resolution and subjects can be recorded nationally.

## **8.0 Continual/Vexatious Concern or complaints**

This section of the policy should be used to identify situations where the complainant might be considered to be continual or vexatious, and suggests ways of responding to these situations.

The policy should only be used as a last resort and after all reasonable measures have been taken to try to resolve concerns or complaints following the NHS Concern or Complaints Procedure, i.e. through local resolution or conciliation.

The policy should only be implemented in exceptional circumstances and then only with the approval of the CCG Chair.

### **Definition of a Continual/Vexatious Complainant**

Complainants (and/or anyone acting on their behalf) may be deemed to be continual or vexatious complainants where previous or current contact with them shows that they meet TWO OR MORE of the following criteria:

Where the complainant:

- Is in frequent contact with the complaints department. They make contact every day, and in some cases, more frequently, either by telephone, letter, and email or by physically calling into the department.
- Persist in pursuing a concern or complaint where the NHS Concern or Complaints Procedure has been fully and properly implemented and exhausted.
- Changes the substance of a concern or complaint or continually raises new issues, or seeks to prolong contact by continually raising further concerns or questions upon receipt of a response whilst the concern or complaint is being addressed. (Care must be taken not to discard new issues that are significantly different from the original concern or complaint. These might need to be addressed as separate concern or complaints.)
- Challenges written documentation by claiming that the records have been altered. Refuses to accept contemporaneous notes, even though different people have made them.
- Receives a response from the organisation and immediately responds by either raising new concerns or presenting an old problem in a new way.
- Seeks an unrealistic outcome and intends to continue until that outcome is achieved. Examples could include wanting to have a member of staff dismissed.
- Tries to manipulate the concern or complaint by:
  - complaining about the member of staff dealing with the concern or complaint
  - dictating who they will and will not speak to, e.g. wanting to speak directly to the CCG Chair, or the Accountable Officer
  - stating they wish to meet with a person, and then either refusing to arrange a date, or not turn up after the meeting has been arranged

- Making the same, or a slightly different, concern or complaint to other people, e.g. the press, the local Member of Parliament, the Health Secretary, etc.

If a complainant (patient, carer or visitor) threatens or uses actual physical violence towards staff at any time, personal contact with the complainant and/or their representatives will be discontinued. Thereafter, the concern or complaint will only be pursued through written communication.

If the complainant that is displaying verbally abusive or threatening behaviour, or has caused actual harm and is currently a patient, a clinical decision will be made by the Chief Executive Officer and a Consultant Psychiatrist as to whether their behaviour is attributed to the illness, and whether the concern or complaint should be pursued. (All such incidences will be recorded on the CCG Incident Reporting documentation.)

### **Handling Continual/Vexatious Complainants**

The CCG Chair should agree that the complainant falls into the category of a continual/vexatious complainant. The decision should be recorded and the reason for the decision should also be noted.

To check that the complainant's concerns have been fully investigated and that the information has been forwarded, the complainant should be encouraged to request a review by the Health Service Ombudsman.

If the complainant is not prepared to request a review, or insists on raising the same issue again, they should be advised that as the Chief Executive Officer has responded fully to the points raised, the matter is now closed. They will be advised of the following:

- No further correspondence will be entered into unless they have a new concern or complaint
- Staff will no longer deal with the complainant over the telephone
- Complainants have the right to contact the Health Service Ombudsman if they remain dissatisfied.

If a complainant replies again, the next response will inform them that their letter has been received and the contents noted. A copy of the letter answering the concern or complaint will be enclosed with a statement to the effect that there is nothing further to add to that letter.

In extreme cases, where abusive behaviour continues, complainants may be informed that the CCG Solicitors may have to become involved. As a last resort, an injunction may be sought but only following seeking legal advice.

### **Withdrawing Continual or Vexatious Status**

Once complainants have been identified as 'continual or vexatious' there needs to be a mechanism for withdrawing this status at a later stage.

This decision will be made by the CCG Chair, if the complainant subsequently demonstrates a more reasonable approach or if they submit a further concern or complaint for which the normal complaint's procedure would appear appropriate.

## Appendix A – NHS Complaints Process Advice for Patients

### Stage one: Making a concern or complaint

If you don't feel like you can solve issues informally then you should make a formal concern or complaint to your service provider such as your GP, dentist, hospital or pharmacist. If you cannot make a concern or complaint yourself, then you can ask someone else to do it for you.

Every NHS organisation has a concern or complaints procedure. To find out about it, ask a member of staff, look on the hospital or CCG's website, or contact the concern or complaints department for more information. You probably have to make the concern or complaint in writing.

However, if you feel too uncomfortable to complain to the service provider directly then you can make a concern or complaint to the commissioner of the services instead. NHS services are commissioned, planned and paid for by either NHS England or Dudley Clinical Commissioning Group (DCCG).

**Note:** if you have already complained to your service provider then the commissioner will not be able to reinvestigate the same concerns. In this case you should proceed to stage two of the concern or complaints process.

NHS England is responsible for purchasing primary care services such as GPs, dentists, pharmacists, optical services and some specialised services, and you should contact them if you wish to complain about any of these services.

When you contact NHS England via email ([england.contactus@nhs.net](mailto:england.contactus@nhs.net)) ensure you state 'For the attention of the concern or complaints manager' in the subject line.

You should provide as much information as possible to allow NHS England to investigate your concern or complaint, such as:

- your name and contact details
- a clear description of your concern or complaint and any relevant times and dates
- details of any relevant healthcare providers or services
- any relevant correspondence, if applicable

Contact Dudley CCG for secondary care including hospital treatments, emergency care and some community services, like district nursing.

### When should I complain?

As soon as possible. Concerns or complaints should normally be made within 12 months of the date of the event that you're complaining about, or as soon as the matter first came to your attention.

The time limit can sometimes be extended (so long as it's still possible to investigate the concern or complaint). An extension might be possible, for instance in situations where it would have been difficult for you to complain earlier, for example, when you were grieving or undergoing trauma.

If you made your concern or complaint to NHS England you will receive the findings of the

investigation together with an appropriate apology and the changes or learning that have taken place as a result of the investigation.

**Stage two: I am not happy with the outcome of my concern or complaint**

If you are unhappy with the outcome of your concern or complaint you can refer the matter to the Parliamentary and Health Service Ombudsman, who is independent of the NHS and government.

The Parliamentary and Health Service Ombudsman  
Millbank Tower  
Millbank  
London  
SW1P 4QP  
Tel: 0345 015 4033

If you have problems with your hearing or speech then you can use a textphone (minicom) on 0300 061 4298. (Calls to these numbers cost the same as a call to a UK landline.) You can also call using Text Relay.



**Appendix B- Supporting Documents**

**Sample Consent Forms**

<b>Dudley Clinical Commissioning Group</b>	
<b>CONSENT FORM 1 - Consent form where patient has died</b>	
<b>Full Name of Complainant:</b>	.....
<b>Address:</b>	..... .....
<b>Relationship to Patient:</b>	.....
<b>Patient's Name:</b>	.....
<b>Patient's Address:</b>	..... ..... .....
<b>Patient's Date of Birth:</b>	.....
<b>Patient's Date of Death:</b>	.....
I confirm that the above information is true and accurate to the best of my knowledge.	
I give my permission for Dudley Clinical Commissioning Group to investigate this concern or complaint, and where necessary, obtain disclosure of relevant personal and confidential information relating to the above named patient, including any clinical notes. I understand that Dudley Clinical Commissioning Group will use any information gathered to assist in the investigation of my concern or complaint.	
<b>Signature of Complainant:</b>	.....
<b>Name in Capitals:</b>	.....
<b>Date:</b>	.....

**Dudley Clinical Commissioning Group**

**CONSENT FORM 2 – Part 1 - where patient is a child**

**Full Name of Patient:** .....

**Address:** .....  
.....

**Date of Birth:** .....

**Name of Complainant:** .....

**Address:** .....  
.....  
.....

**Relationship to Child:** .....

**Do you have parental responsibility for the child:** YES:  NO:

**Is the child in the care of a local authority or voluntary organisation?** YES:  NO:

(If YES, to the above question, written confirmation is required that you are authorised to pursue this concern or complaint)

**I confirm that the information set out above is true and accurate**

**Signature of Complainant:** .....

**Name in Capitals:** .....

**Date:** .....

**Dudley Clinical Commissioning Group**

**CONSENT FORM 2 – Part 2**

**To be completed when the child is 16 years of age, or older or where competency assessment has been done to determine a younger age.**

I consent to the investigation of the concern or complaint to Dudley Clinical Commissioning Group

brought by .....

on my behalf.

**Signature of Child:** .....

**Name in Capitals:** .....

**Date:** .....

**Section 3**

I give my permission for Dudley Clinical Commissioning Group to investigate my concern or complaint, and where necessary, obtain disclosure of relevant personal and confidential information

relating to ..... (patient's name), including any clinical notes.

I understand that Dudley Clinical Commissioning Group will use any information gathered to assist in the investigation of my concern or complaint.

**Signature of person with parental responsibility for the patient.** .....

**Date:** .....

**Dudley Clinical Commissioning Group**

**CONSENT FORM 3 – Patient authorises someone else to complain.**

**Full Name of Patient:** .....

**Address:** .....

.....

**Patient's Date of Birth:** .....

**I hereby authorise:**

**Complainant's Name:** .....

**Address:** .....

.....

.....

**Relationship to Patient:** .....

I authorise the person named above to act on my behalf and to receive any and all information, including personal and confidential information that may be relevant to my concern or complaint.

I give my permission for Dudley Clinical Commissioning Group to investigate this concern or complaint and where necessary, obtain disclosure of relevant personal and confidential information relating to me, including my clinical notes.

I understand that Dudley Clinical Commissioning Group will use any information gathered to assist in the investigation of this concern or complaint.

**Signature of Patient:** .....

**Name in Capitals:** .....

**Date:** .....

**Dudley Clinical Commissioning Group**

**CONSENT FORM 4 – Patient’s permission to forward concern or complaint to another organisation for investigation and response**

**Complainant’s Name:** .....

.....

**Address:** .....

.....

**Relationship to Patient:** .....

I hereby authorise Dudley Clinical Commissioning Group to forward my concern or complaint to .....

in order for my concern or complaint to be investigated, and responded to.

I authorise ... ..

to provide Dudley Clinical Commissioning Group with a copy of the response to my concern or complaint.

**Signature of Complainant:** .....

**Name in Capitals:** .....

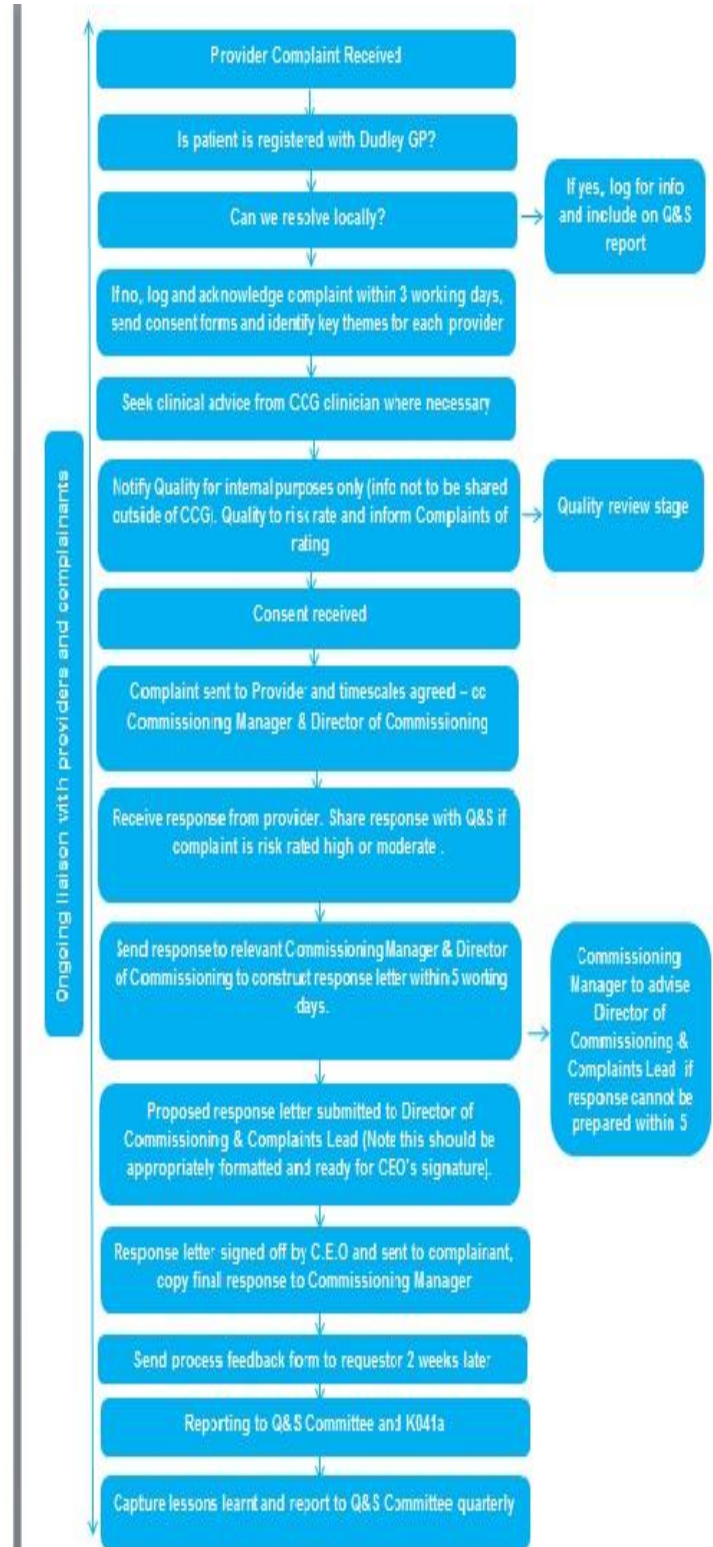
**Date:** .....

## Appendix C- Complaints Process



**Note:**  
 At this point a status will be added to the complaint.

**Red:** Passed on to NHS England.  
**Amber:** Assigned with reference number from NHS England.  
**Green:** NHS England response received, complaint closed.



## References

Guidance to the Regulations: Listening, responding, and improving: a guide to better customer care.

[http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_09\\_5408](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_09_5408)

Ombudsman's Principles for:

Good concern or complaint handling -

[www.ombudsman.org.uk/improving\\_services/principles/concern\\_or\\_complaint\\_handling?index.html](http://www.ombudsman.org.uk/improving_services/principles/concern_or_complaint_handling?index.html)

Good Administration –

[http://www.ombudsman.org.uk/improving\\_services/principles/good\\_administration/index.html](http://www.ombudsman.org.uk/improving_services/principles/good_administration/index.html)

Remedy –

[http://www.ombudsman.org.uk/improving\\_services/principles/remedy/principles\\_remedy.html#pr](http://www.ombudsman.org.uk/improving_services/principles/remedy/principles_remedy.html#pr)

NHS Constitution

[http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_09\\_3421](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_09_3421)

Health and Social Care Act 2008

<http://www.dh.gov.uk/en/Publicationsandstatistics/Legislation/Actsandbills/HealthandSocialCareBill/index.htm>

National Patient Safety Agency – Being Open Guidance

<http://www.npsa.nhs.uk/nrls/improvingpatientsafety/patient-safety-tools-andguidance/beingopen/>

Standards for Better Health

<http://www.cqc.org.uk/>

[Duty of candour](#)

[Data Protection Act \(DPA\) / General Data Protection Regulations \(GDPR\) 2018](#)