Guide to good handling of complaints for CCGs

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# Guide to good handling of complaints for CCGs

This document provides advice to CCGs to support them in handling and responding to complaints about the services they commission on behalf of their populations, or about the exercise of any of their own functions.

### Document Purpose
To support CCGs to develop good processes for handling and responding to complaints

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Guide to good handling of complaints for CCGs

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- CCG clinical leaders
- CCG accountable officers
- CCG complaints managers

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- NHS England regional directors
- NHS England area directors
- Commissioning support units

### Description
This document provides advice to CCGs to support them in handling and responding to complaints about the services they commission on behalf of their populations, or about the exercise of any of their own functions.

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### Contact Details for further information
Nicola King  
Commissioning Skills Lead  
CCG Development  
0113 825 1025

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## Contents

1. Introduction........................................................................................................................................5  
2. Knowing what is required and expected of you when dealing with complaints ............................6  
3. Getting the initial contact right .......................................................................................................9  
4. Finding out what happened and deciding a fair outcome ............................................................11  
5. Writing a ‘fit for purpose’ response ................................................................................................13  
6. Using complaints to drive improvements .....................................................................................15  
7. The Health Service Ombudsman..................................................................................................18
1. Introduction

Ensuring good handling of complaints is one way in which clinical commissioning groups (CCGs) can help to improve quality for their patients. Monitoring trends and patterns in complaints and concerns raised by patients about organisations facilitates early detection of systemic problems. Learning from complaints helps organisations to continually improve the services they provide and the experience for all their patients.

NHS organisations, including CCGs, must make arrangements for dealing with complaints in accordance with *The Local Authority Social Services and NHS Complaints (England) Regulations 2009* (the regulations).

This document sets out for CCGs what a good process for the handling of, and learning from, complaints looks like. It is intended as a good practice guide to assist CCGs to handle complaints well and comply with the regulations, but compliance with the good practice elements of this guide is not mandatory. For those CCGs that have outsourced the process for complaints management to commissioning support units (CSUs), this guide supports CCGs in understanding what service they should expect from the CSU. In such circumstances the responsibility remains with the CCG and they will need to put governance processes in place to ensure sign off and learning from complaints is built into the CCG process.
2. Knowing what is required and expected of you when dealing with complaints

NHS organisations, including clinical commissioning groups (CCGs), must make arrangements for dealing with complaints in accordance with The Local Authority Social Services and NHS Complaints (England) Regulations 2009 (the regulations).

When people have a complaint about an NHS service, they can complain to the provider of that service or to the commissioner of that service.

CCGs will therefore be required to handle complaints about the services that they commission on behalf of their populations from providers or about the exercise of any of their own functions.

CCGs may receive complaints that are in part about services they commission, but there may be other commissioners involved in more complex complaints. For example if someone complains about hospital care and community care it may be that the CCG that received the complaint only commissions one of the providers. It is important to keep the patient/complainant at the centre of the response and that a single response is coordinated.

In cases where the complaint is in part about care commissioned by NHS England, NHS England would be willing to take on the co-ordinator role on behalf of CCGs. Such complaints should be re-directed to the NHS England Customer Contact Centre (CCC) after the patient’s permission has been granted. When it is determined that a CCG will undertake the co-ordinator role, NHS England will wish to work very closely with the CCG to agree the final response letter to the complainant.

When a CCG receives a complaint about a service it commissions they may decide to deal with the complaint or decide that it is more appropriate for the provider to do so. In either case, the CCG will need the complainant’s consent to forward the complaint to the provider. Often a complaint can be made on behalf of an individual (by a family member or a friend) in these cases consent must be gained from the patient to whom care was provided (or their advocate in cases where there is lack of capacity) and not necessarily simply from the complainant. In cases where a posthumous complaint is being made it is important to understand the relationship of the complainant to the deceased before proceeding.

Complaints relating to the same subject matter as that of a complaint previously investigated under the regulations do not have to be dealt with in accordance with the regulations. This means that The Local Authority Social Services and NHS

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1 Postal address: NHS England, PO Box 16738, Redditch, B97 9PT
Telephone: 0300 311 22 33 (Monday to Friday 8am to 6pm, excluding English bank holidays)
Email: england.contactus@nhs.net
Complaints (England) Regulations 2009 do not allow for a second investigation by the commissioner if the provider has already investigated and responded to a complaint. However, at the request of the complainant, a CCG may offer help to broker a resolution where it appears that more can be done by the provider to resolve the complaint. It is acceptable for a CCG to take this approach so long as they are clear to the complainant that the complainant retains the right to go to the Health Service Ombudsman and that the CCG’s support is not a formal part of the complaints process.

The regulations specify the requirements for handling of complaints by NHS organisations which include:

- the need to identify a ‘responsible person’ (the regulations state that this should be the chief executive officer. For CCGs this will be the person who undertakes the accountable officer role) and a ‘complaints manager’ (who may be the same person) to deal with complaints;
- the time limit for making a complaint;
- the requirement for organisations to co-operate when dealing with a complaint that spans more than one organisation;
- what the response must include;
- the requirement to tell the complainant of their right to put the complaint to the Ombudsman if dissatisfied; and
- the recording of complaints.

Complaints made orally, and that are resolved to the complainant’s satisfaction no later than the next working day after the complaint was made, fall outside these regulations though CCGs may choose to record these for learning and quality improvement purposes.

Other helpful resources that set out expectations of how complaints are to be handled are:

- The NHS Constitution which sets out rights and pledges for all patients, public and staff, including about complaints.
- Principles of Good Administration, Principles of Good Complaint Handling and Principles for Remedy (the Ombudsman’s Principles). Published by the Health Service Ombudsman to support good complaint handling.

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2 Clarification of the Complaints Regulations 2009
Top tips for CCGs

Establish the arrangements for handling both categories of complaints ie. those that are about the execution of your responsibilities and those that are about services that you have commissioned.

If you have outsourced your complaints handling to a CSU, make sure that processes for the sign off and learning from complaints are properly developed and built into the CCG governance process.

Encourage a positive approach to receiving complaints as they provide valuable feedback about patients’ experiences.

Ensure that timely and meaningful information about complaints is reported to the relevant committee of the CCG to analyse and consider any action required.

Be open and honest with patients if things go wrong. Offer an apology and explain fully and promptly to the patient what has happened, and the likely short-term and long-term effects. Let the complainant know what action will be taken to address any shortcomings in the service as a result of their complaint.

Don’t allow a patient’s complaint to affect adversely the care or treatment you provide or arrange. Patients who complain about the care or treatment they have received have a right to expect a prompt, open, constructive and honest response including an explanation and, if appropriate, an apology.

Remember to include in your response that if the complainant remains unsatisfied that they have the right to put their complaint to the Health Service Ombudsman.
3. Getting the initial contact right

Ensuring that patients have a positive experience is a key outcome for the NHS. Making sure that your organisation is open and receptive to hearing people’s views, and honest about how it will use this information to develop and improve its service is an important part of this.

Complaints are a valuable source of information about people’s interaction with the services that you commission. Significant contributions to service improvement can be made when you are able to put things right after they have gone wrong.

When someone does complain, the first contact is crucial in setting the right tone and helping to ensure that a positive outcome is reached for everyone. Key things to take into consideration include:

- be pleasant, courteous and keep calm;
- maintain confidentiality. Don’t discuss matters in front of others;
- get consent. This is required for the investigation of the complaint. Remember that this must be from the patient if a complaint has been made on their behalf;
- check how the complainant wants to be addressed and whether they have any particular access or communication preferences or needs;
- arrange to discuss the complaint by phone or by meeting;
- make the complainant aware of local advocacy support;
- be prepared to listen to their complaint in detail. Don’t be defensive, make assumptions or speculate about what may have happened;
- get all the details so you are clear about the complaint. Try to agree a summary of the key points the complainant wishes you to address;
- ask what they would like to happen as a result of the complaint and be honest right from the outset (explaining why) if their expectations are not feasible or realistic;
- always resolve the matter immediately if you can and check that the complainant is happy with that. Confirm in writing; and
- agree a broad plan of action, including when and how the complainant will hear back from your organisation and how they will be kept updated on progress. Let them know the name and contact details of the member of staff who will investigate their complaint.
Top tips for CCGs

Complaints about unsatisfactory communication are the second largest category of complaints dealt with by the Health Service Ombudsman. ‘Unsatisfactory attitude’ is one aspect of this.

Make sure that frontline staff understand the behaviours expected of them; know how to handle complaints; and are equipped with the skills to defuse more challenging behaviour if this occurs.
4. Finding out what happened and deciding a fair outcome

**Investigate**

Complaints should be investigated by someone not involved in the complaint, and complainants should be assured of the investigator’s impartiality.

Individuals should be informed which body(ies) will be involved in investigating their complaint and consent should be sought for any disclosures required.

The investigation should be proportional to the issues raised. If required, draw up a plan of what information is needed to establish the facts, for example, reviewing records and logs of telephone calls; speaking to staff; checking local and national policies, guidelines and good practice; and seeking advice from professionals or clinicians as relevant.

Keep in mind what the complainant is looking for and what is a reasonable, achievable outcome.

**Communicate**

If the complaint involves another organisation, be clear with the complainant - or the patient on whose behalf a complaint is made - how this will be handled and secure agreement from them to share the complaint with the other organisation. Remember that you have a duty to co-operate when there is more than one organisation involved and that one of the organisations will take a lead role. In cases where any element of the complaint is about directly commissioned care, NHS England is willing to act as the co-ordinator. Make sure you keep complainants regularly updated about progress and, if you need to, agree a new timescale for completing the response.

**Keep records**

Record key evidence. Remember that the individual is entitled to see the record and it is important that the records are factual and avoid jargon. Be honest about noting any discrepancies, disputes or gaps and consider whether further action could clarify these.

Make a note of any errors or shortcomings the investigation has exposed along with the action your organisation intends to take to deal with these. The Ombudsman receives many complaints that expose inadequate record-keeping making it difficult to establish facts and impossible to reconcile conflicting accounts of a consultation. Remember that if something is not recorded, the Ombudsman may assume that it did not take place.
**Make a fair decision**

Make a decision about the complaint that is fair and is supported by the available evidence. Take into account any discrepancies or omissions that cannot be reconciled and be honest about these in your response.

Complaints will sometimes be made that are not justified. If you are satisfied that this is the case, then be confident and clear when saying so and explain why.

**Top tips for CCGs**

<table>
<thead>
<tr>
<th>Do</th>
<th>Avoid</th>
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<tbody>
<tr>
<td>• have an agreed protocol for handling complaints when they involve another health or social care organisation.</td>
<td>• getting key facts wrong or making assumptions.</td>
</tr>
<tr>
<td>• act proportionately; whilst a document review may be sufficient for straightforward complaints, for more serious or complex complaints you might want to think about more extensive action such as involving the complainant (if applicable), holding case conferences or taking fuller notes of interviews with staff.</td>
<td>• responding by answering long lists of questions from complainants: try to agree a summary of all the key issues to be addressed first.</td>
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<td>• try to be sensitive as well as objective; complainants may be writing at a time of grief and shock but that doesn’t make their concerns invalid or unfair as a result.</td>
<td>• fudging the matter, or skating over missing information. The complainant should <strong>not</strong> have to ask further questions to be satisfied that the response is as comprehensive as it can be.</td>
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<td>• challenge your colleagues’ responses if they are weak, inconsistent, or do not make sense.</td>
<td>• being defensive.</td>
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<td></td>
<td>• apologising indirectly. Try and avoid phrases like “we are sorry that you <em>felt</em> the organisation or an individual did something wrong”. Apologise for it going wrong instead.</td>
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5. Writing a ‘fit for purpose’ response

A ‘fit for purpose’ response means:

- Writing in plain English. In particular don’t forget to explain any medical or technical terms and make sure that you don’t use acronyms without explaining what they mean. Consider whether other formats could be made available if requested.

- Summarising the complaint (it is helpful to agree such a summary with the complainant at the start of the process). Ensure that you address all the key issues you agreed to address at the outset. If some points are not addressed, explain why.

- Explaining the steps taken to investigate the complaint and stating what evidence you have taken into account, including:
  - the complainant’s account of events;
  - the account of events by the person(s) complained about (if relevant);
  - relevant documentation, including medical records;
  - relevant law, policy, guidance and procedures (quote when appropriate); and
  - any independent clinical or professional advice taken.

- Giving a thorough explanation of what you think happened and, if different, what you think should have happened. State your conclusions based on the evidence. Address any conflicting evidence or lack of evidence. Make sure that your decision is clear.

- Apologising if something has gone wrong. Remember that an apology is not an admission of liability.\(^3\) In many cases a carefully worded apology\(^4\) and a thorough explanation can resolve a complaint.

- Informing the complainant of any actions you will take as a result of the complaint and of the lessons learnt, and how you will keep the complainant updated if applicable (such as when a policy is updated, training has taken place, or new patient information has been produced).

- Providing any other remedy, including financial redress, as necessary.

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\(^3\) Section 2 of the *Compensation Act 2006* states: ‘An apology, an offer of treatment or other redress, shall not of itself amount to an admission of negligence or breach of statutory duty’.

\(^4\) See the Scottish Public Services Ombudsman (SPSO) Guidance on Apology – [www.spso.org.uk/online-leaflets/leaflets-for-complaint-handlers](http://www.spso.org.uk/online-leaflets/leaflets-for-complaint-handlers)
• Ensuring that the final response is signed by the responsible person or person authorised to act on his or her behalf, and includes clear signposting to the Health Service Ombudsman (with contact details) in the event that the complainant remains unsatisfied.
6. Using complaints to drive improvements

Using complaints to improve quality of services commissioned by CCGs

As part of ensuring the quality and clinical effectiveness of the services they commission, CCGs will wish to put in place a process for monitoring and learning from complaints. This can also form important insight for the Quality Surveillance Groups.

Monitoring complaints against providers will help identify possible themes, issues or risk in order that appropriate action can be taken. The information requirements for monitoring complaints can be detailed as part of the contract.

CCGs will want to be sure that their providers’ boards receive regular comprehensive and meaningful information about complaints and that providers share anonymised reports with them on a regular and timely basis.

A detailed (quarterly) complaints report should include:

- number of complaints and an analysis of the subject matter, clinical area (or directorate);
- any repeats, clusters or increases (with commentary about any patterns of potential concern);
- details of risk assessments and action taken to mitigate risk;
- analysis of the outcomes of complaints;
- summary of the learning/insight;
- details of any action taken as a result of complaints and how the impact of any change in policy/practice will be measured;
- whether any other provider organisations were involved in the complaint;
- what the information shows about people’s experience of complaining – and whether action is required as a result; and
- triangulation with other soft intelligence and feedback that may suggest areas for improvement.

Using complaints data to support area teams of NHS England to secure continuous improvement in the quality of primary medical services

CCGs do not commission all services in their area. NHS England directly commissions primary care services, specialised services, offender health care and NHS services for the military. CCGs do not have a role to play in responding to complaints about these services. However, they do have a duty to assist and support
NHS England in discharging its duty to secure continuous improvements in quality of primary medical services in their area.

CCGs, working with area teams, may wish to consider how to use information about complaints in primary care to help improve quality in primary medical care, for instance by:

- reviewing complaint reports with or on behalf of area teams;
- identifying any patterns, themes or trends across the CCG area;
- working with member practices to identify how best to improve quality; and
- helping monitor and evaluate the action taken in response to complaints.

**Using complaints to improve the CCG**

Being honest about, and receptive to, feedback, means reflecting on what improvements can be made to the service you offer. Organisations that do this well will:

- have a system for recording complaints and their outcomes;
- collate relevant learning from complaints;
- disseminate and embed relevant learning within the organisation;
- understand what is required to produce the regulation 18 annual complaints report which must:
  - summarise the subject matter of the complaints (for example, communication and attitude, premises, practice or surgery management, practice administration, clinical, and other);
  - state how many complaints were received; how many were upheld; and how many were referred to the Ombudsman; and
  - summarise matters of general importance arising from the complaints or the way in which they were handled. Set out any actions taken to improve services and any trends that have been identified.

- include in the regulation 18 annual report a commentary about any repeats, increases or clusters; any significant risk assessments; and how the impact of any service improvements arising from complaints was evaluated and provide useful information about the quality of services and the patient experience of those services; and

- demonstrate that changes have been made as a result of acting on feedback. Research shows that a significant number of people don’t complain because they
do not think it will make any difference. If a complaint has led to improved practice, think about how this could be publicised.

**Top tip for CCGs**

Complaint reports that are just numerical provide no real insight into the patient experience. Insightful reports might include; a patient story; discussion of any Ombudsman’s report and recommendations; regular feedback of any change in practice or policy as a result of a complaint; or occasional focus on specific service areas. Some organisations have invited patients to the Board meeting, or to a separate meeting, to communicate their experience of the complaints system directly.
7. The Health Service Ombudsman

- The Health Service Ombudsman is an independent crown servant appointed by the Queen and is not part of the Government or the NHS. Its role is to investigate complaints that individuals have been treated unfairly or have received poor service from the NHS in England. Its service is free for everyone.

- The Ombudsman’s powers are set out in the *Health Service Commissioners Act 1993*. They have very wide powers to gather evidence for complaints put to them, including looking at clinical records and interviewing staff. They often ask to see a copy of your complaint handling records when they first receive a complaint, and they may also ask you for copies of any relevant practice policies and/or procedures as well as the clinical records. They do not need to provide you with the complainant’s consent to see any of these records.

- The Ombudsman wants NHS organisations to be given the chance to resolve complaints. This means that they may refer complaints back to you at an early stage if they think that there is more that can be done.

- The Ombudsman considers all complaints that come to them. Many complaints come to them too early, others they resolve informally. If they think that something has gone wrong that your organisation has not put right, they may contact you to explore opportunities to resolve the complaint quickly.

- The caseworkers who look at complaints that come to the Ombudsman are lay staff, but they also employ a range of clinical staff who advise them on clinical aspects of the complaints.

- If the Ombudsman decides to investigate a complaint about your organisation, they will contact you (and any practitioner specifically named in the complaint) with their proposal to investigate. They will keep you informed about the progress of the investigation and you will have the opportunity to comment on their draft decision.

- The Ombudsman shares information about their work with Parliament to help them hold the NHS in England to account for the service it provides and the way it handles complaints. For example, if an organisation refuses to accept the recommendations arising from an Ombudsman’s investigation, the Ombudsman can lay a report before Parliament to alert them to the failure to comply. They can also share information with the professional regulator when they are sufficiently concerned that a practitioner poses a risk to the health and safety of patients.
• The Ombudsman applies six principles to their work: These six principles are:
  o Getting it right
  o Being customer focused
  o Being open and accountable
  o Acting fairly and proportionately
  o Putting things right
  o Seeking continuous improvement.
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