

**BERKSHIRE WEST CLINICAL COMMISSIONING GROUP
POLICY FOR THE HANDLING OF FORMAL COMPLAINTS**

Version:	3
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Review Log

Version No	Type of Change	Date	Description of change
V1.0	New Policy	April 2013	New Policy
V2.0	Policy Update	March 2015	To reflect recent changes in organisational structures and any latest guidance. Approved Feb 2016.
V3.0	Policy Update	September 2018	To reflect the in housing of the Complaints and PALS service into Berkshire West Clinical Commissioning Group

1 INTRODUCTION

This policy sets out the Berkshire West Clinical Commissioning Group's (BWCCG) process for dealing with NHS Complaints. All BWCCG staff, including temporary and agency staff are responsible for co-operating with the implementation of the complaints policy as part of their normal duties and responsibilities.

BWCCG has a responsibility to have the complaints policy in place and in line with national requirements (Statutory Instrument 2009 No. 309: The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009).

All information will be treated as confidential and will be kept in accordance with the Data Protection Act 2018

2 POLICY STATEMENT, AIMS, OBJECTIVES

- 2.1 BWCCG's approach to handling complaints is engagement led, focusing on developing effective relationships through contact with the complainant, one which is able to support timely local resolution and through which learning for providers and commissioners, and for patients, can be implemented appropriately across the system.

BWCCG will make reasonable efforts to ensure that complaints received are resolved locally to the satisfaction of complainants and providers.

Complainants will not be discriminated against or treated less favourably in line with the Equality Act 2010 legislation.

Complainants/patients will also be able to access BWCCG's Patient Advice and Liaison Service (PALS) which will assist them to deal with their queries and concerns in an informal manner wherever possible.

- 2.2 Information about the complaints procedure, and how concerns and complaints from patients and members of the public can be made, will be made easily available in a format which is simple and understandable. This information will be available on the BWCCG's website.

- 2.3 It is in the interests of patients and of BWCCG that patient concerns and complaints are resolved as quickly, efficiently and professionally as possible. The CCG will make every effort to respond to complaints within 25 working days where possible. If, for whatever reason, it is not possible to respond within this timescale, the complainant/patient will be kept informed.

BWCCG will ensure that any learning from complaints is used to improve the quality of its commissioned service. BWCCG will maintain an overview of concerns and complaints received, trends will be analysed and used to inform commissioning plans. This analysis will be reviewed in the CCG's Quality Committee on a quarterly basis.

BWCCG will also be capturing other patient feedback in a wide variety of ways including complainant evaluation forms, the Patient Participation Groups, Healthwatch and through the Provider Friends and Families Test data

3 Scope

- 3.1 This Policy applies to all staff employed by and working for BWCCG. Providers of services commissioned by BWCCG; such as Berkshire Healthcare NHS Foundation Trust, Royal Berkshire NHS Foundation Trust and South Central Ambulance Service NHS Foundation Trust will be expected to comply with this document in situations where people request that BWCCG responds to or leads an investigation and response. All providers are also required to have their own Complaints Policy in line with the 2009 NHS complaints regulations.
- 3.2 BWCCG must have, or seek to obtain, documented consent from the complainant to be able to forward the complaint to another organisation as part of any investigation.
- 3.3 Where it is more appropriate for the complaint to be dealt with by the service provider, and the complainant consents, the provider will be requested to handle the complaint in accordance with their NHS complaints policy.
- 3.4 Where the CCG commissions services from an independent provider e.g.; Ramsay Berkshire independent Hospital, Spire Dunedin, Circle; BWCCG must ensure that the independent provider has in place arrangements for the handling and consideration of complaints about any matter connected with its provision which meets the requirements of national policy.
- 3.5 Patients who are dissatisfied with an individual funding case decision made by the BWCCG's Case Review Committee or a decision made by BWCCG Continuing Healthcare panel; should first pursue the appeals procedure. Patients who remain dissatisfied after an appeal have the right to make a complaint through BWCCG's NHS complaints procedure that will co-ordinate the response from the appropriate experts. Patients who believe the CHC process has not been appropriately followed and/or the CHC eligibility criteria has been incorrectly applied can request an appeal within the appropriate timeframe. These are the appropriate grounds for an appeal. If the appeal is unsuccessful patients have the right to make to a further appeal to NHS England and following the NHS England decision can appeal to the Parliamentary Health Service Ombudsman.
- 3.6 BWCCG places great emphasis on dealing with complaints as effectively and thoroughly as possible in a courteous and sympathetic manner, particularly through an immediate response by members of staff. Staff members should seek advice from the Complaints Manager where necessary.

4 DEFINITIONS

- 4.1 A complaint is usually described as 'an expression of dissatisfaction requiring a response'. These expressions can be face to face or over the telephone (verbal complaints), or by letter and e-mail (written complaints).
- 4.2 This is a wide definition and it is not the intention of this policy that every complaint should warrant a full-scale formal investigation. Rather; the spirit of the complaints policy and procedure is that BWCCG will respond to all patient feedback in the form of comments, concerns and problems as immediately and informally as possible, and offer the assistance through the BWCCG's Patient Advice and Liaison Service (PALS).

- 4.3 BWCCG will distinguish between requests for assistance in resolving a perceived problem and an actual formal complaint. Once an issue or concern becomes a 'formal complaint' it will be handled in accordance with BWCCG's NHS complaints procedure. Members of staff should prioritise the resolving of issues or concerns before they become a 'formal' complaint.

However, if there is a specific statement on the part of the caller/correspondent that they wish their concerns to be dealt with as a complaint, they will be treated as such.

5 ROLES AND RESPONSIBILITIES

5.1 Any staff member receiving a verbal complaint

Any member of staff in BWCCG receiving a verbal complaint should encourage and listen to comments raised; listening in itself may help to resolve the issue and often the complaint is not personal but about the system. If the member of staff is not able to resolve the complaint in person they should direct the individual to the BWCCG's Complaints or PALS Service (PACT) in the first instance.

5.2 Chief Officer

The Chief Officer is accountable for the complaints handling systems in place within BWCCG. The Chief Officer, with the assistance of the Assistant Director of Quality & Nursing, will ensure that the complaints procedure is followed and that complaints are investigated and reported, as part of the overall approach to improving the quality of services to patients.

Each complaint requiring a written response will receive a reply from the Chief Officer which has been prepared by the PACT. The response letter will also advise complainants of their right to take their complaint to the Parliamentary & Health Service Ombudsman if they so wish.

5.3 Complaints Manager

The BWCCG's Complaints Manager is the named member of CCG staff whom complainants can access for advice on how to use the CCG's complaints procedure. S/he will:

- ensure that any written complaint or one which has been made verbally and requires a written response is acknowledged no later than three (3) working days after the day on which it is received.
- provide advice and support on handling complaints to other health or social care organisations where joint complaints are under investigation.
- ensure that BWCCG conducts an investigation according to national guidelines.
- review the investigation report produced by the Investigating Officer and provide a written response which will be quality assured by the Assistant Director of Quality & Nursing to the Chief Officer for ratification and signature.
- ensure that the final response is sent to the complainant within the agreed response time via the Chief Officer's Team.
- maintain a log of complaints received on Datix of the investigation input received and responses issued to that complainant.

5.4 Assistant Director of Quality & Nursing

The Assistant Director of Quality & Nursing is responsible for ensuring that the complaints policy is adhered to within BWCCG, liaising with the Complaints Manager as required to ensure robust reporting on complaints to the Quality Committee.

5.5 BWCCG

5.5.1 BWCCG will ensure that contracts/service level agreements have a requirement for all providers to have in place complaints procedures which comply with the requirements of the NHS 2009 Complaints Regulations. They are also responsible for ensuring that, when complaints are made, the issues raised by complaints are discussed with the responsible provider.

5.5.2 BWCCG is responsible for investigating complaints; preparing an investigation report and drafting a response to the complainant; monitoring the trends and improvements relating to complaints, and ensuring that a log of formal complaints is kept and actions taken. BWCCG will be responsible for reporting to the Quality Committee.

5.5.3 BWCCG must ensure that:

- all investigation notes, investigation reports, written communications and completed complaint responses are filed and stored appropriately on Datix
- communications with the Parliamentary & Health Service Ombudsman are dealt with appropriately
- trends are analysed and that evidence from lessons learned is shared both within the CCG, and externally with other health and social care organisations as appropriate
- best practice in complaints management is implemented and supporting policies and procedures are updated to reflect any changes in national guidance.

5.5.4 BWCCG will be required to obtain feedback anonymously from complainants on how their complaints were handled, and this information is to be provided on a quarterly basis within reporting to the Quality Committee.

5.5.5 BWCCG will also provide PALS which will have an important role in working in an advisory capacity with patients. PALS will advise patients on the complaints process if an informal approach to resolving the problem is unsuccessful and the patient wishes to take the matter further.

5.5.6 BWCCG will ensure that the PALS liaise and work with relevant arm's length bodies capturing broader patient feedback from them and advising of any necessary actions required.

5.5.7 BWCCG will capture and log compliments about commissioned services in order to promote the spread of good practice and report quarterly as required.

5.6 Who can complain?

5.6.1 Complaints may be made by existing or former users of the services commissioned or provided by the CCG. If the complainant is unable to give consent, another person may be nominated to act on their behalf, including those with recognised legal authority for patients who are unable to give consent. A consent form is attached in Appendix A.

- 5.6.2 Where a complaint is made on behalf of a deceased patient, consent will be sought from the executor of the will or the administrator of the estate. A consent form is attached as Appendix B. If the deceased has no will, executor or administrator of their estate then 'next of kin' status may be used depending on individual circumstances.
- 5.6.3 In the case of a child (under the age of 16 years) the representative must be a parent, guardian or other adult person who has parental responsibility for the child, or authorised local authority representative if the child is in care. In such situations, it may be appropriate to assess whether the child is capable of understanding the situation and to consider whether it is appropriate to obtain their consent that the person with parental responsibilities for them may act on their behalf. If the patient is a minor, the complaint should be discussed with the BWCCG's Caldicott Guardian.
- 5.6.4 Any person who is affected by or likely to be affected by the action, omission or decision of BWCCG may also make a complaint.

5.7 Complaints not covered by this policy

- 5.7.1 Complaints made outside the time limits. Complaints should normally be made within twelve months of the event or within twelve months of the date on which the matter came to the complainant's attention. Complaints received after the expiry period will be considered on a case by case basis at the discretion of BWCCG's Chief Officer.
- The time limit shall not apply if the Chief Officer is satisfied that the complainant had good reasons for not making the complaint within this time limit and, notwithstanding the delay, it is still possible to investigate the complaint effectively and fairly.
- 5.7.2 A complaint which has already been investigated, whether by the CCG or a provider of its commissioned services, under the NHS 2009 complaints regulations or previous regulations.
- 5.7.3 A complaint which is being or has been investigated by the Parliamentary and Health Service Ombudsman.
- 5.7.4 A complaint made by another NHS organisation which relates to the exercise of BWCCG's function.
- 5.7.5 A complaint made by an independent commissioned service about any matter relating to arrangements made by BWCCG with that commissioned service.
- 5.7.6 A complaint arising out of BWCCG's alleged failure to comply with a data subject request under the Data Protection Act 2018 or a request for information under the Freedom of Information Act 2000.
- 5.7.7 A complaint which relates to any scheme established under section 10 (superannuation of persons engaged in health services, etc.) or section 24 (compensation or loss of office, etc.) of Superannuation Act 1972, or the administration of those schemes.

- 5.7.8 A complaint where the complainant has stated that s/he intends to take legal proceedings (see para 7)
- 5.7.9 A complaint in relation to services that are commissioned by the NHS Commissioning Board
- 5.7.10 When it is a staff grievance.
- 5.7.11 A complaint made by an employee about any matter relating to their contract of employment.

6 Access to records

- 6.1 Where a complainant seeks access to records, these should be provided promptly in accordance with the Data Subject Access Policy (records of living patients) or Access to Health Records Policy (records of deceased patients) as appropriate and without charge.

7 Possible claims for negligence

- 7.1 If the complainant explicitly instigates legal action, the complaints procedure will normally cease. However, the NHS 2009 complaints regulations make provision for the two to continue in parallel. Organisations are advised to use this option cautiously, and to take legal advice from all parties' solicitors to confirm that the complaints investigation will not compromise any legal proceedings:

The complainant and the complained against will be advised of any suspension of the complaints process in writing.

The appropriate Risk Lead should be informed as soon as possible who will then take appropriate action, including notifying the NHS Litigation Authority.

- 7.2 If the complainant's initial communication is via a solicitor's letter, the inference should not necessarily be taken that the complainant has decided to take legal action. This should not prevent a full explanation being given and if, appropriate, an apology offered to the complainant. An apology is not an admission of liability.

8 Parliamentary & Health Service Ombudsman (PHSO)

- 8.1 Complainants who are dissatisfied with BWCCG's response following the outcome of the local resolution process may make a complaint to the Parliamentary & Health Service Ombudsman. The final response to the complainant under local resolution should explain how they can pursue their complaint further if they remain dissatisfied.
- 8.2 Complainants should be advised that they must ask the Health Service Ombudsman to review their complaint within twelve months of the matter which is the subject of their complaint. However, the PHSO can exercise its discretion.
- 8.3 All complaints made to the PHSO will be recorded as such on the complaints Datix log together with the details of action taken by the PHSO to resolve the matter and any subsequent action taken by BWCCG.
- 8.4 When the PHSO receives a request for independent review of a complaint, the

case file is requested from BWCCG. Failure to provide this information, or to provide a reasonable explanation of the delay, will be classed as an indication of a potential lapse of good complaints handling.

- 8.5 When the PHSO investigates a complaint it will, as soon as reasonably practicable, prepare a written report of its investigation. The report may include suggestions which it considers would improve the services of BWCCG or which would otherwise be effective for the purpose of resolving the complaint.
- 8.6 All complaints made to the PHSO and their outcomes will be shared with the Quality Committee via the quarterly reporting structure.

9 Help Available to Complainants

- 9.1 Complainants who require help and support in pursuing their concerns should be guided to the BWCCG PALS or to SEAP (Support, Empower, Advocate, Promote) for the Newbury and Wokingham localities and Healthwatch for the Reading locality. Both these organisations provide independent advocacy services to patients/complainants.

10 Unacceptable and habitual complainants

- 10.1 There are times when nothing further can reasonably be done to assist a complainant or to rectify a real or perceived problem. Under such circumstances and as a last resort after all reasonable measures have been taken to try and resolve the complaints under this policy, the following should be considered:
- 10.2 Complaints made by unacceptable and/or habitual complainants should be reviewed by BWCCG to establish whether the same issues are being raised again. Complaints about matters unrelated to previous complaints should be approached objectively and without any assumption that they are bound to be frivolous or unjustified.
- 10.3 If a complainant is abusive or threatening, it is reasonable for BWCCG to require him/her to communicate in a way which still allows the complaint to be investigated. For example, this could be in writing and not by telephone, or solely with one or more designated members of staff. It is not reasonable to refuse to accept or respond to communications about a complaint until it is clear that all practical possibilities of resolution have been exhausted.
- 10.4 Complainants regarded as unacceptable and/or habitual should be pursued in accordance with the Unacceptable and Habitual Complainants Policy procedures:
- The Chief Officer will review the complaint and make a decision as to whether or not it is appropriate for BWCCG to investigate the complaint further.
 - If the Chief Officer makes the decision that the complaint should be investigated further, the case will be returned for further action in accordance with this policy. If it is now felt that restrictions should be placed on the complainant these should be explained together with the reasons why the restrictions are being put in place.

- If the Chief Officer makes the decision that the complaint should not be pursued; the complainant should be immediately informed of this decision and advised of his/her right to take the case up with the Health Service Ombudsman if they remain dissatisfied.

11 Compliments

Compliments received by BWCCG relating to commissioned services should be logged and included in the reporting of patient experience to the Quality Committee

12 Policy Review

This policy will be reviewed on a 3 year basis by the Complaints Manager and the Assistant Director of Nursing & Quality. Feedback from patients and BWCCG will be taken into account and revisions to BWCCG's service specification may be required.

This policy will also be amended in line with changes in national guidance and/or legislation.

Appendix A

CONSENT FORM

Our Ref:

I, Patient Name, hereby give consent for the Patient Advice and Complaints Service to discuss my case and share my concerns/complaint, including personal information, with the external organisation(s) listed on this form for the purposes of investigating and responding to my concerns/complaint. I understand this may include accessing and receiving copies of relevant information held within my medical, social care and personal records. I understand that information exchanged as agreed by me must be used solely for the purpose for which it was obtained.

I understand that the Patient Advice and Complaints Service will record my personal information on a confidential database and information contained within this database is used anonymously to help improve services.

I hereby give consent for Personal Representative 1, as the person making this complaint on my behalf to do so, and for information to be released back to them.

Part 1 – Patient

Name (please print).....

NHS Number..... Date of Birth.....

GP Surgery (optional)

Email Address

Telephone Number..... Mobile Number

Address.....

Part 2 – Personal Representative (1) Consent

Name (please print).....

Email Address

Telephone Number..... Mobile Number.....

Address.....

Appendix B

FORM OF AUTHORITY (deceased patient)

Our Ref:

The CCG has a continuing duty of confidentiality to patients after they have died. Therefore, we require proof that you are the Executor of the Will or the Administrator of the Estate of the deceased or that you are authorised by the person who is, to receive confidential information about the care given to your friend/relative.

This proof can be shown by providing:

- a copy of the portion of the Will appointing you as Executor of the Will, or
- the Grant of Probate or
- the Letters of Administration

If you are the Executor/Administrator you need only provide that proof and complete this form.

If, however, you are not that person, could you please provide a letter from the Executor/Administrator giving consent for us to provide you with confidential information, with a copy of one of the documents from the list above, giving proof of their appointment. We are sorry to have to ask for this documentation at such a distressing time.

Deceased patient's details

Name: _____

Date of Birth: _____

Hospital and/or NHS Number: _____

To be completed by the Executor/Administrator

I confirm that I am the Executor/Administrator of the deceased and able to receive any and all such information as may be relevant to the complaint.

Signature: _____

Print Name: _____

Date: _____

Once completed, please return the consent form to the Patient Advice and Complaints Team addressed to Susan Finch at NHS Berkshire West CCG, 50-59 Bath Road, Reading, Berkshire, RG30 2BA or by email at bwccg.bwpalscomplaints@nhs.net