NHS
Norfolk and Waveney
Integrated Care Board

Norfolk and Waveney ICB

Complaints Handling Policy and Procedure

Document Control Sheet

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Name of document:	**Complaints Handling Policy and Procedure**
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Produced by:	Corporate Affairs
What is it for?	If a person is unhappy about any matter reasonably connected with the exercise of the Integrated Care Board's (ICB's) functions, they are entitled to make a complaint, have it considered, and receive a response. This policy details that process.
Evidence base:	Parliamentary and Health Service Ombudsman – Principles for Remedy
Who is it aimed at and which settings?	The policy is for use by all patients, carers and service users of Norfolk and Waveney.
Impact Assessment:	N/A
Other relevant approved documents	N/A
References:	• The Local Authority, Social Services and National Health Service Complaints (England) Regulations 2009 • Mental Capacity Act 2005 • Human Rights Act 1998 • Data Protection Act 1998 / 2018 • Freedom of Information Act 2000.
Monitoring and Evaluation	This policy will be monitored and reviewed for effectiveness by the Complaints and Enquiries Manager in August 2023.
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Revision History	Summary of changes	Author(s)	Version No
November 22	Voiceability updated to POHWER.	Jon Punt	2
July 23	Policy updated to reflect primary care commissioning functions now fully delegated to ICB	Jon Punt	3
July 25	Policy reviewed, no changes required.	Jon Punt	4

Contents

1. INTRODUCTION

NHS Norfolk and Waveney Integrated Care Board (hereafter known as 'the ICB') complaints policy and procedure is written in accordance with **The Local Authority, Social Services and National Health Service Complaints (England) Regulations 2009** which came into force on 1st April 2009.

If a person is unhappy about any matter reasonably connected with the exercise of the ICB's functions, they are entitled to make a complaint, have it considered, and receive a response. In particular, these complaints may relate to the commissioning of health care or other services under an NHS contract, or making arrangements for the provision of such care or other services with an independent provider or with an NHS trust,

Matters excluded from consideration under these arrangements are listed in Appendix 4.

The ICB aims to manage complaints by the procedure of local resolution. The primary objective of this process is to provide the opportunity for investigation and resolution of the complaint, as quickly as is sensible in the circumstances and minimising the need for the complainant to escalate concerns to the Parliamentary and Health Service Ombudsman (PHSO). It aims to satisfy the complainant while being fair to staff. Local resolution should be open, honest, fair, flexible and conciliatory.

Complaints are recognised by the ICB as a vital form of feedback to help improve both the service the organisation and providers offer. The ICB aims to ensure all complainants feel listened to, have their complaint investigated thoroughly and that any response is delivered in a personalised way.

2. POLICY STATEMENT

NHS Norfolk and Waveney ICB is committed to providing an accessible, fair and effective means for people (and/or their representatives) to express their views. It is also recognised staff have the right to make a complaint to senior managers on behalf of, or in the interests of, a patient.

The ICB aims to promote a culture in which all forms of feedback are listened to and acted upon. Complaints, compliments, general comments and suggestions are encouraged. It is recognised such information is invaluable as a means of identifying both problems and areas of good practice and as such can be used as a tool for improving services.

Being open: Often, all that is required is a simple apology and/or explanation. This should, wherever possible, be given at the earliest opportunity by all front-line staff. Patients have a right to expect openness in their healthcare.

No discrimination: Patients should always be reassured that making a complaint will not affect their eligibility for, or the nature of, current or future treatment. This is achieved through the complete separation of complaint documentation from the patient's medical records. Complainants and members of staff are asked to inform the ICB's Complaints and Enquiries Manager if they have any concerns about this.

Complaints about care that is felt to discriminate against a person will be reported to the ICB's Patient and Communities Committee.

Dignity and respect: Complaints about care that compromises the dignity of, or respect shown to, a person will be overtly reported to the ICB's Patient and Communities Committee.

Mindful of people's human rights: The ICB respects and observes the Absolute, Limited, and Qualified Rights contained in legislation and applies these rights to all its business undertakings. The Rights are set out at Appendix 1.

Mental Capacity Act 2005, revised 2007: The ICB is also mindful of the statutory principles contained in this legislation, an overview of which is set out at Appendix 2.

Legal Action: Should a complainant explicitly indicate an intention to take any form of legal action the matter will be treated under the appropriate procedure.

The ICB's Complaints and Enquiries Manager may investigate the complaint if it does not compromise or prejudice the concurrent investigation, but this can be discontinued at any time if circumstances change.

3. COMPLAINTS HANDLING POLICY

3.1 Responsibilities

The Chief Executive is accountable for the quality of the care commissioned and will, therefore, have an overview of all recorded dissatisfaction expressed by patients and service users.

Director for Corporate Affairs and ICS Development is the senior person appointed by the Chief Executive to ensure the process for handling and reporting on complaints on behalf of the ICB complies with this policy.

3.2 What is a complaint?

A complaint is a verbal or written expression of concern or dissatisfaction about a matter relative to the ICB's functions or decisions, which requires a response and/or redress.

3.3 Who can complain?

A complaint can be made under this policy by:

- A patient or person affected or likely to be affected by the actions or decisions of the ICB;
- someone acting on behalf of the patient or person concerned, with their consent;
- someone acting on behalf of a person mentioned above, and in any case where that person has died;
- a child, or in the case of a child, someone acting on their behalf, who must be a parent, legal guardian or other adult person who has care of the child. Where the child is in the care of a local authority or a voluntary organisation, the representative must be an authorised person identified by the local authority or voluntary organisation, and must be making the complaint in the best interests of the child;
- someone who is unable by reasons of physical or mental incapacity to make the complaint themselves.

3.4 Local Resolution

The first stage of the NHS complaints procedure is called 'local resolution' and concerns should be brought to the attention, in the first instance, to the organisation providing the service.

Local resolution aims to resolve complaints quickly and as close to the source of the complaint as possible, using the most appropriate means; for example, the use of conciliation. Local resolution enables concerns to be raised immediately by speaking to a member of staff who may be able to resolve issues without the need to make a formal complaint.

3.5 Making a Formal Complaint

A complaint about the ICB or a service the ICB pays for can be made in writing, including by email, over the phone or in person / remotely via an online meeting upon request.

If local resolution does not resolve matters and the complainant wishes to continue with their complaint they can do this formally to the organisation concerned or, if the complainant wishes, to the ICB. This can be done orally or in writing (including e-mail) to the Complaints and Enquiries Manager for NHS Norfolk and Waveney ICB at the following address:

The Complaints and Enquiries Manager
Norfolk and Waveney Integrated Care Board
County Hall
Norwich
Martineau Lane
NR1 2DH

Tel - 01603 595857

Email – nwicb.complaintsservice@nhs.net

The complaint will be recorded as being made on the date on which it was received by the Complaints and Enquiries Manager.

3.6 Time limit for making a complaint

A complaint should be made within 12 months of the event(s) concerned, or within 12 months of the date on which the matter came to the notice of the complainant. The Complaints and Enquiries Manager has discretion to waive this time limit if there are good reasons for the complaint not having been made within that time frame.

3.7 Duty of Candour

The ICB welcomes the government's commitment to introducing a duty of candour within the NHS. This recommends that all providers of NHS care should owe a duty of candour to their commissioners under which they provide, amongst others;

- Timely reports, prepared to an agreed protocol, of all complaints made by NHS patients;
- In cases when complaints are upheld, Complaints Action Plans to address the weaknesses that have been identified;

- Progress reports in relation to implementation of complaints action plans

The ICB is committed to improving the quality of care and the services it commissions. The Clinical Quality team will review and monitor the reports received from providers and will report to the Patient and Communities Committee to ensure the quality of services provided is of a high standard and they continually strive for further improvement. This will be addressed with providers through the existing quality monitoring mechanisms.

4. COMPLAINTS HANDLING PROCEDURE

4.1 Acknowledgement and record of complaint

The Complaints and Enquiries Team will send to the complainant a written acknowledgement of the complaint within **three working days** of the date on which the complaint was received. This acknowledgement will include:

- if necessary, a consent form to be signed and returned by the patient if they are not the person who has identified the concerns to be investigated;
- information concerning how to access the local NHS advocacy provider, POHWER
- information concerning how to access the Parliamentary and Health Service Ombudsman;

4.2 Complaints in Writing

The ICB's Complaints and Enquiries Team will review the complaint, then identify the appropriate senior manager to investigate the matter.

Where the complaint involves services or care commissioned from or provided by more than one organisation, the ICB's Complaints and Enquiries Manager will liaise with the complaints manager(s) of the other organisation(s) to ensure all aspects of the complaint are appropriately investigated and responded to. This is provided appropriate consent has been provided by the complainant/patient to do so.

4.3 Verbal Complaints

When a verbal complaint is made to the ICB's Complaints and Enquiries Team, the letter of acknowledgement and associated enclosures must be accompanied by a written file note summarising the issues raised, with an invitation to the complainant to sign and return it. This will ensure all aspects of the complaint have been thoroughly understood.

4.4 Investigation

The ICB's Complaints and Enquiries Manager will discuss the investigation of high-risk cases with the ICB's Chief Executive and Director of Nursing. The investigation must be of sufficient rigour and detail to enable the ICB to provide an open, honest and comprehensive response to the complainant. The investigating officer will request the review of patient records and statements from the staff involved as necessary and provide a response to the complaint to the ICB's Complaints and Enquiries Manager.

Investigating managers will share a copy of the written complaint response with any person who was the subject of the complaint.

4.5 Response

The complainant should receive a full written response from the ICB's Chief Executive as soon as reasonably practical following completion of the investigation and within a preferred timescale of 30 working days following receipt of the complaint if possible. It should be noted that in stances where consent is required from a complainant to proceed with the complaint, the 30 working day timescale will start on the date formal consent is received.

If it is not achievable to respond with the target timescale, the ICB's Complaints and Enquiries Team will write to the complainant explaining the reason, and an achievable date will be negotiated. A response must be sent within six months of the date of a complaint being received.

If a complainant is not happy with aspects of the response, they are encouraged to contact the ICB's Complaints Team in the first instance, but they will also have the option of escalation to the PHSO.

5. PHSO AND PRINCIPLES FOR REMEDY

The ICB will follow the principles of good administration outlined by the PHSO and will consider the impact of the organisation's actions on the individual concerned. The key principles are as follows:

i. Getting it right

- Acting in accordance with the law and with due regard for the rights of those concerned
- Acting in accordance with the public body's policy and guidance (published or internal)
- Taking proper account of established good practice
- Providing effective services, using appropriately trained and competent staff
- Taking reasonable decisions, based on all relevant considerations

ii. Being customer focused

- Ensuring people can access services easily
- Informing customers what they can expect and what the public body expects of them
- Keeping to its commitments, including any published service standards
- Dealing with people helpfully, promptly and sensitively, bearing in mind their individual circumstances
- Responding to customers' needs flexibly including, where appropriate, co-ordinating a response with other providers

iii. Being open and accountable

- Being open and clear about policies, procedures and decisions, and ensuring that information and any advice provided is clear, accurate and complete
- Stating its criteria for decision making and giving reasons for decisions
- Handling information properly and appropriately
- Keeping proper and appropriate records
- Taking responsibility for its actions

iv. Acting fairly and proportionately

- Treating people impartially, with respect and courtesy
- Treating people without unlawful discrimination or prejudice, and ensuring no conflict of interests
- Dealing with people and issues objectively and consistently

- Ensuring that decisions and actions are proportionate, appropriate and fair

v. Putting things right

- Acknowledging mistakes and apologising where appropriate
- Putting mistakes right quickly and effectively
- Providing clear and timely information on how and when to appeal or complain
- Operating an effective complaints procedure, this includes offering a fair and appropriate remedy when a complaint is upheld

vi. Seeking continuous improvement

- Reviewing policies and procedures regularly to ensure they are effective
- Asking for feedback and using it to improve services and performance
- Ensuring that the public body learns lessons from complaints and uses these to improve services and performance.

6. ROLE OF THE PHSO

The PHSO is completely independent of the NHS and of government and derives his powers from the Health Service Commissioners Act 1993. The Ombudsman is the final arbiter in the complaints process where it has not been possible to resolve concerns locally. The ICB will co-operate fully with any investigation undertaken by the Ombudsman. Further information on the role and work of the Ombudsman is available at:

Parliamentary and Health Service Ombudsman
Citygate
Mosley Street
Manchester
M2 3HQ

Tel: 0345 015 4033
e-mail: phso.enquiries@ombudsman.org.uk Website: www.ombudsman.org.uk

7. ROLE OF THE COMPLAINTS ADVOCACY SERVICE (POHWER)

POHWER have an important role in helping complainants at each stage of the process. Their contact details can be found below:

POHWER

- Telephone: 0300 456 2370
- Email: pohwer@pohwer.net
- Letter: PO Box 14043, Birmingham, B6 9BL

Under the Mental Capacity Act 2005, the role of advocacy for patients who lack capacity is undertaken by the Independent Mental Capacity Advocate Service (IMCA). All complainants are sent information with POHWER's details to inform them of their role in providing support and information.

8. COMPLAINTS AND DISCIPLINARY PROCEDURES

The complaints procedure is concerned only with resolving complaints and not with investigating disciplinary matters. Whether disciplinary action is warranted is a separate matter for management outside of the Complaints Procedure and there must be a separate process of investigation.

9. MONITORING AND LEARNING FROM COMPLAINTS

- All complaints will be recorded on the ICB's database and complaint files maintained for a period of not less than ten years;

- The Complaints and Enquiries Manager will provide regular reports, to the Patient and Communities Committee. The report will provide information about the number of complaints; the services involved; the reasons for complaints and any ongoing trends.

- The ICB's Complaints and Enquiries Manager will prepare information regarding complaints handling which will be included in the ICB's Annual Report as and where necessary.

10. STAFF SUPPORT

The ICB acknowledges the importance of supporting those involved in complaints and recognises the need to ensure that all parties are provided with timely and appropriate support.

11. HABITUAL, UNNECESSARILY AGGRESSIVE OR REPETITIVE COMPLAINANTS

Habitual, unnecessarily aggressive or repetitive complainants are an increasing problem for staff, reflecting a pattern experienced throughout the NHS. The difficulty in handling such complainants can place a strain on time and resources and cause undue stress for staff that may need support in difficult situations. Staff are trained to respond in a professional and helpful manner to the needs of all complainants. However, there are times where nothing further can reasonably be done to assist the complainant or to rectify a real or perceived problem. Appendix 3 sets out the procedure for the management of habitual, unnecessarily aggressive or repetitive complainants.

12. REVIEW

The Complaints Policy and Procedure will be reviewed every two years, or sooner, if changes occur in legislation. The effectiveness of the policy will be reviewed in the light of performance against response timeframes; numbers resolved and referred complaints as well as implementation of lessons learned.

The procedure will also be reviewed in the light of any audit recommendations, learning and developments cycles or changes to organisational structure that may impact on how the procedures operate.

APPENDIX 1: ARTICLES OF HUMAN RIGHTS

Articles of Human Rights

The Human Rights Act 1998 gives further effect to the rights and freedoms contained in the European Convention on Human Rights. Article 1 of the European Convention is introductory and is not incorporated into the Human Rights Act.

Article 2: Right to Life
A person has the right to have their life protected by law. There are only certain very limited circumstances where it is acceptable for the state to take away someone's life, e.g. if a police officer acts justifiably in self-defence.

Article 3: Prohibition of Torture
A person has the absolute right not to be tortured or subjected to treatment or punishment which is inhuman or degrading.

Article 4: Prohibition of Slavery and Forced Labour
A person has the absolute right not to be treated as a slave or to be required to perform forced or compulsory labour.

Article 5: Right to Liberty and Security
A person has the right not to be deprived of their liberty except in limited cases and provided there is a proper legal basis in UK law.

Article 6: Right to a Fair Trial
A person has the right to a fair and public hearing within a reasonable period of time.

Article 7: No Punishment without Law
A person normally has the right not to be found guilty of a crime arising out of actions which, at the time they committed them, were not criminal.

Apart from the right to hold particular beliefs, the rights in Articles 8-11 may be limited where that is necessary to achieve an important objective.

Article 8: Right to Respect for Private and Family Life
A person has the right to respect for their private and family life, their home and their correspondence.

Article 9: Freedom of Thought, Conscience and Religion
A person is free to hold a broad range of views, beliefs and thoughts and to follow a religious faith.

Article 10: Freedom of Expression
A person has the right to hold opinions and express their views on their own or in a group. This applies even if those views are unpopular or disturbing.

Article 11: Freedom of Assembly and Association
A person has the right to assemble with other people in a peaceful way. They also have the right to associate with other people, including the right to form a trade union.

Article 12: Right to Marry
Men and women have the right to marry and start a family; however, national law will still govern how and at what age this can take place.
(Article 13 is not included in the Human Rights Act)

Article 14: Prohibition of Discrimination
A person has the right not to be treated differently because of their race, religion, sex, political views or any other personal status unless this can be justified objectively.

APPENDIX 2: MENTAL CAPACITY ACT 2005, REVISED 2007

Introduction

The Mental Capacity Act 2005 (the Act) provides the legal framework for acting and making decisions on behalf of individuals who lack the mental capacity to make particular decisions for themselves. Everyone working with and/or caring for an adult who may lack capacity to make specific decisions must comply with this Act when making decisions or acting for that person, when the person lacks the capacity to make a particular decision for themselves. The same rules apply whether the decisions are life-changing events or everyday matters.

The Act's starting point is to confirm in legislation that it should be assumed that an adult (aged 16 or over) has full legal capacity to make decisions for themselves (the right to autonomy) unless it can be shown that they lack capacity to make a decision for themselves at the time the decision needs to be made. This is known as the presumption of capacity. The Act also states that people must be given all appropriate help and support to enable them to make their own decisions or to maximise their participation in any decision-making process.

The underlying philosophy of the Act is to ensure that any decision made, or action taken, on behalf of someone who lacks the capacity to make the decision or act for themselves is made in their best interests.

The Act is intended to assist and support people who may lack capacity and to discourage anyone who is involved in caring for someone who lacks capacity from being overly restrictive or controlling. But the Act also aims to balance an individual's right to make decisions for themselves with their right to be protected from harm if they lack capacity to make decisions to protect themselves.

The Act sets out a legal framework of how to act and make decisions on behalf of people who lack capacity to make specific decisions for themselves. It sets out some core principles and methods for making decisions and carrying out actions in relation to personal welfare, healthcare and financial matters affecting people who may lack capacity to make specific decisions about these issues for themselves.

Many of the provisions in the Act are based upon existing common law principles (i.e. principles that have been established through decisions made by courts in individual cases). The Act clarifies and improves upon these principles and builds on current good practice which is based on the principles.

The **five statutory principles**, contained in Section 1 of The Act, are:

- A person must be assumed to have capacity unless it is established that they lack capacity.
- A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success.
- A person is not to be treated as unable to make a decision merely because he makes an unwise decision.
- An act done or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests.
- Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

APPENDIX 3: THE MANAGEMENT OF PERSONS WHO ARE IDENTIFIED AS HABITUAL, UNNECESSARILY AGGRESSIVE OR REPETITIVE COMPLAINANTS

1. Introduction

This guidance should only be used as a last resort and after all reasonable measures have been taken to assist the person concerned. All staff are expected to be familiar with the NHS Complaints Procedure.

The decision to categorise a person as a habitual, unnecessarily aggressive or repetitive complainant will follow discussion between the ICB's Chief Executive, Complaints and Enquiries Manager and an appropriate member of the Executive Management Team.

It should be emphasised that the classification of an individual as a 'habitual, unnecessarily aggressive or repetitive' complainant will NOT mean that any new issues, having no connection with original concerns, will not be dealt with through the usual process.

2. Criteria for definition of a habitual, unnecessarily aggressive or repetitive caller or complainant

Complainants may be deemed to be habitual, unnecessarily aggressive or repetitive callers where previous or current contact with them shows that they meet two or more of the following criteria:

- Persist in pursuing a complaint where the NHS Complaints Procedure has been fully and properly implemented and exhausted
- Change the substance of a complaint or continually raise new issues or seek to prolong contact by repeatedly raising further concerns or questions upon receipt of a response whilst the complaint is being addressed. (Care must be taken not to discard new issues that are significantly different from the original complaint. These might have to be addressed separately)
- Do not clearly identify the precise issues they wish to be investigated, despite reasonable efforts by staff and others (e.g. advocacy agencies) to help them specify their concerns
- The complaint or issue is trivial or appears to consume an excessive amount of resources
- Having, in pursuing their concerns, had an excessive number of contacts with the ICB by telephone, letter or fax. Staff should be instructed to keep a clear record of the number of contacts to demonstrate their excessive nature
- Display unreasonable demands or expectations and fail to accept these may be unreasonable, for example insist on immediate responses from senior staff when they are not available and this has been explained
- Have threatened or used actual physical violence. All such cases must be documented on an incident form in accordance with policy, in case of further action
- Have harassed or been personally abusive or verbally aggressive on more than one occasion towards staff dealing with them. All cases must be documented on an incident form in accordance with policy, in case of further action.

The use of actual physical violence, albeit on one occasion only, will result in the application of measures described under (3) to limit the personal contact ordinarily available to complainants.

2. Procedure for staff handling habitual, unnecessarily aggressive or repetitive callers or complainants

- Ensure all relevant procedures and reasonable action has been correctly implemented. If you are at all uncertain, please check with the ICB's Complaints and Enquiries Manager or Director for Corporate Affairs and ICS Development.

- Even the most difficult of callers may have issues that contain genuine substance.

- Remain professional and polite. This does not mean that you have to listen continually to the same story of complaint, nor that you cannot politely, but firmly terminate the call.

- Record the date, time and how long you were on the telephone and inform the ICB's Complaints and Enquiries Manager as soon as possible.

- When a caller has been officially declared a habitual, unnecessarily aggressive or repetitive caller, the ICB's Chief Executive may decide no further telephone communication will be accepted.

- Where there is ongoing correspondence or investigation, the ICB's Complaints and Enquiries Manager will write to the caller setting the parameters for a code of behaviour and the lines of communication. These will be communicated to all appropriate staff to ensure consistency of approach.

Where investigation or correspondence is completed, the ICB's Complaints and Enquiries Manager will, at an appropriate stage, write to the caller informing him/her the ICB has responded fully to the points raised and that there is nothing further that can be added, therefore correspondence is at an end. The ICB may wish to state that further correspondence will be acknowledged, but not answered.

It should be emphasised that the classification of an individual as habitual, unnecessarily aggressive or repetitive will not mean that any new issues having no connection with the original complaint or dispute will not be dealt with in the normal way.

APPENDIX 4: MATTERS EXCLUDED FROM CONSIDERATION UNDER THIS POLICY

The following complaints are excluded from the scope of the arrangements described within this policy:

- A complaint made by an NHS body which relates to the exercise of its functions by another NHS body.

- A complaint made by a primary care provider which relates either to the exercise of its functions by an NHS body or to the contract or arrangements under which it provides primary care services, unless those arrangements fall within the ICB's sphere of responsibility. In such cases, the ICB's Dispute Resolution Procedure should be invoked.

- A complaint made by an employee about any matter relating to his/her contract of employment.
- A complaint made by an independent provider or an NHS trust about any matter relating to arrangements made by the ICB with that independent provider or NHS trust.
- A complaint which is being or has been investigated by the PHSO or Local Government Ombudsman.
- A complaint arising out of the ICB's alleged failure to comply with a data subject request under the Data Protection Act 1998 / 2018 or a request for information under the Freedom of Information Act 2000.
- A complaint about which the complainant has stated in writing that s/he intends to take legal proceedings.