

POLICY ON HANDLING HABITUAL OR VEXATIOUS COMPLAINANTS

1. Introduction

Habitual and/or vexatious complainants are becoming an increasing problem for NHS staff. The difficulty in handling such complainants is placing a strain on time and resources and is causing undue stress for staff who may need support in difficult situations. NHS staff endeavour to respond with patience and sympathy to the needs of all complainants but there are times when there is nothing further which can reasonably be done to assist them or to rectify a real or perceived problem.

In determining arrangements for handling such complainants, staff are presented with two key considerations.

The first is to ensure that the complaints procedure has been correctly implemented so far as possible and that no material element of a complaint is overlooked or inadequately addressed.

The second is to be able to identify the stage at which a complainant has become habitual or vexatious.

One approach to the situation is to develop an approved policy which is formally incorporated into the complaints procedure. Invoking such a policy would occur only in exceptional circumstances. Information on handling habitual and/or vexatious complaints could also be made available to the public as part of the information provided on the complaints process as a whole.

2. Intention of this policy

The intention of this policy is to identify situations where a complainant might be considered to be habitual or vexatious and to identify ways of responding to these situations.

3. Scope of Policy

It is emphasised that this policy should only be used in exceptional circumstances after all reasonable measures have been taken to try to resolve complaints following the Trust's complaints procedures. Judgement and discretion must be used in applying the criteria to identify potential habitual or vexatious complainants and in deciding action to be taken in specific cases. The policy should only be invoked following careful consideration by, and with the authorisation of, the Chief Executive, Medical Director/Director of Nursing, or

Director of Social Care, a non-executive director (who is not a convenor) and an independent party.

The mechanism for making the decision as to whether or not a complainant is vexatious must be free from bias, hence the decision making process should include discussion with an independent person. An independent party can be considered from a number of sources outside the Trust for example, Community Health Council or NSF.

It is also essential that the Trust does not replicate or seek to replace the independent review process when determining whether or not a complainant too vexatious.

4. Definition of a habitual or vexatious complainant

Each case will be viewed individually but a complainant (and/or anyone acting on their behalf) may be deemed to be habitual or vexatious if previous or current contact with them shows that they meet any of the following criteria, dependant upon degree.

Where complainants: -

1. Persist in pursuing a complaint where the Trust's complaints procedure has been fully and properly implemented and exhausted (e.g. where several responses have been provided, where investigation has been denied as "out of time", or where a Convenor has declined a request for an Independent Review Panel to be established).
2. Change the substance of a complaint or continually raise new issues or seek to prolong contact by continually 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 which are significantly different from the original complaints. These might need to be addressed as separate complaints.
3. Are unwilling to accept documented evidence of treatment e.g. Drug records, computer records or entries in the Health Record.
4. Deny receiving an adequate response in spite of correspondence specifically answering their questions.
5. Do not accept that facts can sometimes be difficult to verify when a long period of time has elapsed.
6. Do not clearly identify the precise issues which they wish to be investigated, despite reasonable efforts of Trust staff and, where appropriate, the Community Health Council to help them specify their concerns, and/or where the concerns identified are not within the remit of the Trust to investigate.

7. Focus on a trivial matter to an extent which is out of proportion to its significance and continue to focus on this point. It is recognised that determining what is a 'trivial' matter can be subjective and careful judgements must be used in applying this criteria.
8. Have in the course of addressing a registered complaint, had an excessive number of contacts with the Trust placing unreasonable demands on staff. A contact may be in person or by telephone, letter or fax. Discretion must be used in determining the precise number of "excessive contacts" applicable under this section, using judgement based on the specific circumstances of each individual case.
9. Have harassed or been personally abusive or verbally aggressive on more than one occasion towards staff dealing with their complaint or their families or associates. Staff must recognise that complainants may sometimes act out of character at times of stress, anxiety or distress and should make reasonable allowances for this. They should document all incidents of harassment.
10. In cases where a complainant or their representative has threatened or used actual physical violence towards staff or their families or associates at any time - this will in itself cause personal contact with the complainant and/or their representatives to be discontinued and the complaint will, thereafter, only be pursued through written communication. All such incidents should be documented.

5 Strategy for dealing with habitual or vexatious complainants

Where complainants have been identified as habitual or vexatious by the group identified under the scope of this policy, taking account of the above criteria, the Chief Executive and the Medical Director/Director of Nursing or Director of Social Care will determine what action to take. The Chief Executive will implement such action and will notify complainants, in writing, of the reasons why they have been classified as habitual or vexatious and what action will be taken. This notification may be copied for the information of others already involved in the complaint, e.g. clinical practitioners, Community Health Council, Member of Parliament etc. A record must be kept for future reference of the reasons why a complainant has been classified as habitual or vexatious.

The Chief Executive may decide to deal with complainants in one or more of the following ways.

- a. Withdraw contact with the complainants either in person, by telephone, by fax, by letter or any combination of these, provided that one form of contact is maintained, or alternatively to restrict contact to liaison through a third party. If staff are to withdraw from a telephone conversation with a complainant there will be an agreed statement available for them to use at such times.

- b. Notify the complainants in writing that the Chief Executive has responded fully to the points raised and has tried to resolve the complaint but there is nothing more to add and continuing contact on the matter will serve no useful purpose. The complainants should be notified that correspondence in relation to their complaint or any further complaints relative to the same period of time or the same or similar issues as an earlier complaint is at an end, and that further letters received will be acknowledged but not answered.
- c. In extreme circumstances inform the complainants that the Trust reserves the right to pass unreasonable or vexatious complaints to the Trust's solicitors and may result in legal action against the complainant.
- d. Temporarily suspend all contact with the complainants or investigation of a complaint whilst seeking legal advice or guidance from solicitors, the National Health Service Executive, or other relevant agencies.

The decision to classify a complainant as vexatious or habitual will be reported in an anonymised format to the Trust Board as part of the quarterly complaints reports.

6. Withdrawing 'habitual or vexatious' status

Once complainants have been determined, as 'habitual or vexatious' there needs to be a mechanism for withdrawing this status at a later date if, for example, complainants subsequently demonstrate a more reasonable approach or if they submit a further complaint for which normal complaints procedures would appear appropriate.

Complainants should also have an opportunity to apply to have their 'habitual or vexatious' status withdrawn. In all instances, a 2 tier process will be applied. A Non-Executive Director should be appointed to review the circumstances and establish the status quo.

If however, there is demonstrable evidence that the circumstances have changed, then they will convene a panel to also include Chief Executive, Medical Director/Director of Nursing or Director of Social Care and an independent party to reconsider withdrawing the status of 'habitual or vexatious complaint'. Subject to the panels' approval, normal contact with the complainant and application of the NHS complaints procedure will be resumed.