

## **FREEDOM OF INFORMATION & DATA PROTECTION ACTS COMPLAINTS PROCEDURE**

### **1. INTRODUCTION**

- 1.1 Complaints arising out of the Trust's alleged failure to comply with
- a data subject request under the Data Protection Act 1998 or
  - a request for information under the Freedom of Information Act 2000
- are excluded from the NHS Complaints Procedure.
- 1.2 The Trust deals with such complaints within the spirit of the Local Resolution stage of this procedure. However, where a complaint remains unresolved the complainant will be referred to the Information Commissioner.

### **2. LOCAL RESOLUTION**

- 2.1 The primary objective of Local Resolution is to investigate and resolve the concerns, aiming to satisfy the complainant whilst being scrupulously fair to staff.
- 2.2 People are encouraged to make first contact about a data protection or freedom of information concern to the Data Protection and Freedom of Information Manager but they may be initiated with front line staff, in wards, clinics, day centres or in the service user's home.
- 2.3 It is important to establish whether the person actually wishes to make a complaint. They may be seeking help, support or advice, in which case it may be appropriate to refer them to the Data Protection and Freedom of Information Manager or Patient Advice and Liaison Service (PALS). Alternatively, they may simply wish to raise comments/criticisms where they want something put right or improved, but not investigated. Mechanisms for achieving this should be agreed and outcomes shared to demonstrate any learning from events.
- 2.4 If it is clear that the person is raising a complaint (verbally, in writing or electronically) it must be referred immediately to the Complaints Manager, who will either
- advise whether it can be dealt with locally or
  - decide to handle it himself.
- 2.5 It may be appropriate for the entire process of local resolution to be conducted orally, without any written communication and with the complainant satisfied with the outcome. However, the Complaints Manager should be informed of the outcome. Where staff are aware that the complainant may wish to consider taking the matter further or, although satisfied with the oral response, would wish this to be confirmed in writing, Local Resolution is best rounded off with a letter.

- 2.6 All complaints handled by the Complaints Manager must be acknowledged within 2 working days. Complainants should then receive the Chief Executive's written response within 20 working days. If the investigation process is likely to take longer, then the complainant should be notified of any delay.
- 2.7 Complainants should be kept fully and promptly informed about the progress of the investigation.
- 2.8 Any member of staff mentioned in a complaint should be given the opportunity to comment on the complaint and be informed of the outcome.
- 2.9 All complaints about medical staff and handled by the Complaints Manager will be sent to the appropriate consultant with the request that they provide the Data Protection and Care Group Managers with a written report on the complaint. A copy of the complaint will also be sent to the Medical Director.
- 2.10 For all other complaints which the Complaints Manager handles, an investigating officer will be nominated. This will usually be the Data Protection Manager, Service Manager or Head of Profession. A copy of the complaint will also be sent to the relevant Care Group Manager or Director. The investigating officer should carry out an investigation and produce a written report.
- 2.11 All reports should be sent within 12 working days of receipt to the Care Group Manager or Director and Data Protection Officer (if not the investigating officer), who will pass them to the Complaints Manager with their own comments on the complaint and the report.
- 2.12 In some situations, where the facts of the complaint are clear and straightforward, the Complaints Manager may wish to undertake the investigation personally. However the Data Protection and Care Group Managers or relevant Director will still be informed and consulted as appropriate.
- 2.13 Brief guidance on investigating complaints and the required format is included in Appendix 5 of the Trust's Complaints Policy and Procedure. For additional guidance on investigative techniques, investigating officers should refer to the **Root Cause Analysis & Investigation Procedure**. The report must respond fully to each aspect of the complaint. It should contain explanations of the action being taken and specify any recommendations or improvements. Any information that the investigating officer considers inappropriate for disclosure to the complainant should be clearly indicated. Staff may be requested to provide a statement as part of the investigative process and guidelines for this are included at Appendix 6 of the Complaints Policy and Procedure.
- 2.14 The Complaints Manager will be responsible for using the report(s) to draft a reply for the Chief Executive. The draft reply and the complaints file will be given to the Chief Executive so that the reply can be finalised and sent to the complainant within 20 working days of receipt.

2.15 Letters concluding the local resolution stage should satisfy the complainant that the complaint is fully investigated, with an appropriately worded apology where things have gone wrong, and an indication of action taken to prevent recurrence.

### **3. INFORMATION COMMISSIONER**

All complainants have the right to complain at any time directly to the Information Commissioner, whose details will be provided in all acknowledgement letters and in the letter from the Trust at the end of Local Resolution.

### **4. REVIEW DATE:**

This policy will be reviewed in December 2005.