

Patient Complaints and Concerns Policy v11.0

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Purpose:	This policy and procedure sets out the way in which complaints and concerns are handled by the Trust.
Responsible Directorate:	Corporate Nursing
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Related Controlled documents	Patient Complaints and Concerns Procedure Access to Health Records Policy Being Open Policy Claims Management Policy Data Protection, Confidentiality and Disclosures Policy Disciplinary Policy Freedom of Information Policy Health and Safety Policy Incident Reporting Policy Risk Management Policy Safeguarding Policies (Adults, and Children) Raising Concerns Incorporating Whistleblowing Policy
Relevant External Standards/ Legislation (A full list is under References)	National Health Service Complaints (England) Regulations 2009 Care Quality Commission Regulation 16: receiving and acting on complaints The Report of Mid Staffordshire NHS Foundation Trust Public Inquiry 2013
Target Audience:	All Trust staff with operational responsibility for complaints. Divisional Triumvirate Heads and their Associates/Deputies. Group Managers, Group Support Managers, Matrons, Senior Sisters/Charge Nurses, Clinical Directors, Consultants. All Complaints and Patient Experience staff.
Further information:	Head Nurse Patient Experience and Head of Patient Services

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Version History:

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Summary of changes from last version:

Split into policy and procedure
Removal of out of date materials
Consent process and principles clarified.

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1 Policy Statement

The purpose of this policy is to ensure that all those involved in the complaints process have a clear understanding of the Trust's expectations and requirements. The policy is based on legislation, best practice and guidance from national bodies and helps ensure that:

- There is an early distinction made between complaints and concerns
- Complaints are dealt with efficiently and to a high standard
- That Data Protection Legislation is complied with in communicating with patients (i.e. consent)
- Complaints are investigated thoroughly
- Complainants are treated with respect and courtesy
- Complainants are provided with
 - advice to help them understand the complaints procedure
 - advice on where assistance may be obtained
- Complainants are responded to timely and appropriately as agreed with the complainant
- Complainants are told of the outcome of the investigation
- The recurrence of mistakes through learning lessons is minimised
- Action is taken if necessary in light of the outcome of a complaint
- Staff are appropriately supported through the complaints process.

This policy should be read in conjunction with the [Complaints and Concerns Procedure](#) which sets out the detail of how complaints and concerns are managed.

This policy and the [associated procedure](#) are based on the model of the NHS Complaints Regulations 2009 and Principles of Good Complaint Handling released by the Parliamentary and Health Service Ombudsman (PHSO). This document ensures that the way in which complaints and concerns will be handled by the Trust is clear to all Trust staff, in particular those with responsibility for complaints management.

The procedure also contains guidance on the assessment and management of complaints that may be termed vexatious.

2 Scope

This Policy should be read by all staff and applies equally to staff in a permanent, temporary, voluntary or contractor role acting for or on behalf of the Trust. This policy applies to the management of all complaints and concerns made about the services provided by the Trust.

3 Definitions

A complaint or concern can be defined as: *“an expression of dissatisfaction about an act, omission or decision, either verbal or written, and whether justified or not, which requires a response and/or redress.”*

Use of the word “complaint” should not automatically mean that someone expressing concern enters the complaints process. It may be more appropriate for a “complaint” to be dealt with and resolved in a more immediate and timely manner and as long as this is done with the agreement of the person raising the concern and the outcome is to their satisfaction then this approach would be deemed appropriate and, in many cases, preferable.

The Patient Services team provides support for concerns and complaints raised.

A complaint may be made orally or in writing (letter, email or complaints inbox) and the procedure is set out in this policy detailing how each type of complaint should be dealt with

Complaints may be made to any department within the organisation and irrespective of the route, are to be managed in line with this policy.

A Medical Record is any recorded information relating to an individual.

4 Policy Framework

The PHSO’s Principles of Good Complaint Handling will be used by the Trust as the standards to be observed in the handling of all complaints; they are summarised as follows and can be found in detail at www.ombudsman.org.uk

- Getting it right
- Being patient focused
- Being open, honest and accountable
- Acting fairly and proportionately
- Putting things right
- Seeking continuous improvement

The Trust recognises that patients and their relatives have a fundamental right to raise concerns about the services they receive. Accordingly it is expected that staff will not treat patients or their relatives unfairly as a result of any complaint or concern raised by them. Any complaints, by patients or their relatives, of unfair treatment as a result of having made a complaint will be investigated as a separate complaint and appropriate action will be taken.

4.1 Who can make a complaint?

A complaint may be made **by the person who is affected by the action**, or it may be made by a person acting on behalf of a patient in any case where that person:

- is a **child**; (an individual who has not attained the age of 18) In the case of a child, we must be satisfied that there are reasonable grounds for the complaint being made by a representative of the child, and furthermore that the representative is making the complaint in the best interests of the child.
- has **died**; In the case of a person who has died, the complainant must be the personal representative of the deceased. The Trust needs to be satisfied that the

complainant is the personal representative. Where appropriate we may request evidence to substantiate the complainant's claim to have a right to the information.

However, the Trust recognises that a partner or close family member of a person who has died, may not fit any of the above legal criteria. We would look to have evidence of the relationship/involvement in the deceased patient's care before providing information. We would look to give out the minimum personal information to answer the complaint. We would also maintain our legal duty of confidentiality to the deceased patient. This option is only to be used in exceptional circumstances as there is no legal basis to support this.

- has **physical or mental incapacity**; In the case of a person who is unable by reason of physical capacity, or lacks capacity within the meaning of the Mental Capacity Act 2005, to make the complaint themselves, the Trust needs to be satisfied that the complaint is being made in the best interests of the person on whose behalf the complaint is made.
- Has given **consent to a third party acting on their behalf**; In the case of a third party pursuing a complaint on behalf of the person affected we will request the following information: - Name and address of the person making the complaint; - Name and either date of birth or address of the affected person; and - Contact details of the affected person so that we can contact them for confirmation that they consent to the third party acting on their behalf. This will be documented in the complaint file and confirmation will be issued to both the person making the complaint and the person affected.
- Has **delegated authority to act on their behalf**, for example in the form of a registered **Power of Attorney which must cover health affairs**.
- Is an **MP**, acting on behalf of and by instruction from a constituent.

4.2 Consent

Appropriate consent for all of the above types of complainant must be obtained before communicating any personal information. Details of this can be found in the [associated procedure](#).

There is an expectation that when obtaining consent for the use and sharing of information, that the patient has made an informed decision and clearly understands the processing and potential sharing of their information.

Staff must also understand the expectations of confidentiality that the information is provided under.

Information may be disclosed to or requested from third parties but the complainant will have been informed of this in the acknowledgement of their complaint. At that point, the complainant will have been given the option to dissent (opt out) from this. If the complaint is identified as multi agency, the patient will be informed of this.

If by the 40th working day consent has not been received the complaint should be closed and categorised as a concern. This will be communicated to the complainant.

4.3 Other considerations when assessing a complaint

Staff processing complaints should be aware of any Subject Access Requests, Freedom of Information Requests or Access to Health Records Requests. Guidance of identifying and dealing with these are in the procedure.

4.4 Time scales for making a complaint

A complaint must be made no later than 12 months after:-

- the date on which the matter which is the subject of the complaint occurred; or
- The date on which the matter which is the subject of the complaint came to the notice of the complainant.

This time limit will not apply if the Trust can be reasonably satisfied that:

- the complainant had good reasons for not making the complaint within that time limit; **and**
- notwithstanding the delay, it is still possible to investigate the complaint effectively and fairly.

The decision to investigate complaints made outside the 12 month timeframe is the responsibility of the Head Nurse – Patient Experience or Head of Patient Services; taking advice from relevant clinicians, Patient Services team members and Executive Directors. The Head Nurse – Patient Experience may seek guidance from the Chief Nurse and/or Medical Director in support of a decision. The decision must be noted on Datix and a written response provided to the complainant.

4.5 Complaints exempt from the NHS Complaints Regulations 2009

The Trust is not required to deal with some types of complaints under the NHS Complaints Regulations 2009, in particular:

- a complaint by a responsible body (that is a local authority, NHS body, primary care provider or independent provider);
- a complaint by an employee of a local authority or NHS body about any matter relating to that employment associated policy.
- a complaint which is resolved to the complainant's satisfaction within 24 hours Monday to Friday;
- a complaint previously investigated by the Trust or provider under current or the previous NHS Complaints Procedures;
- a complaint, the subject matter of which has been or is being investigated by a Health Service Commissioner under the 1993 Act (the PHSO is empowered by the

Health Service Commissioners Act 1993 to investigate complaints about the NHS in England);

- a complaint arising out of the alleged failure by a responsible body to comply with a request for information under the Freedom of Information Act 2000; and
- a complainant has stated in writing the intent to take legal proceedings in relation to the substance of the complaint where it will prejudice the proceedings.

Where the Trust receives a complaint that falls into one of the above categories then a written reply should be sent to the complainant explaining why the issues they have raised will either not be dealt with or will be dealt with outside of the NHS Complaints Regulations.

4.6 Vexatious Complaints

During the complaints process Trust staff may have contact with a small number of complainants who require a disproportionate and unreasonable amount of NHS resources in dealing with their complaints. For guidance please refer to the [procedure](#) for handling unreasonable, persistent complainants (vexatious). This identifies situations where a complaint might be considered to be unreasonable in their behaviour (also referred to as vexatious), provide guidance on how to assess and manage such complaints and where to seek support in the management of such situations.

Complaints should only be termed unreasonable (vexatious) as a last resort and after all reasonable measures have been taken to try to resolve the complaint by local resolution. Judgment and discretion must be used in applying the criteria to identify potential vexatious complaints action taken should be on a case by case basis. The procedure should be implemented following careful consideration by, and with the authorisation of, the Chief Nurse or their nominated deputy.

4.7 Multi agency & mixed sector complaints

In cases where a complaint is received which also concerns services provided by another organisation, agency or provider, the Patient Services Team will seek consent to forward any correspondence / information received to the other relevant organisation(s). The Patient Services Team will be responsible for facilitating an appropriate response to this type of complaint. The Directorate team responsible for handling the complaint will work to:

- Agree a lead organisation.
- Agree who will answer which parts of the complaint
- Agree who will be the central contact point for the complainant

Data must be shared via secure means (refer to Safe Haven procedure) Every effort should be made to resolve the complaint in a cooperative manner, with a coordinated response sent to the complainant unless specifically requested otherwise. Time limits for responding to multi-agency complaints will be in line with the timescale requirements of this policy. Where other organisations leading on a multi-agency complaint stipulate an alternative timeframe to that set out in this policy, every effort will be made to support that organisation to ensure a timely response for the complainant. Trust staff have a duty to cooperate in this situation.

4.8 Safeguarding Information

If there is Safeguarding information in the Trust medical record of the patient and it is crucial to the complaint, then the Safeguarding team would be contacted for their advice as to whether it can be released. The release of such information would also very much depend on who the information would be released to – especially if the complaint is being made on behalf of a patient who lacks capacity and the concerns are about the patient’s representative.

Where the Trust receives sensitive information (for example Safeguarding information) in patient information from other Trusts/Organisations, additional consideration should be given as to whether this should be mentioned to the patient. It may be appropriate to contact the originator of the information about the release.

4.9 Safeguarding Issues

If during the investigation of the complaint it becomes apparent that a safeguarding referral should have been made during the original period of care with the Trust, this referral should now be made by the individual who identified it, to the Safeguarding Team. Additionally if during the investigation of the complaint new issues come to light which may require a safeguarding referral, this should now be made by the individual who identified it, to the Safeguarding Team. This may involve care at home, in a care home or care delivered by a third party provider.

4.10 Serious Incidents (SI), Being Open and Duty of Candour

All complaints are scoped on receipt by the Head Nurse – Patient Experience (or nominated deputy) for consideration of any possible patient safety incidents.

Some complaints will be identified and investigated as a part of the Trust’s SI process. This will be decided on a case by case basis following initial scoping by the Divisional Triumvirate and in discussion with the Head of Investigations and Legal. Confirmation of the need for an SI investigation will be made by a member of the Executive team.

If an SI is confirmed, the complaint process is halted; the Governance Team will take over the investigation of the SI element of the complaint, including communication with the complainant. This process will usually take 60 days from the day an SI is declared.

Issues complained of outside of the scope of the SI investigation will be responded to through the complaints process following completion of the SI investigation.

Staff should consider their responsibilities under the Being Open Policy when managing complaints and concerns. Consideration of the Trust’s obligation in line with Duty of Candour does not mean that the complaints process should cease. Duty of Candour is covered under the Trust’s Being Open Policy and is a statutory duty which applies to cases of moderate/serious harm.

4.11 Trust Approach to Complaints Management

The Trust will follow the national two stage process in dealing with complaints, that is:

4.11.1 Stage 1 – Trust resolution

This involves working with the complainant to understand and resolve their concerns in a timely and appropriate fashion.

Direct contact with the complainant at an early stage is encouraged by the Parliamentary Health Service Ombudsman (PHSO) and should be undertaken for all complaints. This should be carried out within 24 hours (Monday – Friday) of the complaint being received by the Patient Services Team. Where the issues are unclear or it is very obvious that a reasonable complaint response time cannot be met then issues should be clarified and timescales explained.

The complaint issues should be investigated and the complainant invited to meet with appropriate Divisional team and investigating officer, support at such meetings will be provided by the Patient Services Team where appropriate. The purpose of the meeting is to discuss the finding of the investigation and issues addressed. During the meeting the following bullet points are to be discussed and a written response should also be prepared which includes these points:

- an apology
- how the complaint was considered
- the conclusions reached
- details of remedial action taken or planned and lessons learnt
- confirmation that the action will address the issues raised
- Reference to the Parliamentary and Health Service Ombudsman.

Further requests to meet or seek further clarity on the issues raised constitutes further local resolution and is detailed in the procedure set out in this policy.

4.11.2 Stage 2 - Referral to the PHSO

All final complaint response letters will include relevant details for complainants to refer to the PHSO should they remain unsatisfied by the organisations response.

Where Trust resolution is not successful, the complainant may refer their complaint to the PHSO for review. The Trust will include details of how to refer to the PHSO in all complaints handling response letters.

The PHSO will undertake a review where they consider that the Trust resolution stage of the complaint has been completed. The Trust is not required to deal with the complaint at this stage and should direct all enquiries by the complainant to the PHSO. Where appropriate (under the Health Service Commission Act 1993) the Trust may also refer

complainants to the PHSO when all other avenues have been completed.

4.12 Advocacy

When receiving a complaint via an advocacy agency, the Patient Services Team will ensure that written consent has been received from the patient, to release information to an advocacy representative. Without explicit patient consent, no information will be shared with the agency. The Trust will respect the complainant's wish to be represented and supported by an advocate by sending all correspondence to ICAS, unless the complainant specifically instructs otherwise.

The Trust will accommodate ICAS, other recognised advocacy agencies or other support groups when arranging meetings if complainants feel they require support.

4.13 Record Keeping

The keeping of sufficiently detailed, clear and legible notes and records (whether clinical or otherwise) is of paramount importance when it comes to dealing with complaints. Good note/record keeping can avoid complaints or reduce the potential consequences of them. The PHSO may ask the Trust to make financial redress to complainants based on a finding of maladministration and it is therefore vital that file notes detail what we do in dealing with a complaint. This must include all contact made with the complainant to discuss the complaint issues, evidence of legal basis to share, e.g. consent and the timescale for reply. Complaint records will be kept separate to patient medical records and will be kept securely in line with legislation and Trust policy.

4.14 The Role of PALS

The Patient Advice and Liaison Service (PALS) provides practical support and advocacy for a patient, carer or visitor at Heart of England Foundation NHS Trust.

PALS offers a supportive and non-judgemental response to a patient, relative or carers' experience and provides assistance to help resolve concerns locally.

4.15 Training

The Patient Services Team will ensure provision of guidance and support for investigators, relevant managers and staff to enable them to carry out their duties and responsibilities relating to complaint and concern prevention and management.

Awareness of the role of all staff in complaints management forms a part of the Trust's training programme and all staff are informed of their responsibilities through the Trust's Corporate Induction process. Directorates can also request further support and the Patient Services Team will develop and deliver training and workshops to assist staff in dealing with a customer-focused approach.

Training will be provided to Divisional Leads, Group Managers, Matrons, Senior Sisters, Clinical Directors and Consultants regularly and when required or requested.

5 Roles and Responsibilities

5.1 Chief Executive

The Chief Executive is the responsible person as detailed in the NHS Complaints Regulations 2009. They are responsible for ensuring compliance with the arrangements made under these Regulations, and in particular ensuring that action is taken if necessary in the light of the outcome of a complaint. This responsibility may be delegated as appropriate. All complaint response letters will be signed by the Chief Nurse or delegated individual on behalf of the Chief Executive, or by the Chief Executive where appropriate.

5.2 Executive Directors

The Chief Nurse is accountable to the Chief Executive and Trust Board for complaints management within the Trust. They will report regularly to the Trust Board in relation to complaints activity, and will liaise with other senior members of the Trust as required.

5.3 Divisional Directors/ Head of Operations/Heads of Nursing (Triumvirate)

Triumvirate Heads will be responsible for quality assurance and approval of complaint responses, and for arranging appropriate cover in their absence.

They are responsible for ensuring that complaint action plans are devised, monitored, supported, delivered and formally closed through an appropriate forum, for example the Divisional Quality and Safety Group. They are also responsible for keeping the Complaints team informed of completed actions, on a timely basis.

The Triumvirate is accountable for the delivery of action plans and for ensuring that the standards referred to in this policy are followed for their Division. They will decide who should be the lead for each complaint and ensure that the Trust does not suffer reputational or financial penalty due to maladministration of complaints.

The Triumvirate will be provided with timely data via by the Performance reporting dashboard and regular performance updates from the Patient Services team.

5.4 Head Nurse – Patient Experience

The Head Nurse - Patient Experience is responsible for:

The development and implementation of high quality complaints handling

- Overseeing the complaints function and monitoring performance
- Providing advice across the Trust on the handling of all serious/complex complaints
- Following up action plans that result from PHSO investigations
- Being the specialist advisors to the Trust Board on complaints and concerns management
- Provide leadership to the Patient Services Team, ensuring that team members are concordant with Trust policy

- Support the monitoring and delivery of action plans
- Providing leadership, management and expertise to the Trust Board, leading the development and submission of timely reports to relevant forums to meet Board Assurance, contractual and organisational governance requirements
- Leading, and supporting, improvements in performance and learning from complaints
- Highlighting, assessing and managing associated risks
- Ensures the Trust remains aligned to national and regulatory guidance on complaint management
- Escalating concerns to Chief Nurse and Divisional Triumvirates
- Provide leadership and best practice guidance to the organisation
- Support the Divisional Directors in the monitoring and delivery of action plans

5.5 Head of Patient Services

The Head of Patient Services Team is designated as Complaints Manager for the Trust and responsible for

- Ensuring that the Patient Services Team and all staff within the team, comply with the Policy and procedure.
- Dealing with enquiries, concerns and complaints from members of the public and will be a point of contact for anyone wishing to raise a concern verbally.
- Explaining the role of the Patient Services Team together with providing contact details to anyone making a verbal complaint when they contact the Trust.
- If PALS is able to provide a mutually agreeable solution to such a concern/complaint by the end of the next working day after the day on which the concern/complaint was made, then this is considered a concern and not a complaint which is managed under Stage 1 Trust (local) Resolution, as detailed above
- Administering the Trust's Concerns, Complaints and Compliments email inbox within set working hours
- Servicing the Trust's Concern, Complaints and Compliments phone line within set working hours
- Advise members of the public on the complaint procedure if contacted directly
- Support the investigating officer with co-ordination of meetings with complainants and the compilation of high quality written complaint responses
- Complete the Trust database with all concern and complaint details
- Escalate concerns regarding poor complaint handling to the appropriate line manager in a timely manner
- Line Managers will escalate concerns to the Patient Services team as appropriate and in a timely manner
- Provide reports to the Trust on compliance with quality indicators associated with complaints and complaints handling response rates
- Offer advice, guidance and training to the staff groups where required
- Facilitate the process with regard to multi-agency complaints
- Ensuring complaints which incorporate an element relating to Information Governance compliance are forwarded to the Information Governance Team in a timely manner, e.g. allegation of inappropriate access, Freedom of Information requests or a request for a copy of medical records.

Enquiries and complaints from the primary care sector of the NHS will be forwarded to the appropriate Trust Contact (GP Liaison Officer). Where complaints are received from General Practitioners regarding a patient, and the GP has the consent of the patient to make the complaint on their behalf; then the complaint will be dealt with under the NHS Complaints Regulations.

5.6 Divisional Heads

Divisional teams (including Group Managers, Clinical Directors, Matrons and Senior Sisters) are responsible for investigating and responding to complaints about their operational areas. Under the direction of the Divisional leadership team they should ensure that their Directorate complies with the Trust's Complaints Policy and undertakes appropriate investigation, using RCA where required.

The Patient Services team will provide advice and guidance in support of the effective and appropriate complaints handling.

The complaint investigation lead, as nominated by the Triumvirate, will undertake duties that may include:

- Identifying key staff members required to provide information in response to a complaint and to ensure that this information is received from them within the designated timeframe
- Ensuring that information from staff is appropriate and addresses all issues raised by the complainant
- Quality assuring all complaint responses to ensure that they answer all issues raised as honestly and as comprehensively as possible
- Ensure an action plan is developed to address the issues identified for every complaint
- Ensuring compliance with action plans as a result of complaints, to improve service provision
- Feedback any action taken as a result of complaints to staff involved

The Triumvirate will ensure there is a process for disseminating learning from complaints and identifying, assessing and mitigating associated risks.

5.7 All Staff

Ultimately, all staff members within the Trust have responsibilities in relation to complaints however certain members of the Trust have particular specialist functions in this regard. All staff are required to know how to register a complaint so that they can advise patients/visitors, if asked.

6 Monitoring and Review

Internal Monitoring criteria are laid out in Appendix A.

Annual Complaints Report

The Trust also has a legal duty to submit an Annual Complaints Report as detailed in section 18 of the NHS Complaints Regulations 2009. The Trust has a duty to send a copy of the report to the Clinical Commissioning Group that commissions services from the Trust and also to ensure that this report is available to any person on request.

7 References

- National Health Service Complaints (England) Regulations 2009
- Care Quality Commission Regulation 16: receiving and acting on complaints
- The Report of Mid Staffordshire NHS Foundation Trust Public Inquiry 2013
- Review of NHS Hospitals Complaints Systems, Clwyd & Hart 2013
- Good Practice Standards for NHS Complaints Handling, Patients Association 2013
- Principles of Good Complaint Handling, Parliamentary and Health Service Ombudsman 2009
- NHS England: Assurance of Good Complaint Handling for Acute and Community care 2015
- PHSO: A review into the quality of NHS complaints investigations

Appendix A

MONITORING	MONITORING LEAD	REPORTED TO PERSON/GROUP	MONITORING PROCESS	MONITORING FREQUENCY
Listening and responding to complaints	Head Nurse Patient Experience/Head of Patient Services	Chief Nurse	Compile report using Datix information to include: Number of complaints received and compliance with the agreed deadline for complaint response; and analysis of themes	Monthly
		Chief Nurse	Compile a report using datix information on PHSO cases	Quarterly
		Head Nurse – Patient Experience	Chair weekly and month end complaints and concerns performance reviews	Weekly/Monthly
		Triumvirate Heads of Division	Trust Patient Experience/Ward to Board dashboards information review of performance.	Divisional forums
		Triumvirate Heads of Division	Divisional performance review with Chief Executive	Monthly
Managing complaints on behalf of patients received from other agencies (e.g. CCG/CQC/MP/HMC)	Head of Patient Services	Head Nurse – Patient Experience	Monthly report prepared by Head of Patient Services	Monthly
Complainants are not be treated differently as a result of raising a complaint	Head Nurse - Patient Experience/ Head of Patient Services	Matrons/Senior Sisters	Qualitative information is provided using patient survey tools (FFT) to inform Matrons and Sisters of patient experience, also PALS interventions. This allows patients, carers and relatives the opportunity to feedback anonymously.	Monthly
Improvements are made as a result of concerns / complaints being made	Head of Patient Services	Triumvirate Heads of Division	Divisional action logs showing themes of complaint, action pledged, location, specialty and assurance of action delivered.	Quarterly
Concerns and Complaints are managed according to the policy and associated procedure.		Chief Nurse	Timescales for acknowledging and responding to complaints are monitored via the ward to Board dashboard	Monthly
		Head Nurse Patient Experience/Head of Patient Services	Compliance with policy and data quality falls within the remit of the Operational Delivery Manager	Weekly meeting