



Reference Number:
Version Number: 1
Next Review date:

Policy for Handling Persistent and Serial Complaints

Introduction

This policy should only be used as a last resort and after all reasonable measures have been taken to try to resolve concerns under the Putting Things Right Guidance (2013)

This policy should be read in conjunction with the Cwm Taf Morgannwg University Health Board (CTMUHB) Concerns Policy & Procedures (2020)

Operational Date

Expiry Date

Formal – three years
Informal – one year

Scope

This policy applies to all staff on all locations across the University Health Board (UHB).

Equality Impact Assessment

An Equality Impact Assessment has been completed

Distribution

All staff via internet and team briefings.
 External stakeholders, Community Health Council

To be read by

All Staff

Documents to read alongside this Policy

CTMUHB Concerns Policy & Procedures
 Incident reporting policy & Procedure
 NHS
 Concerns, complaints & Redress arrangements) (Wales) Regulations (2011)
 Putting things right guidance (2013)

Approved by

Clinical Policy Working Group Committee
 Q&S Committee

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Accountable Executive / Lead Director (responsible for formal review every three years)	Executive Director of Nursing
Author / Management Lead (carries out informal review annually)	Assistant Director or Nursing & People's Experience
Freedom of Information Status	Open (most will be open, seek advice from the Head of Corporate Services if unsure)
<p>If the review date of this policy has passed, please ensure that the version you are using is the most up to date either by contacting the document author or the Corporate Services Department.</p> <p>To avoid use of out of date policies please do not print and then store hard copy of this document.</p> <p>Out of date policies cannot be relied upon.</p>	

Amendment Record

If a change has been made to the document, the changes must be noted and circulated to the appropriate colleagues.

Detail of change	Why change made?	Page number	Date of change	Version	Name of Policy Author

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1. Introduction

This policy should only be used as a last resort and after all reasonable measures have been taken to try to resolve concerns under the Putting Things Right Guidance (2013).

All complainants have the right to be heard, understood and respected, as do Health Board staff. We therefore expect complainants to be polite and courteous in their dealings with the Health Board. The Health Board will not tolerate aggressive or abusive behaviour, unreasonable demands or unreasonable persistence.

The Health Board will make every effort to achieve a satisfactory outcome for each complainant. However, it is recognised that a small number of complainants will remain dissatisfied despite every effort to resolve their complaint and will absorb a disproportionate and unreasonable amount of NHS resources in dealing with their complaints.

These guidelines set out the Cwm Taf Morgannwg University Health Board's (CTMUHB) approach to the relatively few complainants whose actions or behaviour are considered unacceptable. The term complainant includes anyone who contacts the CTMUHB in connection with a concern.

The Health Board acknowledges that it is important (as part of the investigation into the concern raised) to identify and manage the expectations of the person raising the concern. It should be made clear to all complainants, both at initial contact and throughout their dealings with the Health Board, what CTMUHB can or cannot do in relation to their concern. In doing so, the aim is to be open and not raise hopes or expectations that cannot be met.

Should situations be identified where a person pursuing a concern might be considered to be making unreasonable demands, or is behaving in an unacceptable manner, this document suggests ways staff should respond to these situations. This ensures equity to both staff and the person raising the concern. In particular, in such situations the Health Board may need to change how it responds to the concern, or restrict or modify the complainant's access to its staff members.

Whilst members of staff are expected to respond with sympathy and patience to the needs and concerns of patients, families and representatives, there are occasions when there is nothing further which can reasonably be done to assist the person raising the concern to rectify a real or perceived situation.

It is important that when considering such concerns, in order to ensure equality of treatment, staff identify the following:

(a) The stage at which the behaviour of the person raising the concern has become unreasonable or unacceptable. To ascertain this, consideration should be

given to the information contained in Appendix L of the Putting Things Right Guidance (2013).

(b) That they have ensured that no element of the concern raised has been overlooked, and that each element of the concern has been responded to.

2. Scope

This policy applies to all individuals acting as a complainant in respect of services provided by the Health Board, where that individual is considered to be unreasonably persistent in pursuing their grievances, or seeking to pursue inappropriate contact with Health Board staff when matters have been previously responded to in full and in accordance with the CTM UHB Concerns Policy and All Wales Putting Things Right guidance (2013)

3. Aim

The purpose of this document is to set out the Health Board's Policy for dealing with persons who act in an unreasonable and persistent way in continuing to complain despite their grievances having already been addressed proportionally by the Health Board.

The principle of this policy is that the Health Board will not tolerate unreasonable or inappropriately persistent behaviour and will take all necessary steps to protect staff from nuisance, verbal abuse, threatened or actual harm or harassment.

Complainants will be treated equitably, fairly and with dignity and respect whilst bringing their repeated endeavours to reopen their case or seek continual contact with the Health Board and its staff to an end.

Staff must ensure that consideration of reasonable adjustment is made for persons with a disability who raise concerns.

In times of trouble or distress some people may act out of character. There may have been upsetting or distressing circumstances leading up to a concern. The Health Board does not view behaviour as unacceptable if someone is forceful or determined.

It must also be acknowledged that the grieving process can produce anger and resentment which may be inappropriately directed towards the Health Board or an individual member of staff. In such situations the Health Board should consider what bereavement counselling services could be made available. Any offer of counselling will need to be handled carefully and sensitively and in a way that does not devalue the concern.

4. Duties – Roles and responsibilities

- The Executive Director of Nursing is accountable to the Board for ensuring compliance with this policy.

- The Head of People's Experience is responsible for all delegated actions in regard to implementation, documentation and record keeping.

This policy should only be used as a last resort and after all reasonable measures have been taken to try to resolve concerns under the Putting Things Right Guidance (2013).

Judgement and discretion must be used in applying the criteria to identify unreasonable complainants and in deciding on the action to be taken in specific cases. If appropriate, clinical, psychological, spiritual or other relevant advice will be sought prior to implementing the policy. The policy will only be implemented following careful consideration by, and with the authorisation of, the Chief Executive or, in their absence, the Executive Director of Nursing or Medical Director.

5 Definitions

Unreasonable demands, unacceptable actions or behaviour, violent or aggressive behaviour and persistent behaviour are defined in Appendix L of the Putting Things Right Guidance 2013:

Unreasonable Demands: May include demanding a response to the concerns raised within unrealistic timescales, possibly because of the amount of information requested, repeatedly phoning, writing, or insisting on speaking to a particular member of staff.

Unacceptable Actions or Behaviour: May include verbal threats, personal abusive comments, rudeness or derogatory remarks. Unsubstantiated allegations or offensive statements can also be termed as abusive behaviour.

Threatening/Physically Violent or Aggressive Behaviour: This should always be reported as an incident on Datix and to line management / Police where appropriate. Violence is not restricted to acts of aggression which may result in physical harm. It also includes behaviour or language (both oral or written) that may cause staff to feel afraid, threatened or abused.

Persistent Behaviour: May include repeatedly telephoning, visiting or writing to raise a concern which has already been investigated and a response sent. It is recognised that some complainants will not or cannot accept that the Health Board is unable to assist them further or provide a level of service other than that provided already. Complainants may persist in disagreeing with the action or decision taken in relation to their complaint or contact the Health Board persistently about the same issue.

6 Criteria

Complainants can only be classified as "unreasonably persistent" with regard to pre-existing issues. New concerns raised by the same individual that relate to a different or new episode of care or where new information

has come to light within the existing concern will be dealt with under the Health Board's Concerns Policy and Putting Things Right (2013) unless the unacceptable behaviour is repeated.

Complainants (and/or anyone acting on their behalf) may be deemed to be unreasonably persistent where previous or current contact with them shows that they meet TWO OR MORE of the following criteria:

- They persist in pursuing a complaint where the Putting Things Right procedure has been fully and properly explained, implemented and exhausted at local level i.e. when a referral to the Public Services Ombudsman for Wales (PSOW) is appropriate
- They seek to prolong contact by continually raising further concerns or questions upon receipt of a response (care must be taken not to disregard new issues which are significantly different from the original complaint. These might need to be addressed as separate complaints).
- They are unwilling to accept documented evidence as being factual or deny receipt of an adequate response in spite of correspondence specifically answering their questions, or does not accept that facts can sometimes be difficult to verify when a long period of time has elapsed.
- They do not clearly identify the precise issues which they wish to be investigated, despite reasonable efforts by Health Board staff and, where appropriate, Patient Advocacy services to help them specify their concerns, and/or where the concerns are not within the remit of the Health Board to investigate.
- They have had, in the course of addressing the complaint an excessive number of contacts with the Health Board, placing unreasonable demands on staff time or resources. (A contact may be in person, or by telephone, letter or e-mail). Judgement must be used in determining what an "excessive number" of contacts is and this will be based on the specific circumstances of each individual case.
- They have harassed or been personally abusive or verbally aggressive on more than one occasion towards staff dealing with their complaint, their families or associates. However, staff must recognise that complainants may sometimes act out of character at times of stress, anxiety or illness.
- They have displayed unreasonable demands or expectations and fail to accept that these may be unreasonable (e.g. insisting on responses to complaints or enquiries being provided more urgently than is reasonable, or contrary to normally recognised practice).

7 Options for dealing with unreasonably persistent complainants

It is anticipated that there will be times when the actions of very few persons pursuing a concern would be deemed to be unacceptable. How these actions are managed will depend on their nature and extent. Where such actions impact upon the Health Board's ability to function effectively and provide a service to others, the level and type of contact may need to be restricted to manage the unacceptable action. The objective remains that the concern under investigation can be progressed to a conclusion under the Putting Things Right regulations.

An arrangement will be put in place whereby the complainant will be informed:

- They will be allocated a single point of contact within the Health Board
- They will be contacted at agreed set times by the designated 'single' point of contact
- If agreed, telephone calls can only be received at set times on set days to the designated single point of contact.

In certain situations the person raising the concern may be told that there can be 'no personal contact' which means that all contact must be in writing or through a nominated third party. The Health Board will not deal with any communication (written or verbal) which is abusive to staff or contains allegations that lack substantive evidence.

Where complainants have been identified as "unreasonably persistent" in accordance with the above criteria, the Chief Executive, Medical Director or Executive Director of Nursing will decide what action to take. The Chief Executive, Medical Director or Executive Director of Nursing will implement the action and will notify complainants in writing of the action that has been taken and the reasons for it.

If appropriate, notifications under this policy may be copied for information to others already involved in the complaint e.g. General Practitioner, Patient Advocate or Senedd Member. A record will be kept of the reasons why a complainant has been classified as "unreasonably persistent".

8 Complaints Panel

When the complainant meets the criteria in section 6 above to be classified as 'unreasonable' under this policy, a Complaints Panel will be convened. The complaints panel will meet by exception as "unreasonably persistent", complainants are identified by the Head of People's Experience using the criteria outlined above.

The scope of the Panel is:

- To take an independent overview of the complaint, the response and any other forms of communication between the complainant and the Health Board. Consideration will be given to:
 - The continued concerns of the complainant, the response already issued, any gaps in the continued concerns and the response.

- Compliance with the Putting Things Right guidance and regulations
- The panel will undertake a detailed analysis and scrutiny of the complaint, to assess the degree of effective management, including evidence of robust proportionate investigation, learning and improvement where required.

As part of this work, the Panel will review confidential issues and is required to work in compliance with Data Protection Act 2018 and the General Data Protection Regulations as replaced or updated by United Kingdom legislation from time to time and ensure the requirements of Caldicott and the Human Rights Act 1998 in respect of the right to privacy and also the Freedom of Information Act 2000 in respect of openness. As such, all reports and action plans should be clearly marked as confidential. Members of the Panel must raise concerns regarding confidentiality issues at any time during the meeting if they feel that an individual's position is being compromised or they need to declare an interest.

Panel Membership

- Independent Board Member
- Executive Director of Nursing, or nominated deputy
- Medical Director or nominated deputy
- Board Secretary/Corporate Director
- Assistant Director of Nursing & People's Experience
- Head of People's Experience
- Representative from NHS Wales Shared Services Partnership Legal & Risk Services
- Invited colleagues to attend as required in order to present and to discuss specific issues, such as representatives from the relevant service areas and patient advocacy services, e.g. Community Health Council Representative.

9 Steps to take when invoking the policy

At times, it may not be possible to reach an agreement with the person raising the concern or that agreement may be breached. In those circumstances, the following action should be taken:

Once classified as "unreasonably persistent", complainants will be dealt with as follows:

Stage 1

Once it is clear that complainants meet any of the criteria outlined in Section 6, it will be appropriate to inform them, in writing that their conduct is unacceptable and that, if it continues, they may be classified as an "unreasonably persistent complainant". The letter should state clearly which of the criteria from section 6 above has resulted in being classified as an unreasonably persistent complainant and be accompanied by a copy of this policy. Complainants should also be advised to seek advice from independent organisations such as the Community Health Council or PSOW.

Stage 2

Attempts will be made to try and resolve matters by drawing up a signed agreement with the complainant, and their advocate where appropriate if the Health Board is to continue dealing with the concern. The agreement should set out a code of behaviour for all parties, which will detail the behaviours considered to be unacceptable and set out the consequences of any refusal to change those behaviours. If these terms are contravened consideration will be given to implementing Stage 3 of the policy

Stage 3

Where the Health Board has responded fully to the points raised in the complaint and has tried to resolve the issues, but there is nothing more to add and continuing contact on the matter would serve no useful purpose, the complainant will be notified that the correspondence is at an end and that further letters may be acknowledged but not answered in any detail.

Once Chief Executive, Medical Director or Executive Director of Nursing has established that this is 'unreasonably persistent' behaviour under the Policy, they should write a letter to the complainant. This letter will advise that the Responsible Body has:

- responded fully to the points raised
- done everything it can to resolve the concern
- there is nothing more that can be added
- ended its correspondence and advise that any further letters received regarding this matter will be acknowledged but no response will be made because of the unacceptable behaviour of the complainant.

The Complainant should also be informed in this letter of the reasons behind the decisions and any actions that have been taken. The letter will be copied promptly to any others involved in the concern, and the decision taken shall be documented on the concerns record, outlining the steps taken to try and avoid this course of action and why these steps have failed.

The above process has been summarised in Appendix 1 within this policy.

10 Threats of Violence or Aggression

In extreme cases, where there are threats of, or use of violence, aggression, harassment, abusive correspondence or verbal abuse, the Chief Executive, Medical Director or Executive Director of Nursing will write to the person pursuing the concern to advise that the matter is being referred to the Police and/or is being dealt with under the Health Board's relevant policies and procedures (including Prevention of Violence to Staff – Policy and Procedure)

11 Ombudsman Referrals

In the event that the concern is referred to the PSOW by the complainant or by the Health Board, the Health Board will ask the PSOW to take into account the previous correspondence and the person's behaviour.

As with Stage 3, the letter should be copied promptly to any others involved in the concern, and the decision taken shall be documented on the concerns record, outlining the steps taken to try and avoid this course of action and why these steps have failed.

The Chief Executive, Medical Director or Executive Director of Nursing, may at their discretion choose to omit one or more of the above stages.

12 Withdrawing Persistent and Serial complainant status

Where complainants have been determined as unreasonably persistent and their conduct improves, the status of "unreasonably persistent" can be reconsidered. Where it appears to be appropriate to withdraw "unreasonably persistent" complainant status, the approval of the Chief Executive, Medical Director or Executive Director of Nursing will be required and the complainant so notified. Subject to the withdrawal of the unreasonably persistent status normal contact with the complainant and application of the Health Boards Concerns Policy and Putting Things Right (2013) will be resumed.

13 Implementation of the policy and raising awareness

All decisions to implement unreasonably persistent status on a complainant will be routinely reviewed via the Head of People's Experience to the Health Board's Complaints Panel.

Clinical Service Group Managers, Heads of Nursing and Clinical Directors will receive feedback on action taken in respect of unreasonably persistent complainants where this relates to their own Clinical Service Group.

Monitoring by the People's Experience Department will include maintaining an overview of all current unreasonably persistent complainants and identification of any actions necessary should their behaviour continue.

14 Training

Whilst there are specific elements to the effective and efficient management of concerns which require training, the most enabling aspect of achieving this relates to staff in every part of the organisation fully embracing the Health Board's values & behaviours in their interactions with everyone they come into contact with including, patients, relatives, carers and colleagues.

Additional training needs are identified through management structures and processes within the localities, e.g. via the Performance Annual Development Review (PADR) process.

The concerns team undertake local departmental level training and also at wider Health Board level in the form of annual learning events. The concerns team are reactive to the locality/unit training needs analysis to meet training requirements.

Appendix 1

Steps to take when invoking the policy

