

Promoting a just and learning culture

This is draft material and is not live guidance. It is shared for information and will be tested with organisations who have agreed to pilot the new Complaint Standards.

1. Introduction

- 1.1 This guidance is part of a range of guidance modules produced to help you implement and deliver the Expectations set out in the Complaint Standards.
[Insert link](#)
- 1.2 This module sets out how all staff in your organisation can promote and demonstrate a culture that openly welcomes complaints and is accountable when mistakes happen.
- 1.3 For the purposes of this guidance, organisational culture refers to the values shared by everyone who works in your organisation, and how these values are applied in practice within your organisation's policies and processes, and through the behaviour and actions of each employee.
- 1.4 This module sets out the most important cultural values that encourage staff to view complaints as a vital tool for getting feedback from the people who use your service, and to use this feedback to improve both staff and organisational performance. It also sets out the what senior staff should do to create a just and learning culture and make sure that:
 - people who use your service can see how your organisation proactively and openly responds to complaints, and how it regularly uses learning from complaints to improve its services
 - staff know to be open and accountable when mistakes happen, and feel confident to speak up when things go wrong
 - staff are empowered to learn from the insight that comes from complaints, and supported to be accountable for their actions and to use learning to improve
 - staff are trained to know what a just and learning culture looks and feels like in practice, and how they should promote it within their work

- people who complain to your organisation agree that they have been listened to, and have had their concerns looked at openly, thoroughly, and fairly.

1.3 This guidance should be read in conjunction with the following modules:

- Making sure people know how to complain [Insert link](#)
- Identifying a complaint [Insert link](#)
- Who can make a complaint, consent and confidentiality [Insert link](#)
- Early Resolution [Insert link](#)
- A closer look - clarifying a complaint and explaining the process [Insert link](#)
- A closer look - The investigation [Insert link](#)
- A closer look - writing and communicating your final written response [Insert link](#)
- A closer look - providing a remedy [Insert link](#)
- Referring people to the Ombudsman [Insert link](#)
- Complaints involving multiple organisations [Insert link](#)
- Independent NHS complaints advocacy and other specialist advice and support for people raising complaints [Insert link](#)

2. Standards and relevant legislation

2.1 The relevant Complaint Standards are:

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- Senior staff make sure every member of staff knows how they can create and deliver a just and learning culture in their role. Staff can demonstrate how they meet these objectives through practical examples.
- Every organisation has appropriate governance structures in place to ensure that senior staff review information arising from complaints regularly, and are held accountable for making sure that the learning is acted on to improve services.
- Organisations make sure staff are trained to identify complaints in a way that meets the expectations set out in the Complaint Standards.
- Organisations have clear processes in place to show how they capture learning from complaints and use it to improve services. In their annual report, organisations provide details of what learning they have identified in complaints and they have used it to improve their services. This information is easy to compare with that of other organisations.
- Organisations put measures in place to capture feedback from those who make complaints (as well as the staff involved) on their experience. They use this to demonstrate how the organisation has performed towards

meeting the Complaint Standards and what users expect to see, as set out in **My Expectations**.

- Staff are trained to identify those complaints where mistakes have been made that may have resulted in significant impact. Staff ensure these mistakes are reviewed through the organisation's Duty of Candour processes. Organisations routinely share learning from complaints with other organisations (both locally and nationally) to build on insight and best practice.

2.2 [The Local Authority Social Services and National Health Service Complaints \(England\) Regulations 2009](#) state (at regulation 4) that your organisation must designate a responsible person who ensure the organisation complies with these Regulations, and “*ensuring that action is taken if necessary in light of the outcome of a complaint*”. The responsible person will be the person who:

- (In an NHS body) acts as the chief executive;
- (In other responsible bodies) acts as the sole proprietor or (in a partnership) a partner; or
- (in any other case) a director of the responsible body or a person who is responsible for managing the responsible body.

2.3 [The Health and Social Care Act 2008 \(Regulated Activities\) Regulations 2014](#) state (at regulation 16) that the person registered to carry out regulated activities in a healthcare setting must:

- Establish and operate effectively an accessible system for identifying, recording, handling and responding to complaints by service users and other persons in relation to the carrying on of regulated activity;
- Must provide to the Care Quality Commission (within 28 days of request) a summary of:
 - Complaints made and responses given to those complaints;
 - Any other relevant information in relation to such complaints as requested.

2.4 Regulation 17 of the 2014 Regulations state that your organisation must establish and set up effective systems and processes (governance) to:

- assess, monitor and improve the quality and safety of services your organisation provides when carrying out regulated activity (including the quality of the experience of service users in receiving those services);
- assess, monitor and mitigate the risks relating to the health, safety and welfare of service users and others who may be at risk which arise from your organisation carrying out regulated activity;
- seek and act on feedback from relevant persons and other persons on the services your organisation provides when carrying out regulated activity,

for the purposes of continually evaluating and improving such services;
and

- evaluate and improve how your organisation captures and processes information relevant to the above.

2.5 Regulation 17 also requires your organisation to send to the Care Quality Commission (upon request) the following written reports within 28 days:

- An evaluation of how your organisation is complying with the assessment, monitoring and improvement of the quality and safety of services, and mitigation of risks relating to the health, safety and welfare of service users; and
- Any plans your organisation has for improving service standards.

2.6 Regulation 20 of the 2014 Regulations is known as the ‘Duty of Candour’. Under this regulation, all staff in your organisation:

- act in an open and transparent way with relevant persons in relation to care and treatment provided to service users;
- must (as soon as reasonably practicable after becoming aware) notify relevant persons that a ‘notifiable safety incident’ has occurred.
- A notifiable safety incident means *“any unintended or unexpected incident that occurred in respect of a service user...that, in the reasonable opinion of a health care professional, could result in, or appears to have resulted in, the death of the service user...(or has) resulted in severe harm, moderate harm or prolonged psychological harm to the service user”*
- This must be done initially in person by staff and followed up in writing. Staff must provide an account (to the best of knowledge) that is true and contains all the facts known about the incident in question. Staff must also let the relevant persons know what further inquiries are appropriate and apologise for the impact caused by the incident.

3. What you should do

Creating and maintaining a positive culture towards complaints

3.1 Complaints give you a vital and direct insight into the quality of the services your organisation provides. They can be a quick way to identify how a service can be improved that you can use immediately. Yet often complaints are not valued or prioritised by organisations.

3.2 Good complaints handling must be led from the top. Senior leaders in your organisation are responsible for demonstrating best practice in handling and learning from complaints. They can do this by being engaged and involved in complaints, and by understanding and acting on the insight they provide. They should also make sure:

- a clear and straightforward complaints process is in place,

- staff are trained and empowered to handle complaints fairly, openly and with maximum accountability,
 - effective governance systems are in place so that senior staff regularly oversee complaints.
- 3.3 At a fundamental level, senior leaders must actively make sure that all staff understand and recognise the core values of a just and learning culture and that these are demonstrated in practice to build trust with staff. This means that staff know (and regularly see) that your organisation always:
- gives them the confidence to speak up when things go wrong, rather than fearing blame
 - encourages staff to always identify what learning can be taken from feedback and complaints to make continuous improvements, - even when things have not gone wrong
 - regularly reviews complaints at senior level, and uses complaints insight to improve systems or processes that support staff, rather than focusing on the failings of individuals
 - supports the mental and physical wellbeing of staff who are subject to a complaint by keeping them informed and engaged during the process
 - makes sure there is the right balance of accountability and learning for individuals
 - translates learning from complaints into practical action that seeks to improve services and develop staff learning.
- 3.4 To embed these core values, your organisation should first make sure they are included in your local complaints policy. This will help them become normal practice whenever someone makes a complaint.
- 3.5 Your organisation should train all staff on how your organisation values and handles complaints. This includes what role they must play to embed these values and how to challenge other staff if they are not upheld. This should be included in any induction programme for new staff, so they are immediately aware of your organisational values.

Embedding a just and learning complaints culture into governance processes

- 3.6 Organisations who have a well-developed just and learning complaints culture will have senior staff who take an active role in complaints handling. This often involves assurance and sign off complaint responses wherever possible. Where that is not possible (due to the size of organisation for example), senior leaders should put in place processes to make sure that complaints about serious or significant issues are escalated to them for their oversight and action.
- 3.7 Senior leaders in your organisation should make sure complaints insight is embedded into governance processes to continuously assess, monitor and improve the quality and safety of the services you provide. This is a regulatory requirement.

- 3.8 A fundamental requirement is for senior staff and (where appropriate) your organisation's Board to see regular reports on complaints. Such reports should provide periodic data on:
- number of complaints received
 - cases resolved at the frontline stage to the satisfaction of the complainant
 - number of cases currently being looked at in more detail
 - details of cases that have been closed - what findings/learning were identified and what action is being taken to improve.
- 3.9 These reports should also have a section that details cases referred to the Parliamentary and Health Service Ombudsman (PHSO), which include updates of any recommendations PHSO has made for your organisation to take forward.
- 3.10 Senior staff (and Boards) should always review complaints data and insight alongside relevant periodic data from Patient Safety incidents and claims. They should use this 'triangulated' analysis to identify any patterns or themes that indicate where system or service improvements can be made.

Complaint panels

- 3.11 Well-developed organisations set up a Complaints panel to make sure senior staff regularly listen to complaint stories and keep up the momentum learning from complaints and monitoring performance.
- 3.12 Complaint panels are made up of senior leaders and staff who are responsible for handling complaints. The panel meet regularly to:
- review complaints data
 - discuss cases of interest
 - review actions to improve services as a result of learning from complaints.
- 3.13 The panels are a way to make sure that complaints remain a high priority within the governance process. They enable that senior staff to provide assurance on what your organisation is doing to monitor and assess the quality and safety of services, and what is being done to improve them.

Supporting and developing staff to reflect on learning from complaints

- 3.14 Well-developed organisations will promote an equal balance between staff taking responsibility for actions and being supported to learn and improve from all types of feedback. Staff will have meaningful input into complaints about them, or which impact on their role. This includes:
- making sure every member of staff complained about is supported and engaged during the handling of a complaint. Organisations should adapt [Being Complained About](#) guidance into their complaints procedures.

- creating effective ways for staff feedback to be captured and shared alongside complaints, claims and patient safety feedback at Board level and other senior leadership meetings
- building a strong partnership with staff representatives and networks to make sure feedback is used to support individuals and promote wider organisational learning.

Ideal structures for embedding a just and learning complaints culture

- 3.15 Organisations should use NHS Resolution’s just and learning culture charter as the core foundation for their approach to complaints, claims and patient safety incidents. This is described in their [Being Fair report](#). From that, well-developed organisations should create and publish guidance summarising the *“fundamental principles of a just and learning culture which will be applied at all levels of our organisation, from the executive to the frontline”* (p. 10, *Being Fair*).
- 3.16 Well-developed organisations will make sure there is a close connection between monitoring complaints feedback alongside all other feedback channels. This should always include monitoring complaints, claims and patient safety data together. This provides a detailed triangulation of key feedback to ensure your organisation can confidently understand the impact of your services on user experience, and the quality and safety of those services.
- 3.17 Well-developed organisations organise their teams so that staff who are responsible for complaints, claims and patient safety can work closely together. For larger organisations, that would include having complaints, claims and patient safety leads working within the same division (usually where the governance and/or quality improvement functions sit) and reporting to senior staff. Where this is not possible, your organisation should make sure that all relevant staff regularly collaborate to share insight and are responsible for joint reporting to senior leaders.
- 3.18 For smaller organisations, a more suitable option would be for one person to be responsible for analysing all such feedback. They should be empowered to report back to senior leaders on its insight and how it can be used to improve.

Demonstrating a just and learning complaints culture outside of your organisation

- 3.19 Well-developed organisations make sure there is an open and transparent relationship with staff and service users when it comes to responding to complaints and using the insight to make improvements. This includes feeding back results and learning to all staff and externally.
- 3.20 Reporting on complaints insight is an essential pathway to cementing trust with both staff and service users. It shows that your organisation highly

values learning from complaints. You should regularly communicate actions taken, and how these have made a difference to learning and improvement. This shows staff and service users that complaints make a difference. It also helps those who complain know your organisation listens and is responsive and open to learning from feedback.

- 3.21 Well-developed organisations do this by regularly reporting summaries of complaints learning activity with staff, and with users through their website and with local Healthwatch, advocacy and service user interest groups. This reporting can then be used in your organisation's Annual Reporting process. This can also be used for when the Care Quality Commission ask for more information on what your organisation is doing to capture and monitor key insight on the safety of your services and use that to improve, as given in the 2014 Regulations.

Improving experience of making a complaint

- 3.22 It is a regulatory requirement for your organisation to regularly evaluate and improve how your organisation captures and processes information related to service monitoring. It is therefore important that your organisation sets up mechanisms to capture feedback from those who complain (and from staff who are involved in the complaints process) about their experiences.
- 3.23 This can be done by regularly getting feedback (through surveys or interviews) from people who are involved in your complaints process about their experience. This can be measured against the expectations set out in the Complaint Standards and My Expectations.

4. Examples and case studies

Taken from PHSO's Insight Report [Making Complaints Count](#), (p.16) Newcastle Upon Tyne Hospitals NHS Foundation Trust describe how they set up a monthly Complaints panel, which includes senior staff and their complaints team. The panel meets to scrutinise a range of complaints that have been made to the Trust and hear about what action is being taken on learning from complaints. The Patient Relations Team present data and discuss how best to approach the issues arising. This is an excellent example of how an acute trust can keep complaints high on the leadership agenda which has had a positive impact on their culture.

Also within [Making Complaints Count](#), (p.21) is the example of how Mersey Care NHS Trust adopted a just and learning culture. At Mersey, many staff felt fearful of speaking up when things went wrong for fear of being blamed or punished.

In adopting a just and learning culture, Mersey changed their language and approach to potential issues. They focussed on supporting staff and using human factors analysis to look at events, alongside examining whether the systems and processes in place were enabling staff to provide the best possible care. The pilot helped to build new trust between staff and the

organisation. It created a more reflective practice that placed accountability and learning without blame side by side. Staff now feel more encouraged to speak up and raise issues proactively so services can be improved.

You can watch NHS Mersey Care's [Just Culture documentary](#) to find out more about their journey to adopting a just a learning culture.

5. Practical tools and guidance

[NHS Resolution's Being Fair report](#) explains why it is important to adopt a reflective approach to learning from incidents and supporting staff. It provides guidance on how organisations can do this. .

[NHS Improvement's just culture guide](#) encourages managers to treat staff involved in patient safety incidents in a consistent, constructive and fair way.

[Care Quality Commission's guidance on duty of candour](#) provides more details on the specific requirements that providers must follow when things go wrong with care and treatment.

[The Good Governance Institute's Board assurance prompt](#) on complaints handling in the NHS is a good reference for best practice in complaints handling for leaders and staff.

[My Expectations for raising concerns and complaints](#), produced by PHSO, LGSCO and Healthwatch England, provides a powerful review of what service users expect to see from NHS and social care organisations when they complain about services. It includes a useful set of benchmarks for how every NHS organisation can measure performance in complaints handling.

[Being Complained About](#), published by the University of Glasgow, provides practical approaches to how organisations can effectively support staff who are subject to a complaint.

[Under Construction - to be finalised during pilots]

Example of relevant performance objectives on promoting a just and learning complaints culture for each level/role within NHS Organisations

Templates for Board/senior Leadership reporting on complaints

Guide for setting up and running Complaints panels in your organisation.

6. Version control

6.1 Pilot draft - March 2021