

Policy Title: SWL CCG Complaints Policy

Policy Number: SWLCCG/CG06

	Name	Role and Organisation	Date
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Approved By	Senior Management Team
Applies To	South West London CCG (The CCG), Governing Body Members, Committee Members and all staff working for, or on behalf of, NHS South West London CCG.

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Controlled Document

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Target Audience	Governing Body Members, Committee Members and all staff working for, or on behalf of, NHS South West London CCG.
Brief Description	This policy outlines our framework for, and commitment to, dealing with complaints about the services commissioned NHS South West London Clinical Commissioning Group.
Action Required	Ensure that the contents of this Policy are shared at all Team Meetings.

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1. Introduction

1.1. Introduction

- 1.1.1. This policy outlines our framework for, and commitment to, dealing with complaints about the services commissioned NHS South West London Clinical Commissioning Group (Hereby known as the CCG) Governing Board members, committee and sub-committee members, and employees of the CCG (as well as individuals contracted to work on behalf of the group or otherwise providing services or facilities to the group such as those within commissioning support services). It also provides information about how we manage, respond to and learn from complaints made about these services and the way in which they are commissioned.
- 1.1.2. This policy sets out the way in which complaints are to be managed. It emphasises the importance of prompt resolution wherever possible. The policy also sets out the timeframes for responding to complaints, individuals' roles in the process and the reporting structure for complaints information.

1.2. Policy Statement

- 1.2.1. The CCG is committed to ensuring that complaints, concerns and issues raised by patients, relatives and carers are acknowledged, responded to in an appropriate and timely manner, and that the CCG learns from them, in order to continually improve the services, it commissions.
- 1.2.2. The CCG will treat complaints seriously and ensure that complaints, concerns and issues raised are properly investigated in an unbiased, non-judgmental, transparent, timely and appropriate manner. The outcome of any investigation, along with any resulting actions, will be explained to the complainant.

1.3. Legal, Statutory, Mandatory, and Best Practice Requirements

- 1.3.1. This policy meets the requirements of the *Local Authority Social Services and National Health Service Complaints [England] Regulations 2009*, conforms to the NHS Constitution, and complies with guidance from the NHS England *Guide to good handling of complaints for Clinical Commissioning Groups (2003)*. It also takes account of the principles laid out in the *Parliamentary and Health Service Ombudsman Principles of Good Complaints Handling (2009)*.

1.4. Scope

- 1.4.1. This policy applies to the handling of compliments, queries, complaints or concerns, including those raised by a Member of Parliament (MP) on behalf of their constituent, relating to services directly commissioned by the CCG. This policy does not apply to Freedom of Information Requests.
- 1.4.2. This policy applies to all individuals working for, or on behalf of, the above organisations, including those employed on permanent or fixed term contracts, interims, self-employed contractors, Governing Body Members, Clinical Leads, Locality Leads, and volunteers.

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- 1.4.3. Complaints can be made by any person who is affected by, is likely to be affected by, or is aware of, either through direct experience or observation, an action, omission or decision of the CCG.
- 1.4.4. For complaints about services other than those commissioned by the CCG, the CCG will refer the complainant to the complaints service of the provider concerned. Where the complaint is in part about a service commissioned by the CCG, if given consent to do so by the complainant, the CCG is willing to take on the coordinator role where possible to ensure a single response is coordinated to the complainant.

2. Definitions

- 2.1.1. A complaint or concern is an expression of dissatisfaction about an act, omission or decision of the CCG, either verbal or written, and whether justified or not, which requires a response and/or redress.
- 2.1.2. Working day means any day except a Saturday, a Sunday and a bank holiday.

3. Responsibilities

3.1. Accountable Officer

- Overall accountability for ensuring that the CCG Complaints Policy meets the statutory requirements as set out in the Regulations;
- Responsible for approving and signing complaint response letters.

3.2. Chief of Staff

- Responsible for ensuring the CCG applies the principles of this policy and that there are suitable resources to support its implementation;
- Responsible for managing the procedures for handling and considering complaints in accordance with the Regulations and local policy;
- Ensure that where a complaint may need to be escalated as a Serious Incident that the complaint is discussed and reviewed at the relevant Quality Committee;
- Ensure information from complaints is reported into appropriate quality and risk committees and forums to enable organisational review and learning.

3.3. PALS and Complaints Manager

- Facilitation of the resolution of complaints and concerns;
- Recording details of the complaint on a database, the outcome, and any learning from the complaint;
- Disseminate learning from complaints across the relevant parts of the organisation in the most appropriate way;
- Include the use of complaints procedures as a measure of performance and quality;
- Use complaints information to contribute to practice development, commissioning and service planning; and
- All complaints staff must have relevant safeguarding to enable them to identify the key safeguarding concerns.

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3.4. PALS and Complaints Officer

- Facilitation of the resolution of complaints and concerns;
- Recording details of the complaint on a database; and
- All complaints staff must have at least Level 2 training in safeguarding to enable them to identify the key safeguarding concerns.

3.5. Associate Directors

- Responsible for investigating and resolving complaints about commissioned services in line with this policy, as subject matter experts, drafting responses for the Accountable Officer to approve and sign.

3.6. Governing Body

- Consider emerging themes and learning from the complaints reporting mechanism and identify service improvements as a result of complaints and concerns being raised.

3.7. All Staff

- All staff have a responsibility to ensure that they are aware of the contents of this policy and have undertaken training as appropriate;
- All individuals working for, or on behalf of the organisation(s) listed within section 1.4 above, including those employed on permanent or fixed term contracts, interims, self-employed contractors, Governing Body Members, Clinical Leads, Locality Leads, and volunteers are responsible for complying with this Policy.

3.8. All Line Managers

- All Line Managers are responsible for ensuring that their teams comply with this Policy.

3.9. Senior Responsible Officer

- The Accountable Officer is accountable for this Policy, and for supporting the implementation.

4. Complaints Policy

4.1. Complaints that cannot be dealt with under this policy

4.1.1. The following complaints cannot be dealt with under this policy:

- A complaint made by a local authority, NHS body, primary care provider or independent provider;
- A complaint regarding privately funded treatment;
- A complaint made by an employee about any matter relating to their employment¹;
- A complaint which is made orally and resolved to the complainant's satisfaction no later than the next working day;
- A complaint, the subject matter of which has previously been investigated under the 2009 Regulations or previous Regulations;
- A complaint which is being or has been investigated by the Ombudsman;

¹ These complaints will be handled under the CCG's Grievance Policy.

- A complaint arising out of an NHS body's alleged failure to comply with a request for information under the Freedom of Information Act 2000²;
- A complaint which relates to any scheme established under Section 10 (superannuation of persons engaged in health services) or Section 24 (compensation for loss of office) of the Superannuation Act 1972 or to the administration of those schemes³.

If the organisation decides that a complaint meets any of the criteria detailed above, the complainant will be notified in writing of this decision and will be signposted to the correct agency or team to deal with their query.

4.2. Who can make a complaint?

4.2.1. Any person who receives or has received services commissioned by the CCG or any person who is affected, or is likely to be affected, by the action, omission or decision of the CCG.

4.2.2. A complaint or concern may be made by a person acting on behalf of a patient in any case where that person:

- is a child;
In the case of a child, the representative must be a parent, guardian or other adult person who has care of the child. Where the child is in the care of a local authority or a voluntary organisation, the representative must be a person authorised by the local authority or the voluntary organisation, and in the opinion of the Accountable Officer, Chief of Staff, Chief Clinical Information Officer or Caldicott Guardian is making the complaint in the best interests of the child;
- has died;
In the case of a patient or person affected who has died, the representative must be a relative or other person who had sufficient interest in their welfare and is a suitable person to act as a representative; e.g. next of kin, or Power of Attorney.
- 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 representative must be a relative or other person who has sufficient interest in their welfare and is a suitable person to act as a representative; e.g. Power of Attorney;
- Has been given the complainant's written consent to act on their behalf, or has delegated authority to do so; e.g. Power of Attorney;
- Is an MP acting on behalf of and by instruction from a constituent?

4.3. Safeguarding and complaints

4.3.1. The CCG takes its safeguarding duties seriously and adheres at all times to the Caldicott Principle number 7, that "The duty to share information can be as important as the duty to

² These complaints are handled by the Information Commissioner's Office.

³ These complaints are handled by the NHS Pensions Agency.

protect patient confidentiality”. This means that information will be shared where necessary for the safety of a patient or complainant, even if they do not give consent for the information to be shared for this use. Please see the CCG’s Safeguarding Policies for further information;

- 4.3.2. If a complaint or concern is an allegation or suspicion of abuse for a person over the age of 18, for example sexual abuse, physical neglect or abuse, or financial abuse, it will immediately be forwarded to the Safeguarding Adults Team at the appropriate London Borough (dependent on where the complainant lives) for an investigation to be undertaken following the appropriate safeguarding policies and procedures. The CCG will review the complaint or concern in line with the Serious Incident policy to determine whether there is a requirement to contact the provider and request that they investigate the concerns as a Serious Incident. The CCG will notify the complainant that their concerns will be managed via the safeguarding process;
- 4.3.3. If a complaint or concern is an allegation or suspicion of abuse for a person under the age of 18, for example sexual abuse, physical neglect or abuse, or financial abuse, it will immediately be forwarded to the Children’s Safeguarding Team at the appropriate London Borough (dependent on where the complainant lives) for an investigation to be undertaken following the appropriate child protection policies and procedures. The CCG will review the complaint or concern in line with the Serious Incident Policy to determine whether there is a requirement to contact the provider and request that they investigate the concerns as a Serious Incident. The CCG will notify the complainant that their concerns will be managed via the safeguarding process;
- 4.3.4. In a situation where a person discloses physical or sexual abuse, or criminal or financial misconduct, it will be reported using appropriate policies and procedures. The CCG is bound under its duty in the *Health and Social Care Act 2012* to report the disclosure even if the person does not want to make a complaint about the disclosure.
- 4.3.5. In case involving vulnerable adults or children, including threats of self-harm and/or harm to others, all officers will implement effective safeguarding policies and practice, referring to the appropriate safeguarding board;
- 4.3.6. Any allegations of fraud or financial misconduct will be referred to the National Fraud Reporting line at NHS Counter Fraud Authority; details will not be taken by the complaints team and the complaint will not be dealt with by the team. The CCG will notify the complainant that their concerns will be managed via NHS fraud processes.

4.4. How a complaint can be made

- 4.4.1. Where it is appropriate, complaints and concerns can be resolved on the spot or quickly by front line staff or the service provider. This is known as local resolution. If the complainant has concerns relating to a service directly commissioned by the CCG and where local resolution fails to achieve a satisfactory outcome, the complainant then has the right to raise a formal complaint with either the service provider or the CCG;
- 4.4.2. A complaint or concern can be made in writing or verbally; by mail, electronically or by telephone. Where the complaint is made by telephone a written record of the complaint will be made and provided to the complainant.

4.5. Advocacy Services

4.5.1. Since April 2013, local authorities have a statutory duty to commission independent advocacy services to provide support for people making, or thinking of making, a complaint about their NHS care or treatment. Arrangements will vary between local authority areas. Complainants are advised to directly contact their local Healthwatch, or their local authority, for information about how this service is provided in their area.

4.6. Timescales

4.6.1. Complaints should be made twelve months from the date on which the matter that is the subject of the complaint came to the notice of the complainant.

4.6.2. If there are good reasons for not having made the complaint within the above time frame and, if it is still possible to investigate the complaint effectively and fairly, the CCG will consider reviewing the complaint.

4.7. Confidentiality

4.7.1. Complaints will be handled in the strictest confidence. Care will be taken that information is only disclosed to those who have a demonstrable need to have access to it.

4.8. Consent

4.8.1. The CCG will assume that, when acquiring consent for the use and sharing of information, the patient has made an informed decision and clearly understands the processing and potential sharing of their information.

4.8.2. Information will not be disclosed to third parties unless the complainant or appropriate authorised party who has provided the information has given explicit verbal or written consent to the disclosure of that information. It is recognised that there may be circumstances in which information disclosure is in the best interests for the patient, or the protection, safety or wellbeing of a child or vulnerable adult (see paragraph 4.3.1 above). In these circumstances information will be escalated as necessary in line with safeguarding policies and procedures, as outlined in section 4.3 above;

4.8.3. Information given to the CCG for the purpose of investigating a complaint will be retained, securely and electronically, by the CCG and only used to investigate the complaint. Only the Complaints Officer, PALS and Complaints Manager, and the staff responsible for the area / service the complaint is about, will have access to any information provided for the purpose of making a complaint;

4.8.4. The CCG may have to look into medical records or other documentation in order to resolve the complaint but would not keep that information in the complaint record, unless it is provided to the CCG by the person making the complaint;

4.8.5. Once a complaint is resolved, the information held by the CCG is securely stored and securely destroyed in accordance with the retention schedule from the Information Governance Alliance's *Records Management Code of Practice for Health and Social Care*⁴

⁴ <https://digital.nhs.uk/media/776/Records-Management-Code-of-Practice-2016/pdf/rmcop16718>

(2016); which states that complaints files must be retained for 10 years from the date of the resolution of the complaint. After this time, the file will be reviewed and, if no longer needed, securely destroyed;

4.9. Investigation and organisational response

4.9.1. All complaints will be acknowledged no later than three working days after the day the complaint is received (either by telephone, email or letter) and an offer will be made, as appropriate, to discuss with the complainant the following:

- An action plan for handling the complaint;
- Timescales for responding;
- The complainant's expectations and desired outcome;
- Information in relation to the provider of independent advocacy services;
- Consent for the CCG to pass the complaint to the service provider (as appropriate); and
- Consent for the CCG to handle the response provided by the service provider (as appropriate).

4.9.2. The CCG will investigate a complaint in a manner appropriate to resolve it as speedily and efficiently as possible;

4.9.3. The complainant can expect that the CCG will:

- Undertake to investigate the complaint;
- Keep the complainant up to date on the progress of the investigation;
- Provide a response that is written in plain English, summarises the complainant's concerns, appropriately answers each concern and shows the evidence considered when writing the response;
- Provide assurance that the matter has been investigated and action has been taken to prevent a recurrence;
- Inform the complainant of any actions that will be taken as a result of the complaint and of the lessons learnt; and
- Make a remedy where appropriate.

4.9.4. Where the complaint involves more than one NHS or social care body, the CCG will adhere to the duty to cooperate contained in the Regulations. Where complaints involve more than one body, discussions will take place about the most appropriate body to take the lead in coordinating the complaint and communicating with the complainant;

4.9.5. Where the CCG receives a complaint involving several bodies, permission will be sought from the complainant before sharing or forwarding a complaint to another body. Consent will be obtained to forward the complaint to any provider;

4.9.6. Where a complaint is received regarding the CCG staff, this will be dealt with using the appropriate CCG HR policies;

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4.9.7. As soon as reasonably practicable after completing the investigation, the CCG will send a formal response in writing to the complainant which will be signed by the Accountable Officer or delegated deputy. The response will include:

- An explanation of how the complaint has been considered;
- Conclusions reached in relation to the complaint, including any remedial action that the organisation considers to be appropriate;
- Confirmation that the CCG is satisfied any action has been or will be actioned;
- Information on the next stages of the complaints procedure should the complainant wish to take matters further, including the complainant's right to take their complaint to the Parliamentary and Health Service Ombudsman (PHSO).

4.9.8. Once the complaint is resolved, either by the CCG or by the PHSO, information given to the CCG for the purpose of investigating the complaint will be retained, securely and electronically, by the CCG. The files must be retained by the CCG for 10 years from the date of the resolution of the complaint. After this time, the file will be reviewed and, if no longer needed, securely destroyed, in accordance with the retention schedule from the Information Governance Alliance's *Records Management Code of Practice for Health and Social Care* (2016).

4.10. Referrals to the Parliamentary and Health Service Ombudsman (PHSO)

4.10.1. If a complainant remains dissatisfied with the handling of the complaint by the CCG they can ask the PHSO to review the case;

4.10.2. When informed that a complainant has approached the PHSO, the CCG will cooperate fully with the PHSO and provide all information that has been requested in relation to the complaint investigation.

4.11. Policy Implementation Plan

4.11.1. The CCG will ensure that all employees are aware of the existence of this policy. The following will be undertaken to ensure awareness:

- Annual reminder of the existence and importance of the policy via internal communication methods;
- Publication on the CCGs' website and intranet site.

4.12. Monitoring Compliance and Effectiveness of the Policy

4.12.1. An annual report will be produced for the Quality, Performance and Oversight Committee which will include:

- Numbers of complaints received;
- Numbers of complaints received considered to be based on solid evidence or good reasons (complaints upheld);
- Issues, key themes and lessons learnt;
- Actions taken, or being taken, to improve services as a result of complaints made;

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- Number of cases which the CCG has been advised are being considered by or referred to the PHSO;
- Equality impact data.

4.12.2. Quarterly reports will be produced for SMT.

4.13. Persistent and/ or unreasonable complaints

4.13.1. Detailed guidance on the management of persistent and/ or unreasonable complaints is set out in Appendix 2.

5. Review of this Policy

5.1. This policy will be reviewed initially after one year, then every three years thereafter, or as and when there are changes to national legislation or local policy. Amended versions of this policy will be signed off by the Quality, Performance and Oversight Committee, and will then go to the SWL CCG Governing Body for note.

6. Templates/Forms

Acknowledgement Letter template, response letter template, consent form template, consent form to share information with a provider/ outside agency template.

7. Internal and External References

7.1. Internal References

- SWL CCG Data Protection Policy;
- SWL CCG Information Governance Policy;
- SWL CCG Safeguarding Children Policy;
- SWL CCG Safeguarding Adults Policy;
- SWL CCG Serious Incident Policy;
- SWL CCG Grievance Policy.

7.2. External References

- *Local Authority Social Services and National Health Service Complaints [England] Regulations (2009)*
- *NHS Constitution*
- *Guide to good handling of complaints for Clinical Commissioning Groups (2003) NHS England*
- *Complaints Policy (2017) NHS England*
- *Parliamentary and Health Service Ombudsman Principles of Good Complaints Handling (2009) PHSO*
- *Records Management Code of Practice for Health and Social Care (2016) Information Governance Alliance*

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- *Health and Social Care Act (2012)*

8. Monitoring

Implementation of this policy will be monitored annually, and a report submitted to the Quality, Performance and Oversight Committee.

If you have any suggestions for the improvement of this policy, please contact the Chief of Staff with your suggestions, for consideration.

9. Equality Impact Assessment

An Equality Impact Assessment has been completed for this policy (Appendix 1), and no negative impact upon persons with protected characteristics has been identified.

10. History

Policy Number	Effective Date	Significant Changes
SWLCCG/CG06	01/04/2020	Policy Creation

11. Appendix 1 - Equality Impact Assessment

	Mandatory Questions	Yes/No/NA	Comments
1.	Does the Policy affect any group less or more favourably than another on the basis of:		
	Age?	No	
	Disability?	No	
	Gender?	No	
	Gender identity?	No	
	Marriage or civil partnership?	No	
	Pregnancy and maternity or paternity?	No	
	Race?	No	
	Religion or belief?	No	
	Sexual orientation?	No	
2.	Is there any evidence that any groups are affected differently by the Policy and if so, what is the evidence?	No	
3.	Is any impact of the Policy likely to be negative?	No	
4.	If any impact of the Policy is likely to be negative, can the impact be avoided and if so, how?	NA	
5.	If a negative impact can't be avoided, what, if any, are the reasons the Policy should continue in its current form?	NA	
6.	Where relevant, does the Policy support the FREDA principles: Fairness, Respect, Equality, Dignity and Autonomy?	Yes	

If you have identified a potential discriminatory impact of this Policy, please contact the Chief of Staff.

12. Appendix 2 - Guidance for dealing with unreasonable complainants

This guidance covers all contacts, enquiries and complaints. It is intended for use as a last resort and after all reasonable measures have been taken to try and resolve a complaint using the CCGs' Complaints Policy.

Persistent complainants may have genuine issues and it is therefore important to ensure that this process is fair and that the complainant's interests have been taken into consideration.

1. Purpose of guidance

To assist CCG staff to identify when a person is unreasonable, setting out the action to be taken.

2. Definition of unreasonable complainants

There is no one single feature of unreasonable behaviour. Examples of behaviour may include those who:

- Persist in pursuing a complaint when the procedures have been fully and properly implemented and exhausted;
- Do not clearly identify the precise issues that they wish to be investigated, despite reasonable efforts by staff, and where appropriate, the relevant independent advocacy services;
- Continually make unreasonable or excessive demands in terms of process and fail to accept that these may be unreasonable e.g. insist on responses to complaints being provided more urgently than is reasonable or is recognised practice;
- Continue to focus on a 'trivial' matter to an extent that it is out of proportion to its significance. It is recognised that defining 'trivial' is subjective and careful judgment must be applied and recorded;
- Change the substance of a complaint or seek to prolong contact by continually raising further issues in relation to the original complaint. Care must be taken not to discard new issues that are significantly different from the original issue. Each issue of concern may need to be addressed separately;
- Consume a disproportionate amount of time and resources;
- Threaten or use actual physical violence towards staff;
- Have harassed or been personally abusive or verbally aggressive on more than one occasion (this includes written abuse e.g. emails);
- Repeatedly focus on conspiracy theories and/or will not accept documented evidence as being factual;
- Make excessive telephone calls or send excessive numbers of emails or letters to staff.

3. Actions prior to designating a complainant as unreasonable

It is important to ensure that the details of a complaint are not lost because of the presentation of that complaint. There are a number of considerations to bear in mind when considering imposing restrictions upon a complainant. These may include:

- Ensuring the complainant's case is being, or has been, dealt with appropriately, and that reasonable actions will follow, or have followed, the final response;
- Confidence that the complainant has been kept up to date and that communication has been adequate with the complainant, prior to them becoming unreasonable;
- Checking that new or significant concerns are not being raised, that require consideration as a separate case;
- Applying criteria with care, fairness and due consideration for the client's circumstances – bearing in mind that physical or mental health conditions may explain difficult behavior. This should include the impact of bereavement, loss or significant/sudden changes to the complainant's lifestyle, quality of life or life expectancy;
- Considering the proportionality and appropriateness of the proposed restriction in comparison with the behavior, and the impact upon staff;
- Ensuring that the complainant has been advised of the existence of the policy and has been warned about and given a chance to amend their behavior.

Consideration should be also be given as to whether any further action can be taken prior to designating the complainant unreasonable or persistent. This might include:

- Raising the issue with a Director with no previous involvement, in order to give an independent view;
- Where no meeting with staff has been held, consider offering this at a local level as a means to dispel misunderstandings (only appropriate where risks have been assessed);
- Where multiple departments are being contacted by the complainant, consider a strategy to agree a cross-departmental approach;
- Consider whether the assistance of an advocate may be helpful.

4. Process for managing unreasonable behaviour

Where a complainant has been identified as unreasonable, the decision to declare them as such is made by the Accountable officer or the Chief of Staff. The Accountable officer or the Chief of Staff will write to the complainant, informing them that either:

- Their complaint is being investigated and a response will be prepared and issued as soon as possible within the timescales agreed;
- That repeated calls regarding the complaint in question are not acceptable and will be terminated, or;
- Their complaint has been responded to as fully as possible and there is nothing to be added
- That any further correspondence regarding the complaint in question will not be acknowledged.

All appropriate staff should be informed of the decision so that there is a consistent and coordinated approach across the organisation.

If the declared complainant raises any new issues then they should be dealt with in the usual way.

Review of the persistent status should take place at six monthly intervals.

5. Urgent or extreme cases of unreasonable or persistent behaviour

In urgent or extreme cases:

- Adopt safeguarding and zero tolerance policies and procedures;
- Discuss the case with the appropriate Director to develop an action plan.

In these circumstances, carry out a review of the case at the first opportunity after the event.

7. Record keeping

Ensure that adequate records are kept of all contact with unreasonable complainants.

Consideration should be given as to whether the organisation should take further action, such as reporting the matter to the police, taking legal action, or using the risk management or health and safety procedures to follow up such an event in respect of the impact upon staff.

13. Appendix 3 - SWL CCG Complaints Process

