

Document information

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Summary

This policy has been created to detail a clear and fair process for dealing with situations where an applicant might be considered to be a persistent, habitual, prolific or vexatious applicant.

Consultation

This policy was developed from the policy of South, Central and West Commissioning Support Unit which was shared with the Information Governance Group and the Executive Management Team.

Appendices

The following appendices form part of this document:

Appendix 1: Evaluation Standard

Review Log

Version	Review Date	Reviewed By	Changes Required? (If yes, please summarise)	Changes Approved By	Approval Date
1.1	Oct'17	IGG	Section 3.1 amended to reflect that, in exceptional circumstances, the Accountable Officer may decide and record that the Vexatious Applicant should not be informed of the decision.	AAC	Nov'17

Acknowledgements

Based on a policy document provided by South, Central and West Commissioning Support Unit.

MANAGEMENT OF PERSISTENT AND VEXATIOUS APPLICANTS POLICY

1.0 INTRODUCTION AND PURPOSE

This policy aims to provide staff with a clear and fair process for dealing with situations where an applicant might be considered to be a persistent, habitual, prolific or vexatious applicant and to recommend ways of handling those situations.

Section 14 of the Freedom of Information Act 2000 states that the CCG is not obliged to comply with a request for information if the request is vexatious. Also, where the CCG has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance and the making of the current request.

This policy provides support for CCG staff where there is a view that a difficult situation should not continue. It should be used as a guide for all staff involved with an application or series of applications that has become unmanageable due to an applicant's persistent behaviour and will only be considered as a last resort where the applicant fits the criteria as being deemed persistent, habitual or vexatious.

It should be noted that in applying this policy the CCG will not unreasonably exclude from consideration new issues raised by or on behalf of the applicant that are relevant to the CCG's role and remit, and which will be considered in line with the CCG's Compliments, Concerns and Complaints Policy. It should also be noted that the status of 'Vexatious Applicant' may be withdrawn.

The CCG is committed to dealing with all applications fairly and impartially and to providing a high quality service to applicants. However, there are a small number of applicants who may because of the frequency and nature of their contact with the CCG, hinder consideration of theirs or other people's applications. Their actions may also bring the Freedom of Information Act into disrepute.

It is important to remember that if an applicant raises the same or similar issues repeatedly there may be underlying reasons for this persistence which require consideration. Complaints about the CCG's services, or commissioned services, are processed in accordance with the NHS complaints procedure as set out in statutory regulations and embodied in the CCG Compliments, Concerns and Complaints Policy.

When applications from or contact with an applicant absorbs a disproportionate amount of NHS resources, this is an unreasonable burden on the NHS and impacts on the service that can be provided to other applicants. It is also recognised that this situation can cause undue stress for staff and may constitute harassment. There are times when there is nothing further which can reasonably be done to assist the applicant or to rectify a real or perceived problem and where there is no sight of resolution. At this point the CCGs may wish to review the situation and at times withdraw from on-going debate.

In addition, the CCGs do not expect our staff to tolerate unacceptable behaviour by applicants or their representatives. Unacceptable behaviour includes behaviour and comments which are abusive, offensive or threatening and/or which are a breach of key CCG policies such as those relating to equality and dignity. This policy should be read in conjunction with the CCG Security Management Policy with regard to violence and aggression.

For some applicants on-going contact can exacerbate rather than improve existing medical conditions and contribute to a deterioration of their ability to deal reasonably with the staff handling other issues. Reasonable adjustments will be made, as appropriate, to this policy for applicants where disability may be promoting an applicant's approach.

Throughout the remainder of this document an applicant being defined as vexatious and/or habitual and /or persistent will be referred to as a 'vexatious applicant' for ease of reference.

2.0 SCOPE AND DEFINITIONS

This policy applies to CCG management of Freedom of Information Act 2000 applications, Environmental Information Regulations (EIR) applications and Subject Access Requests (SAR) under the Data Protection Act 1998 by CCG staff and CSU staff acting on behalf of the CCG.

This procedure will only be used as a last resort and after all reasonable measures have been taken and should only be implemented following careful consideration and with the authorisation of the CCG's Accountable Officer (or nominated deputies in their absence).

Definitions:

A **vexatious** or manifestly unreasonable application is one where, on the facts of the application, it has little merit or substance and has been made with the apparent intended consequence of distress or harm to either the individual receiving/managing the application, the CCG or a particular staff member. The CCG is permitted to take into account the costs of complying with a request in assessing whether the request is vexatious or manifestly unreasonable.

A **persistent** or habitual applicant is defined as someone who continually makes contact with the CCG to request information relating to a particular issue(s). This may also include offensive, rude, aggressive, discriminatory or abusive behaviour or comments during contact.

A **prolific** applicant is someone who raises the same issue despite having been given a statutory compliant response and may display certain types of behaviour:

- Complains about every part of the health system regardless of the issue
- Seeks attention by contacting several agencies and individuals
- Often repeats the full complaint
- Automatically responds to any letter/correspondence from the CCG
- Insists that they have not received an adequate response
- Focuses on a trivial matter

3.0 PROCESS / REQUIREMENTS

3.1 DETERMINING AN APPLICANT AS VEXATIOUS

Applicants may be deemed to be a 'Vexatious Applicant' where on-going contact with them shows that they meet at least two of the following criteria. This assessment will be undertaken by the Information Governance Group.

The applicant:

- Persists in pursuing an issue for which statutory compliant responses have been given and any complaint has been fully examined under the NHS complaints procedure.
- Changes the substance of an application or continually raises new issues or seeks to prolong contact by continually raising further concerns or questions upon receipt of a response. Past requests could be relevant to a decision that an applicant is vexatious even if they have no underlying grievance in common with the later application(s). (Care must be taken not to discard new applications, which are significantly different from the original application. These might need to be addressed as separate applications).
- Is unwilling to accept documented evidence as being factual, e.g. medication records, nursing records; or denies 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.
- Does not clearly identify the precise requirements of their application, despite reasonable efforts of the CCG's staff to assist. Or where the concerns identified are not within the remit of the CCGs to fully investigate i.e. the CCG has no right to investigate or the CCG does not hold relevant information.
- Focuses on a particular matter to an extent which is out of proportion to its significance and continues to focus on this point. (It is recognised that

determining what such a matter is can be subjective and careful consideration must be used in applying this criteria).

- Has, in the course of addressing an issue, had an excessive number of contacts/applications with the CCG placing unreasonable demands on staff. (A contact may be in person or by telephone, email, letter or fax. Discretion must be used in determining the precise number of "excessive contacts" applicable under this section, using judgement based on the specific circumstances of each individual case.
- Is known to have recorded meetings or face-to-face/telephone conversations without the prior knowledge and consent of other parties involved.
- Displays unreasonable demands or expectations and fails to accept that these may be unreasonable (e.g. insist on responses to applications/enquiries being provided more urgently than is reasonable or normal recognised practice).
- During the process of the application, threatened or actual physical violence is used towards staff or their families or associates at any time, and/or offensive/discriminatory comments are made in communications with staff.

Once it is clear that the applicant has met at least two of the criteria and the procedure has been invoked, the Information Governance Group will recommend the action to be taken (see section 3.3 below) to the Accountable Officer (or deputy). The Accountable Officer (or deputy) will implement such action and will notify the complainant in writing of the reasons why they have been identified as a vexatious applicant and the action to be taken unless, in the opinion of the Accountable Officer (or deputy), doing so would further stimulate an unacceptable level of correspondence. In the latter case, a record of the decision not to inform should be recorded by the Accountable Officer.

The notification may be copied for the information of others already involved with the issue, e.g. staff, PALS, CSU, conciliator/mediator, Complaints Advocacy, Member of Parliament. A copy of this policy will be sent with the notification to the complainant to advise them to take account of the criteria in any further dealings with the CCGs. A record must be kept for future reference of the reasons why an applicant has been deemed a vexatious applicant.

3.2 MITIGATING CIRCUMSTANCES

Prior to action being taken under this policy, the Information Governance Group must first consider:

- Has the FOI or SAR procedure been correctly implemented as far as is possible and has any material element of a complaint against the handling of the application been overlooked or inadequately addressed? Considering this question will entail appreciating that even persistent applicants may have aspects of a complaint which may contain some genuine substance.

- The stage at which an applicant has become or is developing into a persistent applicant where the applications and responses have become repetitive, habitual or persistent (following a review of the available information). There should be evidence available to demonstrate the habitual and persistent nature of the applications. The purpose of this procedure is to ensure that any restrictions placed on applicants should be the result of a fair and consistent process. The procedure will be applied only in the absolute circumstances outlined, not because the applicants are forceful and determined.
- In making a decision to determine an individual as a Vexatious Applicant, the CCG's Accountable Officer (or deputy) will need to be satisfied that in the CCG's handling of an individual's applications, all necessary and reasonable practical steps have been taken (seeking professional advice as applicable) to minimise or overcome any barriers that applicants might experience as a result of relevant equality factors (for example, disability). Any planned actions do not constitute unlawful victimisation.

3.3 MANAGING A VEXATIOUS APPLICANT

Following a recommendation from the Information Governance Group, the CCG Accountable Officer (or deputy) may decide to manage the ongoing relationship with the applicant in one or more of the following ways:

- Decline contact with the applicant either in person, by telephone, by fax, by letter, by email or any combination of these, provided that one form of accessible contact is maintained or alternatively to restrict contact to liaison through a third party.
- Notify the applicant in writing that the CCG Accountable Officer has responded fully to the points raised and has tried to resolve the issue, but there is nothing more to add and continuing contact on the matter will serve no useful purpose. The applicant should also be notified that the correspondence is at an end and that further letters received might be acknowledged but not responded to.
- Inform the applicant that in extreme circumstances the CCG reserves the right to pass unreasonable or persistent correspondence to be dealt with by the CCG's solicitors and, where appropriate, other agencies.
- Temporarily suspend all contact with the applicant or completion of outstanding applications whilst seeking legal advice or guidance from the CCG's solicitors or any other relevant agencies.

The CCG must ensure that consideration has been given as to whether there are any relevant equality considerations that may be linked to the persistency of the applications. It is the responsibility of the Information Governance Group reviewing each individual case to recognise that some applicants (for example, individuals with speech/hearing impairment, learning disability or other permanent or temporary cognitive impairment or service users for whom English is not their first language) may need the CCGs to implement relevant adjustments to the process for the handling of their application(s) to minimise communication issues and barriers. The Accountable Officer (or deputy) must agree with this assessment.

3.4 CONSIDERATION OF NEW APPLICATIONS

Should an element of contact be retained with the vexatious applicant, any further applications must continue to be considered. Consideration must be given to whether each application could receive attention under normal procedures. Vexatious applicant status does not need to be withdrawn to manage such applications.

The CCG is permitted to take into account the costs of complying with a request in assessing whether the request is vexatious or manifestly unreasonable. A single very burdensome request may therefore be rejected as vexatious or manifestly unreasonable if the costs involved in responding to it would be too high.

However, should the vexatious applicant make a further vexatious application for identical or substantially similar information, the CCG will inform the applicant in writing, stating that they will not be fulfilling the request and outlining why they consider the request to be vexatious. They will also advise the applicant of how to proceed if they are not satisfied with the response.

3.5 WITHDRAWING VEXATIOUS APPLICANT STATUS

Once an applicant has been determined as a 'Vexatious Applicant' there needs to be a mechanism for withdrawing this status at a later date if, for example, the applicant subsequently demonstrates a more reasonable approach.

Staff should previously have used discretion in recommending vexatious applicant' status and discretion should similarly be used in recommending that this status be withdrawn when appropriate. The Information Governance Group will receive and review the list of vexatious applicants on an annual basis.

Where the Information Governance Group believes that the status should be withdrawn, this recommendation will be discussed with the CCG's Accountable Officer (or deputy). Subject to their approval, normal contact with the applicant and application of CCG procedures may then be resumed and the applicant will be notified of this in writing unless, in the opinion of the Accountable Officer (or deputy), doing so would stimulate recommencement of an unacceptable level of correspondence or repetition of the original issue. A record of the decision not to inform should be recorded by the Accountable Officer.

3.6 RECORD KEEPING

Throughout this process it is imperative that the CCG keeps a full record. It is possible that the applicant will make a complaint to the Information Commissioner's Office (ICO) or complain through the NHS Complaints procedure. It is vital that all decisions and the evidence in support of the decisions is documented and retained in line with the CCG retention and disposal schedule.

4.0 ROLES AND RESPONSIBILITIES

Accountable Officer

The Accountable Officer of the CCG has overall accountability and responsibility for compliance with the Freedom of Information Act 2000, Environmental Information Regulations (EIR) and the Data Protection Act 1998 within the CCG and setting a culture of openness and transparency. The Accountable Officer (or their deputy) will consider the recommendation of the Information Governance Group as to the status of the applicant and the future management arrangements and write to the applicant detailing the CCG decision.

Director Responsible for Information Governance

The Director responsible for the processes and procedures for the management of Information Governance (of which this statutory compliance is a part) is the Chief Operating Officer. This Director will also oversee the support contract with SCWCSU.

The Information Governance Group

The Information Governance Group is responsible for monitoring the management of the Freedom of Information Act, Environmental Information Regulations (EIR) and the Data Protection Act 1998 process, developing and maintaining this policy. The Group will consider whether an applicant meets the criteria of 'Vexatious Applicant' and whether there are any mitigating circumstances. The Group will make a recommendation to the Accountable Officer (or their deputy) on the status of the applicant and future management arrangements.

CCG Information Governance Lead

The CCG Lead will support the Director in management of the FOI/SAR process and the CSU support contract. The CCG Lead will facilitate reporting to the Information Governance Group and the collection of evidence for consideration of an applicant as vexatious.

CSU Support

The Information Governance and FOI Team at the CSU will support this process and implement decided management actions.

5.0 TRAINING

The CCG will ensure that relevant staff and members of the Information Governance Group are aware of and understand this policy.

6.0 EQUALITY, DIVERSITY AND MENTAL CAPACITY

An Equality Impact Assessment (EIA) has been completed for this policy and it has been determined that there is the possibility that this policy, if misapplied, may have an adverse equality impact. The EIA will be published on the CCG internet.

This policy has been assessed against the requirements of the Mental Capacity Act 2005 and it has been determined that mental capacity should be considered in application of this policy. However, this policy meets the requirements of the Mental Capacity Act 2005.

7.0 SUCCESS CRITERIA / MONITORING EFFECTIVENESS

This policy will be successful if applicants that are vexatious, persistent, habitual or prolific are identified as vexatious applicants and correspondence is legitimately ceased.

The Information Governance Group, by means of the Group minutes, will report the invoking of this policy, and any subsequent withdrawal, to the Audit and Assurance Committee. The Information Governance Group will also report any investigation into the use of this policy by the ICO and the ICO's findings.

In addition, Appendix 1 within this policy provides an Evaluation Standard which should be used corporately by the Information Governance Lead to assess compliance with this policy on an annual basis where the policy has been invoked in the previous 12 month period. Results from any corporate assessment will be presented to the Information Governance Group.

Any non-compliance with this policy should immediately be reported using the Non-compliance Form contained within the Policy on Management of Procedural Documents.

8.0 REVIEW

This document may be reviewed at any time at the request of either staff side or management, but will be reviewed where there is any major change in legislation or NHS guidance and after three years.

9.0 REFERENCES AND LINKS TO OTHER DOCUMENTS

This policy should be read in conjunction with the NHS Code of Confidentiality and the following CCG policies:

- Compliments, Concerns and Complaints Policy
- Data Protection Act Policy
- Freedom of Information and Environmental Information Regulations Policy
- Policy on Management of Procedural Documents

Other policies and procedures may become available during the lifespan of this policy.

Related information:

- Local Authority Social Services and National Health Services Complaints (England) Regulations 2009
- NHS Records Management Code of Practice for Health & Social Care 2016
- NHS Constitution
- The NHS Code of Confidentiality
- Human Rights Act 1998
- The Mental Capacity Act 2005
- The Equality Act 2010

EVALUATION STANDARD

Policy Name: Management of Persistent and Vexatious Applicants Policy
Policy Reference: TBC

Standard statement

Where an applicant might be considered to be persistent, habitual, prolific or vexatious the CCG will consider the applicant against set criteria to determine their status and future management.

Criteria - Corporate

1. There is documentary evidence that criteria have been considered by the Information Governance Group and that at least two criteria have been recorded as applying to the applicant.
2. There is documentary evidence that there has been compliance with the FOI/SAR procedure for the applications and any issues with the process have been addressed.
3. There is documentary evidence that relevant equality factors have been identified and explored by the Information Governance Group.
4. There is documentary evidence that the Accountable Officer (or deputy) has agreed the status of 'Vexatious Applicant' and this and the ongoing management of the applicant have been communicated in writing to the applicant, or the reason for not informing the applicant has been recorded.
5. Further applications by the Vexatious Applicant have been considered as to whether they could receive attention under normal procedures.
6. For further vexatious applications by the Vexatious Applicant an acknowledgement has been sent stating that the application is vexatious and will not be responded to (if communication is a permitted part of the ongoing management).
7. The Information Governance Group has received and reviewed a list of vexatious applicants on an annual basis where the policy has been invoked in the previous 12 months.
8. There is documented approval from the Accountable Officer (or deputy) for removal of vexatious applicant status and the individual has been informed in writing, or the reason for not informing the applicant has been recorded.
9. The Audit and Assurance Committee is notified when this policy is invoked and when the status is withdrawn by means of the IGG minutes.

Conclusion

Please explain any discrepancies below:

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Please detail remedial action to prevent re-occurrence, giving details of monitoring arrangements to assess improvement:

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Date of assessment:	
Assessed by:	