



MDU

Medico-legal guide to The NHS complaints procedure

1.1

Introduction

The NHS and social care complaints procedure was introduced in England on 1 April 2009. The local resolution stage of the procedure is governed by the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009.

Responsible bodies

The complaints procedure applies to NHS bodies and all providers of NHS healthcare (including commissioning bodies and primary care providers). It also applies to 'independent providers', that is voluntary and independent sector organisations providing 'healthcare in England under arrangements made with an NHS body', and to local authority adult social services.

These are all identified as 'responsible bodies' in the regulations.

The complaints procedure has two stages

Stage 1 **Local resolution** – for example, within the GP practice or hospital. In the MDU's experience most complaints are resolved quickly and efficiently this way (see Medico-legal Guide 1.2 – *Local resolution*.)

Stage 2 **Parliamentary and Health Service Ombudsman** – a complainant who remains dissatisfied after stage one may complain to the Ombudsman. Doctors who are being complained about can also take the case to the Ombudsman, for example if they are not satisfied with

a response provided on their behalf by a commissioning body (see Medico-legal Guide 1.4 – *Parliamentary and Health Service Ombudsman*).

Complaints do not need to be made to the provider

Complaints can be made to the organisation providing care (for example hospital or GP surgery) or direct to the commissioning body. In the latter case, the commissioning body will consider if it can deal with the complaint, or if it would be more appropriate to pass it to the provider for a response. In both circumstances, the body must seek the complainant's consent before it passes the details of the complaint to the provider.

Complainants must choose at the outset whether to make their complaint to a primary care provider or the commissioning body. If the complaint is made to a GP or practice but the complainant is unhappy with the response, the procedure does not allow them to refer it to the commissioning body for review. If they want to pursue the complaint further, they can refer it to the Ombudsman.

If a responsible body receives a complaint that it considers should have been made to a different body, it can send the complaint to the other body for a response. The other body can handle the complaint as though it had received it first. It must acknowledge the complaint within three working days.

Complaints excluded from the procedure

- Complaints made by one NHS body against another.
- Complaints made by employees in relation to their work for an NHS body.
- Oral complaints that were resolved to the complainant's satisfaction within one working day.
- Complaints about the same subject matter as a complaint that has previously been made and resolved.
- Complaints alleging failure by a public body to comply with a request for information under the Freedom of Information Act 2000.
- Complaints about care solely provided by the independent healthcare sector, which has its own procedures.

If a responsible body considers that it is not required to consider a complaint, it must inform the complainant in writing of the decision and the reasons for it.

The complainant

Complainants should normally be current or former patients or their nominated representatives, such as a solicitor or the patient's elected representative, for example an MP. Patients over the age of 16 whose mental capacity is unimpaired should normally complain themselves. Children under the age of 16 who are able to do so may also make their own complaint.

The investigation of a complaint does not remove the need to respect a patient's right to confidentiality. If someone other than the patient makes a complaint, you will need to make sure they have authority to do so. If patients lack capacity to make decisions for themselves, the representative must be able to demonstrate sufficient interest in the patient's welfare and be an appropriate person to act on their behalf. This could be a partner, relative or someone appointed under the Mental Capacity Act 2005 with lasting power of attorney. If the power of attorney covers the

patient's welfare, this could include making complaints at a time when he or she lacks capacity.

Appropriate person

In certain circumstances, the regulations require the responsible body to satisfy itself that a representative is an appropriate person to make a complaint. For example, if the complaint is about a child, the responsible body must satisfy itself that there are reasonable grounds for the representative to make the complaint, and not the child concerned. If the patient is a child or a patient who lacks capacity, the responsible body must also be satisfied that the representative is acting in the best interests of the person on whose behalf the complaint is made.

If the responsible body is not satisfied that the representative is appropriate, it must not consider the complaint, giving the representative reasons for the decision in writing.

Time limits

A complaint must be made within 12 months from the date on which the matter occurred, or from when the complainant first knew about the matter. The regulations state that a responsible body should consider a complaint made outside that time limit if the complainant has good reason for doing so and, despite the delay, it is still possible to investigate the complaint fairly and effectively.

The MDU generally advises members to consider complaints made outside the time limit if it is possible to investigate them. If there are any difficulties, for example if relevant information is no longer available, you may wish to discuss this with the complainant as soon as possible so they know what steps, if any, can reasonably be taken to investigate their complaint.

Your response to a complaint must be timely and appropriate. Although the regulations do not set timescales for the procedure itself, they do state that if a response is not provided within six

months from the date of the complaint, or a later date agreed with the complainant, the complaints manager has to write to the complainant to explain the delay. The complaints manager must ensure the complainant receives a response as soon as possible.

Saying sorry

In the MDU's experience patients who complain often want one or more of the following:

- a thorough investigation and explanation of what happened and why
- assurance it won't happen again
- an apology – a sincere expression of regret.

This is acknowledged in the GMCs' guidance in paragraph 31 of *Good Medical Practice*:

'Patients who complain about the care or treatment they have received have a right to expect a prompt, open, constructive and honest response including an explanation and, if appropriate, an apology. You must not allow a patient's complaint to affect adversely the care or treatment you provide or arrange.'

The MDU advises members to apologise where appropriate. If something goes wrong, patients should receive a prompt, open, sympathetic and above all truthful account of what has happened. Any patient who has had the misfortune to suffer through an error of whatever nature should receive a full explanation and a genuine apology. We encourage members to adopt this approach. There are no legal concerns about apologising: it is quite different from admitting liability.

Disciplinary and criminal procedures

The complaints procedure is a means for addressing patient complaints, not disciplining healthcare professionals. But, inevitably, some complaints will identify matters that suggest a need for disciplinary investigation, either locally or at the GMC or other regulatory body.

Where disciplinary action is contemplated against a doctor who is the subject of a complaint, the complaints and disciplinary processes should be treated entirely separately. Disciplinary procedures are confidential between an employer and employee, or a contracting body and a contractor, and complainants have no right to know the details or the outcome of such procedures.

It may be possible for investigation of the complaint to continue at the same time as the disciplinary investigation, but if there is any question that the rights of the doctor under investigation may be prejudiced, please seek advice from the MDU.

In very rare cases a complaint might relate to a matter under police investigation. Given that investigation of the complaint might prejudice the police investigation and possibly the rights of the doctor, members are advised to contact the MDU for advice.

Negligence claims

The complaint process should be fully concluded even if the complainant indicates they intend to claim for clinical negligence. It is possible that the full response to the complaint will help the complainant and their legal adviser decide if there has been negligence or not.

Please contact the MDU if you are informed of a claim at the same time as you are involved in an investigation of a complaint.

How the MDU can help?

The MDU has extensive experience of assisting members with complaints.

We can help with both stages of the complaints procedure, from drafting an initial response to supporting you if the complaint is referred to the Ombudsman. As always, if you need our assistance, please call the MDU's 24-hour advisory helpline to speak to one of our medico-legal advisers.

Principles of Good Complaint Handling

The Parliamentary and Health Service Ombudsman's booklet *Principles of Good Complaint Handling* (November 2008, updated February 2009) sets out six key principles that the Ombudsman considers are central to good complaints handling. The Ombudsman expects to see these principles applied to complaints handling by all public bodies, including NHS bodies and organisations providing NHS services.

The Ombudsman makes it clear that the principles in the booklet set out the approach the Ombudsman's office will take when considering complaints referred to it.

Much of the Ombudsman's advice about complaints handling is similar to the advice the MDU has given to members over the years, including in this series of leaflets.

The principles are:

1. Getting it right.
 2. Being customer focused.
 3. Being open and accountable.
 4. Acting fairly and proportionately.
 5. Putting things right.
 6. Seeking continuous improvement.
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If you are responding to a complaint, you may wish to look at the Ombudsman's booklet in conjunction with the MDU's guidance. It can be found in the publications section at ombudsman.org.uk

For individual medico-legal advice:

24-hour advisory helpline

T **0800 716 646**

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1.2

Stage one - local resolution

Local resolution is governed by the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009.

This guidance applies to England. There are some differences in the way the NHS complaints procedure operates elsewhere in the UK. Separate guides are available for Scotland, Wales and Northern Ireland.

Complaints procedure requirements

The regulations require all responsible bodies to make arrangements for dealing with complaints to ensure they are:

- dealt with efficiently; and
- properly investigated.

Responsible bodies must also:

- treat complainants with respect and courtesy;
- help complainants understand the complaints procedure, or advise them where they can get help;
- respond to the complaint appropriately and within a reasonable time;
- tell the complainant the outcome of the investigation into their complaint; and
- take action, if necessary, in the light of the outcome of the complaint.

Responsible bodies

All NHS bodies and organisations must have a well-publicised complaints procedure. This includes, for example, hospital trusts, commissioning bodies, mental health trusts, foundation trusts, primary care providers and independent

providers which have made arrangements to provide services to the NHS.

All these bodies are referred to in the regulations as 'responsible bodies' and all staff working in them need to understand the procedure and know how to handle and respond to complaints and concerns. When thinking about introducing new services or redesigning existing care pathways, the MDU suggests that complaints management is integrated into this design.

Responsible person

In each body or organization, there must be clear leadership and accountability for responding to complaints. Responsible bodies are required to have a 'responsible person' who will ensure the organisation complies with the complaints procedure and that actions, identified as necessary during the investigation of a complaint, are taken. Within NHS bodies, the responsible person will be the chief executive. In other organisations it will be the chief executive or another senior person, for example a senior partner in primary care.

The responsible person, or someone authorised to act on their behalf, must sign all complaints responses.

Learning and improvement

All responsible bodies are required to have formal mechanisms in place to allow complaints to drive learning and improvement. This might be a department dedicated to clinical governance or risk management in a hospital, or a GP practice's formal arrangements to review and analyse all complaints.

All responsible bodies must have a complaints manager who is readily accessible to the public. Complaints managers will usually be employed by the responsible body, but that is not always the case. They could, for example, work for another responsible body. The complaints manager will deal with all complaints and may, if authorised, sign on behalf of the responsible person.

Complaints involving more than one organisation

Where a complaint relates to care provided by more than one responsible body, for example primary and secondary care, or health and social care organisations, the regulations include a 'duty to co-operate'. Responsible bodies are required to work together, which may include providing information to each other as appropriate, and attending joint meetings.

Together, the responsible bodies must provide a single response, agreed by each body as part of the final response. They must also co-ordinate the way in which the response is communicated to the complainant. For practical reasons it may be helpful if the bodies decide between them which one will take the lead in providing the final response and liaising with the complainant.

Local investigation and resolution

The complaints procedure places great emphasis on resolving complaints as quickly as possible. All complaints must be acknowledged within three working days of receipt. The only exception is

oral complaints that can be resolved satisfactorily within one working day.

The regulations require responsible bodies to publicise their arrangements for responding to complaints and explain how patients can find out more. In primary care, this is usually done through posters, leaflets and on the practice website, and a nominated person, such as the complaints manager, could provide further information.

Complainants can choose at the outset to complain either to the organisation or individual providing the service (GP or practice, hospital or foundation trust, for example), or to the commissioning body. However, if the complaint is made to a GP or practice and the complainant is unhappy with the response, the procedure does not allow the complainant to refer it to the commissioning body for review. If the complainant wants to pursue it, the complaint can be referred to the Ombudsman.

The MDU strongly supports this principle of local resolution. Often speed, sympathy and a willingness to listen are all that are necessary to resolve concerns.

Oral complaints resolved within 24-hours

It may be possible to resolve simple oral complaints within 24 hours and front-line staff should be encouraged to do so.

If it is possible to resolve a complaint in this way and the patient is happy with the response, the regulations do not require a formal written response. You may confirm the discussion in writing if you wish. You should make a note of the complaint and your response to it and keep this on a complaint file which should be filed separately from clinical records.

GP practices do not need to include such complaints in their monitoring of complaints, nor in their annual report on complaints, as they do not fall within the regulations. However, this does not prevent you considering them under your clinical governance procedures.

All other complaints

Complaints may be made orally, in writing or electronically.

Oral complaints can often be resolved by the next working day but if they can't, they fall within the regulations and must be treated in the same way as all other complaints, which require a full written response. In addition, with oral complaints you will need to make a written record of the complaint and give the complainant a copy of it.

Annual report of complaints

Primary care providers must prepare an annual report of complaints and send a copy to the commissioning body.

The annual report must contain

- numbers of complaints received
- numbers of complaints that were considered well-founded
- the number of complaints referred to the Ombudsman.

It should also contain

- a summary of the subject matter of complaints. This should exclude confidential information and be confined to details of the nature of the complaint
- any matters of general importance arising from the complaints (such as lessons learnt) or from the way in which they were handled
- improvements to services as a result of the complaint.

If you are the subject of the complaint

If you are the subject of the complaint, we advise you to ask the complaints manager to keep you involved in preparing the response to ensure it accurately reflects your involvement in the patient's care. It is important that you are involved so that you can try to preserve your professional relationship with the patient. You will also need to discuss complaints as part of your appraisal process, and you will need to provide information about complaints for revalidation.

The Ombudsman's booklet *Principles of Good Complaint Handling* makes it clear that organisations should: 'Act fairly towards staff as well as customers. This means ensuring members of staff know they have been complained about and, where appropriate, have an opportunity to respond'.

This applies whether a complaint is made to your employing hospital trust, your practice or even direct to the commissioning body. If you think that a complaint response does not accurately report the facts or that it misrepresents your role, you will need to make this clear and ask for it to be amended. In such circumstances, you are advised to contact the MDU for advice.

How to respond to complaints

Most doctors will be involved in a complaint at some point in their career. In the case of hospital doctors, you are unlikely to be writing the response to the patient, but you will need to provide a written or oral account of what happened to help the complaints manager write a response. You may also be asked to attend meetings to discuss the complaint, including meetings with the complainant.

GPs have contractual responsibilities to ensure that appropriate arrangements are in place to manage complaints effectively and might themselves take on the role of complaints manager at the practice.

Even if you are not responsible for running your organisation's complaints procedure, you may wish to bear the following principles in mind when responding to a complaint.

- Ensure that all complaints are investigated thoroughly as you will only be able to respond effectively once all the relevant facts are established. You will probably need to speak to all the staff involved and/or obtain their written accounts for more complex complaints.
- Have a clear investigation plan for each complaint. This will normally include an estimate of the timescales reasonably required to investigate and

respond. It should be clear from the plan what the complaint is about and what the complainant wants as an outcome.

- You are expected to handle complaints in a flexible way, taking account of the seriousness of the concerns raised, the lessons learnt by the organisation and ensuring the response is balanced and proportionate.
 - Receiving any complaint can be distressing and it can be difficult to be entirely objective if you are subject to a complaint. Where possible, complaints should be reviewed by someone directly involved in the circumstances leading up to the complaint but who is not the subject of the complaint itself.
 - Provide a prompt and complete written response to the complaint. Where the issues are complex or there will be unavoidable delay in responding to the complaint, keep the complainant informed of progress to ensure they understand the reasons for any delay. The regulations require you to inform complainants and to provide reasons if there is a delay of more than six months in providing a response.
 - Give an open and honest response. Acknowledge mistakes and apologise where appropriate. Ensure that the response to a particular complaint is proportionate to the issue.
 - Have a system in place for reviewing and learning from complaints. You are required to inform the complainant of any action that has been taken as a result of a complaint to prevent a recurrence of the same problem, and this can help to resolve the complaint.
- It was received and provide the complainant with a written record of the complaint, even if it was made verbally or electronically.
 - You should offer the complainant the opportunity to discuss an agreed approach to the complaint, either by telephone or in person. You should then write to confirm the details of how the complaint will be handled, and when the complainant can expect a response.
 - If you know there may be a delay in responding to the complaint, for example if key staff are away or if the complaint is complex, contact the complainant to explain the reasons for the delay.
 - If the complainant does not take up the offer to discuss the complaint, you should still tell them how you intend to handle the complaint and we suggest you put all this in writing.
 - There is a variety of support services to assist patients to make complaints (such as the NHS customer service team or Patient Advice and Liaison Service). You may wish to draw their attention to these. Information about support services is available on websites such as pals.nhs.uk and nhschoices.nhs.uk

Investigation

You are required to complete a thorough investigation and to keep the complainant informed about the progress of the investigation.

In most cases, you will be able to provide a full, detailed and positive response as soon as possible. If you cannot, you will need to inform the complainant and explain the reasons.

The complaints regulations require the response to be signed off by the organisation's responsible person (often the chief executive), or someone with delegated authority. This demonstrates accountability and responsibility for the proper provision of a complaints procedure and for ensuring that the organisation addresses and

learns from any concerns identified in the complaint.

The responsible person will usually be someone more senior in the organisation than the complaints manager. The regulations allow the same person to act as responsible person and complaints manager, but we suggest that the roles are separate if possible.

Sign-off should be a valuable opportunity to demonstrate to the patient that the complaint has been taken seriously by the whole organisation and that it has taken steps to ensure the same problem does not occur again. Without being prescriptive, NHS bodies and provider organisations are encouraged to consider a range of measures to ensure that the complainant is satisfied by the initial response. This could include seeking independent clinical advice when investigating complex clinical cases, or seeking assistance from a conciliation service where there are differences of opinion that are difficult to reconcile.

Compensation

The MDU's view is that compensation should only be paid if negligence has been proven and that it has no part in the complaints procedure. We suggest you seek our advice if the question of any payment to the complainant arises.

Holding a meeting

It can be helpful to offer the complainant a meeting as part of your investigation, even if you have already met to agree the approach to the complaint.

Agree the areas for discussion in advance. If you contact the complainant first by phone, make sure to follow up in writing with a proposed agenda.

As part of the discussion you should agree who will attend the meeting. You might wish to encourage the complainant to bring a friend or person from an advisory/advocacy service. If the complainant needs a translator, seek advice from the commissioning body or trust about what services are available.

Practical steps

Acknowledgement and planning

- Complaints must be acknowledged within three working days (except for oral complaints that can be satisfactorily resolved in one working day).
- The complaints manager must make a written record of the date

You will need to let the complainant know who else will be there. The complaints manager should normally attend, and the person(s) who is the subject of the complaint. If you think it appropriate for an independent clinical adviser to attend, you will need to get the complainant's permission. Some meetings can occasionally benefit from the presence of a conciliator and, again, the complainant will need to agree.

In most circumstances it would be appropriate to hold the meeting in the practice or hospital, but there may be rare occasions when it would be better to find a neutral venue.

The complaints manager would normally chair the meeting and ensure it is conducted fairly and not in an adversarial way. Make sure you allow plenty of time.

The purpose of the meeting could be to gather information to help you respond to the complaint. It may be possible to resolve concerns there and then, but if you can't, it should provide a forum to help you to discuss and understand the issues better.

Make sure the meeting is fully minuted and that all parties agree the minutes afterwards.

The outcome of the meeting should be fed into the response and any learning points that arise from investigation of the complaint.

If the complainant remains dissatisfied after you have responded to the complaint, you may wish to offer a further meeting to explore the patient's remaining concerns. This may help to resolve the matter locally. Again, it may be helpful for a conciliator to be present.

Response

- For advice on what you should cover in a written response see *Medico-legal Guide 1.3 – Writing a response*. The MDU can help by checking draft responses.
- Apologise where appropriate. A genuine and sincere apology is not an admission of liability and can often defuse a complaint.
- The regulations require the response to contain an explanation of how the complaint was investigated and details of conclusions reached. It should identify any matters that need remedial action and explain whether such action is planned or has already taken place.
- The report should explain the complainant's right to take the matter to the Ombudsman within 12 months if dissatisfied with the response.

Monitoring and reporting

- If you are in primary care, you are expected to consider the complaint as part of your practice's clinical governance procedures. This will often involve formal risk assessment. The practice will need to be able to demonstrate that it has learnt lessons from complaints and, if appropriate, adopted changes to procedures aimed at improving patient care and safety. In other NHS bodies we expect that a review of the circumstances of the complaint will take place in accordance with that body's clinical governance procedures and any steps necessary to improve patient care will be taken.
- The regulations require the responsible body to monitor complaints and to provide an annual report on them, which should be available on request,

and should also be sent to the commissioning body by primary care providers. Responsible bodies need to keep a record of complaints (subject matter and outcome) and to record any lessons that have been learnt from complaints. The annual reports should give details of the complaints received and those which the body decided were well-founded. It should also contain details of complaints referred to the Ombudsman and any lessons learnt, particularly if there are any patterns of complaints that developed in the reporting period.

Record keeping

Make sure you record the action taken in responding to a complaint. This should include all communication with the complainant in addition to the letter of complaint and the final response. We also advise that oral complaints that are resolved within 24 hours should be recorded in writing. The record should include the name of the complainant, the subject matter and the date on which it was made. You are advised to keep complaints records separate from patients' records.

Keeping careful records will assist in management of the complaint and should also provide evidence of effective complaints handling, should the complaint be subject to review by the Ombudsman.

If you would like help with any part of the local resolution process including advice on drafting a response, do not hesitate to contact the MDU.

For individual medico-legal advice:

24-hour advisory helpline

T 0800 716 646

E advisory@themdu.com

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1.3

Writing a response

Most doctors will be involved in complaints investigations and clinical governance procedures as a routine part of their professional practice. Even if you are not the subject of a complaint, you are likely to have a professional interest in the procedure. You may also be involved in investigating and responding to complaints, or providing independent clinical advice, or in considering complaints as part of the appraisal or revalidation processes.

General principles

Doctors who receive a formal complaint are advised to discuss their response with the practice or trust complaints manager.

In secondary care, a written response may be sent from the chief executive, or from a responsible person on the chief executive's behalf.

If a complaint is submitted to the primary care organisation rather than to a GP practice, the doctor(s) involved should be fully consulted and have the opportunity to provide statements of their involvement in the matter. A primary care organisation might also seek independent expert advice on the clinical aspects of the complaint. In all cases you should ask to be involved in the response to the complaint and your comments should be fairly represented. If you do not think this is the case, you are advised to contact the MDU.

Responding to the complaint

The tone of your response needs to be professional, measured and sympathetic. You also need to take into account the following points.

Patient confidentiality

If a complaint is from the patient's representative, you must ensure the patient has given consent before you can disclose clinical information to a third party. It can be a complex matter, particularly if the patient is a child or an adult without capacity so do not hesitate to seek expert advice from the MDU on this issue.

Timescale

You are required to investigate and respond to a complaint promptly. If there is likely to be a delay in forwarding a comprehensive response, you or the complaints manager will need to explain the reasons for this in advance to the complainant and ensure the complainant is kept informed of progress.

Typed response

Type the response on headed paper if possible, or type your full postal address and telephone number at work.

Identify yourself

State your registered name and GMC reference number, and describe your relationship with the patient (eg GP, consultant, registrar, locum). If the complaint involved several doctors, you should make it clear how you were involved in the patient's care.

Addressing the complaint

The following points apply whether you are responding to the complaint as a complaints manager, or if you are a doctor in a senior position who is not the subject of the complaint. If you are the responsible person you will need to sign off on the response and take responsibility for ensuring the practice learns from it.

The response should be capable of standing on its own

Do not assume the reader has any background knowledge of the case. Several people may read your response apart from the complainant, such as the complainant's relatives and advisers.

Give a detailed report of the part you played, including a factual chronology of events as you saw them

Describe each and every consultation or telephone contact, referring to the clinical notes if you need to. Include relevant medical history, your working diagnosis or your differential diagnoses. State whether you saw the patient alone or accompanied by another person and give the name and status of the other person.

Specify which details of your account are based on memory, contemporaneous notes or usual or normal practice

No one expects you to make copious clinical notes of every last detail, nor will you be expected to remember every detail of a consultation that at the time appeared to be routine. It is acceptable to quote from memory, but if you cannot recall the details of a case, then state what your 'usual' or 'normal' practice would have been in the circumstances of the case.

Say what you found, and what you looked for but failed to find

If your evidence is challenged, it may be on the basis that you failed to put yourself in a position to make an adequate assessment. Your response at the outset should clearly describe the full extent of the patient's history and your examination.

Respond to every concern

Respond to each and every concern raised by the complainant as far as possible, including your opinion of what happened. Sometimes you can combine this with the chronology of events, but often it is better to deal with one and then the other. Many complaints arise from a misunderstanding, and a detailed description of the pathophysiology involved can be helpful. In some cases this might include references to journal articles or standard medical textbooks, though care should be taken to do this in a way that the patient or complainant will understand.

Complaints involving more than one clinician

If a complaint involves more than one clinician, or both social care and healthcare, it is hardly ever appropriate to express an opinion on the acts and omissions of a colleague, unless they are under your direct supervision. The procedure requires a joint response and this should include a full account from each clinician or care provider of their part in the matter.

Where several clinicians are involved, each should comment on the parts of the case they were involved with. It is usually best to combine the comments into a single response for the complainant. Where this is not possible, the complaints manager's response should be written so as to help the complainant understand how the individual accounts relate to the complaint.

Say sorry where appropriate

No doctor can get it right every time. Medicine is a life-long learning experience and every doctor can learn something from every complaint. Complainants often simply want an apology and an assurance that what happened to them will not happen to anyone else. Saying sorry is not an admission of liability. This is recognised in section 2 of the Compensation Act 2006 which says:

'An apology, an offer of treatment or other redress, shall not of itself amount to an admission of negligence or breach of statutory duty.'

Enclose a photocopy of the contemporaneous clinical notes

If the handwriting is not clear, it might be necessary to provide a word-for-word, line-by-line, typewritten transcript, with abbreviations written out in full.

Do not alter the notes

This may sound obvious, but it can lead to more serious trouble than the original complaint. If the patient records have been amended because there was a mistake in the original, this should be clearly marked, dated and legibly signed. Similar procedures should be followed for electronic records, where alterations can be seen on an audit trail.

Analyse complaints

The practice or hospital is expected to analyse each complaint in order to learn from it, identify concerns that need to be addressed and to decide what action, if any, needs to be taken. The response should include details of what you have done, or intend to do, to remedy the concerns you identified and ensure the problem is not repeated.

Style

Avoid jargon or medical abbreviations

Many lay people understand something like BP, but would they know SOB (shortness of breath), for example? All medical terms are best written in full. If you mention a drug, give an idea of what type of drug it is (antidepressant, antihypertensive, and so on). Give the full generic name, dosage and route of administration as well.

Write in the first person when describing your part in the proceedings

The reader should have a good idea who did what, why, when, to whom, and how you know this occurred.

Example

Rather than 'The patient was examined again later in the day', it is far more helpful to say, 'I asked my registrar, Dr Jim B, to examine the patient and the notes show that he did so.'

You may wish to include an offer to meet the patient to discuss the contents of the report and to answer any questions that may arise from it.

Response sign-off

Finally, the response should be signed off by the responsible person within the organisation, or someone authorised to do so on their behalf. The response letter should:

- answer the complaint
- explain how the complaint has been investigated
- detail action the organisation intends to take as a consequence of the complaint
- give clear advice to the complainant that they may take the case to the Ombudsman if they are still dissatisfied.

A good complaint response takes time and careful thought. It is worth the effort.

Remember, most complaints are resolved successfully at the first stage. The prime purpose of the complaints procedure is to address the concerns of the complainant in order to resolve the complaint and to help you identify changes that may be needed to improve your practice.

A thorough and detailed first response should help to minimise the risk of further correspondence from the complainant asking for clarification and further medico-legal complications.

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Medico-legal guide to The NHS complaints procedure

1.4

Stage two - Parliamentary and Health Service Ombudsman

Please note that this guidance applies to England. There are some differences in the way the NHS complaints procedure operates elsewhere in the UK. Separate guides are available for Scotland, Wales and Northern Ireland.

Complainants who are not satisfied with the response they receive after the first stage of the procedure can refer their complaint to the Parliamentary and Health Service Ombudsman for investigation. The Ombudsman can also consider complaints brought by the person or organisation who is the subject of a complaint, and grievances about the administration of the complaints procedure itself.

The complaint must be referred to the Ombudsman within 12 months of when the complainant became aware of their concerns. The Ombudsman has discretion to investigate complaints submitted outside this time frame.

Screening process

The Ombudsman considers each case on its merits and has discretion whether or not to investigate a complaint.

The Ombudsman will not consider a complaint about a decision simply because the complainant disagrees with the outcome, but will require evidence that the decision was taken wrongly. In particular, statutory provisions require the Ombudsman to consider complaints only when injustice or hardship arises from failure in a service, or failure to provide a service, or maladministration.

In deciding whether to dismiss or investigate a complaint, the Ombudsman has access to all the paperwork from the local investigation and can compel disclosure of documents, and summon witnesses, if necessary. The Ombudsman's office may also obtain independent professional advice as required, and is assisted by specialist assessors for all matters involving clinical judgment.

If it decides not to investigate a complaint, the Ombudsman's office will write to the complainant setting out the reasons.

You can find more information about the Ombudsman's standards for complaint handling in *Principles of Good Complaint Handling* (see ombudsman.org.uk).

Investigation

If an investigation goes ahead, the practical aspects are usually undertaken by the Ombudsman's representative, who will interview all those involved. A professional 'friend' may accompany a doctor to the interview, but often a detailed discussion with one of the MDU's medico-legal advisers before the meeting is the most useful and appropriate form of assistance.

The Ombudsman will prepare a confidential draft report for the complainant and doctor to check for accuracy. The parties may need professional advice at this stage. If there are errors of fact, the MDU is happy to help doctors prepare a statement asking for corrections. However, a doctor

may not challenge the conclusions the Ombudsman draws from the agreed facts of the case, though representations can sometimes be made in relation to the conclusions and recommendations.

The Ombudsman's final report is sent to all interested parties. It is also sent to the chief executive of the responsible body so they can act on any recommendations. A copy is also sent to the Secretary of State and published, in anonymised form, on the Ombudsman's website.

Recommendations

When an individual or organisation is found to be at fault, the Ombudsman may make recommendations about changes to working practices, so that lessons are learnt.

Although compliance with recommendations cannot be enforced, in practice doctors usually adopt recommendations that have been made.

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Medico-legal guide to The NHS complaints procedure

1.5

Scottish complaints procedure

The Patients Rights (Scotland) Act 2011 came into force in April 2012. The Act aims to improve patients' experience of the NHS, and to support people to become more involved in healthcare. Central to the Act is the right to give feedback and raise concerns or complaints, and that healthcare providers should monitor and learn from the feedback and complaints that they receive.¹

GPs need to consider the complaints procedure in conjunction with the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004 (as amended) which sets out their obligations to respond to complaints at paragraph 82 of Schedule 5. Guidance on the procedures, *Can I Help You?* (updated 2012) is available from sehd.scot.nhs.uk/mels/CEL2012_08.pdf

One of the principles of the complaints procedure is to ensure there are clear lines of accountability for complaints management and that the procedure is integrated into the organisation's clinical governance and quality improvement arrangements. The Act directs that each healthcare provider must have an appointed feedback and complaints officer, to ensure compliance with the complaints process. You are required to have a clear and well publicised complaints policy and front-line staff should be trained to deal appropriately with feedback. You are also advised to inform complainants of any action that has been taken as a result of a complaint to prevent a recurrence of the same problem; sometimes this can help to resolve the complaint.

The procedure has two stages.

- Stage 1 - **Local resolution**
- Stage 2 - patients who remain dissatisfied after local resolution may choose to complain direct to the **Scottish Public Services Ombudsman**.

Who can complain?

A complaint may be made by a patient or former patient, on behalf of a patient or by anyone who is affected, or is likely to be affected, by an act or omission of the NHS.

A complaint can be made on behalf of a child by either parent or, in their absence, by a guardian or person who has care of the child. If a child is in care, the local authority may complain.

If the patient is an adult who is incapable of making a complaint, a relative or 'other adult person who has an interest in their welfare' may complain. In particular, you will need to consider the provisions of the Adults with Incapacity (Scotland) Act 2000 and seek the views of a welfare attorney (if one has been appointed). For deceased patients, a complaint may be made by a relative or other adult who had an interest in the patient's welfare.

Bear in mind the importance of patient confidentiality – especially if the patient is not making the complaint, is a child or lacks capacity. For patients who are deceased, the duty of confidentiality extends after death. If in any doubt, members should seek advice from the MDU.

When the patient feels uncomfortable in complaining directly to the health service provider, the complaint can be made directly to the appropriate NHS body, for example the health board. The health board and the provider should agree how the matter will be dealt with and inform the complainant.

Time limits

The period for making a complaint against an NHS body or GP is:

- six months from the event which is the subject of the complaint, or
- six months from the patient becoming aware of the reason for the complaint provided this is not later than 12 months after the event.

The directions and GMS contract regulations make it clear that these guidelines must be operated flexibly. Complaints should be accepted where it would be unreasonable for the patient to have complained earlier and it is still possible to investigate the facts. There may be many reasons why patients cannot bring their complaint within these timescales and responding to the complaint, even some time after the event, may help to resolve a patient's concerns. A complainant who believes a doctor's refusal to respond to a complaint is unreasonable may complain to the Ombudsman or the GMC.

Responding to a complaint

Where a complaint is reasonably straightforward and can be resolved to the satisfaction of the complainant within three working days, you do not need to send a written response or carry out an investigation.

Complaints that cannot be resolved in this way must be acknowledged in writing within three working days. The acknowledgement must contain:

- contact details for the feedback and complaints officer

- details of advice and support available, including the Patient Advice and Support Service
- contact details and information on the role of the Ombudsman
- a statement confirming that the complaint will be investigated within 20 working days, or an explanation why there will be a delay.

A timely and full response to the complaint is more likely to resolve it at an early stage. If you cannot respond within the 20 working day time limit, inform the complainant, give reasons for the delay and tell them when they may expect a response.

Where the complaint relates to more than one NHS body, then the organisations are expected to cooperate fully and should coordinate who will take the lead in investigating the complaint. The complainant must be informed of the arrangements. After the investigation, a joint response should be provided to the complainant where possible.

Similarly, if a complaint involves two public sector bodies, for example, the NHS and social care, the local authority and the NHS provider should agree who will take the lead and work together to ensure the complaint is investigated. They should provide a joint response to the complainant. This is the case even though the NHS and social care have two separate complaints handling processes. The complainant should be made aware of this, particularly if it might delay the response.

Investigating a complaint

The feedback and complaints officer, or the person authorised to act on their behalf, must ensure that a fair and impartial investigation is carried out and should be aiming to 'get it right first time'. An investigation may involve face-to-face meetings, obtaining written statements from those involved and the use of alternative dispute resolution services.

The complainants should be kept informed of the progress of the investigation.

Clinicians who are the subject of a complaint should have the opportunity to talk with the person investigating the complaint and be kept informed of progress.

For advice on writing a response, see our Medico-legal guide 1.3 *Writing a response*.

Alternative dispute resolution (conciliation or mediation)

Not all complaints are easily resolved through written communication. Mediation or conciliation can be helpful in resolving complaints and preventing them going further.

Both parties must agree to conciliation. The conciliator may adopt whatever procedures they consider appropriate. If a primary care service provider requests the help of an alternative resolution service, the health board is required to provide this service.

Recording complaints

Healthcare providers have a duty to supply information about complaints to the health board every quarter. The report should detail the number of complaints received, whether the response was provided within the 20-day timescale, the key themes and any action taken to improve services.

The Ombudsman

The Scottish Public Services Ombudsman Act 2002 set up a single office to deal with complaints about a number of bodies including the Scottish Executive and the health service (see scottishombudsman.org.uk).

The Ombudsman's office usually only considers complaints that have been addressed fully by the complaints procedures of the body concerned, though it has the power to waive this requirement.

Complaints made more than 12 months after the complainant first knew of the

matter they are complaining about must not be considered unless the Ombudsman is satisfied that there are special circumstances (s10 of the 2002 Act).

Possible outcomes from an Ombudsman investigation

- an apology or explanation
- practical action to mitigate any injustice
- reimbursement of any actual losses/ costs necessarily incurred
- a modest payment in recognition of time and trouble
- exceptionally, asking the authority complained about to propose appropriate action
- recommending changes to procedure or policy
- recommending staff guidance or training.

The MDU's view is that compensation should only be paid if negligence has been proven and that it has no part in the complaints procedure. We suggest you seek our advice when the question of any payment to the complainant might arise.

How the MDU can help

The MDU has extensive experience in assisting members with complaints and we are happy to help at any stage of the complaints procedure. Please call the MDU's 24-hour advisory helpline.

Reference

1. *Scottish Government, 28th March 2012 CEL 8(2012), Guidance on Handling and Learning from Feedback, Comments, Concerns and Complaints about NHS Healthcare Services*

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Medico-legal guide to The NHS complaints procedure

1.6

Welsh complaints procedure

The National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011 govern complaints handling in Wales.

The regulations use the term 'concern' which includes both expressions of dissatisfaction or complaints from patients and reports of adverse incidents from staff.

The regulations require NHS hospitals and local health boards to consider whether it is appropriate to offer patients financial redress of up to £25,000 where there has been negligence. However, the redress requirement does not apply to primary care providers or independent providers of care to NHS patients.

The regulations apply to Welsh NHS bodies, including local health boards and primary care providers in Wales. Independent providers of treatment to NHS patients are covered by these regulations but are excluded from the redress requirements. If NHS patients are referred by a Welsh NHS body to an independent provider for NHS treatment it is important to ask the contractor to make clear what indemnity arrangements will apply if something goes wrong.

Who can notify a concern?

Concerns can be notified by anyone who has used NHS services or facilities. A relative or friend can notify a concern on behalf of a patient. However, never assume that someone complaining on behalf of a patient has authority to do so.

The investigation of a concern does not remove the need to respect a patient's right to confidentiality.

Adult patients whose mental capacity is unimpaired should usually notify a concern themselves, although they can appoint a suitable representative to act for them. Children may need assistance in pursuing concerns they raise themselves.

If the patient lacks capacity, the Mental Capacity Act 2005 provides for a person to be given lasting powers of attorney and if this extends to welfare decisions, that person would be able to notify a concern on behalf of someone lacking capacity. If the person notifying the concern is not the welfare attorney or the patient's next of kin, the patient's relatives need to be consulted, and their views considered. If the next of kin refuse to authorise an investigation, members are advised to call the MDU.

If a patient has died, the GP or hospital should proceed with an investigation.

The procedure in Wales has two stages:

Stage 1 **Local resolution** – by the hospital or practice

Stage 2 **Public Services Ombudsman for Wales**

The MDU has extensive experience in assisting with complaints, and members can contact us at any stage of the procedure.

Time limits

The period for notifying a concern is:

- 12 months from the event which is the subject of the concern, or
- 12 months from the patient becoming aware of the event they are complaining about, provided this is not later than 12 months after the event.

These guidelines should be operated flexibly. Notifications of a concern should be accepted where it would be unreasonable for the patient to have complained earlier and it is still possible to investigate the facts. There may be many reasons why patients cannot raise a concern within these timescales and we advise members to deal with concerns, even some time after the event, in order to help the patient to resolve them.

Local resolution

Please note: the regulations do not apply to oral complaints that are resolved locally within one working day.

Concerns must first be addressed locally by the primary care provider or hospital. If the concerns involve more than one responsible body, Part 4 of the regulations requires that the organisations co-operate and provide a co-ordinated response to the issues raised.

The MDU strongly supports the principle of local resolution. Often speed, sympathy and a willingness to listen and explain are all that is necessary to resolve concerns.

Hospitals and practices should appoint a **responsible officer**, normally the chief executive or a GP partner, to oversee arrangements for dealing with concerns.

When an incident reported by a member of staff is being investigated, the hospital or practice is expected to involve the patient. They are not obliged to do so if it would not be in the patient's interests but it is difficult to think of circumstances in which this would happen because the GMC also expects doctors to tell patients when something goes wrong.

The responsible officer has an obligation under Part 8 of the regulations to ensure that lessons are learnt from concerns.

There must also be a senior investigations manager who is responsible for the investigation and consideration of concerns.

Concerns should be acknowledged within two working days. If the concern is made orally, a written record setting out the details of the concern must be provided to the complainant. At the same time the organisation must offer to discuss:

- how the investigation will be conducted
- what advocacy services are available
- the likely timescale to complete the investigation and to provide a full response.

If the complainant does not wish to take up the offer to discuss this, these details must be provided in writing.

Local resolution and investigation should be appropriate to the particular concern, and may include:

- inviting the complainant to meet staff, practitioners and clinicians to discuss their concerns further
- arranging an independent opinion on clinical issues
- offering alternative dispute resolution.

Once the investigation is complete, a full response signed by the responsible officer should be sent to the complainant within 30 working days of receipt of the complaint. If it is not possible to complete the investigation within this timescale, complainants should be informed of the reason for the delay and told when they can expect to receive a reply.

For advice on providing a written response to a complaint see our Medico-legal Guide to the NHS complaints procedure 1.3 – *Writing a response*.

All GPs are required by their contract (paragraph 90 of Schedule 6 of the National Health Service (General Medical Services Contracts) (Wales) Regulations

2004, as amended) to have a practice-based system for handling complaints.

Practices must co-operate with the local health board in the investigation of concerns (paragraph 95 of the GMS contract regulations). Concerns about primary care providers can be raised with the local health board, but the board must then determine whether it would be more appropriate for the primary care provider to consider the complaint. This decision and the reasons for it should usually be notified to both the complainant and the primary care provider within five working days.

Redress

Part 6 of the regulations requires Welsh NHS bodies (NHS trusts and local health boards – but not primary care providers or independent providers treating NHS patients) who are investigating a concern to consider whether an offer of redress should be made.

If the Welsh NHS body considers that there may be a qualifying liability, ie that there may have been negligence, it must inform the complainant, provide copies of the records and any expert evidence (which would come from an expert agreed by the complainant) and offer free legal advice. Financial redress of up to £25,000 can be offered.

Part 7 of the regulations requires other NHS bodies, such as NHS trusts in England, Scotland and Northern Ireland, to consider redress when they are involved in a concern made under the Welsh redress regulations. Again, this excludes primary care providers and independent providers of care to NHS patients.

However, because the procedure for redress by Welsh NHS bodies requires them to share expert evidence with the complainant and to provide them with free legal advice, it is possible that primary care providers and private practitioners treating NHS patients within and outside Wales could be contacted by a complainant who is pursuing a case

against them. Please get in touch with the MDU immediately if you are contacted in this way.

Public Services Ombudsman for Wales

Complainants who are still dissatisfied or feel they have suffered hardship or injustice, or who have not yet sought an independent review of their case can write to the Ombudsman and ask for a further investigation. They need to provide reasons why they are unhappy with the outcome of their complaint.

Practitioners and their staff may also complain to the Ombudsman about the local health board or NHS trust if they feel that they have been treated unfairly by the administration of the complaints process.

The Ombudsman will not accept a complaint older than 12 months unless there is a good reason why the complaint could not have been made earlier. The Ombudsman has no power to enforce recommendations or impose sanctions. Where the Ombudsman investigates a complaint, this will be reported in regular reports to the National Assembly of Wales.

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Medico-legal guide to The NHS complaints procedure

1.7

Northern Ireland complaints procedure

There is a common complaints procedure for health and social care in Northern Ireland¹. The procedure has two stages.

- Stage 1 - **Local resolution**
- Stage 2 - referral to the **Northern Ireland Commissioner for Complaints (Ombudsman)**.

For complaints that cover more than one aspect of care, for example, primary care and social care, there is a statutory obligation for the relevant organisations to co-operate to resolve complaints.

One of the key features of the complaints procedure is that it should be seen as an opportunity to learn from matters complained about. Monitoring and reporting requirements are intended to provide information so that commissioners of healthcare and the public will be able to evaluate a health or social care body's complaints record.

Four core principles of the complaints procedure

1. Openness and accessibility– flexibility in how complaints are investigated; support for complainants.
 2. Responsiveness – to provide an appropriate, proportionate response to complaints.
 3. Fairness and independence.
 4. Learning and development.
-

Scope of the complaints procedure

A patient or their representative may make a complaint about the provision of care or services by any health or social care organisation. However, there are several possible causes for complaint that are excluded from the complaints procedure.

Excluded causes for complaint

- Data protection.
- Freedom of information.
- Staff grievances.
- Disciplinary procedures (whether contractual or brought by a regulatory body).
- Independent inquiries – for example, coroner's inquests.

The directions do not prohibit healthcare organisations from responding to complaints about access to a deceased patient's clinical records (to avoid court proceedings under the Access to Health Records (Northern Ireland) Order 1993).

Complaints investigations

The procedure does not allow complaints investigations to run in parallel with disciplinary or regulatory body action brought against the same healthcare professional, but it does allow complaints to be investigated where the subject matter is separate from the disciplinary or regulatory body issues. If this situation arises, a trust chief executive, or senior partner in a GP practice, should write to a complainant indicating the issues that the complaint investigation will cover.

Complaint versus claim

Sometimes patients make their complaint through a solicitor. This does not imply that the patient is taking, or intends to take formal legal action against the healthcare organisation or healthcare professional they are complaining about. The complaint can continue.

But the complaint must cease if a patient indicates that they intend to bring a civil claim for clinical negligence.

Investigations

Some complaints are not investigated, or the investigation stops before it is complete. In some types of cases, the investigation may start or continue when the matter that led to the complaint is concluded. However, this does not apply in all cases – for example, complaints relating to contract of employment or to child protection inquiries are excluded. Please contact the MDU for further advice.

Where a decision is made not to investigate (or stop the investigation of) a complaint, the chief executive (or senior partner) must notify the complainant and any subject of the complaint of that decision. Similarly, they must notify the complainant and subjects of the complaint when a previously excluded complaint is to be investigated. The MDU recommends that you give such notifications in writing.

Making a complaint

A complaint may be defined as ‘an expression of dissatisfaction that requires response’.

The person who makes the complaint may be:

- current or former patients of a healthcare organisation,
- someone acting with the patient's authority, such as someone with parental authority for a child, or an appropriate person for a deceased patient, normally a close relative or executor.
- a competent child may make a complaint in their own right.

A GP may also complain to the health board about the behaviour of a patient. However, this is likely to arise very rarely and we would suggest that you contact the MDU for advice before deciding on what action, if any, to take.

‘Sufficient interest’

A complaints manager, in consultation with a trust chief executive, or practice senior partner, must decide whether a complainant acting for a child, incapable adult or deceased individual has ‘sufficient interest’ in the welfare of that individual and is a suitable person to act as a representative.

If the complaints manager considers that the complainant does not have sufficient interest to make a complaint, then the senior person in the healthcare organisation must write to the complainant to explain the reasons for the decision.

Confidentiality

Normal considerations of confidentiality apply and you should inform complainants how their personal information will be used to investigate concerns they have raised. If a complainant objects to their personal information being used, you should respect their wishes though you should also explain how this will affect the investigation, or indeed whether it will be possible to investigate the complaint at all without consent.

Oral and written complaints

Complaints may be made orally or in writing at the outset. Oral complaints must be recorded in writing (or at least summarised in written form) and a copy of the written record provided to the complainant.

Certain oral complaints may be resolved on the spot by front-line staff, in which case further action under the complaints procedure is unnecessary².

Although complaints may be made to any staff member, the complaints manager is responsible for investigating them. Every health and social care organisation must have a nominated complaints manager.

Complaints about GPs are normally made by patients direct to the practice. However, complainants can make their complaint direct to the health board which must offer the complainant the option of forwarding the complaint to the practice. Alternatively, the health board can act in the role of ‘honest broker’ to facilitate investigation of the concerns raised. The term honest broker is defined in the directions as where the health board's complaints manager acts as an intermediary in an attempt to resolve the complaint. This will normally be best achieved by mediation, which allows individuals to respond, or through conciliation services. The health board must record and monitor complaints that it receives and responds to.

Time limits

Complaints should normally be brought within six months of the date of the incident giving rise to the concerns. Where the complainant became aware of the cause for complaint later this, the period is either six months from the date of knowledge or 12 months from the date of the incident, whichever is shorter.

There is discretion to extend these time limits and the MDU would encourage you to investigate complaints where it is possible to do so (for example, where notes still exist and where it is reasonable in the circumstances to investigate the matter). If it is not possible to extend the time limits we would advise members to explain this to the complainant and to give reasons.

Accountability and publicity

Health and social care trusts and boards must appoint a senior person within their organisation to take responsibility for ensuring that there is a complaints procedure that can adequately investigate and consider complaints. However, that senior person can delegate the responsibility for ensuring that the organisation complies with the complaints regulations and learns lessons from them. This senior person would normally

be a director of the trust or a clinical governance lead in primary care. The complaints procedure emphasises the importance of continuous change and improvement as a result of learning from concerns raised.

Organisations are required to ensure the complaints procedure is given adequate publicity so that patients and their relatives understand the procedure and know how to use it. This may include putting up posters, notices in waiting rooms and practice/trust literature as well as information provided by health boards and trusts.

Duty to co-operate

All relevant organisations must co-operate to ensure that complaints involving more than one health or social care body are investigated thoroughly and that the complainant receives a full and comprehensive response. Such co-operation would include providing information to the person co-ordinating the response, attending meetings and answering questions asked of individual organisations.

Complaints manager

The complaints manager is key to handling complaints. Each health or social care organisation must designate a complaints manager whose function is to acknowledge, investigate, consider and draft responses to complaints, as well as ensuring that relevant matters are considered under the organisation's clinical governance procedures. Complaints managers should be trained appropriately so they can discharge their responsibilities properly.

Practical aspects of responding to complaints

The MDU recommends that you discuss the complaint at the outset with the complainant to ensure both parties are agreed on its scope. This will allow you to draw up an investigation plan and

clarify what the complainant expects the outcome to be. If it seems that you may need to exceed the statutory timescales in order to make a thorough investigation and provide a report, this will also need to be agreed (see below). It is important to keep the complainant informed of relevant developments, particularly if delays are expected.

Complaints must be acknowledged promptly, within two working days in the case of trusts, and three working days in primary care. In primary care, you must provide the health board with a copy of the complaint within three working days, where the complainant permits this to happen. If the complainant refuses permission, the MDU recommends that you notify the health board that you have received a complaint, but that permission to disclose it has been withheld.

When acknowledging a complaint, you must also tell the complainant that they have the right to seek assistance from the Patient and Client Council.

The investigation into the complaint should normally be completed within 20 working days for trusts and 10 working days for GPs. If this is not possible, you need to explain why to the complainant and tell them when they will receive a response.

In joint complaints, there should be appropriate liaison between the various organisations involved, with the complainant's permission. The organisations will need to agree between them what aspects of the complaint each organisation will address.

Investigations must be non-adversarial, fair and consistent. The thoroughness of the investigation should be proportionate to the concerns and sufficient to identify all relevant facts and factors to inform the response, as well as identifying matters that contribute to the process of learning.

The manner of the investigation is largely at the discretion of the complaints manager, but it is advisable to agree the general approach with the complainant at the outset. As a matter of course it is essential to obtain detailed statements from the complainant, the organisation/

person(s) complained about and other relevant witnesses. You may also wish to use external services, such as conciliators, independent medical assessors, and support/advocacy services for the complainant.

The complaints guidance lists eight standards that should be followed in order to maintain consistency in the way in which complaints are dealt with between organisations. These are:

- **Accountability** – in terms of the procedures and ensuring that relevant directions are complied with.
- **Accessibility** – making the complaints procedure open and easily accessed by patients and their representatives.
- **Receiving complaints** – all complaints will be dealt with seriously, with courtesy and in a timely manner and will respect confidentiality.
- **Supporting complainants and staff** – including ensuring that complaints managers are trained, appropriate use is made of conciliation and lay or medical advice, and that complainants have access to advice and support.
- **Investigation of complaints** – these must be conducted promptly, thoroughly, openly, honestly and objectively.
- **Responding to complaints** – timescales will be met, where practicable, and all aspects of the complaint addressed.
- **Monitoring.**
- **Learning.**

It is the MDU's experience that meetings can be an effective method of gathering information and in some cases can greatly assist the resolution of a complaint. You may wish to agree in advance areas of discussion with the complainant as well as who will be present at the meeting. You might also suggest that the complainant seeks support from a friend, or advocacy service. There may be benefit too in using a conciliator. Keep minutes of the meeting and agree them afterwards, and reflect the key points in the final response to the complaint.

When the investigation is complete, the response must accurately reflect the evidence obtained and the findings made. Where medical staff have given a statement, it is vital that they have the opportunity to comment on a draft of their evidence and, ideally, any conclusions and recommendations drawn from it in order to ensure accuracy. The complaints manager and anyone else involved in drafting the response should weigh the findings in order to reach fair, balanced conclusions that can be justified from the evidence obtained. Recommendations should also be fair, achievable, proportionate and take all opportunities to learn lessons from the complaint.

Although it is not unusual to offer the complainant the opportunity to respond to your response, it is important that this does not lead to protracted to-ing and fro-ing if agreement cannot be reached, and the complainant should be notified of the formal ending of local resolution. Complainants who are dissatisfied with the response may take their complaint to the Northern Ireland Commissioner for Complaints (Ombudsman). The Ombudsman will normally only consider complaints where they have been brought within 12 months of the date when the complainant knew they had cause for complaint.

The senior person who is responsible for the organisation should normally sign off of the final report, though this responsibility may be delegated. If the task is delegated it does not remove the overall accountability of the senior person.

Reporting and monitoring arrangements

All health and social care organisations have a duty to monitor complaints to ensure they are being addressed in an effective, efficient manner and that lessons learnt from them are considered and/or adopted, as appropriate. Records of complaints must be kept as well as outcomes and action taken as a result of complaints investigations.

Health boards will produce statistics on those from whom they commission services (notably GPs) on a quarterly basis, as well as a detailed annual report setting out the number, nature and timescales of complaints received and investigated. The report should also state occasions that the board acted as an 'honest broker'.

The reports must be suitably anonymised and must not include information that may identify patients. Annual reports will be publicly available and as a matter of routine will be sent to the relevant Health and Social Services Councils, the Regulation and Quality Improvement Authority (RQIA), the Ombudsman and the DHSSPS. It follows that there is a reciprocal obligation placed on GPs to provide statistical information to health boards to support quarterly and annual reports, as well as notifying the board of new complaints as they emerge. Health trusts have similar monitoring and reporting obligations.

The complaints data will be analysed by the RQIA and disseminated by them from time to time.

Learning

The complaints procedure emphasises that health and social care trusts and boards must ensure that organisational learning flows from the analysis of complaints. The MDU has for many years advised members to consider complaints in accordance with local clinical governance arrangements to encourage and support organisational, regional and national learning. We suggest that practices consider integrating complaints investigation and clinical governance procedures where this is practicable.

For further information see dhsspsni.gov.uk/hsscomplaints.htm

References:

1. *The Health and Social Care Complaints Procedure Directions (Northern Ireland) 2009 (as amended) and Directions to the Health and Social Care Board on Procedures for Dealing with Complaints about Family Health Services Practitioners and Pilot Scheme Providers 2009*
2. *Complaints in health and social care: standards and guidelines for resolution, DHSSPS (April 2009)*

For individual medico-legal advice:

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