



The MDU's guide to the combined NHS and social care complaints procedure

Stage one - local resolution

A new NHS and social care complaints procedure was introduced in England on 1 April 2009. The local resolution stage of the new procedure is governed by regulations: *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 operate elsewhere in the UK - separate guides are available.

Complaints procedure requirements

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

- complaints are dealt with efficiently;
- complaints are properly investigated;
- complainants are treated with respect and courtesy;
- complainants receive so far as is reasonably practical –
 - assistance to enable them to understand the procedure in relation to complaints; or
 - advice on where they may obtain such assistance;
- complainants receive a timely and appropriate response;
- complainants are told the outcome of the investigation of their complaint; and
- action is taken if necessary in the light of the outcome of the complaint.

Responsible bodies

NHS bodies (eg hospital trusts, PCTs, mental health trusts, SHAs and foundation trusts) and organisations providing NHS services (eg primary care providers and independent providers which have made arrangements to provide services to the NHS) are required to have well-publicised complaints procedures. All these bodies are referred to in the regulations as 'responsible bodies' and all staff working in them need to have a good understanding of the procedure and know how to handle and respond to complaints and concerns. When thinking about introducing new services or redesigning existing care pathways, it is suggested that complaints management is integrated into this design.

Clear arrangements need to be in place to provide leadership and a clear line of 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 ensure that actions that have been identified as necessary during the investigation of a complaint are taken. Within the NHS bodies, the responsible person will be the chief executive, and in other organisations the chief executive or another senior person, for example a senior partner in primary care. The responsible person, or someone authorised to act on his or her behalf, must sign all complaints responses.

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 PCT, or might be formal arrangements to review all complaints and analyse them in a GP surgery.

All responsible bodies must have a complaints manager who is readily accessible to the public. Although complaints managers will usually be employed by the responsible body, they do not have to and 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, though the response will be based on the responses provided by the doctor(s) and other healthcare professionals involved.

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 mean that one body will need to provide information to the other, or they may need to attend joint meetings. Responsible bodies are required to co-ordinate a single response, agreed by each body as part of the final response and to co-ordinate the way in which this 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

Other than oral complaints that can be resolved satisfactorily within one working day, the regulations require all complaints to be acknowledged within three working days of receipt. The complaints procedure places great emphasis on resolving complaints as quickly as possible.

The regulations require responsible bodies to inform patients about their arrangements for responding to complaints and to explain how they can find more information. In primary care the procedure could be publicised through posters, leaflets and on the practice website; and a nominated person, such as the complaints manager, could provide further information.

Complainants can choose to complain to the organisation or individual providing the service (GP or practice, hospital or foundation trust, for example), or the body commissioning that service, such as the PCT. However if a complaint made to a GP or the practice is

not resolved satisfactorily at the local level, the procedure does not allow the complainant to refer it to the PCT for review. If the complainant wants to pursue it, the complaint must 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, though that does not prevent you from confirming the discussion in writing if you wish to do so. 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. You do not need to include such complaints in the practice's monitoring of complaints, and they do not need to be included in the 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. Unless oral complaints can be resolved by the next working day, they fall within the regulations and need to 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.

In primary care you need to send the PCT a copy of your annual report on complaints.

The annual report must contain

- numbers of complaints received,
- numbers of complaints that were considered well-founded,
- the number of complaints that were 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
- details of action taken to improve 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 probably 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 PCT. 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 have some involvement with a complaint. 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 verbal account of what happened to assist the complaints manager to write a response. You may also be asked to attend meetings to discuss the complaint and this may include 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 the actual running of your organisation's complaints procedure, there are a few fundamental principles that can aid effective local resolution. 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 6 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 a complaint to prevent a recurrence of the same problem, and this can help to resolve the complaint.

Practical steps

Acknowledgement and planning

- The regulations require complaints (other than oral complaints that can be resolved in one working day) to be acknowledged within three working days.
- The complaints manager must make a written record of the date it was received and needs to provide the complainant with a written record of the complaint, even if it was made verbally or electronically.
- The complainant should be offered the opportunity to discuss an agreed approach to the complaint, either by telephone or in person. The complainant should then be informed how the complaint is to be handled, for example given details of how it is to be investigated, and of the expected timescales for a response. If you expect there will 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.
- We suggest you offer an initial discussion to plan the investigation and then write to confirm the agreed arrangements. If complainants do 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.
- Patients are able to use a variety of support services to assist them to make complaints (such as the NHS customer service team or Patient Advice and Liaison Service) and if they are not using such a service, you may wish to draw their attention to their availability. Information about support services is available on websites such as www.pals.nhs.uk and www.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 and if you are not able to do so, you will need to inform the complainant and explain the reasons.
- The complaints regulations require there to be organisational 'sign-off' from the responsible person

(often the chief executive), or someone with delegated authority, to demonstrate 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. This 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.

- This should be a valuable opportunity to demonstrate to the patient that the complaint has been taken seriously by the whole organisation and that the problems that led to it are unlikely to 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.
- 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.

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.

If you decide to go ahead with a meeting, you will need to 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 will need to 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 and does not have one, seek advice from the PCT or trust about what services are available. 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 at the meeting, but if this is not the case, it should provide a forum to help you to discuss and understand the issues better.

Make sure the meeting is recorded 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 meeting to explore the patient's remaining concerns as this may help to resolve the matter locally. For example, if you have not already done so, it may be helpful to have a conciliator present at such a meeting.

Response

- For advice on what you should cover in a written response see *Medico-legal Guide 1.3 – Writing a response to a complaint*. 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 PCT 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 0800 716 646

Email: advisory@the-mdu.com

Web: www.the-mdu.com

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