PARTICIPANT PACK A

The new NHS complaints procedure

(NB These notes are based on the draft version of the NHS Executive Guidance, the final version of which is due to be circulated early in March 1996. The content of these notes may therefore be subject to minor alteration).

Overview

The new procedure is *intended* to provide a simpler, speedier and more accessible means of making a complaint for those patients who are dissatisfied with NHS treatment or care. The government has attempted to unify the various existing procedures and has placed great emphasis on staff and practitioners dealing with complaints as and when they are made; a process referred to as **Local Resolution**.

Complainants who are dissatisfied with this process can ask for an 'independent' Panel to investigate the facts of the case and issue a report. This stage, referred to as **Independent Review**, will not be available to complainants unless a Panel *Convener* considers it to be appropriate. Complainants can appeal to the Ombudsman about the failure to convene a Panel, or about the outcome of a Panel investigation.

The important role played by CHCs in relation to complaints is acknowledged and welcomed in the new guidance, although there is no reference to additional resources being made available to enable CHCs to continue this increasingly demanding work.

Two of the key objectives of the new procedure are:

- **Common features in the way complaints are handled:** The new procedure applies to Hospital and Community Health Services (HCHS) and Family Health Services (FHS), and also to complaints about purchasing and services provided for NHS patients by the independent sector.

- **Emphasis on early resolution:** The NHS is urged to concentrate its efforts on satisfying complainants early on. Local Resolution is seen as "key to the new procedure being successful".

Some of the main changes of concern to CHCs

- **New time limits in which to make a complaint:** Normally it is expected that a complaint should be made within six months from the incident that caused the problem (or within six months of the date of discovering the problem, provided that this is within twelve months of the incident). The discretion to vary this time limit should be used "flexibly and with sensitivity".

- **New time scales for handling complaints:** Eg, in relation to Family Health Services, an acknowledgement/initial response should normally be made within two working days and an explanation should normally be provided within ten working days. Details of the new time scales can be found in the attached table *Summary of target time scales.*

- **All family practitioners are required to establish and operate practice-based complaints procedures.** These will have to adhere to national criteria, details of which can be found in the step-by-step guide.

- **Separation of disciplinary issues from companies:** Service Committee procedures will no longer be used to investigate complaints, and "the need for disciplinary action will normally only be considered after the handling of a complaint has been concluded". Details of the new Family Health Service disciplinary arrangements are, at the time of writing, unknown.

  With regard to hospital and community health services, "when a decision is made to embark upon a disciplinary investigation, the processing of the complaints procedure does not automatically cease". When complainants ask to be informed of the outcome of a disciplinary inquiry, they *should* receive the "same consideration and level of information as if the matter had been dealt with through the complaints procedure". The guidance, however, does not make this a requirement on Trusts/health authorities but recognises that they may be "reluctant to provide this information" and that a "judgement will need to be made".

- **Mixed sector complaints:**
  What if the complaint is about more than one service or organisation?
  The individual receiving the complaint should notify and cooperate with any other bodies concerned, even where this is a non-NHS body such as a social services department. If the complaint relates to two (or more) NHS bodies, and is pursued to the Independent Review stage, the complainant should be asked if he/she would like the matter to be considered by a single joint Panel.

What if the complaints is about services purchased from the independent sector? The new procedure applies to complaints about purchasing and services provided for NHS patients by the independent sector. Trusts, HAs and GP Fundholders will have to specify in their contracts with independent providers that they must set up and run an equivalent Local Resolution process, and cooperate with the NHS Independent Review procedure.

- **Complaints about purchasing decisions:** Health authorities must have a Local Resolution process for dealing with purchasing complaints, and must be prepared to deal with purchasing complaints at the Independent Review stage. GP Fundholders will be required, as a condition of remaining in the fundholding scheme, to set up and run practice based procedures to deal with purchasing complaints - and to cooperate with the Independent Review process organised on their behalf by their local HA.

- **Extended role for the Health Service Ombudsman:** The Ombudsman will, for the first time, be able to consider complaints about Family Health Services and issues of clinical judgement. He will also consider complaints about the operation of the new complaints system, notably:

  - When a complainant has been refused an Independent Review Panel; and
  - When a complainant is dissatisfied with the outcome of Independent Review.

- **Monitoring of complaints information:** Trust/HA boards must receive quarterly complaints reports in order to monitor handling arrangements, and consider trends and any necessary service improvements. Trusts and HAs must send annual reports on complaints handling to CHCs. National complaints statistics will be collected.

- **Transitional arrangements:** Any complaint first made on or after 1 April 1996, notwithstanding whether the action concerned took place before or after 1 April 1996, should be dealt with under the new complaints procedure.

Specific References to CHCs in the final guidance

Role of CHCs: "Community Health Council staff have a very important role in assisting complainants at each stage of the process in both the hospital and community services and family health services. Trust and HA chief executives, as well as family health service practitioners, should ensure that advice on how to contact the local Community Health Council for assistance in making a complaint is well publicised, and that Community Health Councils are fully aware of the complaints procedures in operation.

"...There can be positive advantages to both sides if a patient/complainant is encouraged to access the support of the Community Health Council ... The role of interpreting and explaining matters to and on behalf of a complainant may well help with the advancement of the process of Local Resolution." (paragraph 5.14)

Complaints about purchasing: "Community Health Councils will continue to assist patients who wish to complain about purchasing decisions and to pursue general issues arising from these complaints with the health authority concerned. The complaints procedure does not affect existing requirements to consult extensively with Community Health Councils and others on policy decisions". (paragraph 4.8)

"... Community Health Councils may wish to raise general concerns about purchasing issues with the HA and they should receive a full explanation of the HA's policy. These are not, however, issues for the new complaints procedure" (paragraph 9.1)

Mixed sector complaints: "Complaints which require Independent Review under the NHS complaints procedures and also involve social services, or those within the remit of the Mental Health Act Commission ... will remain subject to both procedures for the time being. NHS bodies - including Community Health Councils - and local authorities will need to ensure that complainants are fully aware of what matters can be dealt with under which procedure.

"... issues should be covered in NHS and Community Health Council front-line staff training, to enable [the staff] to advise complainants and patients about related social services responsibilities". (paragraph 4.9)

Publicity: Trusts, health authorities and family health services practices, must ensure that advice about how to use the complaints procedure, and the help ... from Community Health Councils ... is well publicised.

"... local information will ... need to be available to cover ... the role of the Community Health Council in giving individuals advice and support on making complaints". (paragraph 5.3)

Local Resolution: "The intention of Local Resolution is that it should be open, fair, flexible and conciliatory. The complainant should be given the opportunity to understand all possible options for pursuing the complaint, and the consequences of following any of these. The Community Health Council ... in advising and supporting the complainant will be invaluable in this process". (paragraph 6.2)

Action by the Convener: "The convener should ensure that complainants are aware of how to seek independent help in drawing up [detailed] statements, if they wish, for example, from Community Health Council staff and patients' advocates". (paragraph 7.5)

The Panel investigation: "when being interviewed by any members of the Panel or the assessors, the complainant and any other person interviewed may be accompanied by a person of their choosing, who may, with the agreement of the chairman, speak to the Panel members/assessors ..." (paragraph 8.10)

"The chairman has discretion, to allow the complainant to be accompanied by a second person, such as a relative, for emotional support, as well as an adviser, say from the Community Health Council." (paragraph 8.11)

Panel's final report: "The complainant and anyone complained against should be asked to inform the Panel if he/she wishes to consult on the content of the draft with an adviser who has not been previously involved in the complaint, eg the Community Health Council." (paragraph 8.26)

"The report may need to be shared by the complainant with a representative of the Community Health Council ... These ... arrangements will need to protect the overall confidentiality of the report". (paragraph 8.b)

Monitoring: "Trusts/HAs must publish annually a report on complaints handling and send copies ... to all relevant Community Health Councils". (paragraph 12.1)

Training: "... special training needs ... will have to be addressed ... particularly for ... Community Health Council staff" (paragraph 13.3)

Some likely questions about the new system

- **Who may complain?** Users/former users of an NHS trust's services or patients/former patients of a family practitioner - or someone accepted as a 'suitable representative'. Suitability will 'usually' be determined by the complaints manager or Panel convener.

- **Who is responsible for overseeing the procedure?** Trusts/HAs must have a designated "complaints manager" (Chief Executive or senior manager) who is readily accessible to the public. Practitioners must also identify one person who is responsible for their practice procedure.

- **What if the complaint reveals issues which need to be referred to another procedure?** Any complaint which might require investigation:
  - under disciplinary procedures;
  - by a professional regulatory body (such as the GMC);
  - under s84 of the NHS Act 1977 (inquiry into serious incidents by the Secretary of State, as conducted in the Beverley Allitt case);
  - as a criminal offence;

  should be passed to the complaints manager/designated person immediately and a full report made available to the complainant outlining how the matter is to be handled.

- **What if the complainant has already sought legal advice?** The complaints procedure should not cease unless the complainant explicitly indicates an intention to take legal action in respect of the complaint.

PARTICIPANT PACK B

Step-by-step guide to the new procedure

Local resolution

Complaints are likely to be made, in the first instance, to front-line staff or practitioners: those working on wards and reception desks; in surgeries and in clinics. The guidance on Local Resolution suggests that complaints should be dealt with "quickly and, where possible, by those on the spot" but at the same time states that "its primary purpose is to provide a comprehensive response that satisfies the complainant".

Local Resolution - Trusts and Health Authorities

All trusts/HAs must have a clear Local Resolution process. Front-line staff are to be "empowered to use the information they gain from complaints to improve service quality" and the Chief Executive "will be responsible for ensuring there is appropriate local policy and procedural guidance available to all staff".

"Most oral complaints are resolved on the spot or within **two working days**. Where this is not possible, and for formal written complaints, trusts/HAs should aim to make either an initial acknowledgement to the complainant within **two working days** or, if they are able to resolve the complaint fully within this time, to respond in **five working days**. For written complaints, and oral complaints recorded in writing, acknowledgements should always be in writing. Full investigation and resolution for all types of complaints should be sought within **twenty working days**..."

Any letter concluding the Local Resolution stage should indicate that the complainant has a right to seek an Independent Review "and that the complainant has **twenty-eight days** from the date of that letter to make such a request."

Local Resolution - Family Health Services

All family practitioners are required to establish and operate practice-based complaints procedures. These will have to adhere to national criteria which include:

a) the procedures should be managed entirely by the practice
b) one person will be responsible for the administration of the procedure
c) the procedures must be clear and must be properly publicised
d) an acknowledgement/initial response should normally be made **within two working days**
e) an explanation should normally be provided **within ten working days**

HAs may have lay conciliators available as a service to complainants and practices, or may consider it appropriate for their own staff to act as intermediaries. "In these cases, it would not be unreasonable to extend [the time scale] to **twenty working days**".

Independent Review

Any complainant who is dissatisfied with the outcome of Local Resolution has the right to request that an Independent Review Panel be convened. This request, which can be made orally or in writing, should be made to the convener within a period of **twenty-eight days** from the completion of the Local Resolution process.

Who is the "convener"

The **convener** is a non-executive director of a trust/health authority, or a "person specifically charged to act in this role in support of the named convener", and is responsible for:

- responding to a request for an Independent Review Panel
- formally acknowledging such a request within **two working days**
- consulting the chair about whether a Panel should be established, and reaching a decision within **twenty working days**
- calling for papers relating to Local Resolution, a written statement from the complainant and, where necessary, independent clinical advice
- advising anyone who is complained against

It is intended that the convener will "ensure the complaint is dealt with impartially at the convening stage" and, in deciding whether to convene a Panel, will consider whether:

- any other action can be taken, short of establishing a Panel (ie whether Local Resolution has been exhausted)
- there is likely to be any value in establishing a Panel.

Clinical advice

It is for the convener to decide if the complaint relates in any way to clinical judgement and, if so, from whom to seek clinical advice. "Such advice is expected to come at least initially from within the Trust/health authority, but not from anyone who is in any way associated with the complaint".

The convener's decision

The convener must inform the complainant, and anyone who has been complained about, in writing, whether he/she has decided that a Panel should be

set up or not. The reasons for any decision to refuse a Panel must be set out clearly and, where this is the case, the complainant should be advised of the **right of appeal to the Ombudsman** at this stage.
In some cases, the convener may recommend that further action should be taken by the Trust/health authority, rather than setting up a Panel. Where this happens and the complainant remains dissatisfied with the Trust/health authority's further action, the complainant may refer the matter back to the convener for reconsideration.

Composition of the Independent Review Panel

The Panel's purpose is to investigate the facts of the case, taking into account the views of both sides. The Panel is composed of **three** members:

- **Independent lay Chair** (nominated by the Secretary of State)
- **Convener** (or alternate), a non-executive of the Trust/health authority
- In the case of Trust Panels, a **purchaser** representative (health authority non-executive or a GP fundholder nominated by the practice which purchased the service concerned) or ...

- In the case of health authority Panels, another independent person nominated by the Secretary of State.

The lay members/Chairs will be drawn from a list held by the Regional Office of the NHS Executive. The guidance says "A prime consideration in [the selection of lay Panel members] should be their independence and ability to act without bias" but goes on to state that "...exceptionally [lay Panel members will] be current or retired NHS staff or members of any of the clinical professions, lay non-executives of other Trusts/health authorities, or former NHS staff".

Clinical assessors

In the case of clinical complaints, the Panel will be advised by at least two independent clinical **assessors** drawn from national/regional lists relating to the relevant specialty or health care profession. The assessors will, in consultation with the Panel, decide how to exercise their responsibilities but should act in an advisory capacity, not act independently to *resolve* a complaint.

Assessors will have access to all records and may interview or examine complainants (who may if they wish have a person of their choosing present) and/or interview the respondent. It is up to the assessors to provide combined or individual reports. These will be made to the Panel and must be attached to the Panel's final report.

Operation of the Panel

The Panel's investigation is based on the terms of reference drawn up by the convener but it should be flexible in the way it goes about its business, ensuring that the complainant and respondent both have a chance to express their views. The Panel should not be adversarial, nor legalistic; resolution may be sought through separate meetings with the complainant and respondent "or - very exceptionally - together". The Panel must have access to all records relating to the complaint (including relevant health records) and, whilst the Chair will decide what records of the investigation are to be kept, the proceedings must be confidential.

Legal representation is not permitted but a complainant may be accompanied by a person of their choosing (as well as, at the Chair's discretion, a person such as a relative for emotional support). Those accompanying the complainant or respondent will be able to contribute to the Panel's proceedings only with the approval of the Chair.

Panel report and follow-up action

The final report should set out the results of the Panel's investigations, with any appropriate comments or suggestions. **The Panel may not make any recommendations or suggestions relating to disciplinary matters.** The report is confidential and must be sent to:

- the complainant
- the patient, if a different person, and if competent
- anyone named in the complaint or interviewed by the Panel (relevant extracts only)
- the clinical assessors
- Trust/health authority Chair and chief executive
- in the case of GP fundholder complaints, regional director of performance management
- in the case of independent provider complaints, Chair and chief executive of the independent provider
- the health authority Chair and chief executive *or* GP fundholder who purchased the service concerned

"the report may need to be shared by the complainant with a representative of the Community Health Council ..."

Following receipt of the report, Trust/health authority boards must consider its content and ensure that any appropriate action is taken. The chief executive must inform the complainant **within twenty working days** in writing of any action, and of the right of appeal to the Ombudsman if the complainant remains dissatisfied.

Simplified flow diagram of the proposed "Wilson" complaints system