



The new NHS complaints procedure: 4Ps Briefing

Proposals for a reformed NHS complaints procedure recently received Parliamentary approval as part of the Health and Social Care (Community Health and Standards) Act 2003 and new regulations were due to be in place from June 2004.

Latest

Following an approach by the Shipman Inquiry, which will report later in the summer, Ministers have decided that the Healthcare Commission will take over the independent review stage on **1 July 2004**. The local resolution stage will remain unchanged until the Shipman Inquiry's findings (and those of the Neale and Ayling Inquiries, to be published soon) have been considered.

Background

Reforming the NHS Complaints Procedure: a listening document was published at the same time as a **National Evaluation Report on the NHS Complaints Procedure** in **September 2001**.

Key issues identified by the evaluation study

- There is a strong perception that the procedure itself is not sufficiently independent from those being complained about, with particular concern about whether the Independent Review stage is sufficiently independent
- Many complainants felt dissatisfied with
 - their experience of the complaints procedure
 - the length of time it took to deal with their complaint, both at local resolution and for independent review
 - Staff operating the procedure agreed with this.
- Both complainants and staff felt that there was no systematic way of ensuring that
 - lessons were learned from their experiences of services, and of the complaints procedure
 - for making improvements to service provision as a result.

Feedback from the listening exercise also identified key areas to focus on

- improved accessibility and making it easier to complain
- monitoring and accountability
- guidance and support
- time scales for dealing with complaints
- mediation and conciliation
- scope for patients to complain direct to Primary Care Trusts in relation to family health service practitioners
- scope to bring certain complaints to the attention of the Ombudsman more quickly.



The listening document asked for the views of patients, the public and staff on the proposals suggested to improve the process.

Feedback from the listening exercise reinforced the need to:

- see complaints as a chance for getting feedback on why things go wrong and how they can be improved
- get local resolution right as this could, and should be the best solution for all involved
- reform independent review to make it fair and unbiased
- invest in training for staff so they can confidently handle complaint
- allocate staff and resources for the system to be supportive, effective and time-efficient
- harmonise NHS and social services complaints systems.

The Department of Health launched a **formal consultation** on the draft regulatory framework for the reformed NHS complaints procedure, and welcomes comments from anyone who has an interest in improving the complaints procedure.

<http://www.doh.gov.uk/makingthingsright/index.htm> The formal consultation period ran from **1 January until 31 March 2004.**

It set out a programme to improve management of the whole complaints system and introduced operational improvements focused around

- making the system more flexible so that there are a range of ways in which people can express concerns about the services they have received
- improving Local Resolution so that formal complaints are more likely to be resolved at this stage, reducing the need for them to escalate unnecessarily
- radical reform to the independent review stage, subject to primary legislation - by placing responsibility for it with the new Healthcare Commission (CHAI)
- making sure information about complaints and their causes are an integral part of the system that assures safe, high quality care, which is constantly improving

A detailed letter and annexes, which **covers key features of the new procedure and an overview of the Regulations**, together with some specific consultation questions arising from the draft can be found at <http://www.doh.gov.uk/makingthingsright/consultationletter.pdf>

The Regulations are in **six** parts.

Part 1: Introduction

Part 2: Nature and scope of the arrangements to be made

Part 3: Handling and consideration of complaints

Part 4: Handling and consideration of complaints by the Commission for Healthcare Audit and Inspection

Part 5: General

Part 6: Transitional provision, consequential amendments and revocations

See appendix for details of each section

The DoH vision for a successful complaints procedure is of one which meets the needs of patients and staff by making the process



- **open and easy to access** – by being flexible about the ways in which people can complain and providing effective support for people wishing to do so
- **fair and independent** – with the emphasis on early and effective resolution so minimizing the strain and distress for all those involved
- **responsive** – providing appropriate and proportionate responses and redress
- **learning and developing** – ensuring complaints are viewed as a positive opportunity to listen and learn from patients views to drive continual improvement in services.

Key changes

There are a number of key changes that are designed to make the procedure more accessible, responsive, independent and more closely linked to systems for improving services. The major changes are

- **radical reform to the independent review process:** the second stage of the procedure will be removed from local NHS bodies and given to the **Healthcare Commission (formerly CHAI)**. Individuals will be able to ask the **Healthcare Commission to review their complaint** if they remain dissatisfied with the outcome from local resolution. The Healthcare Commission will take decisions regarding reviews currently taken by the complaints' convener of individual trusts in conjunction with lay chairs. The Healthcare Commission will review each case to assess how best it can be resolved, whether further action is necessary and if so, what and by whom. It will have a number of options
 - refer the case back to the NHS organisation for further action
 - investigate cases
 - refer to Ombudsman where cases are particularly complex.

Complainants will still have a final recourse to the Ombudsman where they remain unhappy following action by the Healthcare Commission. The Healthcare Commission will also promote feedback from complaints to improve NHS services through its inspection and review processes.

- **improved liaison between services.** NHS organisations and primary care practitioners will have a duty to work together when investigating complaints that concern multiple services so that complainants receive a **single, comprehensive response**
- speedier referral to the **Ombudsman** for some cases
- making sure information about **complaints and their causes are an integral part of the system that assures safe, high quality care**, which is constantly improving. This will be supported by the development of clear national standards and new systems for assessing and monitoring performance against them through the establishment of the Healthcare Commission
- individuals will be able to **complain directly to Primary Care Trusts** (via Patient Advice & Liaison Services [PALS] or complaints managers) where they feel unable to complain direct to their GP or primary care practitioner about issues. PCTs will ensure the



complaint is dealt with, either through investigation itself, through conciliation or by the practitioner

- **extended time limit** for making a complaint from six months to one year
- **time limits for dealing with complaints** will be 25 working days
- A complaint that has **not been resolved within 6 months** of the date on which the complaint was made may be referred to the Healthcare Commission (CHAI).

Background: NHS complaints reform – the roles of the Healthcare Commission (CHAI) and CSCI

Two new independent bodies – the **Healthcare Commission** (formerly the **Commission for Healthcare Audit and Inspection (CHAI)** and the **Commission for Social Care Inspection (CSCI)** will be responsible for independent scrutiny of NHS and social services, and for managing the independent stages of the NHS and social services complaints procedures respectively. The Commission for Healthcare Audit and Inspection (CHAI) in England and Wales has responsibility for

- all of the current and proposed work of the Commission for Health Improvement (CHI) and (subject to legislation) from 2007 the Mental Health Act Commission (MHAC)
- the national NHS value for money work of the Audit Commission and the independent healthcare work of the National Care Standards Commission (NCSC).

The Commission for Social Care Inspection (CSCI) in England will have responsibility for all of the work of the Social Services Inspectorate (SSI - a part of the Department of Health)

- the Joint Review team of the SSI/Audit Commission
- the functions of the NCSC in relation to social care.

The two new Commissions will

- strengthen the accountability of those responsible for health and social services
- demonstrate to the public how the additional money being invested in these services is being spent and enable them to judge how performance is improving as a result
- achieve greater rationalisation of inspection arrangements for health and social care.

Both the Healthcare Commission (CHAI) and CSCI will have equivalent roles in relation to complaints about NHS and social services respectively. Giving the Healthcare Commission (CHAI) and CSCI responsibility for Independent Review of complaints, will provide the necessary independence for the Independent Review stage, and a direct link into quality improvement processes.

The **CSCI complaints function will commence in 2005**. Due to the complex nature of complaints and in order to harmonise complaints legislation for both adults and children, the DOH will conduct a full consultation on the draft Regulations and guidance later in 2004. Full, more comprehensive details as well as the full consultation exercise will be published on a designated DOH website in due course; this is currently in the process of being set up.



Until these new complaints procedures are implemented (April 2005), Local Authorities will need to continue to operate their existing complaints procedures, in accordance with current legislation.

Joint handling of complaints by the Healthcare Commission (CHAI) and the Commission for Social Care Inspection (CSCI)

Both the Healthcare Commission (CHAI) and CSCI will have a duty to co-operate with each other where complaints cut across health and social care. Changes to the legislation for both complaints procedures will allow the parallel operation of both procedures where appropriate. This will address the difficulties which currently exist for patients with complaints about services which are commissioned or provided under joint working arrangements or by Care Trusts.

In any case where the Healthcare Commission (CHAI) proposes to investigate a complaint which involves local authority provision, the Healthcare Commission (CHAI) must consult the CSCI about how the complaint should be handled and considered. When a complaint is handled and considered jointly with the CSCI, the investigation may be conducted jointly, there may be a joint panel and a joint report.

Other elements of the complaints reform programme

At the heart of the programme for reform is **changing attitudes to complaints** so they are integral to clinical governance and service improvement. Other elements of the complaints reform programme relate to **strengthening local resolution** and ensuring the system

- supports individuals to make complaints and is responsive and flexible, so that there are a range of ways in which people can express concerns about the services they have received. Patients' complaints can be raised with any member of staff and resolved immediately. There is no need to deal with the complaint more formally than that unless the complainant wishes otherwise
- deals positively and constructively with complaints
- learns from complaints and makes improvements in services as a result.

Commission for Healthcare Audit and Inspection (Functions) Regulations and the Commission for Social Care Inspection (Functions) Regulations: the Consultation process

The Healthcare Commission (CHAI) has consulted key stakeholders on how it proposes to undertake its function in relation to complaints. The Department of Health will lay regulations before Parliament and commence the powers for 1 June 2004. The Healthcare Commission (CHAI) consultation took place at the same time as the Department of Health's consultation on the NHS complaints procedure regulations and that of CSCI on its complaints function. This will allow the interested groups to see how the Commission intends to use the powers given it by the regulations and how the two Commissions could work together on complaints that encompass both health and social care elements. In the meantime the current complaints procedure will operate. **The Healthcare Commission (CHAI) consultation ended on 2 April 2004.**



<http://www.doh.gov.uk/chaicsciconsult/index.htm>

Two sets of draft regulations have been issued for consultation, covering:

- the Healthcare Commission (CHAI) and CSCI's powers to require explanation from prescribed persons of any documents, records or information
- statements of action to be taken by an English NHS body or cross-border SHA in response to a Healthcare Commission (CHAI) review or investigation
- duty for the Healthcare Commission (CHAI) and CSCI to consult each other

Download consultation documents in Portable Document Format 

<http://www.dh.gov.uk/assetRoot/04/06/72/63/04067263.pdf>

<http://www.dh.gov.uk/assetRoot/04/06/72/65/04067265.pdf>

Background: Commission for Patient and Public Involvement in Health (CPPIH) and ICAS

Section 12 of the Health and Social Care Act 2001 places a legal duty on the Government to provide **Independent Complaints Advocacy Services (ICAS)**, to assist individuals making complaints against the NHS. The **Commission for Patient and Public Involvement in Health (CPPIH)** will identify and disseminate quality standards for ICAS, set criteria for its provision and provide a national assessment of ICAS services. PCT Patients Forums will commission and/or provide ICAS for their local population against the standards set nationally by CPPIH. ICAS will focus on helping individuals to pursue complaints about NHS services. It will aim to ensure complainants have access to the support they need to articulate their concerns and navigate the complaints system – maximising the chances of their complaint being resolved more quickly and effectively.

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May 2004



Appendix

NB The Healthcare Commission is referred to as CHAI in the regulations

Key features of the new procedure

The NHS complaints procedure (Regulations 3, 7)

The draft Regulations cover all NHS services provided by NHS Trusts (including Foundation Trusts), Primary Care Trusts, primary care practitioners, Strategic Health Authorities, most Special Health Authorities. Independent sector organisations providing care under NHS arrangements will be required, through their contracts to operate a comparable complaints process.

Independent Review (Regulations 22-27)

The Commission for Healthcare Audit and Inspection will provide independent review of complaints referred to them by complainants who are unhappy with the response made locally. This will take the form of an investigation by CHAI staff and, where appropriate, by a panel of lay people.

Complaints about primary care services (Regulations 4, 5, 15, 16, 21, 30, 31)

Changes to the procedure for making complaints about primary care services will bring time limits and reporting arrangements into line with those for other parts of the NHS. They also give people a choice about the way they make a complaint – directly to the practitioner, or to the relevant Primary Care Trust. Work on consequential amendments to other sets of Regulation will continue during the consultation period.

Making a complaint (Regulations 5, 12, 13, 14)

There is an explicit recognition that complaints may be raised with any member of staff and resolved on the spot. There is no need to deal with the complaint more formally than that (e.g. exchange of correspondence) unless the complainant wishes otherwise. A complaint may be about any matter connected with the services provided by the NHS, including decisions which affect people who are neither current nor former patients – often to do with access to services.

Time limits (Regulations 15, 16, 21)

It is proposed that the time limit for making a complaint is extended from 6 months to one year. In terms of response, complaints should be acknowledged within 2 working days, and responded to in 25 working days unless the complaint is complex (see 5 below) when longer than 25 days may be taken, provided that is acceptable to the complainant. A complaint that has not been resolved within 6 months may be referred to CHAI.



Complex complaints (Regulations 6, 17, 18)

The fact that some complaints are more complex than others is acknowledged. They are defined as complaints that involve care provided by more than one body or are about events that are subject to more than one type of investigation. The assessment of and response to such complaints must be carefully considered, so that a full investigation may take place and a comprehensive and timely response may be made to complainants.

Duty to co-operate (Regulations 9, 17, 27)

A new duty is placed on NHS organisations and primary care practitioners to co-operate in receiving and investigating complaints and providing, where appropriate, single and comprehensive responses to complainants. This is also reflected in the provision for joint action on the part CHAI and the Commission for Social Care Inspection.

Referral to CHAI or the Health Service Commissioner (Regulation 19)

It is recognised that there will be some occasions when NHS organisations and primary care providers may wish to refer a complaint directly to an independent body. Subject to the complainant's agreement, this is provided for in the draft Regulations.

Accountability and service improvement (Regulations 10, 21, 29, 31)

NHS organisations and primary care practitioners must designate a Board member, or similarly senior person to ensure that complainants receive full consideration and responses and that action is taken as a result of the findings of investigations. Guidance will suggest that an explicit link should be made with the senior person with responsibility for clinical governance and service quality. Regular reports are required on the numbers of complaints received, the substance of those complaints and the action taken as a result.

Contents of each section of the regulations

Part 1: Introduction

This defines the terms used in the Regulations, and covers the timing for the introduction of the new procedure (1 June 2004).

Part 2: Nature and scope of the arrangements to be made

- the **obligation** on NHS bodies and primary care providers to make arrangements for handling and considering complaints (Regulation 3)
- the **definition** of complaints that may be made to primary care providers and NHS bodies (Regulations 4 & 5)
- '**complex complaints**' that is those which
 - may involve **more than one** NHS providers



- involve **both health and social care** matters and so involve an NHS body and a local authority
- concern matters that are **also subject to some other form of investigation** such as legal proceedings (Regulation 6)
- contracts for NHS care from **independent and voluntary sector providers**, which must include an obligation on those providers to have a complaints process (Regulation 7)
- complaint that are **outside the remit of the NHS complaint procedure** (Regulation 8)
- a **duty to co-operate** placed on all those bodies involved in handling and considering complaints to co-operate with each other (Regulation 9).

Part 3: Handling and consideration of complaints

- the duty on organisations to **designate a senior person** who bears responsibility for ensuring effective management of and action on complaints (Regulation 10)
- **who may make a complaint** and to whom, how and when (Regulations 12, 13, 14 and 15)
- **acknowledging and recording** complaints (Regulation 16)
- handling complaints that **involve more than one organisations** or more than one type of investigation, for example the Coroner, or legal action, or child protection procedures (Regulations 17 and 18)
- **referral to CHAI** or the **Health Service Commissioner** by NHS bodies (Regulation 19)
- **investigating and responding to complaints**, including time limits and obtaining and disclosing information (Regulation 20 and 21).

Part 4: Handling and consideration of complaints by the Commission for Healthcare Audit and Inspection

- how a complaint is to be made to CHAI (Regulation 22)
- CHAI's consideration of the complaint, its investigation and report on that investigation (Regulations 23, 24 and 26)
- where appropriate one of the options open to CHAI is the consideration of a complaint by an independent panel of three lay people (Regulation 25)
- joint handling of complaints with the Commission for Social Care Inspection (Regulation 27).

Part 5: General

- **publicity** for complaints procedures (Regulation 28),
- **training** for all staff (Regulation 29)
- **providing information** about complaints handling for monitoring purposes (Regulation 30)
- **annual reports** (Regulation 31).



Development programmes for people in healthcare



Part 6: Transitional provision, consequential amendments and revocations

Part 6 covers technical detail to do with the introduction of the new processes and, importantly, the framework for managing the transition between the old and new systems.