The NHS complaints procedure (England only)

August 2009

Introduction

This document has been produce to provide LMCs, practices and GPs with guidance on the requirements of the NHS complaints system, including advice on how to deal with complaints that come into the practice. This guidance also addresses some of the concerns GPs and practices may have about the way the complaints system operates and offers advice on ensuring that the system works for GPs and practices as well as patients. This document covers England only. Scotland, Wales and Northern Ireland operate separate complaints procedures.

Practice procedures

It is probable that all practices will receive a complaint at some time, so establishing a complaints process that works for your practice and your patients will be essential. The Department of Health (DH) recommends that practices produce a leaflet that informs patients of ways that their views can be heard, including information on how the complaints procedure works and also information on how patients can give positive or constructive feedback. The GPC has produced a document on patient responsiveness which looks at patient involvement in the running and organisation of the practice, and can be accessed via the following link:

www.bma.org.uk/employmentandcontracts/independent_contractors/managing_your_practice/listenpatient.jsp

Every practice must appoint a 'Responsible Person' whose job is to ensure compliance with the complaints regulations. This person must be a partner in the contract, but is permitted to delegate their practical responsibilities. It is also essential to appoint a complaints manager, responsible for handling and considering any complaints. This role may be carried out by the 'Responsible Person' or by an individual who is not a practice employee. Practices are also permitted to share complaints managers if a full-time, one-practice role is not considered necessary. Complaints managers can also delegate their practical responsibilities.

A complaint made to the practice

When a complaint is made directly to a practice it is the responsibility of the practice to deal with it. There is no requirement for the complaint to be sent to the PCT and no funding will be provided for any costs arising from the complaints process.

It is a contractual obligation for practices to follow the complaints procedure and any failure to do so could be considered a breach.

The importance of dealing with it swiftly and effectively is clear. If an oral complaint is dealt with to the complainant's satisfaction within 24 hours then it will not be necessary to embark upon the formal complaints process. Swift resolutions are therefore good for the image of the practice and for avoiding bureaucratic burdens.

In the formal process, practices must send some form of acknowledgement to a complainant within 3 days of the complaint being received. This acknowledgement need not address any of the issue relating to the detail of the complaint itself, but should inform the complainant that the matter will be investigated. This acknowledgement can be in written form or by telephone. If by telephone a record should be kept of this.

A meeting should be arranged for the investigator to discuss the complaint with the complainant. It is important to quickly establish what the complainant expects the outcome of the complaint to be, and to let them know whether this is a realistic possibility. Establishing a good plan and direction for the investigation at an early stage will be beneficial in the long run.

The DH has produced a number of guidance papers on investigating complaints which can be accessed from the following link:
www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_095408

Complaints made to the PCT

When a complaint is made to the PCT about a practice, the PCT will seek permission from the complainant to share the details of the complaint with the practice. If permission is not granted, the complainant will be informed that the matter can be taken no further. The DH guidance for PCTs encourages PCTs to pass complaints to the practice to be dealt with. This can be done with the permission of the complainant and at this point the complaint would be considered to have been made to the practice itself. However, the PCT is permitted to take on the investigation itself, on behalf of the complainant, which will be of particular concern to practices that do not have a good relationship with their PCT.

It is essential that PCTs take a consistent approach to the complaints system. While the new system allows PCTs to take on cases of their choice, it does not provide any direction on how PCTs should make the decision on whether or not to investigate the complaint themselves. LMCs should ask PCTs to openly set out their policy on how this decision will be made. This process should be open and transparent with the criteria used being consistent and non-prejudicial. Practices should be advised to contact their LMC if they feel they are being treated unfairly or inappropriately and LMCs should inform the GPC if they have concerns that this matter is being addressed inadequately or inappropriately by their PCTs.

Complainants

Complaints can be made by patients or someone 'who is affected, or likely to be affected, by the action, omission or decision of the responsible body which is the subject of the complaint'. This means that potential complainants stretch way beyond the confines of the practice list or patient representatives and there is real potential for abuse of this system. Malicious complaints that come directly to the practice can be rejected, with confirmation of the rejection and the reasons for the rejection to be sent to the patient. The practice should also inform their LMC if they feel that the complaints system is being abused. However, this does not diminish concerns about malicous complaints that are made to the PCT. Once again, if the practice feel they are being unfairly treated by the PCT they should make their concerns known to their LMC.

When a complaint is made on behalf of a child, the practice must be satisfied that there are reasonable grounds for the complaint being made by this individual rather than the child. The practice must also be satisfied that the complaint is being made in the best interests of the child. If the practice is not satisfied that this is the case, written notification of this decision must be sent to the representative.

Complaints about more than one service

There is a single complaints procedure for all health and social care services. Usually, the organisation with the largest part in the complaint would be considered the lead agency and would be responible for co-ordinating the investigation.

PCT complaints managers

The PCT complaints manager can advise you on practice procedures as well as how you can deal with individual complaints, if the problem persists or is particularly complex. The complaints manager can discuss the options with you, including whether the complaint is suitable for conciliation.
Complaints managers may provide support to practice staff, such as:

- Advice and help to staff on handling difficult situations
- Help with wording letters and patient information
- Obtaining feedback from patients on particular practice issues
- Patient focus/customer care training
- Arranging for a conciliator
- Acting as an 'honest broker'.

PALS and LINks

PCTs and NHS Trusts have a patient advice and liaison service (PALS) that is available to help patients sort out any problems, if they are unhappy about something but do not want to lodge a complaint. Patients can be put in touch with the PALS or contact the PALS to ask for their help.
The main aims of PALS are to:

- help resolve problems when they arise by working with the staff concerned to negotiate a mutually agreed solution.
- provide information about local health services.

In addition, Local Involvement Networks (LINks) have been set up to increase community influence over local health and care services. LINks give patients the opportunity to raise issues or concerns about the way services are provided so that improvements can be made.

The Parliamentary Ombudsman

If unsatisfied with how the complaint is dealt with at practice level, a complainant may choose to take the matter to the Health Service Ombudsman. However they cannot do this simply because they are unsatisfied with the outcome; they must be able to provide reasons for their continued dissatisfaction and demonstrate that they are suffering continuing hardship or injustice, or that there is a reasonable prospect of achieving a worthwhile outcome.

The ombudsman can then make a decision on whether or not the practice needs to carry out further investigations. The ombudsman can also decide to take on the complaint fully.

If the ombudsman does become involved in the case, it may be wise to seek advice from your defence organisation and LMC.

Seeking advice from LMCs and defence organisations

If there are any concerns about the way that a complaint issue is handled, even if seems to be a simple problem, support can be sought from Local Medical Committees and your Medical Defence organisation.

Things to consider

- A separate file must be kept for complaints records and letters. Under no circumstances should these be filed in a patient's medical records.
- Any complaint resolved by the practice via the formal complaints procedure should be kept on record for 10 years. This is the same length for litigation.
- Complaints can be made up to 12 months after the incident that gave rise to the complaint, or from when the complainant was made aware of it. Beyond this timescale it is at the practice's discretion whether to investigate the matter.
- In the event that a complainant has raised major issues but does not want a full investigation, the practice should investigate fully even if the complainant does not wish to be informed. The issues may not be of interest to the complainant, but the investigation could be extremely important for the future of the practice.
- It is necessary for practices to seek an agreement from locums that they will participate in the complaints procedure if required to do so. As complaints can be made to the practice up to a year after the reason for the complaint, it is possible that complaints will arise where the locum GP has moved on.

Practices should ensure that locums involved in the complaints process are given every opportunity to respond to complaints and it is important that there is no discrepancy between the way the process treats locums, salaried GPs or GP partners.

This does not apply to out-of-hours organisations.

- It is possible for the complaints procedure to run simultaneously with a disciplinary or legal procedure where such procedures will not be compromised by the complaints process. Practices should now be prepared for the possibility of facing disciplinary, complaints and legal proceedings concurrently. LMCs should clarify with their PCTs how they intend to ensure that their handling of performance investigation and complaints procedures are separated appropriately and should report concerns to the GPC; similarly, practices should contact their LMC for advice if they feel a PCT's actions are unfair or inappropriate.

Investigating a complaint

Before an investigation can begin, it is important to assess the seriousness of the complaint. Even if a complainant does not wish to pursue an issue, it may still be that the practice feels the need to investigate the issue to be satisfied that there is not a problem. It is important for practices to use complaints as part of a learning process which assists in the improvement of the service. A toolkit on investigating complaints can be found at Appendix 1 and a flowchart for the complaints process at Appendix 2.

Further information

- The toolkit (Appendix 1) is taken from the Department of Health document *Listening, Responding, Improving*: *A Guide to Better Customer Care*. 2009 (www.dh.gov.uk) (steps 1-3) and from the Primary Care Complaints Consortium document *Complaints, A Guide for General Practices*, Third Edition, 2009.

- Appendix 2 is a simple flowchart for the complaints process.

- GPC document, *New complaints process FAQs*, 2009 www.bma.org.uk/employmentandcontracts/independent_contractors/managing_your_practice/complaintfaqs.jsp

Appendix 1

Investigating complaints toolkit

Step 1: Decide how serious the issue is

Seriousness	Description
LOW	Unsatisfactory service or experience, not directly related to care. No impact or risk to provision of care. OR Unsatisfactory service or experience related to care, usually a single resolvable issue. Minimal impact and relative minimal risk to the provision of care or the service. No real risk of litigation.
MEDIUM	Service or experience below reasonable expectations in several ways, but not causing lasting problems. Has potential to impact on service provision. Justifiable complaint. Some potential for litigation.
HIGH	Significant issues regarding standards, quality of care, and safeguarding of, or denial of rights. Complaints with clear quality assurance or risk management issues that may cause lasting problems for the organisation, and so require investigation. Possibility of litigation and adverse local publicity. OR Serious issues that may cause long-term damage, such as grossly substandard care, professional misconduct or death. Will require immediate and in-depth investigation. May involve serious safety issues. A high probability of litigation and strong possibility of adverse national publicity.

Step 2: Decide how likely the issue is to recur

Likelihood	Description
Rare	Isolated or one-off – slight or vague connection to service provision
Unlikely	Rare – unusual but may have happened before
Possible	Happens from time to time – not frequently or regularly. May occur again at some time but only occasionally.
Likely	Will probably occur several times a year
Almost certain	Recurring and frequent, predictable

Step 3: Categorise the risk

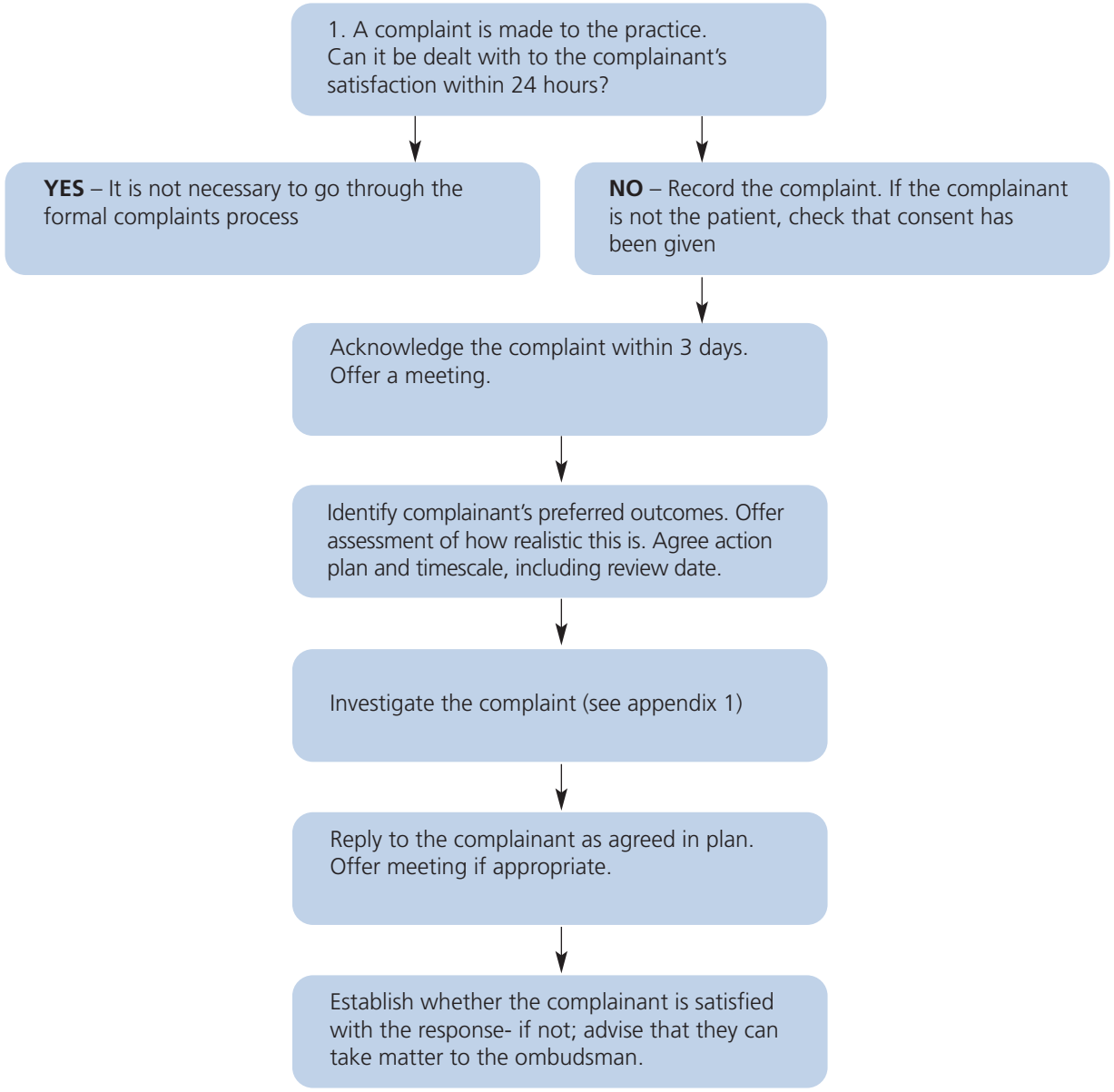
Seriousness	Likelihood of recurrence				
	Rare	Unlikely	Possible	Likely	Almost certain
Low	Low				
		Moderate			
Medium			High		
High				Extreme	

Examples that are low, moderate, high or extreme risk			
Low (simple, non-complex issues)	**Moderate** (several issues relating to a short period of care)	**High** (multiple issues relating a longer period of care, often involving more than one organisation or individual)	**Extreme** (multiple issues relating to serious failures, causing serious harm)
Delayed or cancelled appointments. Event resulting in minor harm (e.g. cut, strain). Loss of property. Lack of cleanliness. Transport problems. Single failure to meet care needs Medical records missing. Staff attitude or communication.	Event resulting in moderate harm. (e.g. fracture). Delayed discharge. Failure to meet care needs. Miscommunication or misinformation. Medical errors. Incorrect treatment.	See moderate list. Event resulting in serious harm (e.g. damage to internal organs).	Events resulting in serious harm or death. Gross professional misconduct. Abuse or neglect. Criminal offence (e.g. assault).

Step 4: Deciding the best course of action

Low
Front line staff response, verbal or written. Possible involvement of PALS Offer advocacy to complainant Consider financial redress Consider seeking advice from LMC/defence organisation Time scale to be negotiated
Medium
Practice manager/GP investigates (possibly involve senior partner or another partner if complaint about senior partner) Notify PCT complaints manager Advice from LMC/defence organisation Meeting with complainant Offer advocacy to complainant Offer conciliation/mediation Written response directly from practice or with PCT covering letter Consider financial redress Follow-up call to complainant to ensure resolution Time scale to be negotiated
High
Discuss with PCT complaints manager Offer advocacy to complainant Consider financial redress Seek advice from LMC/defence organisation Involve designated partner (or another partner if complaint about designated partner) External involvement in the investigation, may include external clinical advice – compulsory for single handed practices (e.g. PCT complaints manager, another GP practice, independent investigator) Meeting/direct contact with complainant before investigation Meeting/direct contact with complainant after investigation Offer conciliation/mediation Send a written response directly from practice or with PCT covering letter Ask for a review of complaint file by local PCT or another PCT Involve the responsible officer for the GMC affiliate Significant event procedure Time scale to be negotiated
EXTREME
Discuss with PCT complaints manager Offer advocacy to complainant Consider financial redress Seek advice from LMC/defence organisation Involve designated partner (or another partner if complaint about designated partner) External investigation – compulsory for single handed practices (e.g. PCT complaints manager, another GP practice, independent investigator) Meet /direct contact with complainant before the investigation Meet/direct contact with complainant after investigation Offer conciliation/mediation Send a written response via PCT Ask for a review of complaint file by local PCT or another PCT Involve GMC affiliate responsible officer Significant event procedure Time scale to be negotiated

Complaints process flowchart



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