

# **New complaints procedure – FAQs**

April 2009

## **What are the main differences between the new procedure and the old one?**

It is not a requirement for practices to copy complaints to the PCT, so there is increased expectation that practices deal with complaints internally. Under the new procedure, oral complaints made to the practice do not have to be dealt with under the legislation if they are resolved to the patient's satisfaction by the end of the next working day.

Practices now must acknowledge the receipt a complaint within three days. It is acceptable for the acknowledgement to be made via telephone. However, there is no allotted timescale for resolution, as it is accepted that the requirements will differ from case to case.

The complaints manager role has been retained. This person, who is responsible for handling and considering complaints in line with the regulations, does not necessarily have to be a practice employee and can perform this role for more than one practice in the vicinity.

We recommend that LMCs contact PCTs to discuss the changes and to establish how the procedure is to be operated locally.

## **Who can complain?**

A complaint can be made by a patient, or anyone else who has been affected by the action, omission or decision of the practice that led to the complaint. There is concern that in opening up the complaints system to individuals with indirect involvement there is potential for abuse of the system. While it is important that the complaints procedure does not prejudice those with legitimate grievances, it should also protect GPs from the possibility of malicious accusations. Practices should inform their LMC if they encounter any apparent misuse of the complaints system.

There are a number of cases when a complaint may be made a third party acting on behalf of someone else; when the individual has died, when the individual is a child, or when the individual is physical or mentally incapable of making a complaint. An individual is also permitted to request that a third party makes them complaint on their behalf.

When a complaint is made by a third party on behalf of a child or individual lacking mental capacity, the practice must be satisfied that there are reasonable grounds for this method of representation and that the third party is genuinely acting in the best interests of the individual. If the practice is not satisfied that this is the case, they must inform the representative in writing, stating the reasons for this decision.

## **What happens with complaints made by or on behalf of a child?**

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.

## **What happens when a complaint is made directly to a PCT?**

If a complaint is made directly to a practice then the PCT need not be involved, however it may also be that a complaint about a practice is made to the PCT. If this is the case, the PCT will seek permission from the complainant to share the details of the complaint with the practice. It will be made clear to the complainant that if they do not agree to this, the matter cannot be pursued.

The PCT may decide that it is appropriate that they handle the complaint, however it is clearly the intention set out in the guidance that complaints should be managed as near to the complainant as possible and PCTs should seek to achieve this passing the complaint to the practice. In this case, the

complainant must consent to having the complaint passed on to the practice and the complaint will then be deemed to have been made to the practice rather than the PCT.

It is essential that PCTs take a consistent approach to the complaints system. There is some concern that 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. 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.

### **What happens when the complaint involves a locum GP?**

In order to account for complaints involving locum GPs, 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.

### **Does the complaints procedure have disciplinary or legal repercussions?**

The complaints process is entirely separate from disciplinary procedures. A complaint does not necessarily mean that disciplinary action be pursued and there is nothing in the regulations that states a requirement to do so. However it is now 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.

Previously, when a complaint led to disciplinary or legal proceedings, it was deemed that the original complaint could not proceed. There were concerns that a response to the original complaint could jeopardise legal or disciplinary proceedings if the response included pertinent information. While, in these cases, the need to prevent the disclosure of information remains, the new complaints procedure does not automatically deem that the complaint be nullified, but rather asserts that where possible a response should be issued. However, the disciplinary or legal case must not be jeopardised by the response. In such cases practices will wish to seek advice from their legal and MDO advisers before proceeding.

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.

### **What is the definition of a complaint?**

A complaint that is made in writing to the practice on or after April 1, 2009 should be dealt with by following the new complaints procedure regulations. However, a complaint that is made orally, that is dealt with to the complainant's satisfaction by the end of the next working day, is not considered to be an official 'complaint' and the complaints procedure regulations need not be applied. Complaints made to the PCT will only be dealt with via this procedure if the complainant agrees to share the details of the complaint with the practice.

A complaint must be made within 12 months of the date that subject matter of the complaint occurred or the date that the subject matter came to the complainant's attention. However discretion can be used

if the complainant is considered to have good reason for a delay in complaining and if it is still possible to investigate the complaint fairly and effectively.

**What do we have to do immediately?**

Practices must appoint, or reappoint, a complaints manager. They must also appoint a 'Responsible Person' who must be, in the case of a partnership, a partner. For a sole contractor, the responsible person must be that contractor, and for a company or other organisation, it should be director of the organisation. This is a minor change from the previous system where the equivalent position could be held by a manager in the practice.

It is acceptable to appoint the same person to both roles.