Complaints in the NHS

A Guide to handling complaints in Wales

April 2003
NHS WALES

Complaints in the NHS

A guide to handling complaints in Wales

Contents

Executive Summary

Part 1 Managing Complaints

Part 2 Independent Review

Part 3 Forms and examples

Part 4 Further information

Part 5 Training on complaints

Glossary

Index
EXECUTIVE SUMMARY

Introduction

This Guide on NHS complaints handling in Wales provides information and advice to NHS organisations and family health services practitioners on how to deal effectively with complaints they receive. It is aimed mainly at managers and professionals responsible for handling complaints and those responsible for ensuring that lessons from patients’ experiences are used to improve services as part of clinical governance.

Following a two-year UK-wide review of the NHS Complaints Procedure, a consultation exercise in Wales in 2001 showed strong support for reform. The National Assembly for Wales (the Assembly) accepted this in March 2002 and endorsed the principles of:

• Ensuring that as many complaints as possible are resolved using Local Resolution;

• Making the complaints process faster and more independent of NHS organisations;

• Providing adequate support for people who may wish to complain and for those complained against; and

• Ensuring that the NHS in Wales learns from complaints.

Changes from the 1996 Guidance

This Guide complements the Directions and Regulations that provide the statutory framework of the complaints procedure from 1 April 2003. It supercedes the 1996 guidance. The main changes to NHS procedures from 1 April 2003 are:

• The second stage of the complaints procedure – the Independent Review – is now independent of the NHS. The Independent Review Secretariat, which is managed by Powys Business Services Centre and accountable to the Assembly, administers it;

• All complainants have the right to have their complaint reviewed by two independent lay people appointed by the Assembly. They will,
with clinical advice if necessary, decide the most appropriate action. This may include setting up an Independent Panel;

• Local Health Boards are encouraged to make arrangements to provide family health services practitioners with independent complaints facilitators to assist in Local Resolution in appropriate complaints (replacing the lay conciliation service previously provided by health authorities);

• NHS Trusts and Local Health Boards are required to produce action plans following up recommendations in the reports of Independent Panels for complaints against themselves and report on this to the Assembly;

• Community Health Councils (CHCs) have a greater role to play in the complaints process by providing an independent patient’s advocacy service to people who wish to complain.

Further developments are likely in particular around the links with clinical negligence, risk management and possible arrangements for joint NHS and Social Services complaints procedures. The Guide will be revised to cover changes in Regulations and add examples of good practice.

**Key messages**

• How an organisation handles complaints against itself indicates how responsive it is to the patients and public it serves.

• Senior NHS staff should have responsibility for ensuring complaints are handled appropriately and lessons are learnt for improving services.

• Complaints are most likely to be resolved if they are dealt with as they arise as part of Local Resolution. All NHS organisations and independent providers of NHS health care must have a written complaints procedure, in line with the principles of the NHS Complaints Procedure.

• Complainants may need support and advice and should be encouraged to contact CHCs and other advice and support agencies.
• Handling complaints causes stress for staff. Those dealing with complainants will need support from the organisation and access to counselling if they want it.

• Local complaints procedures should form part of the clinical governance and quality framework.

• Clear and accurate documentation about complaints and complaints handling is essential. Information from complaints needs to be collected, analysed and the causes of complaints identified and remedied.

• In all stages of the complaint process care must be taken to protect patient confidentiality and ensure that all personal identifiable information about complaints meets Caldicott principles and complies with the Data Protection Act, and that procedures are regularly reviewed.

Local Resolution (stage 1)

The procedures (see Chart 1)

The NHS body or practice that receives a complaint should:

• Acknowledge the complaint within two working days and provide information on the process;

• Investigate thoroughly and fairly;

• Ensure that complainants and complained against are offered support and assistance if they want it;

• Have a range of options to investigate and resolve complaints, including:

  • Inviting the complainant to meet with staff, practitioners and clinicians to discuss their concerns further;

  • Offering a second opinion on clinical issues;

  • Offering independent facilitation or mediation.
• Provide a full written reply within four weeks signed by the Chief Executive or senior partner or practitioner in the practice. Where this is not possible, to inform the complainant and complained against of the reason for the delay and when they can expect to receive a reply.

**Recommended actions**

*Local Health Boards and NHS Trusts*

• The Board should nominate a Non-Executive Director or Non Officer Member to have an overview of complaints and report to the Board.

• Complaints should be managed by senior staff with a short and direct line of accountability to the Chief Executive.

• NHS Boards should receive regular reports on complaints and publish an annual report on complaints handling.

• Contracts with independent providers should specify that they must set up and run a Local Resolution process and co-operate with the NHS Independent Review procedure.

• An action plan should be produced following an Independent Panel, held as part of an Independent Review, to implement the Panel’s recommendations to improve services.

• There should be appropriate training and protocols to ensure that any member of staff who is likely to receive a complaint or concern is able to take appropriate action and able to deal with it rapidly, in a sensitive manner and recognise when to refer complaints on to a more senior person.

• There should be arrangements in place to address the different needs of clients, for example language, literacy or communication difficulties. Translation and signing services should be available to complainants if required.

• There should be arrangements for support and advice for staff against whom complaints are made.

• There should be procedures to deal promptly with serious concerns and ensure that appropriate action is taken in the interests of patient safety.
• Even where there is a prima facie case of clinical negligence or there is a likelihood of legal action, complaints are fully investigated and a full explanation given.

Local Health Boards have a responsibility, in addition to:

• Help family health services practices put effective complaints procedures in place and monitor them;

• Have arrangements to assist individuals who do not wish to complain directly to family health services practices;

• Offer in liaison with other Local Health Boards a pool of trained independent complaints facilitators to assist practitioners in Local Resolution, if appropriate;

• Encourage practices to produce action plans following an Independent Panel report and offer them assistance to do this.

• Follow up Independent Panel reports about family health services practitioners to see whether recommendations are implemented.

• Monitor any changes made in the practice as a result as part of its clinical governance duty.

Family health services practitioners should:

• Have a practice-based system for handling complaints;

• Consider producing an action plan based on any recommendations for improvements in services arising from recommendations in Independent Panel Reports;

• Provide Local Health Boards with information on the number of complaints received in each practice or surgery annually (GPs and dentists only), issues raised through complaints and action taken as a result.

Independent health care sector should:

• Have an in-house complaints procedure for NHS patients;

• Co-operate with the NHS Independent Review procedure;
• Produce an action plan based on any recommendations for improvements in services arising from recommendations in Independent Panel Reports.

**Independent Review (stage 2)**

**The procedures (see Chart 2)**

• When Local Resolution is completed, complainants who are dissatisfied with Local Resolution may request an Independent Review of their complaint within 28 days of the date of the final reply.

• When the complainant asks for an Independent Review, their complaint will be considered by two independent lay people appointed by the Assembly and, where relevant, a clinical adviser.

• The Independent Complaints Reviewer with a Lay Adviser will consider what actions might help resolve the complaint. They may suggest the NHS body or family health services practice takes further action under Local Resolution or decide to set up an Independent Panel.

• Where an Independent Panel to investigate the complaint is set up, NHS bodies and practitioners are required to co-operate with this.

• The Panel may make recommendations for Trusts, Local Health Boards and practices about improving systems to avoid future problems or to give redress.

• If complainants are still dissatisfied either because of the way the Panel was handled or because an Independent Panel was not set up, they can write to the Ombudsman and ask for a further investigation.

**Recommended actions**

When the Independent Review Secretariat receives a request, it will:

• Write to the complainant and complained against when a request for Independent Review is received;

• Ask the complainant for a statement and supporting information to be sent within 28 days of request;
• Ask for the complaints file and relevant health records (where applicable) from the organisation complained against;

• Appoint an Independent Reviewer (previously called Convener) and an independent Lay Adviser to assist the Reviewer;

• For clinical complaints appoint a Clinical Adviser from the same profession or specialty as the complained against to advise the Reviewer.

Trusts, Local Health Boards or Family Health Service Practitioners will:

• Acknowledge any request for Independent Review received directly and forward it immediately to the Independent Review Secretariat.

When a request is received from the Independent Review Secretariat, they will:

• Inform the complained against and any one mentioned in the complaint that the request has been received;

• Send the Independent Review Secretariat the complaints file and relevant health records as soon as possible.

• Appoint a senior officer (generally the Complaints Manager) to liaise with the Independent Review Secretariat during the Independent Review process.

• Release clinical staff appointed as Clinical Assessors from other commitments quickly, so that delays in the complaints process can be avoided.

**Review Stage**

The Reviewer and the Lay Adviser will:

• Consider the statement and complaints file on Local Resolution to:

  • Ascertain whether all opportunities for resolving the complaint have been explored and exhausted, including independent complaints facilitation;

  • Identify whether any issues, should be referred to a Panel and,
• Where appropriate get clinical advice.

• The Reviewer may decide to:

  • Take no further action because Local Resolution has been carried out satisfactorily;
  
  • Refer the case or part of the case back to Local Resolution, recommending actions that might resolve the complaint;
  
  • Decide to set up a Panel if nothing short of setting up a Panel will resolve the complaint;
  
  • Decide not to set up a Panel, because there may be more appropriate courses of action outside the NHS Complaints Procedure.

  • The Reviewer will give the complainant full reasons for the decision and tell them that they can complain to the Ombudsman if they are not satisfied.

**If a Panel is held**

The Independent Review Secretariat will:

• Appoint the Chair and Panel members;

• Where a complaint raises clinical or professional issues, appoint a Clinical Assessor from the relevant disciplines;

• Provide administrative support to the Chair and Members;

• Distribute the final report, including the Clinical Assessor’s report, to the complainant and complained against and others with an interest in the complaint, either because they were directly involved or have responsibility for clinical governance.

The Reviewer will:

• Draw up terms of reference for the Panel in consultation with the Panel Chair;

• Become a Member on the Panel.
The Panel Chair will:

- In consultation with Panel members, Clinical Assessors and the parties:
  - Decide how to conduct the investigation, the evidence needed and the witnesses to be interviewed;
  - Chair Panel meetings;
  - Draft the report of the Panel investigation.

The Clinical Assessor will:

- Provide advice to the Panel on the clinical issues to address and the conduct of the investigation;
- Interview the patient and clinician and examine the patient where appropriate.

Following a Panel, Trusts and Local Health Boards will:

- Agree an action plan to remedy any problems identified in the Panel’s report;
- Write to the complainant within 20 working days of receiving the Panel’s report outlining any action the organisation is taking as a result of the Panel’s deliberation and the timescale in which the Board has agreed to consider other policy issues.
- For complaints against family health services practitioners, the Chief Executive of the Local Health Board will:
  - Write and ask the practitioner to reply directly to the complainant about proposed action and inform the complainant of this;
  - Check whether the practice has taken any follow up action recommended in the Panel report.
- For complaints against independent providers, the Chief Executive of the Local Health Board should write and ask the provider to write directly to the complainant about proposed action and follow this up where appropriate as part of contract monitoring.
Chart 1 - Local Resolution

1. Staff receive a complaint
2. Is it a serious issue?
   - Yes: Oral response
   - No: Proceed to next step
3. Is it written?
   - Yes: Complaints Manager
   - No: Oral response
4. Investigation
   - Acknowledge complaint in writing

   - Are there any nursing medical, therapy, aspects to the complaint?
     - Yes: Consult the relevant healthcare professional
     - No: Written response to complainant signed by the Chief Executive

5. Complainant informed that they may request an Independent Review panel within 28 days

   - Complainant satisfied
   - No: Independent review
Chart 2 - Independent Review

The complainant asks the Independent Review Secretariat for an Independent Review

Complaint considered by Reviewer and Lay Adviser

Is it a clinical complaint?

YES

Obtain clinical advise

Reviewer decides action to be taken in consultation with Lay Adviser and Clinical Adviser

Panel set up

Organised by independent review secretariat

Panel Rejected

LOCAL RESOLUTION has been completed
NHS Trusts, Local Health Boards, Primary Care Practitioners, Independent Providers

Referred back to LOCAL RESOLUTION

COMPLAINANT DISSATISFIED

COMPLAINANT SATISFIED

LOCAL RESOLUTION has been completed

COMPLAINANT SATISFIED

COMPLAINANT DISSATISFIED

OMBUDSMAN
## MANAGING COMPLAINTS

Local Resolution in Trusts, Local Health Boards and Family Health Services Practices

<table>
<thead>
<tr>
<th>Topic</th>
<th>Paragraph</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>1.1</td>
</tr>
<tr>
<td>Responsibilities for complaints handling</td>
<td>1.3</td>
</tr>
<tr>
<td>What the NHS complaints procedure covers</td>
<td>1.14</td>
</tr>
<tr>
<td>Publicising the procedures</td>
<td>1.34</td>
</tr>
<tr>
<td>Complaints made in person</td>
<td>1.36</td>
</tr>
<tr>
<td>Written complaints</td>
<td>1.41</td>
</tr>
<tr>
<td>Investigating the complaint</td>
<td>1.56</td>
</tr>
<tr>
<td>Facilitating Local Resolution</td>
<td>1.70</td>
</tr>
<tr>
<td>Replying to the complainant</td>
<td>1.83</td>
</tr>
<tr>
<td>When complainants are not satisfied</td>
<td>1.88</td>
</tr>
<tr>
<td>Complaints covering more than one agency</td>
<td>1.91</td>
</tr>
<tr>
<td>Adverse incidents</td>
<td>1.94</td>
</tr>
<tr>
<td>Disciplinary and other procedures</td>
<td>1.97</td>
</tr>
<tr>
<td>Redress and possible claims for negligence</td>
<td>1.111</td>
</tr>
<tr>
<td>Difficult patient relationships</td>
<td>1.114</td>
</tr>
<tr>
<td>Recording information on complaints</td>
<td>1.120</td>
</tr>
<tr>
<td>Reports to NHS Boards</td>
<td>1.123</td>
</tr>
<tr>
<td>Clinical governance</td>
<td>1.127</td>
</tr>
<tr>
<td>Performance management</td>
<td>1.133</td>
</tr>
</tbody>
</table>
Introduction

‘Dealing with complaints well, in my experience, is a sign of good practice on the part of individuals and organisations. Failure to pay attention to the complaints procedure undermines the confidence of both patients and professionals.’ The Health Service Commissioner for Wales, Annual Report 2001-2002

1.1. How an NHS organisation handles the complaints it receives is an important indicator of how responsive it is to patients and the public it serves. The way staff deal with complaints when they arise is a measure of how they are able to communicate with and listen to patients and the public.

1.2. Complaints are not just about dealing with individual grievances; they provide important information that providers and managers of health services need to know. Few people complain but many have useful information about services from their own experiences. The complaints system should be proactive in encouraging people to voice their concerns and be seen as part of the wider arrangements for involving patients and the public in monitoring services.

Responsibilities for complaints handling

Local Health Boards and NHS Trusts

1.3. The Local Health Board and the NHS Trust Board are accountable for the performance of their organisation in handling complaints about the services it provides, commissions or funds and ensuring that lessons are learnt to improve services. The importance given to complaints needs to be reflected at Board level. A Non-Executive Director or Non Officer Member should have designated responsibility for maintaining an overview of complaints and for reporting to the Board.

1.4. The Chief Executive of the NHS Trust or Local Health Board\(^1\) is responsible to the Board for the effective handling of complaints and must sign the final letter to the complainant as part of Local Resolution. The Complaints Manager should be a senior member of staff directly accountable to the Chief Executive.

\(^1\) Powys Local Health Board as a provider of community services will need to follow the guidance for Trusts when dealing with complaints against services it directly provides
1.5. Complaints Managers have an important role in ensuring that complaints are dealt with appropriately and lessons are learnt. They will need administrative support. Complaints Managers will:

- Receive complaints and co-ordinate the investigation and response;
- Advise staff dealing with complaints and who have complaints made against them;
- Advise complainants and ensure they are offered support from patient support staff and Community Health Councils (CHCs);
- Support and train those in contact with patients and carers how to deal with concerns and complaints when they first arise.

⇒ See 3.1 Job description for the Complaints Manager

1.6. Boards must ensure that training is available for all staff who are in touch with patients and members of the public as part of their induction and continuing education, including practice staff and staff working for independent providers. This training needs to advise staff how to deal with complaints where abuse is indicated and refer to Child Protection and Vulnerable Adults Procedures.

⇒ See Part 5 Training programme for NHS staff.

1.7. The Board may wish to set up an advisory committee or a sub committee to assist with monitoring and following up issues raised in complaints. In addition to the Complaints Manager and the Non-Executive Director or Non Officer Member with lead responsibility for complaints, CHCs, local representative committees and other local stakeholders should be involved.

1.8. All NHS bodies are required to appoint a Caldicott Guardian who is responsible for protecting the use of patient information. The Caldicott Guardian where possible should be an existing member of the Board of the organisation, a senior health professional and have responsibility for promoting clinical governance.

1.9. At all stages the Complaints Procedure must follow the principles that underlie the role of the Caldicott Guardian which are:
• Justify the purpose and ensure that every proposed transfer of patient identifiable information within or from an organisation is clearly defined and scrutinised;

• Do not use patient identifiable information unless it is absolutely necessary;

• Use the minimum necessary patient identifiable information; where a patient's identifiable information is considered to be essential, each individual piece of information should be justified with the aim of reducing identifiability;

• Access to patient identifiable information should be on a strict need to know basis;

• Everyone should be aware of his or her responsibilities;

• Every use of patient identifiable information must be lawful.

Family health services practices

1.10. All family health services practitioners are required in their terms of service to have practice-based systems for handling complaints, complying with national criteria and guidance. Practices must cooperate with the NHS Complaints Procedure, including Independent Review. Any failure could be a breach of terms of service.

• The senior partner (or equivalent) in a general medical or dental practice, or the principal or senior practitioner in pharmacy and optometry practices should take the lead responsibility for complaints and approve and sign letters sent to complainants at the end of Local Resolution.

• One person in the practice, often the Practice Manager, should be nominated and given appropriate training to receive and acknowledge concerns and complaints and operate Local Resolution. This person should not be a close family member of any of the health professionals in the practice.

1.11. Local Health Boards have an important role in making Local Resolution in family health services effective. They should:
• Help practices put effective complaints procedures in place; and advise them if the practice-based procedure does not meet the agreed criteria for the procedure;

• Provide training for practice staff in dealing with complaints;

• Assist individuals who do not wish to complain directly to their family health services practice;

• Make available independent complaints facilitators to practices and Trusts as part of Local Resolution, if appropriate (see paragraphs 1.79-1.82);

• Receive Independent Panel reports about family health services practitioners and follow these up to see whether recommendations are implemented.

Independent health care sector

1.12. Independent providers should have a complaints procedure for the NHS patients they care for to deal with complaints as part of Local Resolution. Complainants may ask for an Independent Review or complain to the Ombudsman if they are not satisfied.

1.13. The Directions and Regulations do not bind independent providers. Therefore, Trusts, Local Health Boards and family health services practitioners should specify in their contracts with independent providers that they must:

• Set up, publicise and run Local Resolution as far as possible identical to the Local Resolution procedure;

• Co-operate with the NHS Independent Review procedure;

• Provide information about complaints made by NHS patients to the commissioner of the service as part of their monitoring arrangements. This should include numbers, type, cause and actions taken to resolve the complaint and, where appropriate, remedy the concerns identified.
What the NHS Complaints Procedure covers

What is a complaint?

1.14. An expression of concern about NHS treatment or services, whether verbal or written, which requires a response. A complaint that is made orally but is unresolved after the first time it has been aired or the complainant wants to pursue further should be put in writing and the complaints procedure should start.

Who can complain?

1.15. Complaints can be made by anyone who has used NHS services or facilities; or has the patient’s consent. The NHS Complaints Procedure is primarily for complaints about services and facilities relating to care. As a matter of good practice, public services should deal sensitively and effectively with complaints by patients, visitors or other users of their facilities. The NHS Complaints Procedure is designed to address patients’ and relatives’ complaints, not staff complaints about services.

1.16. Relatives and friends can make complaints on behalf of patients. However, the patient needs to give written permission if the response might include any personal information.

1.17. Where a complaint is received from a local councillor, Member of Parliament (MP), an Assembly Member (AM) or Member of the European Parliament (MEP), you may wish to respond in general terms and write to the complainant to obtain consent for the disclosure of any personal information. You can also reply directly to the patient and send an additional copy of the reply to the complainant which can be passed on to the MP, AM or MEP if they wish. However, Regulations (SI 2002, no. 2905) provide for ‘additional circumstances’ in which personal data can be processed by elected representatives without the need for explicit consent.

1.18. Where a patient has died or is unable to give written consent, you should proceed with an investigation. If the complainant is not the patient’s next of kin, the patient’s relatives should be consulted and their views respected. If the next of kin refuses to give consent, this is not necessarily a reason for refusing to investigate a legitimate complaint. In some circumstances, you may have to respond in general terms to assure the
complainant that you have taken the complaint seriously and take appropriate action, without divulging personal or treatment details.

⇒ See 3.2 Consent forms

1.19. In respect of family health services practitioners, a child under the age of sixteen cannot bring a complaint on his or her own behalf. The statutory instruments containing the terms of service of family health services practitioners provide that parents or those with legal responsibility should bring complaints on behalf of a child. The instruments define a child as a person under the age of sixteen. Where staff are aware that parents are separated or divorced, the Complaints Manager may need to find out who has parental responsibility for the child.

1.20. In respect of services provided by a Trust, Local Health Board or independent provider, a child under the age of sixteen may bring a complaint on his or her own behalf if they are judged to be ‘competent’. In order to be adjudged competent the child has to have sufficient intelligence and maturity to fully understand what is involved in bringing a complaint, what the procedure entails, the involvement that will be expected of him or her and the likely consequences of complaining. The more ‘serious’ the complaint, the greater the level of understanding that will be required. Whether a child is competent to complain is a question of fact in every case. Suitably experienced advocates should support children to enable them to make a complaint if this is appropriate. Where a child has given information in confidence to the professional, which they do not want shared with their parents, their privacy must be respected. However, where a complaint indicates that there may have been abuse, Child Protection Procedures should be invoked.

⇒ See 3.3 Child-friendly statement included in complaints procedures.

Commissioning decisions

1.21. Local Health Boards deal with complaints made by or on behalf of any individual personally affected by a purchasing decision taken by the Local Health Board. The NHS Complaints Procedure cannot be used to complain about general commissioning issues. Local Health Boards are required to consult separately with Community Health Councils and others on policy decisions. Community Health Councils can assist patients who wish to
complain about commissioning decisions, and to pursue general issues arising from these complaints.

1.22. From 1 April 2003, commissioning specialised and tertiary health services will become a function linked to the National Assembly for Wales. The process for handling complaints made against this organisation is yet to be developed. Further guidance will follow.

Continuing Care Reviews

1.23. The review procedure for continuing care decisions is not a complaints procedure. Someone who has had their case considered by a continuing care review panel can complain under the NHS Complaints Procedure about the original decision on discharge, or the continuing care review process. A complainant may choose to complain directly to the Ombudsman, who will have discretion to decide whether the circumstances of the particular case justify waiving the normal requirement that the NHS Complaints Procedure has been exhausted first.

Suspected abuse of children or vulnerable adults

1.24. Where a complaint indicates that a child or vulnerable adult may have been abused, the Child Protection/Vulnerable Adult Procedures should be followed not the complaints procedures. The NHS Complaints Procedures should not be used to investigate allegations of abuse.

Private Pay Beds

1.25. The NHS Complaints Procedure covers any complaint made about a Trust’s staff or facilities relating to care in the Trust’s private pay beds. It does not cover private medical care provided by consultants outside their NHS contract.

Mental Health Act

1.26. The Mental Health Act Commission investigates complaints about treatment from anyone who has been detained under the Mental Health Act. The NHS Complaints Procedure does not apply to any issues around detained patients, but detained patients may still complain about other aspects of their care under the NHS Complaints Procedure and these should be investigated normally.
Complaints about removal from a GP List

1.27. Patients can complain about their removal from the list. The General Medical Council in Good Medical Practice advises doctors thus:

‘Rarely, there may be circumstances, for example where a patient has been violent to you or a colleague, has stolen from the premises, or has persistently acted inconsiderately or unreasonably, in which the trust between you and the patient has been broken and you find it necessary to end a professional relationship with a patient. In such circumstances, you must be satisfied your decision is fair … … and you must be prepared to justify your decision if called on to do so. You should not end relationships with patients solely because they have made a complaint about you or your team, or because of the financial impact of their care or treatment on your practice.’

The British Medical Association and the Royal College of General Practitioners have also produced guidance on the removal of patients from GPs' lists. Guidance from the Royal College of GPs can be seen on (www.rcgp.org.uk/)

Complaints from patients refused registration

1.28. The Ombudsman has taken the view that as general practices provide a public service, any members of the public refused registration by the practice have the right to make a complaint about the decision.

Complaints about deputising and out-of-hours services

1.29. Until Local Health Boards take over responsibility for out-of-hours services, complaints should be made to the patient’s registered GP who has arranged the out of hours service. Where the complaint involves a deputising service, the practice will need to contact the service to obtain their records and comments.

Complaints against locums or doctors in training

1.30. Complaints against locums or doctors in training should be investigated by the practice and the doctors concerned contacted if possible for their comments. If the complaint is not resolved by the practice, the complainant can ask for an Independent Review of their complaint. To avoid this it is important that the practice can show that they have made every effort to investigate the complaint and contact the doctor concerned.
Contracts and letters of appointment should require locums to assist in any complaints investigation.

Complaints about dentists

1.31. Many complaints about dental services cover NHS and private treatment or are made where patients are unclear as to what the charges were for NHS services and what the alternative cost for private treatment would be. Dentists must ensure that the patient fully understands whether the treatment is NHS or private. People who have a dental consultation or receive treatment which they believed to be NHS can make a complaint under the NHS Complaints Procedure, whether or not the dentist has submitted an NHS form for payment.

1.32. Complaints about private dental treatment given by qualified dentists, dental hygienists and dental therapists can be made to the General Dental Council’s complaints and professional conduct procedures (www.gdc-uk.org/).

Complaints against pharmacists and opticians

1.33. All FHS pharmacy and ophthalmic practitioners are required to have in place in-house systems for handling complaints about NHS services, complying with national criteria and guidance. They must cooperate with the NHS Complaints Procedure, including Independent Review.

- Complaints about private optical treatment can be taken up with the Optical Consumer Complaints Service (www.opticalcomplaints.co.uk).

- Complaints about private pharmacies can be referred to the Royal Pharmaceutical Society (www.rpsgb.org.uk).

Publicising the procedure

1.34. Trusts, Local Health Boards and family health services practitioners must publicise their complaints procedures. There should be a poster in waiting areas inviting people to make comments, suggestions and complaints.

⇒ See Poster 3.4
1.35. Anyone who asks for information about how to complain about services should be given a copy of the appropriate leaflet and advised how to make a complaint should they wish to. A general national leaflet about the procedures in Wales is available. Trusts and practices should also provide a local complaints leaflet that:

• Explains how complaints are handled;

• Explains how information regarding the complaint will be handled under the Data Protection Act: what information will be sought and who it will be shared with, how long complaints records will be kept;

• Offers reassurance that making a complaint will not be taken negatively, or adversely affect the care they receive;

• Explains how to get free advice and support from local CHCs, Citizen’s Advice Bureaux, or any local organisation that helps patients in the area;

• Explains how to take the matter further if they remain dissatisfied;

• Identifies the organisation’s Complaints Manager and other key contacts.

Complaints made in person

1.36. Complaints are most likely to be resolved if they are dealt with as they arise by those on the spot. This is Local Resolution. The Health and Social Care Guide for Wales gives patients the right to expect a:

• Complaint to be thoroughly investigated and dealt with promptly; and a

• Full written reply from the organisation complained about within four weeks.

1.37. Many complaints made in person or by phone can be resolved on the spot or within two working days. These complaints should be logged. The information should cover the name of the complainant and patient (if different), what the complaint was about and the action taken.

1.38. Any member of staff who is likely to receive a complaint or concern should be able to take appropriate action and deal with concerns raised
rapidly and in a sensitive manner. Anyone who may receive complaints needs to:

- Check that the patient’s immediate health care needs are being met. This may require urgent action before any matters relating to the complaint are tackled;
- Give complainants the opportunity to discuss their concerns in private and encourage them to speak openly and freely about them;
- Where the complainant raises a clinical matter, ensure this is discussed with the clinician concerned and if a clinician is available, make an appointment to discuss it;
- Know when to refer a complaint to patient support staff or Complaints Manager, either for advice or direct handling;
- Inform the complainant that they can make their complaint to the Complaints Manager or the Chief Executive.

1.39. Sometimes the staff member cannot deal with the complaint and should refer it immediately to someone who can. The organisation should have referral guidelines in place to help junior members of staff hand complaints on to a more senior person, such as the Complaints Manager, in a way that does not mean the complainant has to repeat their story many times. If the complainant is dissatisfied with the initial response and wants to pursue the matter further, the complaint should be put in writing and signed by the complainant.

⇒ See Part 5 Tips on dealing with concerns and complaints as they arise.

Family health services practitioners

1.40. Sometimes people do not want to raise a concern directly with the practice and prefer to make their complaint directly to the Local Health Board either verbally or in writing. If the complainant agrees, the Local Health Board should then send the practitioner complained against a copy of the complainant’s letter or an agreed summary of a verbal complaint, which has been agreed with the complainant. Local Resolution then proceeds as usual. The Complaints Manager in the Local Health Board must make it clear to the complainant that the Board is not able to investigate the complaint but only
able to help in obtaining the practitioner’s reply or by offering independent facilitation.

**Written complaints**

**Acknowledging the complaint**

**1.41.** Complainants who make written complaints should be contacted within two working days of receipt of the complaint to:

- Acknowledge that their complaint has been received;
- Express regret that the person has a complaint;
- Explain the complaints procedure;
- Check whether the complainant is eligible to make a complaint or whether the patient’s consent is needed;
- Give the name of the person dealing with the complaint and how to contact them;
- Where necessary, clarify any issues arising from the complaint;
- Explain that it may be necessary to look at the patient’s health records and obtain their consent;
- Give details of the local Community Health Council and how they can help.

**1.42.** As well as acknowledging the complaint in writing, on some occasions it can help to telephone the complainant. Sometimes it is not clear what the complainant wants from making the complaint, but you need to identify this in order to deal with the complaint in the most appropriate way and to explore ways of resolving it. Complainants should not be phoned if there is any reason to think that they might see this as intimidating.

**1.43.** All communications should be marked ‘Private and Confidential’ and/or ‘Personal’ and sent by first class post. Original records should be sent by an appropriate method (such as registered delivery). A separate file must be kept for complaints records and complaints letters should never be filed in the patient’s medical records.
Support for complainants

1.44. Some people will need additional assistance to make a complaint. There should be systems in place to address the different needs of clients, for example other languages, literacy or communication difficulties. NHS Trusts and Local Health Boards should have policies and arrangements for helping people who may find it difficult to speak for themselves. This is in addition to the support provided to complainants by Community Health Councils.

- Providing people who speak little or no English with an interpreter and publishing key information in relevant languages;
- Arrangements for people who are visually or hearing impaired;
- Providing people with learning difficulties or mental health problems with a ‘buddy’ or advocate to help them.

1.45. To make sure complainants feel able to express their concerns and talk openly, they should be encouraged to bring a relative or friend to meetings and should be informed at the start about the help that patient support staff and Community Health Councils can give. The complainant must also be told that they can give the CHC or other agency written consent to act on their behalf if they do not feel able to act for themselves.

1.46. Children have the right to appropriate advocacy to enable them to make a complaint. Trusts and Local Health Boards should have arrangements in place to provide advocacy services. Complaints made by children should only be discussed with the parents or carers with the child’s express consent.

Patient support staff

1.47. Some NHS Trusts in Wales have patient support staff who can also give advice about the complaints process and steer the complainant to sources of help they might need. All Trusts must have a clear protocol for the assistance that patient support staff provide and when they need to refer complainants to the Complaints Manager and Community Health Councils.

Community Health Councils

1.48. The local Community Health Council provides advice, support and advocacy service for complainants. Their assistance can be invaluable in providing a link with patients who find it difficult to approach the NHS.
organisations directly or make a complaint. Contact details for the local CHC can be found by visiting the website of the Welsh Association of Community Health Councils (www.wales.nhs.uk/chc/)

Advocacy and support groups

1.49. Independent advocacy provides support to people with particular needs and client groups, such as people using mental health services or people with learning disabilities. Trusts providing mental health services may want to ensure that they have good links with local voluntary organisations so that they can arrange assistance for patients who may benefit from their help. Patients can also access Action for Victims of Medical Accident’s (AVMA) services direct if they would like specialist advice on clinical issues.

Support for staff complained against

1.50. Staff need to be told at the start when a complaint has been made against them. Individual members of staff should also see any letters of complaint in which they are mentioned. All staff named in a complaint must be updated during the process and informed of the outcome of the complaint. Staff members may need assistance in preparing reports or evidence required during the complaints process and advised that they may want to contact their professional organisation or trade union.

1.51. It can be very distressing and stressful for staff to receive a complaint from a patient.

- Trusts and Local Health Boards should have arrangements for support and advice for staff against whom complaints are made.

- Local Health Boards should encourage family health services practitioners to ask for help, advice or support from their local representative committee.

- Family health services practitioners need to ensure that similar support arrangements are in place for their own staff who may have a complaint about them.

Time limits for making a complaint

1.52. Normally 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. If a complaint is out of time, the Complaints Manager can ask for reasons for the delay and extend the time limits where it would be unreasonable to expect the complaint to have been made earlier. This might be because the complainant had not realised there was a problem earlier, was ill or was caring for the patient.

1.53. If some time has elapsed between the events complained about and the receipt of a complaint, individuals who have been complained against may have moved from the local NHS or left the NHS entirely. This in itself is not grounds for refusing an ‘out of time’ complaint.

1.54. If a complaint is not investigated because it is out of time, the complainant must be told the reasons and that they can complain about this decision separately, and if this also fails, they can ask for an Independent Review of the complaint about the refusal to waive the time limit. If the complainant is not satisfied with the Independent Review, the complainant may appeal to the Ombudsman.

1.55. Local Health Boards, NHS Trusts and family health services practitioners may be concerned that if they accept a complaint that is out of time, the complainant could then take it to an Independent Review. In certain circumstances, they may consider addressing the complainant’s concerns outside the NHS Complaints Procedure, pointing out to the complainant that it is out of time and that the investigation is not being done as part of the NHS Complaints Procedure. The complainant can still ask for an Independent Review of the decision not to waive time limits, but not on the handling of the complaint.

Investigating the complaint

1.56. The Complaints Manager will ensure that the complaint is thoroughly and fairly investigated by:

- Identifying the staff concerned, any witnesses or supporting evidence (such as health records);

- Interviewing or obtaining statements from staff or other witnesses (including anyone who was present when the events complained of occurred, for example other patients or, with their permission, the complainant’s visitors or relatives if they were present);
• Obtaining copies of health records or supporting evidence (while respecting patient confidentiality and Caldicott principles);

• Checking the evidence and identifying any gaps or contradictions;

• Obtaining clinical advice if necessary, including from nurses or therapists where indicated, and

• Identifying any procedures or policies in the organisation that are relevant to the event.

Health records

Examining health records during investigations

1.57. In many investigations, the person investigating the complaint will need to look at the health records. When a written complaint is received, a letter should be sent to the patient enclosing the consent form at paragraph 3.2 and a copy of the patient complaint leaflet. The letter should make it clear that the patient’s medical records will need to be reviewed. It is recommended that the patient’s signed consent form is returned before investigation of the complaint commences.

1.58. Care must be taken at all times throughout the complaints procedure to follow Caldicott principles and ensure that only information about the patient relevant to the investigation of the complaint is disclosed and only to those who have a demonstrable need to know in order to investigate the complaint. Where a complaint is made on behalf of a patient who has not authorised someone to act for them, care must be taken not to disclose personal health information to the complainant.

1.59. In family health services, the practitioner complained against may no longer have the health records and wish to see them in order to prepare the response to the complaint. In general only copies of records should be sent to the practitioner. If the original records are sent the Local Health Board should keep a copy of the relevant section. This avoids the suspicion arising that the records have been altered.

1.60. For dental services, treatment plans form part of a patient’s dental records and are invaluable when trying to resolve complaints. They can help avoid misunderstandings and disputes about treatments. It is a requirement
of a dentist’s terms of service that they provide a treatment plan in some circumstances and failure to do so can result in disciplinary action.

Requests for access to records

1.61. Complainants may request access to health records in relation to a complaint. Information should normally be shared between parties in the NHS Complaints Procedure. Giving complainants access to the records can help them understand what has happened and avoid suspicion of a ‘cover up’.

1.62. Where the complainant is not the patient, personal information should only be shared if they are authorised to act on the patient’s behalf. Under the Data Protection Act documents can only be withheld from an authorised person in limited circumstances:

- Where information relates to another individual (this does not apply to a health professional); or

- Access to the information is judged as likely to cause serious harm to the physical or mental health of the complainant.

Where a complainant is pursuing a complaint on behalf of a person who is incapable of managing his or her own complaint due to impairment of mental capacity, the data controller, which may be a Trust, Local Health Board or family health services practitioner must be satisfied that the individual who is bringing the complaint is acting in law on behalf of the patient. Further guidance on this point may be found in Part 4.

1.63. Access to the health records of a patient who has died is still governed by the Access to Health Records Act 1990. Where the patient has died, their personal representative, executor, administrator or anyone having a claim resulting from the death, (this could be a relative or another person), has the right to apply for access to the deceased’s health records. Professionals are still under an obligation to keep personal information confidential after a patient dies. However, the General Medical Council in its guidance to doctors, *Good Medical Practice*, advises doctors to give full information to parents of children who have died. Information should also be shared with the partner, close relative or a friend of an adult where they have been involved in the care of the patient, unless doctors have reason to believe that the patient would have objected. Any instructions made prior to death by
the patient about the withholding or disclosing of information must be
honoured.

1.64. Particular care must be taken where the patient’s records contain
third party information provided in confidence by, or about, a third party
who is not a health professional, such as a carer, neighbour or relative. In
GP records it is not unusual to include family history and information about
relatives’ health. Only information, which is relevant to the complaint, should
be considered for disclosure and then only to those within the NHS who have
a demonstrable need to know it in connection with the investigation of the
complaint. Third party information must not be disclosed to the patient unless
the person who provided the information has consented to the disclosure. If
the patient provided this information initially then there is no need to obtain
consent.

1.65. Disclosure of information provided by a third party outside the NHS,
such as Social Services, also requires the explicit consent of the third party. If
the third party objects then the information can only be disclosed where there
is an overriding public interest in doing so and the rationale for such
disclosure should be recorded. For more detailed information on disclosure of
information see Part 4.

W here staff do not co-operate

1.66. All NHS staff are required in their contracts to co-operate with the
NHS Complaints Procedure. Where an employee who has been asked to
give an interview or a statement refuses without reasonable grounds, this
should be considered for disciplinary action.

1.67. Where a family health services practitioner refuses to deal with a
complaint under Local Resolution, the Local Health Board will need to find out
the reason and take action on behalf of the complainant. This may include:

- Visiting the practice and offering assistance;
- Contacting the Local Representative Committee;
- Referring the practitioner for disciplinary action for breach of terms
  of service.

If the Practitioner still refuses to co-operate the complainant has the right to
ask for an Independent Review.
1.68. If staff or professionals complained against have moved from the organisation or left the NHS, attempts should be made to trace and contact them through their professional registration body. It is important to show that every effort has been made to investigate the complaint and contact the staff member or professional concerned, if the complainant then asks for an Independent Review.

1.69. Where an individual has left the UK or retired, it is not possible to apply the NHS Complaints Procedure to them without their agreement. Where appropriate, the individual can be referred to the professional regulatory body.

Facilitating Local Resolution

1.70. Depending on the nature of the complaint, the Complaints Manager will attempt to resolve the matter to the satisfaction of the complainant. Local Resolution should allow a range of different options for responding to a complaint. This may include:

- Inviting the complainant to meet with staff, practitioners and clinicians to discuss their concerns further;
- Arranging a second opinion on clinical issues;
- Offering independent facilitation or mediation.

1.71. If the complaint involves either a clinical matter or a doctor or staff member’s attitude, the Complaints Manager must involve the doctor or staff member concerned in Local Resolution.

Meetings

1.72. Where relevant, any health professional concerned should be consulted about whether a meeting would be useful. They should be informed well in advance of the meeting so that they can prepare answers or instruct an investigation to take place. A meeting with the complainant can be useful to answer some of the issues raised.

1.73. Meetings are more likely to be successful if the complainant knows what to expect and can offer some suggestions towards resolution. Complainants should always be encouraged to bring a relative or friend to meetings. Complainants have the right to choose from whom they seek
support and may wish to bring a solicitor with them to a meeting. A legally qualified person may only be present as a friend or adviser to the complainant and may not act in a legal capacity.

1.74. If complainants say that they are happy with the actions proposed and do not intend taking matters any further, then this can conclude Local Resolution. The organisation or family health services practitioner should then send the complainant a full written response based on the meeting, making it clear that Local Resolution is concluded. If follow-up action has been promised, the patient must be informed in due course about the outcome.

1.75. Not all patients want to attend a meeting or meet people they have complained against. The decision should be respected and other ways of facilitating Local Resolution considered.

⇒ See Part 5 Tips on running meetings

Second opinions

1.76. Where the complaint is about ongoing clinical care, the Trust can arrange for a second opinion or reassessment of the patient’s care. The individual’s treatment or care plan should be reviewed in the light of the results of that reassessment.

1.77. Sometimes it can be helpful to offer the complainant a chance to talk matters through using the patient’s records with a clinician from the Trust or Local Health Board. This can be particularly helpful where there has been a death. Patients can also be advised how they can find someone independent to help them go through the notes.

1.78. For complaints about dental practitioners, the Dental Practice Board will provide dental reference officers (DRO) to provide a second opinion as part of Local Resolution. DRO can examine the patient with their consent and give an opinion about the treatment. This service is only available on the request of the dentist complained against. Local Health Boards may suggest using DRO to a practitioner who seeks their advice. If dentists are reluctant to use DRO services, the local dental committee may be asked to nominate a local practitioner who would be willing to provide a second opinion. The Dental Reference Service contacted via helpdesk@dpb.nhs.uk or the Dental Practice Board (01323 433550).
Independent complaints facilitators

1.79. Sometimes, particularly where a complainant is upset or trust has broken down, an independent person can assist all concerned to a better understanding of why the complaint has arisen and prevent the complaint being taken further. Independent facilitation, which may include conciliation and mediation, is best done in the early stages of the complaint with the agreement of all the parties. It is important that you obtain the complainant’s and other parties signed agreement to their involvement.

1.80. Independent facilitation may help:

- Where staff or practitioners are having difficulty in dealing with the complaint;
- When patients feel uneasy that the Complaints Manager is not impartial and cannot deal with the complaint satisfactorily;
- When there are misunderstandings with relatives, during the treatment of a patient. Facilitation can lead to a ‘shared view’ of the situation including their differences.

1.81. Facilitators can work in different ways, depending on the complaint. Sometimes they meet the parties separately and sometimes together. All discussions and information provided during the process of conciliation are confidential and without prejudice. This allows staff to be open about the events leading to a complaint so that both parties can hear and understand each other’s point of view and ask questions. Using an Independent Complaints Facilitator does not affect the right of a complainant to pursue their complaint, if they are not satisfied.

1.82. In each area there should be a pool of independent facilitators available to family health services practitioners and NHS Trusts as part of Local Resolution (replacing the conciliation services provided under the 1996 Regulations). Local Health Boards may wish to work together to appoint, train and supervise a pool of trained independent complaints facilitators. External mediation services can be useful for difficult complaints where Local Resolution is failing. Local Health Boards may wish to work with local mediation services, where they exist, in developing the pool of independent complaints facilitators.

⇒ See 3.5 Guidance on Independent Complaints Facilitation.
Replying to the complainant

1.83. A full investigation of the issues raised in the complaint should be completed within four weeks (20 working days). If it is not possible to complete the investigation within this time, the complainant should be informed of the reason for the delay and when they can expect to receive a reply.

1.84. The reply should aim to satisfy the complainant by:

- Assuring the complainant that their concerns have been thoroughly investigated point by point;
- Offering an apology and explanation as appropriate;
- Referring to any remedial action that will be taken as a result;
- Informing the complainant that they can request an Independent Review of their complaint if they are still not satisfied within 28 calendar days of the date of the final reply;
- Reminding them of the support available from CHCs.

1.85. The reply must address all the issues raised by the complainant, whether or not they are perceived as important by the organisation complained against. Sometimes problems beyond those in the initial complaint may be identified. While the organisation does not have to include these in the formal letter of response, including them may reassure the complainant about the openness of the organisation and that their complaint has been worthwhile.

Trusts and Local Health Boards

1.86. The Chief Executive must respond in writing to all written complaints about services they provide or commission. The reply from the Chief Executive may take the form of a full personally signed response or a shorter letter covering a full report from another member of staff, which the Chief Executive has approved.

1.87. Where the complaint covers clinical issues, the reply will draw on the comments and report of the clinicians concerned. It is up to the Chief Executive how this information is presented to the complainant. However, if
the Chief Executive wishes to change the substance of the reply or omit information which the clinician feels is relevant, this should be discussed with the clinician before the letter is sent. If the complainant is not satisfied with the response, they can ask to see the full responses and complaints file under the Data Protection Act and so substantive information should not be excluded.

⇒ See 3.6 Sample letters.

**When complainants are not satisfied**

1.88. Most complaints are resolved locally. However, in some cases the complainant may not be satisfied and may ask for an Independent Review. When concluding Local Resolution, NHS organisations must ensure that complainants are aware:

- That a request for Independent Review can be made orally or in writing, setting out which aspect of their complaint remains unresolved;
- That the initial request should be made within 28 calendar days from the date of the letter sent to the complainant at the end of Local Resolution;
- How to contact the relevant Independent Review Secretariat;
- That the local Community Health Council can offer advice and support.

1.89. Some complainants may feel that they are not being given the full picture in the final reply, and may want to have sight of the complete file on the complaint investigation. Any application such as this should be dealt with under the Data Protection Act.

1.90. The complainant can request an Independent Review orally or in writing within 28 days of receiving the reply at the end of Local Resolution. If the complainant makes the request to an NHS Trust or Local Health Board, the Complaints Manager should inform the Independent Review Secretariat the same day by fax, and forward the request to them. If the request is oral, then the Trust or Local Health Board should produce a written summary as soon as possible and give a copy to the complainant and fax a copy to the Independent Review Secretariat.
Complaints covering more than one agency

1.91. Some complaints cover more than one NHS organisation. It is difficult to investigate these complaints without looking at what happened as a whole and this is what complainants often expect.

1.92. Trusts, Local Health Boards and family health services practices can agree to undertake Local Resolution of such complaints jointly and co-ordinate their response. This avoids giving separate replies that may appear contradictory or to shift the blame between each other. Where this happens, and the patient requests it, there would be good grounds for holding an Independent Panel.

- Complaints Managers can decide whether the issues should be handled separately or as part of a joint response. The complainant should be provided with details of how the investigation will take place.

- One officer in a lead agency can be nominated to co-ordinate the joint investigation and to be the main point of contact for the complainant during the investigation.

- Agencies can share an independent complaints facilitator or use a joint ‘independent investigator’ (as required in Social Services second stage procedures) in NHS Local Resolution where a complaint is linked with Social Services.

- Appropriate NHS timescales should apply.

- The respective Chief Executives/senior partner can both sign a joint response.

1.93. Some complaints, particularly from people living with long-term conditions cover both health and social care and may be about the gaps between them. Local Resolution can be undertaken jointly, though the procedures for the second stage (Independent Review) are currently different between health and social care and cannot be undertaken jointly, though this may change in the future.

⇒ See 4.5 Social Services complaints procedures.
Adverse incidents

1.94. All NHS Bodies should have separate policies and procedures in place for the management and investigation of patient-related adverse incidents (otherwise referred to as clinical / significant / critical incidents or sentinel events). All such policies should stress the need to inform patients when such an incident has occurred, the proposed action and outcome. As with the complaints procedure the overarching aim is to ensure that lessons are learnt and not to apportion blame.

1.95. There will be occasions when a patient may lodge a complaint following an adverse incident. In such cases the investigation into the incident should continue to ensure that appropriate action is taken to reduce the risk of recurrence. This should be able to be done in parallel to the handling of the complaint, to ensure that the complainant is kept informed. The adverse incident investigation report can then be used to inform the overall response to the complaint.

1.96. From 2003/04 all NHS bodies will be expected to report all patient related incidents to the National Patient Safety Agency (NPSA) for the purpose of learning lessons and to devise and implement safety solutions nationally where appropriate. All such reports will be anonymous; it is not the role of the NPSA to investigate incidents, that is an issue for local management. The public and patients will also be able to report adverse incidents to the NPSA for the purpose of ensuring that learning can be achieved from such incidents. If a member of the public/patient contacts the NPSA to complain about an aspect of NHS care, then they will be referred to an appropriate organization (www.npsa.org.uk).

Disciplinary and other procedures

1.97. Sometimes in a complaints investigation, serious issues emerge which need to be addressed by the Boards of NHS bodies. The Complaints Procedure is concerned only with resolving complaints and learning lessons for improving services. It is not for investigating disciplinary matters.

1.98. The overriding principle is the safety of patients. If at any stage in the complaints procedure, a member of staff of a Trust or Local Health Board feels serious concerns are raised they should pass the information immediately to the Complaints Manager, who will ensure that it is passed on to a appropriate person who can make a decision on whether or not action
is required in the interests of patient safety. Any concerns should be raised with the appropriate senior person in the Trust or Local Health Board who may decide to:

- Carry out an investigation under the disciplinary procedure;
- Where abuse of a child or vulnerable adult is suspected, refer to professional abuse and the child protection and vulnerable adult procedures;
- Refer a professional to one of the professional regulatory bodies;
- Refer individual clinicians to the National Clinical Assessment Authority;
- Refer to the Counter Fraud Officer of the NHS Trust or Local Health Board.

1.99. If the Trust or Local Health Board decides to take any of these actions before a complaint investigation has been completed, consideration will need to be given to how far the investigation under the NHS Complaints Procedure can continue and whether other investigations can run alongside it.

1.100. As a principle, when disciplinary or other procedures are invoked, the complainant should receive the same consideration and level of information as if the matter had been dealt with through the complaints procedure. The complainant should be able to understand what happened, why it happened, and what action has been taken as a consequence to ensure that it does not happen again. The complainant should be informed in general terms of disciplinary sanctions imposed on any staff member. A judgment will need to be made between reassuring the complainant that the matter they raised has been taken seriously and dealt with satisfactorily, while protecting the confidentiality of the member of staff.

Trusts and Local Health Boards

1.101. Disciplinary investigation can be suggested at any point during the complaints procedure, but consideration as to whether or not disciplinary action is warranted is a separate matter for management outside the complaints procedure. Papers from the investigation of the complaint may be passed to the appropriate person in the organisation responsible for
disciplinary or other action. Only the minimum information that identifies the patient and is necessary to the investigation should be supplied.

**Family health services practitioners**

1.102. For family health services practitioners, local disciplinary procedures cannot be considered until after the complaints procedure, including Independent Review, is exhausted. Disciplinary investigations can only interrupt the handling of a complaint if action is considered necessary to protect patients, for example the need to involve the police, or a professional registration body. When a decision is made to hold a disciplinary investigation, the complaints investigation of all matters subject of the disciplinary proceedings must stop.

1.103. Information gathered in the complaints process by the practitioner, as part of Local Resolution, belongs to the practice. The Local Health Board has no right of access to it and will only be able to require that the practitioner concerned provides the Local Health Board with information about action taken during or because of Local Resolution. Information acquired during the Independent Review process cannot automatically be used in disciplinary investigations.

**Suspected or alleged abuse or assault**

1.104. Where the complaint alleges assault or abuse, the case should be referred to Social Services or the Police as directed by the All Wales Child Protection Procedures and Abuse by Professionals policy. All Trusts must have a procedure for ensuring that such issues of abuse are referred to the appropriate statutory agency. If the Crown Prosecution Service decides not to press charges against the alleged perpetrator and/or there is no conviction, the Professional Abuse Policy, including some aspects of the Complaints Policy, should still be followed.

1.105. Occasionally parents make use of complaints procedures to prevent the proper child protection action being taken. If a complaint received is about a health professional making a Child Protection referral to the statutory agencies or about sharing information with other agencies, then the Complaints Manager should immediately seek the views of the Named Doctor and/or Named Nurse Child Protection for the Trust or person in the Local Health Board with responsibility for Child Protection (or the designated Doctor or Designated Nurse Child Protection), who can advise the
Complaints Manager whether the action was in line both with the multiagency All Wales Child Protection Procedures and that health organisation’s child protection procedures and assist in drafting the reply.

Professional regulatory bodies

1.106. Once Local Resolution is completed, the Trust or Local Health Board may refer a complaint to a statutory professional regulatory body. The complainant should be informed of this decision and be given as full a response as possible to the complaint. It must be made clear to the complainant that any information obtained during the complaints investigation may need to be passed on to the regulatory body.

1.107. An individual can complain directly to a professional regulatory body at the same time as going through the NHS Complaints Procedure. The fact that a complainant has also made contact with a professional regulatory body is not grounds for stopping the complaints procedure at any stage. Advice on this can be sought on individual cases from the regulatory body.

National Clinical Assessment Authority

1.108. Local Health Boards and Trusts can invite the National Clinical Assessment Authority (NCAA) to assist them with doctors who cause them concern. The NCAA provides advice and support to Health Boards and Trusts on dealing with doctors causing concern. This includes advising on the development of effective local procedures for the handling of cases of poor performance. The NCAA will also undertake assessments and make recommendations where problems cannot be dealt with locally. The NCAA’s main role is in education and development and it has no disciplinary functions or sanctions (www.ncaa.nhs.uk).

Fraud

1.109. If the allegation involves fraud, the case should be referred to the Counter Fraud Officer in the Health Board or Trust.

Coroner’s Cases

1.110. If the complaint concerns a death that has been referred to the Coroner’s office, the NHS body should investigate the complaint regardless of the Coroner’s inquiries and where necessary extend these investigations if the Coroner so requests. The Coroner is only looking at the cause of death,
whereas the complaint may cover other issues. Where relatives are concerned about the cause of death, staff should advise them that they can contact the Coroner’s office directly and ask for an independent post-mortem and investigation.

**Redress and possible claims for negligence**

1.111. If a complainant’s initial communication is via a solicitor’s letter, it should not be concluded that the complainant has decided to take formal legal action. Sometimes an open and sympathetic approach will satisfy the complainant. Where a complainant feels that staff are not being honest or are covering up the truth, they are more likely to resort to legal action in order to obtain information and explanations. Complainants should not be asked to sign a disclaimer that they are not taking legal action before the complaint is investigated. This is against the spirit of the Guidance and is unenforceable.

1.112. Where there is a prima facie case of clinical negligence or if it is thought that there is a likelihood of legal action being taken, the person dealing with the complaint should inform the person in the Trust or Local Health Board responsible for dealing with risk management and claims management. There should be a full and thorough investigation of the events and a full explanation being given and, if appropriate, an apology offered to the complainant: an apology is not an admission of liability. In any case where the Trust or Local Health Board accepts that there has been negligence; a speedy settlement should be sought.

1.113. If formal court proceedings have been started, the complaints procedure should be discontinued and the complainant and the complained against advised in writing. If the legal action is later dropped or fails, the complaint can be investigated outside the NHS Complaints Procedure (see paragraph 1.55).

**Difficult Patient Relationships**

1.114. Staff and practitioners need to be courteous at all times, even if patients are rude or aggressive or abuse the service. No member of staff should be the subject of verbal or physical abuse of any kind. Any incident of this sort should be reported to the manager as part of the Zero Tolerance Campaign. (See http://www.doh.gov.uk/zero/gp.htm and
Habitual complainants

1.115. Some people make complaint after complaint and want to continue when nothing further can reasonably be done to assist them or to rectify a real or perceived problem. Handling such complaints causes stress for staff and takes an enormous amount of time and resources. Staff dealing with such complainants will need support from a high level in the organisation and access to counselling if they want it.

1.116. In determining arrangements for handling such complaints, staff need to:

- Ensure that the complaints procedure has been correctly implemented as far as possible and that no material element of a complaint is overlooked or inadequately addressed;

- Appreciate that even habitual complainants may have grievances, which contain some genuine substance;

- Ensure a fair approach;

- Be able to identify the stage at which a complainant has become habitual.

1.117. All NHS bodies need a policy to identify situations where the complainant might be considered to be habitual and to suggest ways of responding to these situations, which are fair to both staff and complainants. This policy should be used after all reasonable measures have been taken to try to resolve the complaint through Local Resolution and Independent Review. After all the attempts at Local Resolution, the Trust and Local Health Board can state that they consider the matter is closed and will not enter into any more correspondence with the complainant. This should be authorised by the Chief Executive.

⇒ See 3.7 Policy for dealing with habitual complainants

⇒ See Part 5 Tips on dealing with difficult professional/ patient relationships.
1.118. The Local Health Board should provide support and advice to any practice wishing to make a complaint about a patient. Before contacting the Local Health Board formally, the practice should:

- Identify the issues and reasons why it is necessary to raise the matter about the patient;
- Seek advice from the local representative committee and defence body;
- Deal with any concerns about a patient with them directly;
- If agreeable to both parties, use a conciliator;
- Finalise the matter in writing, confirming what has been agreed;
- Advise the patient what action will be taken by the practice should their behaviour be repeated, such as giving a final warning, removal from list under normal procedures or with immediate effect, call the Police, inform the Local Health Board.

1.119. The Local Health Board will look at how the practice has dealt with the matter through its local procedures and consider what further assistance it can offer to try and resolve the problem or support to the practitioner and their staff. Each situation will be different, but the Local Health Board may:

- Discuss with the practice its reasons for making the complaint;
- Identify any trends in the patient’s behaviour, for instance is this a one-off incident, or does the patient have social problems, or is there a mental health issue which needs addressing;
- Look at what efforts have been made by the practice to address/resolve the matter with the patient;
- Consider whether it is a matter that would be appropriate to deal with through a patient participation group/patients association;
- Consider whether independent facilitation is appropriate;
• Offer advice to the practitioner about how to go about writing an appropriate letter to the patient;

• Provide advice on the regulations for de-registering patients;

• Suggest the practitioner seeks professional advice from their Local Medical Committee or defence body before taking any action.

Recording information on complaints

1.120. Comments, concerns, complaints and all other forms of informal feedback including enquiries and requests for clarification can all provide useful feedback for the organisation and identify potential areas of difficulty. An increase in the number of complaints is not in itself a reason for thinking that a service is deteriorating. It could mean that the organisation is becoming more responsive and open to patients’ views and complaints. Information from complaints needs to be collected, analysed and the causes of complaints identified by complaints staff.

1.121. In Trusts and Local Health Boards data on all written complaints must be collected centrally to identify any patterns or trends at an early stage, using national categories in accordance with the Welsh Assembly Government’s performance statistics. Where possible this should be automated using either dedicated complaints management software or a database or spreadsheet. Once a complaint is closed, the coding for the cause of the complaint should be checked to see if the initial coding needs revising. Note should also be taken of the outcome and length of time taken and, where possible, related to complaints satisfaction surveys.

1.122. Information about patients’ complaints needs to meet requirements for patient confidentiality and the Caldicott principles (see Paragraphs 1.8-9). Reports should not normally identify individuals, including the complained against. Care must be taken to make sure that they cannot be identified from the information provided.

Reports to NHS Boards

Quarterly reports

1.123. NHS Trust and Local Health Board members should receive monthly or quarterly anonymised reports on complaints received and any emerging
trends. This report should be discussed in the public part of the Board meeting. These reports enable the Board to:

- Monitor arrangements for complaints handling, including other NHS organisations and independent providers from whom they commission services;
- Consider trends in complaints;
- Consider any lessons, which can be learned from complaints, particularly for service improvement;
- Ensure that action plans are produced following recommendations by an Independent Panel and that agreed actions are implemented.

See 3.8 Report template

Annual reports

1.124. NHS Trusts and Local Health Boards must publish an annual report on complaints handling covering the year April to March. The information should be included in the service quality improvement section of the Trust’s annual report under paragraph 7(1) of Schedule 2 to the NHS and Community Care Act 1990. Amendments will be made to the Manual of Accounts requirements for 1996/7 and reports accordingly.

1.125. Annual reports should be sent to:

- The Welsh Assembly Government;
- Community Health Councils within whose boundaries any facilities managed by the Trust or Local Health Board are situated;
- NHS Trusts should also send this information to the Local Health Boards whose patients it serves.

1.126. General medical and dental practices are required by their terms of service to provide Local Health Boards with information on the number of complaints received in each practice or surgery annually. In addition to this, the Local Health Board will need more detailed information about complaints in order to monitor services. Practices will need to provide more detailed information within the format agreed locally under the Board’s clinical governance framework.
Clinical Governance

1.127. Local complaints procedures should form part of the clinical governance and quality framework. Trusts, Local Health Boards and service providers should regularly review complaints received within their individual organisations. This enables any trends to be identified as well as any problems in complaints handling. Independent audit is important to demonstrate that changes have resulted and lessons been learnt. Patient identifiable information should be excluded and the Caldicott principles followed.

1.128. Information from complaints should be fed into the clinical governance framework and risk management policies of the organisation to reduce the likelihood of recurrence. Where it is not possible to take remedial action due to lack of resources, case details should be entered on the risk register and brought to the attention of the Board.

Following up Independent Panel reports

1.129. When an Independent Panel is set up as part of an Independent Review, the Panel may make recommendations for Trusts, Local Health Boards and practices about improving systems to avoid future problems or to give redress. Local Health Boards and Boards of NHS Trusts should see the full Panel report. In complex cases, the Independent Reviewer or a Panel member who served on the Independent Panel can be invited to the confidential part of the Board meeting to present the report and answer any questions.

1.130. Trusts, Local Health Boards and family health services practices should produce an action plan based on the recommendations. While family health service practices are not required to produce an action plan, Local Health Boards should encourage and offer assistance to practices to do so and monitor any changes made in the practice as part of its clinical governance duty.

1.131. If the Panel suggests changes to the services, whether from the NHS or independent sector, commissioned by a Local Health Board or Trust, the Chief Executive should consider, in consultation with the provider, how those services can be improved and the implications for the organisation’s commissioning policy.
Protecting patients

1.132. If information from complaints or evidence from other sources indicates that patients could be at risk the Complaints Manager should discuss the matter confidentially with the Chief Executive, Medical or Nursing Director to consider what is the most appropriate action to take. (See paragraph 1.94-110).

Performance management

1.133. Clear and accurate documentation is essential about complaints handling. Good records can demonstrate that the complaint was investigated adequately, if the complainant asks for an Independent Review or appeals to the Health Service Ombudsman. The most likely reason that complainants go to Independent Review is inadequate or inappropriate handling during Local Resolution.

1.134. From time to time it is useful to ask complainants and complained against how they feel the complaint was handled. A short questionnaire can be sent out to all parties at the end of Local Resolution to complainants ⇒ See 3.10 Questionnaires

1.135. Performance standards for complaints handling are being developed. The targets now in place relate to time limits. Dealing with complaints promptly is important. The longer it takes to resolve a complaint, the less satisfied the complainant is likely to be with the outcome. However, sometimes a thorough investigation cannot be undertaken in this time, such as where a complaint is complex, witnesses are hard to contact or the patient is ill. It is important to keep the complainant and complained against informed of the reasons for the delay and when they can expect a full reply.

1.136. Targets for time limits are outlined below.

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Acknowledgement of oral and written complaints</td>
<td>2 working days</td>
</tr>
<tr>
<td>Final reply to written complaints</td>
<td>20 working days</td>
</tr>
<tr>
<td>Complainant to ask for Independent Review following receipt of the final letter</td>
<td>28 calendar days</td>
</tr>
<tr>
<td>(N.B. The Independent Reviewer has discretion to extend this)</td>
<td></td>
</tr>
</tbody>
</table>
## 2 INDEPENDENT REVIEW

<table>
<thead>
<tr>
<th>Paragraph</th>
</tr>
</thead>
<tbody>
<tr>
<td>What is an Independent Review?</td>
</tr>
<tr>
<td>When complainants ask for an Independent Review</td>
</tr>
<tr>
<td>The Reviewer</td>
</tr>
<tr>
<td>Clinical advice</td>
</tr>
<tr>
<td>Actions the Reviewer may take</td>
</tr>
<tr>
<td>Establishing a Panel</td>
</tr>
<tr>
<td>Clinical Assessors</td>
</tr>
<tr>
<td>The Panel</td>
</tr>
<tr>
<td>Complaints against more than one agency</td>
</tr>
<tr>
<td>The Panel report</td>
</tr>
<tr>
<td>Follow up action</td>
</tr>
<tr>
<td>The Health Service Ombudsman</td>
</tr>
<tr>
<td>Record keeping and security</td>
</tr>
<tr>
<td>Performance management</td>
</tr>
</tbody>
</table>
What is an Independent Review?

2.1. When Local Resolution is completed, complainants who are dissatisfied may request an Independent Review of their complaint. This is the second stage of the NHS Complaints Procedure.

2.2. When the complainant asks for an Independent Review, their complaint will be considered by an independent Reviewer with the advice of another independent lay person (the Lay Adviser) and, where relevant, a Clinical Adviser. The Reviewer will consider what actions might help resolve the complaint. This includes setting up an Independent Panel to investigate the complaint.

2.3. In exceptional circumstances a request for an Independent Review can be made before Local Resolution is complete. These might include where Local Resolution has been refused, has taken an unreasonably long time or the complainant has grounds for believing that it is not being carried out properly.

When complainants ask for an Independent Review

2.4. The complainant can request an Independent Review orally or in writing within 28 days of receiving the reply at the end of Local Resolution. The request for an Independent Review must come from the complainant or someone who has the written permission of the patient. If the complainant is not the patient, the consent of the patient is needed for Independent Review even if it has already been given for Local Resolution, unless the patient is not able to give this.

2.5. When the Independent Review Secretariat receives a request for an Independent Review, it will write to the complainant to acknowledge the request within two working days and:

- Ask for a statement or supporting information (if it has not been included with the request). Guidance on what to include in the statement and information about the local CHC should be given;

- Inform the complainant that the request and statement will be sent to the organisation complained against; and

- Ask the complainant to give their consent for all relevant information to be disclosed to the appropriate officers.
2.6. With the letter all complainants should be sent an information sheet that outlines the procedures of the Independent Review, the options for further action, how long it is likely to take to come to a decision; and how to contact the Community Health Council.

2.7. The Secretariat should inform those complained against in writing and send a copy of the complainant’s statement and letter requesting an Independent Review. The Secretariat will also ask for the complaints file and relevant health records (where applicable) from the organisation complained against. A copy of the patient’s signed consent form must accompany this request. If a family health service practitioner chooses not to disclose the complaints file, they are required by their terms of service to co-operate with any reasonable request by providing information relating to the complaint.

⇒ See 3.2 Consent forms

2.8. When family health services practitioners are informed that the complainant has asked for an Independent Review, they should be given details of the person nominated by the local representative committee who can advise them and informed that any comments they make on the complainant’s letter or statement may be shown to the complainant. The Local Health Board should be informed and asked to obtain copies of the patient’s relevant health records from the practitioner.

2.9. Where a complaint is received by the Independent Review Secretariat which has not been raised locally or the complained against has not had reasonable opportunity to deal with the complaint in Local Resolution, the complainant may be referred back directly to Local Resolution. The Independent Review Secretariat with the advice of the Independent Reviewer should make the decision. It is not necessary to seek the advice of a Lay Adviser or Clinical Adviser.

The Reviewer

2.10. The Secretariat will appoint an Independent Reviewer (previously called Convener) and a Lay Adviser to consider the complaint. The Reviewer and the Adviser are both independent lay people appointed by and accountable to the Welsh Assembly. The Reviewer will consider the request in consultation with the Lay Adviser. The Lay Adviser will normally chair the Panel, if a Panel is held, though in some cases the Reviewer may take the chair. No one appointed as Reviewer, Lay Adviser or Panel Member should
have any business or family connection with an NHS organisation, independent provider, practitioner or complainant involved in the complaint.

2.11. In order to consider the complaint the Reviewer will need information on:

- The events that gave rise to the complaint;
- The main issues of concern and action that has been taken to try and resolve the complaint;
- Parts of the complaint that have not been satisfactorily answered;
- Why the complainant thinks that further action under Local Resolution would not help;
- Whether conciliation or mediation was attempted at Local Resolution and with what results.

2.12. Where possible the complainant should provide a written statement covering these points. However, where providing a written statement is difficult for the complainant, the Reviewer should suggest that the local Community Health Council assists the complainant or can agree the key points at issue with the complainant and accept papers produced during Local Resolution.

2.13. Complainants do not have to send the statement or supporting information at the same time that they ask for an Independent Review, but they should send them within 28 calendar days of making the request. If complainants miss the deadline for requesting an Independent Review or in providing the statement, it is up to the Reviewer to decide whether to accept a late request or statement. The complainant can appeal to the Ombudsman if the request for an extension is refused. The Reviewer should not proceed without the written statement or supporting information from the complainant.

2.14. The Reviewer and the Lay Adviser will consider the statement and complaints file on Local Resolution. The Reviewer will not try and resolve the complaint, but will:

- Ascertain whether all opportunities for satisfying the complainant during Local Resolution have been explored and exhausted, including independent complaints facilitation or mediation;
• Consider what issues, if any, could be referred to a Panel; and

• Where appropriate get clinical advice.

⇒ See 3.11 Checklist for Reviewers

2.15. If complainants raise new points of concern after they have asked for an Independent Review, they may ask for them to be dealt with together. The Reviewer will need to discuss with the Complaints Manager in the NHS body or practice complained against how such issues should be handled. It may be necessary to delay a decision until the body complained against has had the opportunity to investigate these issues.

2.16. Some people complained against provide comments or additional information to the Reviewer when informed that a request for Independent Review has been made. These can include background information on previous contacts with the complainant or additional clinical information. They may also provide a more detailed explanation of their initial actions, which if provided to the complainant at an earlier stage might have assisted in resolution. The Reviewer can refer the complaint back to Local Resolution and advise the organisation complained against to give a fuller explanation to the complainant.

**Clinical advice**

2.17. Most complaints that reach Independent Review relate in whole or in part to action taken as a result of the exercise of a professional’s clinical judgement\(^1\). These are known as ‘clinical complaints’. The Reviewer must decide whether a complaint falls into this category and take clinical advice on these complaints. Most clinical complaints will be evident because of their content and the steps that were taken to resolve them in Local Resolution. If there is any doubt the Reviewer should take clinical advice, as there may be an underlying clinical issue that has not yet been addressed in Local Resolution that is not obvious. The Reviewer should inform the complainant and complained against that this advice is being sought.

2.18. The Independent Review Secretariat will nominate a Clinical Adviser from the same profession or specialty as the professional complained against. The Clinical Adviser will be independent and have no connection with the

\(^{1}\) Clinical judgement can be exercised by any of the recognised clinical professions working within the NHS to provide patient care: doctors, nurses, midwives, health visitors, dentists, pharmacists, optometrists, ophthalmic medical practitioners, clinical psychologists, members of professions allied to medicine, paramedics and ambulance technicians, laboratory and other scientific and technical staff.
Trust or Local Health Board or the individuals complained against. Individuals giving clinical advice to the Reviewer are entitled to fees and allowances at agreed rates.

2.19. Clinical advice should be given to the Reviewer within 10 working days of receiving the papers. The Clinical Adviser’s role is to advise the Reviewer in writing whether the NHS body or practitioner complained against has reasonably answered all the points of a clinical nature in the complainant’s initial letter of complaint at Local Resolution. Clinical Advisers should not comment on clinical aspects and management of the case or how they would have treated the patient. Clinical Advisers need to answer the following questions:

- Was the explanation given to the complainant adequate?
- Are there any outstanding issues that still require a response?
- Are there any other clinical issues that have not been addressed?
- Are there any practical actions that could take place to provide a better explanation to the complainant?

⇒ See 3.12 Report form for Clinical Advisers

2.20. Clinical advice is not the only factor determining the Reviewer’s decision. In consultation with the Independent Lay Adviser, the Reviewer may decide that there are over-riding, non-clinical aspects to a complaint which warrant going forward to an Independent Panel.

2.21. The Clinical Adviser’s report will be sent to the complainant and the complained against, unless there are clear and sustainable reasons for withholding it under the Data Protection Act. Where the Clinical Adviser’s report includes inappropriate material or comments beyond the remit of the advice, the Reviewer may ask the Clinical Adviser to revise the report so that it can be shown to the parties. Whether or not the clinical adviser’s name is included, is a matter of judgement for the NHS organisation concerned. However, it should be borne in mind that in response to a subject access request under the Data Protection Act, the complainant would be entitled (subject to exemptions) to know the source of the personal data about him or her. In some cases that might involve the disclosure of the name and the source of the data.
Health records

2.22. Only extracts of the health records relevant to the episodes of care giving rise to the complaint should be copied for use at each stage of the Independent Review process. Someone with a clinical background will advise the Independent Review Secretariat which extracts of the records are relevant.

2.23. Where anonymised information about patients and/or third parties is enough, identifiable information should be omitted. The Data Protection Act 1998 imposes a duty to ensure that any processing (which includes copying or circulation of health records) is limited to the minimum necessary for the discharge of the function. Even when the patient has died and the Data Protection Act does not apply to their records, an ethical duty of confidentiality remains. If any other parts of the records are copied or distributed, the Reviewer must be able to justify this to the Health Service Ombudsman and the Information Commissioner.

2.24. Where the complained against no longer has the patient's health record (such as a family health services practitioner), the complained against should have access to the records in order to respond to the complaint. The practitioner can be sent photocopies of the relevant parts of the record or invited to inspect them at the Local Health Board's premises. If the original records are sent to the practitioner, the Local Health Board must keep a copy. This may prevent any suspicions arising that the records have been altered. Original records should be sent by an appropriate method (such as registered delivery).

Actions the Reviewer may take

2.25. The Reviewer is responsible for deciding which course of action to take. When considering a request, the Reviewer can:

- Refer the case or part of the case back to Local Resolution, recommending actions that might resolve the complaint;

- Decide to set up a Panel if nothing short of setting up a Panel will resolve the complaint;

- Decide not to set up a Panel because there may be more appropriate courses of action outside the NHS Complaints Procedure;

- Decide to take no further action because Local Resolution has been carried out satisfactorily and achieved everything possible.
2.26. The Reviewer may make a different decision for different aspects of the complaint. For example, the Reviewer may feel that some aspects of the complaint have been dealt with adequately, while others have not.

2.27. The decision on whether or not to set up a Panel should not normally exceed 20 working days from the date that the complainant’s statement is received by the Independent Review Secretariat. Sometimes it may take longer to clarify the facts and seek advice. Where this happens the complainant should be informed and given a revised timetable.

Referring back to Local Resolution

2.28. The Reviewer may decide to refer the complaint back to the NHS Trust, family health service practice or independent health care provider outlining what further action needs to be taken. Copies of all correspondence with the complainant should be shared with the body complained against. Referring back to Local Resolution may be appropriate where, for example:

- A fuller explanation can be given;

- Independent complaints facilitation or mediation has not been tried and might be appropriate;

- A meeting between the complainant and an independent clinician might be arranged by the organisation complained against to go through the patient’s health records and clarify any remaining issues.

2.29. If the complainant continues to be dissatisfied following further attempts at Local Resolution, they can ask the Reviewer a second time for an Independent Review. The same process applies to the consideration of a second request as the first and will normally be dealt with by the same Reviewer and Lay Adviser.

Setting up an Independent Panel

2.30. The decision to grant a Panel should be made where further attempts at Local Resolution are unlikely to lead to an outcome which will satisfy the complainant; and

- Where there is reason to believe that the underlying circumstances which have led to the complaint have not yet been fully exposed; or
• Where the response of the organisation, family health services practitioner or non-NHS provider to the complaint appears to be unreasonable.

2.31. The potential cost of setting up a Panel should not be a factor in deciding whether or not to set up a Panel.

When a Panel should not be set up

2.32. Reviewers should not set up a Panel where:

• They believe that the complaint has been properly investigated, an appropriate explanation given and that nothing further can be done;

• Legal proceedings have commenced;

• It is considered that there is a prima facie case for a disciplinary investigation.

2.33. If the complainant has made a complaint to the professional regulatory body, this is not grounds for not setting up a Panel. Advice on each case can be sought from the regulatory body to determine whether it intends to take the matter further.

2.34. Where the Reviewer decides not to set up a Panel, the Reviewer will write a letter to the complainant, person complained against, Trust or Local Health Board explaining the decision and setting out the reasons for deciding not to hold a Panel as fully as possible, dealing with each of the issues identified in the complainant’s letter and explaining how this has already been dealt with. This is important should the complainant appeal to the Ombudsman. Complainants must be informed of their right to appeal to the Ombudsman in this letter and a leaflet about the Ombudsman enclosed. The complained against should be sent a copy of this letter.

Referral to other procedures

2.35. The Reviewer may decide not to set up a Panel, because there may be a more appropriate course of action outside the NHS Complaints Procedure. The Reviewer may, for example, decide to refer the case to the relevant professional regulatory body. Where the Reviewer feels that disciplinary action or other action, such as referral to the National Clinical Assessment Authority, is more appropriate, the Reviewer may suggest this to
the Trust or Local Health Board. The complainant should be informed of the action proposed. The setting up of an Independent Panel should follow if disciplinary investigation is not pursued. For family health services practitioners, local disciplinary procedures cannot be considered until after the complaints procedure, including Independent Review, is exhausted.

2.36. Under exceptional circumstances for very serious or complex cases the Reviewer may feel that a complaint is more likely to be satisfactorily resolved as a result of an investigation by the Ombudsman. The Reviewer can suggest to the NHS body complained against that it refers a case directly under Section 10 of the Health Service Commissioners Act 1993.

Establishing a Panel

2.37. If the Reviewer decides to set up a Panel, the Reviewer must:

- Inform the complainant and complained against in writing of the decision to set up a Panel and provide information about how the Panel will work;

- Inform the Chief Executive of the organisation, the family health services practitioner or independent provider of the decision to set up a Panel; and

- Set out the terms of reference for the Panel.

2.38. Trusts and Local Health Boards should appoint a senior officer (generally the Complaints Manager) to liaise with the Independent Review Secretariat. The liaison officer will inform any person mentioned in the complaint who may be required to attend the Panel.

The Terms of Reference

2.39. The Reviewer will draft the Panel’s terms of reference based on the complainant’s statement. These will be discussed with the Chair of the Panel and sent to the complainant for their comments in writing. If the complainant wishes to amend the terms of reference, they must say why they wish to do this in writing. It is the Reviewer’s decision whether to accept any amendments.

2.40. The complainant may complain to the Ombudsman about any issues that are excluded from the terms of reference. Complainants should be told
about any matters in their statement, which the Panel will not investigate, for example:

- Matters which are subject to disciplinary investigation; or

- Matters that have already been dealt with adequately in Local Resolution.

⇒ See 3.13 Terms of Reference.

Appointment of Panel Members

2.41. The Independent Review Secretariat will establish the Independent Panel which will have:

- An independent Chair (usually the independent Lay Adviser);

- Two independent Lay Members (one of whom will usually be the Reviewer);

- Where the Reviewer decides that the complaint is wholly or partly related to clinical matters, the Panel will be advised by at least one independent Clinical Assessor per specialty.

2.42. The Secretariat will appoint the Panel Chair, Lay Members and Clinical Assessors. The composition of the Panel will need to be sensitive to any cultural and gender issues that may be raised in the complaint. Where the complainant is from an ethnic minority community attempts should be made to ensure one Panel Member from that community. The Reviewer and Independent Lay Members will sign a confidentiality statement and will be provided with indemnity by Powys Local Health Board.

2.43. Panel Members should have no family or business connection with any of the parties. Where the relationship was in the past (where the individuals were at school together or have worked together), then the Panel Chair should ask all parties if they think this would be unfair. In some circumstances if may be necessary to seek a new Panel Member.

2.44. The Chair and Panel Members will be supported by the Secretariat who will provide administrative support, distribute papers, arrange for note-taking in meetings where appropriate, find suitable places for the Panel to meet and handle claims for fees, travel and subsistence. Where necessary
they will arrange for translation or signing. Where Panel Chairs and Clinical Assessors find it more convenient to make their own arrangements for typing their reports, they will need to agree this with the Secretariat in advance. The National Assembly for Wales is responsible for recruitment, induction and ongoing training of lay members.

2.45. Fees and expenses will be paid to the Reviewer, Chair, Panel Members and Clinical Assessors according to the arrangements set by the National Assembly for Wales. All expenses arising out of the Independent Review process will be met by the organisation complained against. In the case of family health services practitioners, this will be the Local Health Board.

Clinical Assessors

2.46. Where a complaint raises clinical or professional issues, the Independent Review Secretariat will appoint a Clinical Assessor from the relevant discipline from a list held by the Welsh Assembly. Normally the person providing independent clinical advice to the Reviewer should not be appointed as a Clinical Assessor to a Panel.

2.47. If the complaint raises issues about more than one discipline, at least one Clinical Assessor for each relevant medical specialty or health care profession should be available to advise the Panel. In some cases it may be appropriate to appoint more than one Clinical Assessor for each specialty, such as where only one specialty or discipline is concerned. The Panel Chair will make this decision in discussion with the Reviewer.

2.48. Clinical Assessors should have no connection with any of the parties which might call into question their independence or objectivity in respect of a particular complaint. Clinical Assessors should disclose to the Panel any connections with the clinicians complained against.

2.49. All employers are encouraged to release clinicians to act as Clinical Assessors from other commitments quickly, so that delays in the complaints process can be avoided.

2.50. The Clinical Assessors will advise the Panel on those aspects of the complaint involving clinical judgement and expected standards of professional behaviour. Clinical Assessors should not act independently to resolve a complaint. They will:
• Identify any clinical areas outside their area of expertise that may require the appointment of further advisers;

• Be present at all interviews where matters relating to the exercise of clinical judgement or professional behaviour are under consideration;

• Make a report on the clinical and professional conduct aspects of the complaint within 10 days following the Panel.

2.51. The Clinical Assessors will advise the Panel at the start of the meeting. In order to advise the Panel before the meeting the Clinical Assessors will need to:

• Have access to the patient’s relevant health records held by the organisation complained about, together with information about the handling of the complaint and the Clinical Adviser’s report;

• Acquaint themselves of any circumstances where a patient might be denied access to information in the health record, or where the patient has expressed the wish for personal information to be withheld from other parties;

• Check whether the patient has ever been denied access to all or part of their health record;

• Ensure that, where the complainant is not the patient, care is taken not to disclose information which would breach the patient’s confidence;

• Take care not to break third-party confidence.

2.52. In preparing their report Clinical Assessors may need to interview or physically examine the patient. Depending on the nature of the complaint, Clinical Assessors may need access to appropriate facilities, such as a viewer for x-rays for dental complaints.

The Panel

The purpose of the Panel

2.53. The purpose of the Independent Panel is to:
• Consider the complaint according to the terms of reference decided by the Reviewer and in the light of the written statement provided by the complainant to the Reviewer;

• Investigate the facts of the case, taking into account the views of both sides obtained orally or, if more appropriate, in writing;

• Set out its findings of matters of fact and conclusions, with appropriate comments and recommendations in a written report.

The role of the Panel Chair

2.54. The role of the Panel Chair is to:

• Chair the Panel when established;

• Draft the report and secure the agreement of Panel Members, taking account of their comments and amendments;

• Ensure that the report reaches the Independent Secretariat within time limits.

Records and documentary evidence

2.55. The Reviewer and Panel Chair will decide what papers the Panel needs and ensure that the complainant and complained against receive the same documents, including relevant extracts from the health records. The complainant and complained against should be informed of the names of Panel Members and Clinical Assessors. Witnesses and complained against, who are involved in only one aspect of a complaint, should only receive papers relevant to their part in the events leading up to the complaint.

2.56. All parties to the complaint should be informed that, if they have any additional evidence, this must be provided in advance and that evidence produced on the day of the Panel may not be accepted.

2.57. Original health records should be available at the Panel for reference by Clinical Assessors. The Panel should also have access to all the documents held by the Trust or Local Health Board relating to the handling of the complaint. Family health services practitioners will be asked to make available information about their investigation of the complaint, if they are not prepared to disclose the complaints file.
Witnesses

2.58. When considering who to call as witnesses, the Panel Chair will need to decide if there are procedural issues (such as NHS Trust admission, discharge or transfer arrangements) where a manager or more senior member of staff may need to be asked to give evidence. Witnesses suggested by the complainant who were present when the incident occurred or have accompanied them to meetings should be invited to give evidence, where relevant.

2.59. NHS staff who are requested to appear at a Panel cannot be compelled either to attend or to give evidence orally or in writing. If they refuse a reasonable request this should be noted in the Panel’s report. The NHS Trust or the Local Health Board (in the case of family health services practitioners) will decide whether any disciplinary actions should be taken.

The conduct of the Panel

2.60. There is no prescribed way of conducting Independent Reviews. Most important is for the Panel to uphold principles of fairness, openness and natural justice. The Panel will decide how to conduct its proceedings, in consultation with the parties, within the following rules:

- All proceedings must be held in private;
- Proceedings should be held at a time and place that are convenient for all parties;
- Both the complainant and any person complained against must be given a reasonable opportunity to express their views on the complaint;
- If any of the Panel Members disagree about how a Panel should go about its business, the Chair’s decision will be final;
- Good records are kept, bearing in mind the possibility of a future investigation by the Ombudsman.

2.61. The Panel is not a tribunal, involving formal cross-examination of witnesses: nor should it be confrontational or legalistic. Panel Chairs will generally introduce themselves to the parties before they are interviewed to put them at their ease and explain how the interviews will be conducted. The
Panel should be proactive in its investigations, always seeking to resolve the complainant’s grievance in a conciliatory manner, while at the same time taking a view on the facts and the account of those complained against.

2.62. Panels may work in different ways, taking account of the complainant’s views. Sometimes it may be best:

- To hold separate meetings with the complainant and the complained against; or

- To bring the complainant and the complained against together at the same meeting to hear the evidence given by others; or

- To hold smaller meetings involving one member of the Panel. No clinical issues should be discussed without the Clinical Assessor.

2.63. Sometimes the complainant or complained against may produce new evidence at the hearing. The Panel Chair should find out the reason why this information was not produced earlier and decide whether this information is relevant and whether to circulate it. The Chair may decide to:

- Adjourn the Panel until the other party and Assessors have had time to examine the additional evidence and agree to its introduction at this stage; or

- Refuse to accept the new evidence and proceed as planned.

Support for complainants and complained against

2.64. When interviewed by any Panel Member or the Clinical Assessors, the complainant and the complained against may be accompanied by a person of their choosing. The person who accompanies the party may, with the agreement of the Panel Chair, speak to the Panel. Neither the complainant, nor anybody interviewed by the Panel, may be legally represented. If a legally qualified person accompanies any of the parties or witnesses, the person may only speak in the capacity of a friend not a legal capacity.

2.65. A complainant who is accompanied by an adviser from the Community Health Council or advocacy service, may, if desired, be accompanied by a second person, such as a relative, for emotional support.
Travel expenses should be offered to the complainant and the person who accompanies them to the Panel.

Clinical Assessors’ Reports

2.66. Clinical Assessors should give their preliminary conclusions to the Panel at the meeting and follow this up with the report within 10 working days the Panel meeting. The report is then circulated to the Members of the Panel with the draft report. Where there is more than one Clinical Assessor they may provide combined or individual reports. Clinical Assessors should ensure that their reports contain no information which might cause serious harm to the mental health of the patient, or any individual. It should not include information about, or provided by, a third party (other than a health professional involved in the patient’s care) who can be identified from the information, unless they have agreed to its disclosure.

Complaints against more than one agency or service

2.67. Some complaints involve more than one NHS Trust or a Trust and a family health service practitioner. The Chair has the discretion to hold a joint Panel when this is more likely to enable a thorough investigation of the complaint and be more convenient for the complainant, who would otherwise have to attend two Panels. The Chair will need to obtain the agreement of all parties to holding a single Panel and the report will need to clearly identify the different actions required from NHS Trusts and family health service practitioners.

2.68. Some complaints are about health and social care and the gaps between them. The Social Services second stage procedure is different from the NHS Complaints Procedure and complaints must be processed separately. However, attempts should be made to co-ordinate and work together where complaints cover both health and social care and the complainant kept informed. Where relevant a Social Services Adviser can be appointed to assist the Panel as an Assessor.

The Panel Report

2.69. The Panel Chair is responsible for writing the report and for ensuring that it is completed within the time limit. Secretariat staff will provide the Chair with notes of interviews and Panel discussions. In complex or emotionally charged cases, the Chair may agree to tape record interviews as long as the complainant, complained against and witnesses agree. The Chair
should explain that tape recording is to assist in writing the report and that once the report is complete, the tapes will be deleted.

2.70. The Panel’s report should set out the results of its investigations as ‘matters of fact’, outlining its conclusions linked to the terms of reference, with any appropriate comments and suggestions linked to specific elements in the complaint. The Clinical Assessors’ reports will be attached to the Panel’s final report. If the Panel disagrees with the Clinical Assessors’ reports it must state in its report the reasons for doing so.


2.71. The draft report should be sent to other Panel Members for their comment. The complainant, anyone complained against and witnesses should also be sent the sections of the draft report containing their evidence to check for factual accuracy. They should be given 7 working days to comment from receipt of the draft report. However, they should not be sent the draft conclusions at this stage. Those receiving the draft should be reminded that the report is confidential to them and the Panel Members at this stage. If amendments to the facts are suggested, these should be checked against notes and Members of the Panel consulted.

2.72. The Panel may make recommendations for Trusts, Local Health Boards and practices about improving systems to avoid future problems or to give redress. However, it has no authority over the organisation or individual complained against, and may not recommend that anyone should be disciplined or referred to a professional regulatory body.

Distribution of the final report

2.73. Taking account of Caldicott principles, the Independent Review Secretariat will send the Panel’s final report to:

- Panel Members and the Clinical Assessors;
- The complainant;
- The patient, if a different person from the complainant and competent to receive it;
- For Trust complaints, the Trust Chair, Chief Executive and Complaints Manager;
• For family health services complaints, the Local Health Board Chair and Chief Executive where the practitioner is a principal;

• The Chair and Chief Executive of the independent provider or any non-NHS body, that is party to the complaint;

• The Local Health Board Chair and Chief Executive who commissioned the service concerned;

• NHS Performance Quality and Regulation Division, the Welsh Assembly Government;

• The local CHC (in anonymised format).

Before sending a copy of the independent panel’s report to the National Assembly for Wales, the independent review secretariat shall obtain the consent of the patient. The independent review secretariat shall explain to the patient what the report will be disclosed for: namely to monitor general complaints trends and follow up recommendations in individual reports. At the same time the independent review secretariat shall seek the complainant’s consent, where applicable, for a copy of the letter mentioned at paragraph 2.76 to be disclosed to the National Assembly for Wales.

2.74. In exceptional circumstances the Panel Chair may decide to withhold any part of the Panel’s report and all or part of the Clinical Assessors’ reports in order to ensure confidentiality of clinical information and references to third parties. The Chair will need to decide whether people interviewed should receive the full report and Clinical Assessors reports where this may include confidential clinical information about the patient. However, it is essential that all information required for clinical governance and to develop action plans are included in the report or covering letter.

2.75. NHS bodies should not send the report to any other person or body. However, while NHS bodies must keep the report confidential, complainants are not bound by a duty of care and may show the final report to whomever they wish, including the media.
Follow-up Action

Trusts and Local Health Boards

2.76. The complainant and the complained against will receive a copy of the Panel’s report directly from the Independent Review Secretariat. As a follow up the Chief Executive of the Trust or Local Health Board (where the service was commissioned) should write to the complainant within 20 working days of receiving the Panel’s report. Once the Chief Executive has written to the complainant, the NHS Complaints Procedure will have been completed. The letter may include:

- A formal apology;

- Any action the organisation is taking as a result of the Panel’s deliberation; and the timescale in which the Board has agreed to consider other policy issues;

- Approval of an ex-gratia payment (see FDL(95)27 and Corporate Governance Framework Manual (Finance) issued in 1996);

- Information about the right of the complainant to refer their complaint to the Ombudsman.

2.77. This letter should be copied to the Independent Review Secretariat and the NHS Performance Quality and Regulation Division of the Welsh Assembly Government. The Independent Review Secretariat will inform Chair and Panel Members of the results as a way of providing feedback and learning for Panels.

2.78. Local Health Boards and Boards of NHS Trusts are responsible for agreeing action plans and following up the recommendations (see paragraphs 1.129-131). If following this action, the Board takes further decisions relating to the outcome of the case, then the complainant and Welsh Assembly Government should be informed by the Chief Executive.

2.79. In complaints against family health service practitioners, the Chief Executive of the Local Health Board should write to the complainant and the family health services practitioner. The practitioner should be asked to reply directly to the complainant about proposed action. The Local Health Board should check whether the practice has taken any follow up action recommended in the Panel Report.
2.80. In complaints against independent health sector providers, the Local Health Board Chief Executive should write to the complainant and the independent provider. The provider should be asked to write directly to the complainant about proposed action. This should then be followed where appropriate as part of contract monitoring.

**The Health Service Ombudsman**

2.81. If complainants are still dissatisfied either because of the way the Panel was handled or because an Independent Panel was not set up, they can write to the Ombudsman and ask for a further investigation. Complainants need to provide reasons why they are still dissatisfied and consider that they have suffered hardship or injustice. Unhappiness about the outcome of the complaints process is not sufficient cause for the Ombudsman to investigate. Practitioners and their staff may also complain to the Ombudsman about the Local Health Board or NHS Trust if they feel that they have been treated unfairly by the administration of the complaints process.

2.82. Where the Ombudsman decides to investigate a complaint, the NHS organisation must appoint a senior officer to liaise with the Ombudsman’s office on the complaint. The Ombudsman provides advice on the functions of liaison officers when a Statement of Complaint is sent to the NHS Trust or Local Health Board.

2.83. If requested by the Ombudsman, the Independent Review Secretariat, Trusts and Local Health Boards can send the complaints file and the documentation from Independent Review to the Ombudsman with an account of their handling of the complaint to assist in the initial assessment. At this point Reviewers can also submit a commentary on their involvement and the issues that they took into account when reaching a decision. Where clinical advice has been sought, the Reviewer should make this available to the Ombudsman to assist in deciding whether it is appropriate for to carry out an investigation.

2.84. The patient’s permission is still required for the release of personal health information (i.e. the health records) to the Health Service Ombudsman for the initial assessment. Only when a formal investigation is instituted, does the Health Service Ombudsman have formal powers to insist on the disclosure of documents (or to subpoena them).
2.85. The Ombudsman has no power to enforce recommendations or to impose sanctions. In practice however health service bodies almost always accept the findings. Where the Ombudsman investigates a complaint, this will be reported in regular reports to the National Assembly of Wales (see www.ombudsman.org.uk).

Record keeping and security

2.86. Both the Reviewer and Lay Adviser are required to keep records of meetings, telephone conversations, letters and emails relating to the complaint. These could include conversations with Clinical Advisers, Independent Review Secretariat staff and the complainant when seeking clarification on issues raised. The Health Service Ombudsman may request these documents to assist in making a judgement if the complainant appeals about a Reviewer’s decision not to hold a Panel. Such records are not available to the Independent Panel, which is investigating the cause for complaint rather than the Reviewer’s handling.

2.87. The Reviewer, Chair, Clinical Assessors and Panel Members must ensure that any patient identifiable information is secure and not accessible to others. Information kept at home on computers should be secured with a password and any files kept secure when not in use. Personal information on complainants should not be stored on personal computers once the complaint is completed.

2.88. When the complaint is closed Clinical Assessors, Panel Members and Reviewers should return papers to the Independent Review Secretariat for filing or disposal. They may retain their personal notes for reference in the case of an appeal to the Ombudsman as long as they are kept secure. These notes should not normally be kept for more than two years.

Performance management

2.89. The overall target for the Independent Review process is 6 months from the date when the complainant provides the statement giving the reasons for asking for an independent Review to the date when the Chief Executive writes following the Panel’s report.
2.90. The Independent Review Secretariat is required to provide the National Assembly for Wales with anonymised information on all requests for an Independent Review.

2.91. Feedback on Panels from all Chairs, Reviewers, Panel Members, complainants and complained against will be sought after each Independent Panel in order to monitor standards and identify training needs.

⇒ See 3.15 Feedback forms.

<table>
<thead>
<tr>
<th>Activity Description</th>
<th>Working days</th>
<th>Total working days from receipt of complainant’s statement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acknowledge request for Independent Review following receipt of letter</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Receive statement from complainant</td>
<td>28</td>
<td></td>
</tr>
<tr>
<td>Clinical advice received following referral to Adviser</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>Decision whether or not to hold a Review following receipt of complainant’s statement</td>
<td>20</td>
<td>20</td>
</tr>
<tr>
<td>Appointment of Panel Members, following decision to convene Panel</td>
<td>20</td>
<td>40</td>
</tr>
<tr>
<td>Panel following formal appointment of Panel and Clinical Assessors</td>
<td>35</td>
<td>75</td>
</tr>
<tr>
<td>Clinical Assessors report following the Panel</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>Draft report of Panel following Panel</td>
<td>15</td>
<td>90</td>
</tr>
<tr>
<td>Comments on draft extracts parties from receipt of draft report</td>
<td>7</td>
<td></td>
</tr>
<tr>
<td>Final report following the Panel</td>
<td>25</td>
<td>115</td>
</tr>
<tr>
<td>Response to complaint from organisation complained against from receipt of report</td>
<td>20</td>
<td>125</td>
</tr>
</tbody>
</table>
3  FORMS AND EXAMPLES

Part 3 includes examples of forms and letters that you may wish to refer to and adapt for your own use.

LOCAL RESOLUTION

3.1  Complaints Manager - Job Description
3.2  Patient Consent Forms
3.3  Complaints Procedure Children and Young People
3.4  Poster
3.5  Independent Complaints Facilitator
3.6  Sample Letters to Complainants
3.7  Policy for Handling Habitual Complainants
3.8  Board Reports
3.9  Recording Complaints - General Practitioners
3.10  Monitoring Complaints Procedures

INDEPENDENT REVIEW

3.11  Checklist for Independent Complaints Reviewers
3.12  Clinical Adviser’s Report
3.13  Terms of Reference for Independent Complaints Panel
3.14  Panel Reports
3.15  Feedback on Independent Review
3.1 Complaints Manager

**Directorate:**

**Department:**

**Job Title:** Complaints Manager

**Job Grade:**

**Reporting to:**

**Reporting to job holder:**

**Job summary**

To ensure the effective management of the complaints function.

To participate in Clinical Governance forums and initiatives.

To provide training to NHS Trust/LHB/primary care staff on complaints handling and customer care.

**Main areas of responsibility**

1) **Operational Management**

a) To ensure that the Complaints Department implement their responsibilities within the procedure in accordance with quality standards.

b) To provide advice to complainants and staff/practitioners on the complaints procedure.

c) To maintain the data base and provide statistical information in order to provide regular reports to the Board and other bodies.

d) To identify opportunities for quality improvement in complaints management and assist [Departments/Practices/Trusts] where appropriate in overcoming shortcomings.

e) To bring attention to any issues of areas of concern in service provision.
2. Quality Assurance
   a) To ensure that the complaints team are managed in accordance with a quality framework and that work standards and efficiency are monitored on a regular basis.
   b) To be involved in the clinical governance forums.

3. Communications
   a) To produce briefing notes for the Chief Executive on complaints cases that may have a significant impact.
   b) To develop good working relationships with CHCs and other partners within the complaints handling process.

4 Management
   a) To ensure the effective management of the complaints staff, including providing leadership, delegation of duties, performance management and appraisal.
   b) To liaise with the Independent Review Secretariat where complainants request a Review.

LHBs - To recruit, train and support Independent Complaints Facilitators (jointly with other LHBs) and make available to Practices and Trusts.

5 Training
   a) Identify staff/practice training needs with other partners.
   b) Arrange appropriate training programmes for all [Trust/Practice] staff in the effective management of complaints.
   c) Manage the delivery and review training programmes.

6 Financial Management
   a) To monitor expenditure arising from the formal complaints procedures.
Key Working Relationships

Trust staff
LHB staff
Patient Support staff
Community Health Councils
General Public
Professionals including advisers to Independent Complaints Facilitation/Local Resolution and Independent Review
Reviewers and Panel Members
Independent Complaints Facilitators/Mediators

Complaints Manager - Person Specification

<table>
<thead>
<tr>
<th>Skills</th>
<th>Essential</th>
<th>Desirable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Education &amp; Qualifications</td>
<td></td>
<td>Educated to degree level Clinical qualification and experience.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Postgraduate study in a related subject.</td>
</tr>
<tr>
<td>Knowledge &amp; Experience</td>
<td>Minimum of 3 years middle management experience.</td>
<td>Previous NHS Management experience.</td>
</tr>
<tr>
<td></td>
<td>Thorough knowledge of the NHS system for complaints management and Independent Reviews.</td>
<td>Understanding of clinical governance.</td>
</tr>
<tr>
<td></td>
<td>Ability to analyse and report complex data.</td>
<td>Understanding of the NHS system for management of legal claims.</td>
</tr>
<tr>
<td></td>
<td>Experience of working within a complex organisational environment.</td>
<td>Experience of advocacy and conciliation.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Policy and procedure development.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Able to read and speak Welsh (in some areas may be essential)</td>
</tr>
<tr>
<td>Skills</td>
<td>Essential</td>
<td>Desirable</td>
</tr>
<tr>
<td>--------------------------</td>
<td>----------------------------------------------------------------------------</td>
<td>----------------------------------------------</td>
</tr>
<tr>
<td>General skills</td>
<td>Excellent communication, negotiation and influencing skills. Ability to prepare written reports to a high standard. Proven leadership and team building skills. Use of computer database and spreadsheet applications. Ability to deliver work within tight deadlines. Ability to effectively organise own workload with minimum of supervision. Ability to use database, spreadsheet and word processing/computer applications. Ability to deliver work within tight deadlines.</td>
<td>Word processing skills. Ability to design and deliver effective training programmes.</td>
</tr>
<tr>
<td>Personal qualities</td>
<td>Able to maintain high standards of diplomacy/confidentiality.</td>
<td>Able to work autonomously as well as within a team.</td>
</tr>
<tr>
<td>Motivated and enthusiastic</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
3.2 Patient Consent Forms

To use when the patient is the complainant

Full name of patient

Address

Date of birth

I hereby agree that my health records and any personal information can be used in the investigation of my complaint. I understand that access to my records and personal information will be limited to what is relevant to the investigation of the complaint and will only be disclosed to people who need to know it in order to investigate my complaint.

Signature of patient

Date
To use when the patient is not the complainant

Full name of patient

Address

Date of birth

Relationship to person making the complaint

I hereby authorise:

Name of person making the complaint

Address

(If different from above)

To act on my behalf and to receive any and all information that may be relevant to my complaint

I hereby agree that my health records and any personal information can be used in the investigation of my complaint. I understand that access to my records and personal information will be limited to what is relevant to the investigation of the complaint and will only be disclosed to people who need to know it in order to investigate my complaint

Signature of patient

Date

82
3.3 Complaints Procedure Children and Young People

This example of a "child friendly" statement has been included in the three North Wales NHS Trust complaints procedures with slight variations depending on local circumstances.

The core principles of the United Nations Convention on the Rights of the Child set out specific rights in some detail. The broad vision contains the following:

- Children and young people are human beings in their own right – needing protection but having their own strengths, views and opinions as individuals.

- Parents and family are normally the primary carers and protectors of children and are entitled to the support they need to fulfill these responsibilities. They are partners in realising the rights of their children, in providing guidance and direction in enabling their children and young people to mature and develop competence and confidence. Where parents are not able to act in the best interests of their children, there should be support systems in place to protect and care for the child.

The current NHS Trust Complaints Procedure must be adhered to. It is recognised that young people may find it difficult at times to make complaints to NHS staff. Therefore information that is "child friendly" on how to make a complaint should be given to the young people.

Information should be displayed showing the contact numbers of independent agencies (including the independent advocacy service) that young people may wish to use. In addition there should be a Senior Nurse available to anyone who may wish to make a complaint.

Adolescents should have easy access to a pay telephone (which is private).

Allegations against a member of staff and procedures for raising staff concerns:

If a child or adolescent makes an allegation that he / she has been abused by any member of staff or implies that any member of staff has behaved
inappropriately towards them, the member of staff that is made aware should:

1. Ensure the child’s immediate safety.

2. Refer to their immediate manager (unless this is the person against whom the allegation is made, in which case refer directly to the Director of Nursing or her designated deputy).

3. Refer to the Trust Policy to Investigate Allegations of Abuse Against a Health Professional / Trust Employee in Relation to Children.

4. Refer to the Trust Policy – Procedure for Raising Concerns

5. The named nurse and named doctor responsible for child protection can be contacted for advice.
Do you have any ideas, comments, suggestions or complaints?

We want to provide the best possible service to our patients.

We want to hear your views – what you like about the service or where things might be better.

Please speak to

Or fill in a simple form.

If you have a complaint, we will look into it and aim to reply within 20 working days.
3.5 Independent Complaints Facilitator

Role Description

Job Title: Independent Complaints Facilitator

Liaises with: Complaints Manager

Hours: As and when required

Payment: Expenses

Appointment: 12 months, renewable annually

Accountable to: Chief Executive, Local Health Board

Job Summary:

The Independent Complaints Facilitator’s role is to assist in the resolution of complaints about the NHS by facilitating opportunities for discussion between the parties about the incident, which is the cause of the complaint.

Where possible the aim is to complete the facilitation process within 4 weeks, although it is recognised that some cases may require a longer period.

There is a need to be mobile and also to be flexible in the hours worked in order to meet the needs of the parties to the complaint.

Main responsibilities

1. To establish direct contact with the people concerned to arrange meetings as appropriate.

2. To establish common ground between the parties and to clarify areas of misunderstanding.

3. To facilitate a better understanding of the events by both parties and to try to ensure a satisfactory outcome to complaints and grievances.

4. To identify and suggest changes in procedures where this is appropriate.

5. To seek professional advice where appropriate.

6. To conduct the independent facilitation process in a way agreeable to both parties.
7 To have a basic knowledge of the Independent Review process in order to inform the complainant of their rights should they remain dissatisfied.

8 To maintain confidentiality

9 To retain secure confidential records of independent complaints facilitation

10 To provide regular, anonymised, reports to the Local Health Board on matters, which were the subject of independent complaints facilitation.
## Person Specification

(E = Essential    D = Desirable)

Some cases are very complex in their detail and some are highly emotionally charged. Independent Complaints Facilitators are required to mediate between patients or their relatives, who can often be very distressed, and practitioners who are feeling anxious and vulnerable since their professional competence is being called into question.

### Experience

- An interest in the NHS and local community  
  **E**
- Experience of conciliation or mediation or advice and counselling  
  **D**
- Understanding of the NHS complaints procedures  
  **D**
  (training will be given)

### Skills

- Active listening, questioning and summarising skills  
  **E**
- Good oral and written communication skills  
  **E**
- Able to remain objective  
  **E**
- Able to handle conflict  
  **E**
- Non-judgemental  
  **E**
- Able to maintain confidentiality  
  **E**

### Personal Attributes

- Common sense  
  **E**
- Maturity and understanding  
  **E**
- Tact  
  **E**
- Sensitivity and sincerity  
  **E**
Guidance for Independent Complaints Facilitators

When you receive a request

- Check for conflict of interest

When you receive the paperwork

- Check that the names are correct
- Check the complaint

Agree Date & Venue

- With the complainant
- With the complained against
- Check venue preference & availability

Read Paperwork

- Does the complainant have CHC support?
- Who has written so far?
- What has been said?
- What response?
- Major outstanding issues/concerns?
- Has an apology been given? Would it help?
- When was complaint first raised?

Contact & discuss the complaint with a clinical adviser, if appropriate

- Who is the adviser?
- Have they received the paperwork?
- Raise any unclear issues, ask their opinion
- Check availability if you wish him/her to attend a meeting
- Log information if advisor will not be present
Run the Meeting

- Prepare for the meeting
- Prepare notes with prompts
- Arrive early, review paperwork & notes

At the beginning of the meeting

- Thank everyone for attending
- Clarify what the meeting can achieve (& what it can’t)
- Summarise understanding of problems & aims
- Seek agreement from all parties

During the meeting

- Monitor – how is complainant reacting, how much support is needed, check everyone’s understanding, seek clarification
- Time Keeping & ensuring progress
- Take notes
- Gain apology & acknowledgement of issues
- Look for potential for improvements
- Get practice to recommend or accept actions – make suggestions if appropriate
- Check realism of discussions, explanations, actions & recommendations with clinical adviser

At the end of the meeting

- Close- check all aims and explanations achieved, any residual issues, any comments, explain next step, and thank participants.
Prepare Summary Report

This should cover:

- Administrative details – who was present, date, time, venue,
- Summarise issues and aims
- Log introduction to the meeting
- Provide numbered points from notes
- Note actions en-route
- Summarise agreed actions at end
- Conclusions
- End of Report statement – "This report has been prepared in good faith and without prejudice".
- You may need to send as draft to all parties
- Collect comments & make changes as you think fit and re-issue as final

Prepare covering letters to go with the report and send to:

- To staff/practice (advise them what to do next)
- To complainant
- To CHC (sometimes)
- To the Local Health Board
3.6 Sample Letters to Complainants

Acknowledgement Letter

Thank you for your letter dated [ ], which was received on ...... I am sorry to hear of the concerns you raised. (SEE SAMPLE RESPONSES FOR OPENING PARAGRAPHS).

Your complaint is being investigated, and I will provide you with a full reply by (20 WORKING DAYS FROM DATE COMPLAINT RECEIVED.) If this is not possible, I will let you know.

You may wish to contact your local Community Health Council (CHC) who can offer you help and advice on making a complaint. The address is: (ADD CONTACT DETAILS)

If you have any queries about this, please do not hesitate to contact me. (SEE SAMPLE RESPONSES FOR CONCLUDING PARAGRAPHS).

Holding Letter (if applicable)

I am writing further to my letter dated [ ] to apologise for the delay in providing you with a reply to your complaint. (SEE SAMPLE RESPONSES FOR OPENING PARAGRAPHS).

The delay has been caused by (GIVE REASONS FOR DELAY.)

I expect to be able to respond to your complaint by (GIVE EXPECTED DATE OF RESPONSE), and apologise once again for the delay. (SEE SAMPLE RESPONSES FOR CONCLUDING PARAGRAPHS).

Response Letter

I am writing further to my letter dated [ ], and am now able to reply to your complaint. (SEE SAMPLE RESPONSES FOR OPENING PARAGRAPHS).

(GIVE DETAILS OF INVESTIGATION AND OUTCOME.)

I am sorry that you felt the need to complain about the service you received, and I hope the above information clarifies the situation.

0 r
I hope this information has reassured you, but please do not hesitate to contact me again if you have any further queries. (SEE SAMPLE RESPONSES FOR CONCLUDING PARAGRAPHS).

If you are dissatisfied with this answer, you can write and ask for an Independent Review of your complaint, giving the reasons why you are still dissatisfied. You will need to contact [NAME] in the Independent Review Secretariat, [ADDRESS]. If you would like to ask for an Independent Review, you should contact them within the next 28 days.

Examples of opening paragraphs

Thank you for taking the time to write to us about your concerns about [SUBJECT OF COMPLAINT]. I was very sorry to learn that you have been experiencing difficulties.

Thank you for bringing to my attention the difficulties you experienced when [EVENT] and for providing me with an opportunity to rectify the situation. May I begin by saying how sorry I am that you have had cause to complain.

I was very surprised and concerned to learn of the difficulties that you encountered when [DETAILS]. Please accept my sincere apologies for the distress and inconvenience that this has clearly caused you.

I am writing to provide you with a full response to the complaint you about [COMPLAINED AGAINST] concerning [SUBJECT OF COMPLAINT]….

I apologise that there is a delay in replying but I would thank you for your patience.

Firstly, please accept our apologies for any distress this incident has caused. Perhaps you could pass on this apology to your family/relatives/carer who I know was/were also affected by the situation.

I can fully appreciate why you felt the need to write to us for an investigation into what happened.
Examples of concluding paragraphs

I hope that this information clears up any misunderstanding.

Once again, our apologies for the difficulties you experienced and thank you for providing us with an opportunity to rectify the situation.

Thank you for drawing our attention to this matter. It is only when patients report such incidents that we are able to correct them and maintain the high standards that we aim to achieve.

I should like to assure you that the issues which you raised have been taken seriously and fully investigated. However, if you feel that we have failed to address any points or if you have any further questions, please contact (NAME AND PHONE NUMBER). We would also be happy to arrange for our (SENIOR MEMBER OF STAFF) to go through the details with you in person if this would be helpful.
3.7 Policy for Handling Habitual Complainants

1 Purpose of this policy

All complaints are handled in accordance with the NHS complaints procedure. A small number of complainants can take up a disproportionate amount of time in dealing with their complaints. The aim of this policy is to identify situations where the complainant might be considered to be habitual and to suggest ways of responding to these situations which are fair to both staff and complainant.

This policy should only be used as a last resort and after all reasonable measures have been taken to try to resolve complaints following the NHS complaints procedure. This policy should only be implemented following careful consideration by, and with the authorisation of, the Chief Executive of the [Trust/Local Health Board].

What is a habitual complainant?

Complainants (and/or anyone acting on their behalf) may be deemed to be habitual where previous or current contact with them shows that they meet the following criteria:

Where complainants:

a) Persist in pursuing a complaint where the NHS complaints procedure has been fully and properly implemented and exhausted.

b) Seek to prolong contact by changing the substance of a complaint or continually raising new issues and questions whilst the complaint is being addressed.

c) Are unwilling to accept documented evidence of treatment given as being factual e.g. drug records, GP records, nursing notes.

d) Deny receipt of an adequate response despite evidence of correspondence specifically answering their questions.

e) Do not accept that facts can sometimes be difficult to verify when a long period of time has elapsed.
f) Do not clearly identify the issues which they wish to be investigated, despite reasonable efforts of staff and, where appropriate, the Community Health Council, or other advocate, to help them specify their concerns, and/or where the concerns identified are not within the remit of [Trust/Local Health Board] to investigate.

g) Focus on a trivial matter to an extent which is out of proportion to its significance and continue to focus on this point.

h) Have, in the course of addressing a registered complaint, had an excessive number of contacts with Complaints staff and make unreasonable demands on them.

i) Are known to have recorded meetings or face to face/telephone conversations without the prior knowledge and consent of the other parties involved in contravention of the Data Protection Act.

j) Make unreasonable demands and fail to accept that these may be unreasonable (e.g. insist on responses to complaints or enquiries being provided more urgently than is reasonable or normal recognised practice).

k) Have threatened or used actual physical violence towards staff or their families or associates at any time. Where this has happened, personal contact with the complainant and/or their representatives should be stopped and the complaint, thereafter, only pursued through written communication. (All such incidents should be documented in line with the Zero Tolerance Campaign).

l) Have harassed or been personally abusive or verbally aggressive on more than one occasion towards staff dealing with their complaint or their families or associates. (Staff must recognise that complainants may sometimes act out of character at times of stress, anxiety or distress and should make reasonable allowances for this.) Staff should document all incidents of harassment in line with the Zero Tolerance Campaign.

2 Procedure for dealing with habitual complainants

a) Check to see if the complainant meets sufficient criteria to be classified as an habitual complainant.
Where there is an ongoing investigation

   b) The Chair* should write to the complainant setting parameters for a
code of behaviour and the lines of communication. If these terms are
contravened consideration will then be given to implementing other
action.

Where the investigation is complete

   c) At an appropriate stage, the Chief Executive or Chair should write a
letter informing the complainant that:

   - the Chief Executive has responded fully to the points raised,
   and
   - has tried to resolve the complaint, and
   - there is nothing more that can be added,

therefore, the correspondence is now at an end.

The letter may wish to state that future letters will be acknowledged but not
answered.

   d) In extreme cases the Trust/Board should reserve the right to take
legal action against the complainant.

* It would be inappropriate for the Chief Executive to set these
parameters at this stage as s/he will be involved in the ongoing
complaints process.

3 Withdrawing habitual status

Where complainants have been assessed as 'habitual', there needs to be a
mechanism for withdrawing this status at a later date if, for example,
complainants subsequently demonstrate a more reasonable approach or if
they submit a further complaint for which normal complaints procedures
would appear appropriate. Staff should previously have used discretion in
recommending 'habitual' status and discretion should similarly be used in
recommending that this status be withdrawn.
3.8 Board Reports

Complaints Managers need to report quarterly to the Board on complaints activity and produce an annual report. The example given provides a suggested template for the type of information you may wish to include in the annual report. No information should identify individuals in this report.

COMPLAINTS
From (date) to (date)

1 INTRODUCTION

This paper provides the Board/Trust with information for (Year) and highlights some trends.

The paper also sets out developments, which have been implemented within the year.

2 COMPLAINTS RECEIVED

General

- Identify trends over the year, including on localities.
- How complaints are received and handled by complaints staff
- Numbers of complaints and type:

Independent Complaints Facilitation

- Cases went forward to Independent Complaints Facilitation
- Cases were resolved
- Cases went forward to request Independent Review
- Cases are still ongoing

Independent Review

- Cases where Independent Review requested
- Cases were referred back to local resolution
• Cases referred for non-complaints process action
• Cases dismissed
• Cases accepted for a Panel hearing
• Cases involving the Health Service Ombudsman
• Appendix 1 outlines the year’s complaints data.

3 LETTERS OF THANKS

Report any letters from patients expressing their appreciation for assistance with the NHS complaints procedures.

4 LEARNING

• Recommendations from Independent Review reports
  • Identify changes that have been implemented as a direct result of complaints investigation and resolution.

5 OUTSTANDING CASES

By locality and service.

6. DISCIPLINARY CASES AND REFERRALS

Identify numbers received and what happened to them, including referrals to the professional regulatory bodies or the National Clinical Assessment Authority etc.

7. DEVELOPMENTS

• Changes implemented in the last year
  • Specific plans for the next year

8 INTERNAL COMPLAINTS PROCEDURES

How the complaints team has learnt from its own reviews of its work.

9 SUMMARY AND CONCLUSIONS
Complaints Received in (year) & Outcome
(Previous year in brackets)

Table 1: NHS Trusts
Current information required in KO41(A) is given below.

<table>
<thead>
<tr>
<th>Trusts</th>
<th>Total</th>
<th>Completed &gt;20 days</th>
<th>Ongoing</th>
<th>Independent Review</th>
</tr>
</thead>
<tbody>
<tr>
<td>Admissions, discharge and transfer arrangements</td>
<td></td>
<td></td>
<td></td>
<td>Requested</td>
</tr>
<tr>
<td>Aids, appliances, equipment and premises (including access)</td>
<td></td>
<td></td>
<td></td>
<td>Granted</td>
</tr>
<tr>
<td>Outpatients appointments: delay or cancellation</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Inpatient appointments: delay or cancellation</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Attitude of staff</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>All aspects of clinical treatment</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Written and oral communication/information to patients</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Consent to treatment</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Complaints handling</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Patients: privacy and dignity</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Trusts:</td>
<td>Patients: property and expenses</td>
<td>Local Health Board purchasing (including ECRs and waiting lists)</td>
<td>Independent sector services purchased by Local Health Boards</td>
<td>Independent sector services purchased by Trusts</td>
</tr>
<tr>
<td>--------</td>
<td>--------------------------------</td>
<td>-------------------------------------------------------------</td>
<td>---------------------------------------------------------------</td>
<td>-------------------------------------------------</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Table 2: Local Health Board
Current information required in KO41(B) is given below.

<table>
<thead>
<tr>
<th>Written Complaints received</th>
<th>Completed</th>
<th>Independent Review</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Subject of complaint</strong></td>
<td><strong>Total</strong></td>
<td><strong>&gt;20 days</strong></td>
</tr>
<tr>
<td>Attitude of staff</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Premises</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Practice/surgery management</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Local Health Board</td>
<td></td>
<td></td>
</tr>
<tr>
<td>FHS administration</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Clinical</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total: LHB</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Table 3: Local Health Board Complaints - Family Health Services

<table>
<thead>
<tr>
<th>Practitioner Group</th>
<th>Complaints Received in (year)</th>
<th>Independent Review</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Oral</td>
<td>Written</td>
</tr>
<tr>
<td>Medical (GMPs)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dental (DGP)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Local Health Board administration</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ophthalmic</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pharmaceutical</td>
<td></td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
3.9 Recording Complaints - General Practitioners

COMPLAINT ACTION SHEET

Name of complainant

Address

Contact phone number

Patient’s name (if not complainant)

Relationship of complainant to patient

Patient’s consent requested □ Patient’s consent received □

First contact made by:

Phone □ In person □ Letter □

Received on (date)

Received by:

Summary of complaint

<table>
<thead>
<tr>
<th>Action Taken</th>
<th>Date</th>
<th>By Whom</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Analysis of comments and complaints made during the period

...............to............

at the ................................................................. Practice.

Total number of complaints received in the period:

<table>
<thead>
<tr>
<th>Cause/s of complaint</th>
<th>Number received</th>
<th>Outcome</th>
<th>Number where complainant:</th>
<th>Communication/attitude</th>
<th>Don't know</th>
<th>Request for Independent Review</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Doctors</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Nurses</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Reception staff</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Other</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Premises</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Access</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Furniture and fittings</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Cleanliness/decor</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Parking</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Other</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Please indicate below the changes/improvements made as a result of the complaints received by the practice:
3.10 Monitoring Complaints Procedures

PATIENT FEEDBACK (1)

Complaint Case Number...........................................................................................................

EXAMPLE OF QUESTIONNAIRE TO BE SELF-COMPLETED OR ADMINISTERED ON PHONE

Dear Complainant

You recently had a complaint considered by us which we understand from our records is now closed. If this is not the case please tell me at once using the envelope provided. Complaining is never the easiest thing to do and sometimes you may not get what you wanted and hoped for. We want to hear about how you got on and see if we can make things any easier or better for others in your situation.

This short questionnaire will give you a further opportunity to contribute to an improved Health Service by telling us about your experience after raising an issue with us. Just ring the numbers on the short questionnaire attached. It should not take you more than a few minutes to fill in.

We will use the responses as part of a statistical report and the views expressed will not be linked to you. The questionnaire has a number on it which we will use to cross check with our own records as to what parts of the complaint process you were involved with. This enables us to use the information you give us without identifying you in our reports. Please use prepaid the envelope provided.

If you have any queries about any part of this exercise and how we use the information you give us please phone me on [.........................].

Thank you for your time and your views which are very valuable to us.

Complaints Manager
Q1
Thinking about your overall experience of complaining, how satisfied were you with the way your complaint was dealt with?

<table>
<thead>
<tr>
<th>Very Satisfied</th>
<th>Quite Satisfied</th>
<th>Neither Satisfied nor Dissatisfied</th>
<th>Quite Dissatisfied</th>
<th>Very Dissatisfied</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
</tbody>
</table>

Q2
Thinking about particular aspects of your experience, how satisfied were you with:

- The length of time taken to reach a decision

<table>
<thead>
<tr>
<th>Very Satisfied</th>
<th>Quite Satisfied</th>
<th>Neither Satisfied nor Dissatisfied</th>
<th>Quite Dissatisfied</th>
<th>Very Dissatisfied</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
</tbody>
</table>

- How clearly people explained things to you in writing or in person

<table>
<thead>
<tr>
<th>Very Satisfied</th>
<th>Quite Satisfied</th>
<th>Neither Satisfied nor Dissatisfied</th>
<th>Quite Dissatisfied</th>
<th>Very Dissatisfied</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
</tbody>
</table>

- How courteous the people were who dealt with you were

<table>
<thead>
<tr>
<th>Very Satisfied</th>
<th>Quite Satisfied</th>
<th>Neither Satisfied nor Dissatisfied</th>
<th>Quite Dissatisfied</th>
<th>Very Dissatisfied</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
</tbody>
</table>

- The support you got from others such as the Community Health Council

<table>
<thead>
<tr>
<th>Very Satisfied</th>
<th>Quite Satisfied</th>
<th>Neither Satisfied nor Dissatisfied</th>
<th>Quite Dissatisfied</th>
<th>Very Dissatisfied</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
</tbody>
</table>
Q 3
Thinking in particular about the outcome of your complaint which of the statements on the right best describes what happened?

I got all that I wanted
I got most of what I wanted
I got some of what I wanted
I did not get most of what I wanted
I got nothing of what I wanted

☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5

Any other comments? If you have circled 1 or 5 for any of the questions, please tell us more about your reasons for that choice.

Thank you for your time and contribution to a better Health Service for everyone. Your ratings and comments will form part of a report on service quality which we use to improve our complaints handling.
This form was developed by Conwy Local Health Group to review local procedures. It is sent out to all complainants who wrote to the Local Health Group/Health Authority a month after the original complaint was received.

Instructions on how to complete:

Most of the following questions ask you to respond by placing a tick (v) in the box, which most closely represent your answer. Others ask that you write just a few words or numbers in response.

Thank you.

1. Did the Practice you were complaining about have information on NHS Complaints Procedure clearly displayed on the premises? (Please tick one box only)

   YES [ ]
   NO [ ]

2. How many working days (Mondays to Fridays, not including weekends) did it take before you received a full response to your complaint from the GP/Optician/Pharmacy/Dental Practice? (Please indicate).

   ___________ Working days

3. Did the letter of response from the GP/Opticians/Pharmacy/Dental Practice state that if you were not satisfied with their response you could ask for an Independent Review? (Please tick one box only).

   YES [ ]
   NO [ ]

4. Did you understand the stages in the NHS Complaints Procedure? (Please tick one box only).

   YES [ ]
   NO [ ]

5. In your opinion, was each stage of the NHS Complaints Procedure explained clearly to you in the booklet sent to you?

   Local Resolution
   YES [ ]
   NO [ ]

   Independent Review
   YES [ ]
   NO [ ]
6. At which stage was your complaint resolved? (Please tick one box only).

- Local Resolution
- Independent Review

7. Please indicate the extent to which the correspondence you received in relation to your complaint from the following agencies was easy to understand (Please tick one box for each of the listed agencies).

<table>
<thead>
<tr>
<th></th>
<th>Very easy</th>
<th>Quite easy</th>
<th>A little difficult</th>
<th>Very difficult</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local Health Board</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>GP/Opticians/Pharmacy/Dental Practice</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

8. Do you consider your concerns were dealt with sympathetically and sensitively throughout your complaint?

- YES
- NO

If you have answered no to the above question you may use the box below to give further information.

9. Are there any issues about the complaints procedure you may wish to make

If you have any problems completing this questionnaire, please contact [CONTACT DETAILS] for help.

Thank you for taking the time to complete this questionnaire. Please return it to us in the stamped addressed envelope provided.
As a check on your complaints handling, you can use this checklist to review how individual complaints were handled.

Complaint Reference Number

Brief summary of complaint

Acknowledgment sent within 2 working days? YES/NO

Was an Independent Complaints Facilitator involved? YES/NO

If yes what was the outcome?

Any comments on the facilitation process?

Was a full response sent within 20 working days? YES/NO

If not was a holding letter sent with reasons for delay and expected date of final response? YES/NO

Did the Chief Executive sign the final letter? YES/NO

Was the overall tone of the letter satisfactory? YES/NO

Were all the points raised in the complaint addressed YES/NO

Was an apology given (if appropriate?) YES/NO

Was the language used easy to understand? YES/NO

Was any jargon used fully explained? YES/NO
Was the investigation as outlined in the response, thorough? YES/NO

Was any indication given that there would be any changes as a result of the complaint? YES/NO

If so, what actions are intended or have been taken?

Was the complainant given guidance on how to take the matter further? YES/NO

Is there any further action necessary?*

Any additional comments?

Signature of Assessor

Date

* If any of the answers are no, there should be further action or an explanation for why this is not necessary.
3.11 Checklist for Independent Complaints

Reviewers

On receiving the complaint

- Has the complaint been acknowledged within 2 working days?
- Has the Independent Review Secretariat nominated a Lay Adviser?
- Have I got a complainant’s written statement setting out the complaint and why the complainant is still dissatisfied?
- Are there indications that the complainant has commenced legal proceedings?
- Are there any disciplinary issues involved?
- Do I have all the paper work from Local Resolution?
- Is there any other information I need?

Consultation

- Are there areas of the complaint which concern clinical judgement or professional behaviour?
- From which professions and on what aspects of the complaint do I need to seek clinical advice?
- Have I obtained the appropriate clinical advice?
- Have I read carefully all correspondence before discussing it with the Lay Adviser?
- Have I discussed it with the Lay Adviser?

The Reviewer’s decision

- Is there more which could be done at Local Resolution and can I be specific in recommending what further action should be taken?
Would an Independent Complaints Panel help resolve the outstanding issues in complaint?

Are there different parts of the complaint which require different decisions?

Is there any further action which can be taken to resolve the complaint outside of the NHS Complaints Procedure?

Communication

Does my letter to the complainant cover:

- Reasons for my decision?
- All aspects of the complaint?
- The right to complain to the Ombudsman?

Is my letter to the complainant clear, balanced and fair?

If a Panel is to be set up, Have I written to inform:

- The complainant?
- The complained against?
- Anyone mentioned in the complaint?

Terms of reference

Do the terms of reference cover all aspects of the complaint which are to be investigated?

Are the terms of reference realistic, clear and sufficiently broad?

If there are parts of the complaint which are not covered in the terms of reference, are they addressed in the letter to the complainant?

Has the complainant agreed to the terms of reference?

Once agreed, has the complained against party been advised of them?
Administration

• Am I keeping all emails and making written notes of all phone calls and meetings relating to this complaint, including times and dates?

• Are these kept securely?

General

• Do I need to bring any issues at policy level from lessons learned from this complaint to the attention of the Independent Review Secretariat?

Adapted From NHS Executive (2000) Good Practice for Conveners.
3.12 Clinical Adviser’s Report

Independent Review Case Number ________________________________

1. Was the explanation given to the complainant adequate? If not what additional information should have been given to the complainant relating to each element in the complaint?

2. Are there any outstanding issues not dealt with in the reply? If so what are they?

3. Are there any other clinical issues that have not been addressed? If so, what are they?

4. Are there any practical actions that could take place to provide a better explanation to the complainant? If so what would you suggest?

Signed ___________________________ Date ___________________________
3.13 Terms of Reference for Independent Complaints Panel

COMPLAINANT: ________________________________

COMPLAINED AGAINST:

1. To review and report on the care received by [COMPLAINANT/PATIENT] from [TRUST / PRACTITIONER] of [ADDRESS] from [TIME PERIOD COVERED BY COMPLAINT].

2. To determine whether the care provided by [TRUST/PRACTITIONER] was of a standard which could be reasonably expected.

3. To consider the following particular issues relating to management of [COMPLAINANT’S/PATIENT’S] condition:

4. To advise the [TRUST/PRACTITIONER] and any appropriate NHS bodies of recommendations following the review which could improve the care of patients and the NHS Complaints Procedure.
3.14 Panel Reports

Report of the Independent Panel held to consider the complaint

Brought by [COMPLAINANT] about [TRUST/PRACTITIONER]

Membership of the Panel

Chair

Lay panel members

Clinical Assessors: (where applicable)

[insert names, qualifications and addresses]

1 Summary of the complaint

A brief description of the complaint giving a clear chronology and including details of how it came to be heard by the Panel

2 Terms of Reference for the Panel

List agreed terms of reference

3 How the Panel proceeded

Describe the way in which the Panel conducted its business (i.e. any meeting and interviews, with dates and times and those present).

4 Terms of reference Number one

Repeat the terms of reference as headings and describe all the evidence given by the parties to which it relates.

Detail the Panels conclusions. This should include a) findings of fact relevant to the complaint; b) the panel’s opinions on the complaint with regard to the findings of face; and c) the reasons for the Panel’s opinions.

5 Remaining terms of reference

Do the same for all the other terms of reference, cross referencing the conclusions to each other.
6  Recommendations

Any recommendations for service improvements

Signed and dated by each Panel Member

Appendices

Attach Clinical Assessors’ reports and any other appendices.

Where the Panel disagrees with any matter included in the report of the Assessors, the reason for the disagreement should be given
3.15 Feedback on Independent Review

COMPLAINANT AND COMPLAINED AGAINST

We would be grateful if you could complete and return this form in the enclosed pre-paid envelope. The information you provide will enable us to make necessary improvements to the service.

Please read the comments and tick the appropriate box. If you would like to make any other comments, there is a space for this on the other side of the form.

The member of staff who dealt with your case

The member of staff was courteous

The member of staff clearly explained the process

The member of staff was helpful

The Reviewer

The Reviewer was impartial and fair

The Reviewer acted promptly

The Reviewer clearly explained his/her decision

Independent Panel meeting

I felt able to give my point of view

I felt I was listened to

I felt happy about the way the meeting was structured

I was happy with the venue and arrangements
**General information**

I found any written information helpful  
☐ ☐

I was treated fairly  
☐ ☐

I was kept informed of progress  
☐ ☐

I was satisfied with the outcome of Independent Review  
☐ ☐

Please give details of your experience of Independent Review and any other comments you wish to make, especially anything that might help others in similar circumstances in the future, in the space below:

Name: (optional)  
________________________________________

Date  
________________________________________

Thank you for your help
4 FURTHER INFORMATION

4.1 Regulations and Directions
4.2 Handling Information and Data Protection
4.3 Race Relations Amendment Act 2000
4.4 Human Rights Act
4.5 Other Complaints Procedures
4.6 Sources and Further Information
4.7 Publications

Glossary

Index
4.1 Regulations and Directions

Complaints procedures

The following Regulations affect the implementation of the complaints procedure. If there seems to be a discrepancy between the Guide and Directions, you must follow the Directions; otherwise, you may be subject to judicial review. A judicial review is the process that allows judges to supervise the way public bodies carry out their legal duties and exercise their power. Judicial review proceedings may be invoked by either complainant or complained against based on a breach of the Human Rights Act, decisions that are at odds with the Directions or disputes about funding of treatment.

The following Directions are being made to implement the new complaints procedure:

- Directions to NHS Trusts and Local Health Boards on Hospital Complaints Procedures.

- Directions to Local Health Boards on Dealing with Complaints about Family Health Service Practitioners, Providers of Personal Medical Services, and Providers of Personal Dental Services, other than personal dental services provided by NHS Trusts.

- Miscellaneous Directions to Local Health Boards for dealing with Complaints.

The following Regulations will affect the implementation of the new guidance:

- The National Health Service (General Medical Services) Regulations 1992, as amended

- The National Health Service (General Pharmaceutical Services) Regulations 1992, as amended

- The National Health Service (General Dental Services) Regulations 1992, as amended

- The National Health Service (General Ophthalmic Services) Regulations 1986, as amended
Confidentiality and data protection

Listed below are the relevant Welsh Health Circulars issued by the Welsh Assembly Government in support of this programme of work.


This guidance clarifies the minimum requirements in the submission of Caldicott Audits to the Welsh Assembly Government. It includes a corrected version of the Caldicott Matrix, the returns sheet and summary sheet for the audit.


A short circular clarifying the current legal position relating to the maximum permissible charges which can be applied to subject access requests. This circular amends the information previously issued through WHC (2001) 61.


A short circular changing the previously issued timetable of Caldicott work for Local Health Groups.


This circular provides a timetable of work and further guidance for Local Health Groups to take forward Caldicott work in their area. Included within this circular are two versions of the Caldicott Management Audit Tool (both table and form formats).

Detailed within this circular is a general overview of the Data Protection Act 1998 and its subsequent impact on the way the NHS in Wales handles patient-identifiable information.


This guidance provides supplemental information to WHC (99) 92, on the subject of reviewing information flows.

**WHC (2000) 71 – For the Record – Managing Records in NHS Trusts**

This circular sets out the legal obligations that are necessary to enable all NHS bodies to manage their healthcare records. Included in this document is guidance on good practice including the minimum retention periods of NHS records and the requirements to select records for permanent preservation.

**WHC (99) 92 – Protection Patient Identifiable Information: Caldicott Guardians in the NHS**

This key document underpins and sets the framework for the handling of patient-identifiable information within the NHS in Wales. Crucial to the success of this work is the Caldicott Guardian whose role is defined in depth through the circular. Tools, as well as a summary of previous circulars and guidance, enable Guardians to fulfill their duties.

**WHC (99) 07 – Preservation, Retention & Destruction of GP General Medical Services Records Relating to Patients**

This circular sets out the current requirements for the retention of GP health records. The subsequent circular WHC (2000) 71 does not replace the guidance given in this document.

**WHC (98) 80 - The Caldicott Report**

This document outlined the background and recommendations of the Caldicott Report. Attached to this circular was the Executive Summary of the Caldicott Report.
4.2 Handling Information and Data Protection

Access to health records and data protection

Under the Data Protection Act 1998 people have the right of access to information held about them, including such information in their health records. Access can only be denied in limited circumstances on the basis of certain specified exemptions. The Data Protection Act replaced the Access to Health Records Act 1990 on 1 March 2000, except that applications to see the records of someone who has died are still dealt with under the latter.

Who can apply for access under the Data Protection Act

Health records are any records which consist of information about the physical or mental health or condition of an individual and have been made by or on behalf of a health professional in connection with the care of that individual.

Under the Data Protection Act the holder of the information (known as a ‘data controller’) is not obliged to deal with a request for access unless it is made in writing. Data controllers may be GPs, the Health Boards, or Trusts or independent providers.

Sometimes a patient may ask to see their records in the course of a consultation. Often the practitioner may feel that it is helpful to share the record with the patient and go through it with them. Such an oral request does not have to be treated as an application under the Data Protection Act.

An application may be made to the Data Controller by:

a. The patient;

b. A person authorised by the patient (e.g. in writing) to make the application on the patient’s behalf;

c. Where the patient is a child and the child does not understand the nature of the request, then by a parent or person with parental responsibility for the child or is otherwise acting in law on behalf of the child;
d. an attorney or agent appointed by the Court of Protection with general authority to manage the property and affairs of the patient where the patient is incapable of managing his or her own affairs.

Where the patient has died, the patient’s personal representative and any person who may have a claim arising out of the patient’s death may apply under the Access to Health Records Act 1990.

**Time-scales for dealing with applications under the Data Protection Act**

It is a statutory requirement that all requests are dealt with promptly, and in any event within 40 calendar days of receiving a request that meets the conditions set by a data controller for processing such a request e.g. that it be put in writing, proof of identity, a fee and sufficient information to locate the information sought.

**What information can the applicant see?**

The applicant has the right to have access to all personal data held about them in written records and on computer, including those made before 1991.

**Reasons to refuse**

The Data Protection (Subject Access Modification)(Health) Order 2000 gives two circumstances where access can be refused to health records, after consultation with a health professional.

- Access would seriously harm the physical or mental well-being of the patient or any other individual (which could include a health professional)

- The request for access has been made by someone who is not the patient (such as the parent of a child) where the information was provided in the expectation that it would not be disclosed to the applicant. This includes the results of any examination or investigation which the patient consented on the basis that the information would not be disclosed.

Furthermore, the Data Protection (Miscellaneous Subject Access Exemptions) Order 2000 lists a number of categories of personal data, which are exempt from access by the patient:
• UK human fertilisation and embryology information;

• Information contained in adoption and parental order records and reports;

• Information provided by reporters for the purposes of a children’s hearing.

Both of these Orders contain complex provisions and what is stated above is merely a summary of parts of those Orders and any data controller proposing to rely upon provisions in those Orders should consider those provisions as they appear in the Orders.

If access is denied, the individual can complain to the Information Commissioner or make a complaint under the NHS Complaints Procedure. In the last resort individuals can seek redress through the courts.

Process for access

As stated above, a data controller is not obliged to deal with a request for access unless the application has been made in writing. The applicant does not need to give a reason. The data controller must consider the application. The Data Protection Act, generally, requires that data controllers provide the data subject (subject to the exemptions) with a permanent copy of the information that is held about them.

Normally it will be important that a health professional is present to explain the records to the patient, though this is not data protection requirement.

Applicants should be advised that the Data Protection Act provides a right of complaint to the Information Commissioner who can serve an enforcement notice on a data controller who is believed to be contravening the Data Protection Act; failure to comply with an enforcement notice is a criminal offence.

Correction of inaccurate records

If an applicant considers the information to be inaccurate, the individual may apply to the court, for an order, or to the Information Commissioner for an enforcement notice, either of which may require the inaccurate data, and any expression of opinion based on it, is rectified, blocked, erased or destroyed.
In cases where there is dispute (between the health professional and patient) about the accuracy of the information recorded, the health professional should work with the patient with the aim of finding a mutually agreeable solution which will address the patients underlying concerns about the data. Such situations may occur because the data was given by another person or was believed to be accurate at the time of writing (e.g. diagnosis). However the Court or the Commissioner may instead order that the record should be supplemented by a statement of the true facts as approved by the Court/Commissioner.

Charges

No fees will be charged where the patient inspects the written records, but does not take a copy away.

If an individual makes a formal request under the Data Protection Act, the data controller may charge a fee. Such fees are governed by the Data Protection (subject Access)(Fees and Miscellaneous Provisions) Regulations 2000, as amended – see the Information Commissioner’s guidance; Subject Access & medical record: fees for access.

Where a patient has died

Where a patient has died, the patient’s personal representative and any person who may have a claim arising out of the patient’s death has a right to access to the relevant part of the deceased’s health record under the Access to Health Records 1990.

If the patient has died, the records will generally have been returned to the Local Health Board where the patient lived. The application for records should normally be made to the Local Health Board. When the Local Health Board receives an application, it is required to obtain the advice of the last registered GP. Depending on the circumstances, the Local Health Board should consider copying the records before they are returned to the last registered GP to avoid allegations that they may have been altered.

Complainant acting on behalf of a person under a mental incapacity who is unable to give consent

Where a complainant is acting on behalf of a patient in such circumstances, the Trust, Local Health Board or family health service practitioner, must be
satisfied that the individual who is bringing the complaint is acting ‘in law’ on behalf of the patient.

Guidance issued by the Information Commissioner suggests that where an individual has a guardianship order or an enduring power of attorney, that person is acting ‘in law’ on behalf of a patient. As far as the NHS complaints procedure is concerned, it will not be practical in every instance to require a complainant in such circumstances to have written proof that he or she is acting ‘in law’ for the patient. Where the complainant is the patient’s next of kin and is acting in the best interests of the patient this should be sufficient to satisfy the ‘in law’ requirement. However, it is good practice in such cases to seek guidance from the Health Compliance Team at the Information Commissioner’s Office.

Disclosure of information that may identify third parties

Sections 7(4) to (6) of the Data Protection Act deals with disclosure of data to a complainant from which another individual can be identified. The organisation holding the data is not obliged to deal with the request unless the other individual is a health professional involved in the care of the complainant.

Where information about someone other than the complainant is disclosed to third parties the disclosure must be lawful (for example not in breach of the duty of confidence owed to the other individual), it must be fair to the other individual, it must meet all the relevant conditions in Schedules 1 and 2 of the Data Protection Act and must, in all circumstances, comply with the eight data protection principles.

Further information

http://howis.wales.nhs.uk/caldicott

Use and Disclosure of Health Data  (Information Commissioner, May 2002)
www.informationcommissioner.gov.uk

Data Protection Act 1998 –
**Code of Openness in the NHS**

Complaints about the non-disclosure of other (non-personal) information which may be requested should not be dealt with under the NHS Complaints Procedure. Such requests should be considered under the Government’s Code of Openness in the NHS, which came into effect on 1 June 1995. It can be viewed at [www.doh.gov.uk/nhsexec/codemain.htm](http://www.doh.gov.uk/nhsexec/codemain.htm) Guidance on Implementation of Openness in the NHS was issued by the Welsh Office in May 1995 (see DGM(95)97).

Where part of a complaint about services is that information has been refused – maybe in pursuit of the original complaint – and provided the Chief Executive has been given the opportunity first to review the circumstances, complainants may be advised of their right to pursue this aspect separately with the Ombudsman, without waiting for the outcome of NHS investigations into the rest of the complaint.

**Freedom of Information Act 2000**

All matters relating to compliance with the Data Protection Act and the Freedom of Information Act are the responsibility of the Information Commissioner. ([www.informationcommissioner.gov.uk](http://www.informationcommissioner.gov.uk)) Guidance on the Use and Disclosure of Health Data issued in May 2002 is relevant to the NHS Complaints Procedure.

The Freedom of Information Act ([www.doh.gov.uk/freedomofinformation; www.lcd.gov.uk/foi/foiact.htm](http://www.doh.gov.uk/freedomofinformation; www.lcd.gov.uk/foi/foiact.htm)) applies to all public authorities (as defined and set out in that Act) and will provide for a statutory right of access to information as well as requiring them to adopt and maintain a Publication Scheme. The statutory right of access will not come into force until 2005. However, the requirement to establish and maintain Publication Schemes will be brought into force in stages up until 2005. The purpose of Publication Schemes is to specify the classes of information that the authority publishes or intends to publish; the form in which this is or will be done; and whether there is any charge for the information.

When the individual right of access contained in the Act is implemented, it will apply to all types of recorded information held by public authorities regardless of the date of the information and will be retrospective. The Act does, however, set out some exemptions to this right. It also places a number of obligations on public authorities about the way in which they provide
information. Subject to the exemptions, anyone making a request must be informed whether the public authority holds the information and, if so, be supplied with it - generally within 20 working days. There is also a duty to provide advice or assistance to anyone seeking information (for example in order to explain what is readily available or to clarify what is wanted).

Health bodies will need to specify in their Publication Scheme any material that they will not release. NHS bodies can also define the class information in such a way as to exclude information that the body does not wish to disclose automatically under their Publication Schemes.

However the Freedom of Information Act protects individuals from disclosure to others of personal information about themselves. The Freedom of Information Act therefore runs in parallel with the Data Protection Act. Section 40 of Freedom of Information Act provides an exemption in respect of the disclosure of personal data. Its purpose is to exempt disclosing personal information about an individual, if doing so would contravene the various provisions of the Data Protection Act. The intention is to protect the individual’s privacy and to prevent the release of individual’s personal information to a third party where that would amount to a breach of the Data Protection Act.

**Storage and retention of complaints files**

Complaints files, including independent reviews, should be kept for 10 years as other records (WHC (2000) 71) unless there is a continuing civil action or if a complaint refers to maternity cases where the records should be kept for 25 years.

Local Health Boards do not need to keep records about local resolution in FHS practices for more than two years as it is the responsibility of the family health service practitioner to keep records. They should ensure that family health service practitioners are aware that they must retain records for 10 years.

NHS Regulations require dental records to be retained for only two years, but for medico-legal purposes, dental records (including radiographs and study models) should be retained much longer than this. For the purposes of the Consumer Protection Act 1987 they should be kept for at least eleven years or until a child is up to age 25, whichever is the longer. Records for patients who have died should be retained for the same period in case personal representatives take legal action, although in dentistry this is very rare.
4.3 **Race Relations Amendment Act 2000**

The Race Relations (Amendment) Act 2000 came into force on 2 April 2001. The 1976 Act remains the basic law in Great Britain that defines and outlaws racial discrimination, and gives individuals the right to seek legal redress for acts of racial discrimination. The new Act strengthens its application to public authorities in several important ways:

- It extends the scope of the 1976 Act to cover areas that were previously excluded, and makes it unlawful for public authorities to discriminate on racial grounds in carrying out any of their functions.

- It places a general statutory duty on a wide range of public authorities to promote racial equality and prevent racial discrimination.

- It gives the Home Secretary the power to make Orders imposing specific duties on all or some public authorities bound by the general duty. These specific duties will be enforceable by the Commission for Racial Equality (CRE), serving compliance notices, backed up by court orders, if necessary.
4.4 Human Rights Act

Every public authority, including NHS bodies, should already have reviewed its policies and procedures to ensure compliance with the European Convention on Human Rights which became UK law through the Human Rights Act 1998, effective from October 2000. In relation to their contracted NHS functions, GPs and other FHS providers as well as private health care providers are covered by the Act.

Independent Panels are not ‘tribunals’ and the NHS Complaints Procedure is not a judicial process within the meaning of the Act. Nonetheless, the spirit of the Act should be borne in mind when issues of ‘fairness’ of complaints handling and panel procedures are being considered.

The Act reinforces the importance of confidentiality (Article 8). It may also effect the interpretation placed on complaints concerning ‘rationing’ or other decisions about access to and funding of services. There is no right to medical treatment under the Act, but a decision to deny treatment could be challenged if it entailed ‘discrimination’ or a decision has not been taken through a due process. It has been suggested that issues such as the following may be affected by Articles in the Human Rights Act: abortion, ‘resuscitation orders’, right to treatment, mixed sex wards, security and surveillance cameras in health services premises, treatment of minors against parental wishes, any type of ‘discrimination’ affecting access to treatment, including on grounds of age.

The decisions of public bodies are subject to judicial review. It is possible that an NHS body which refused to adopt well-founded recommendations of an Independent Panel or which failed to carry out the action plan stemming from a Panel’s recommendations could be challenged by the original complainant for failing to perform its public duties.
4.5 Other Complaints Procedures

NHS Complaints Procedures in England

The NHS Complaints Procedure in England up till 2002 was the same as in Wales. From October 2002 Primary Care Trusts are responsible for Independent Reviews. This will be transferred in 2004 to the Commission for Healthcare Audit and Inspection that will replace the Commission for Health Improvement. (Website: www.doh.gov.uk/complain.htm)

Social services complaints procedures

The social services procedure has three stages. At the moment the NHS and local authorities can carry out local resolution jointly under stage 1, but not for Stage 2 or 3 (the equivalent of the NHS independent review).

Stage 1 - Local Resolution stage

A member of staff/line manager deals with local Resolution. It should be handled in a flexible and creative way. It is important to explore the most effective way the complaint can be resolved with the complainant. All complaints must be recorded by staff on ‘Complaints Recording Form’. A written response should be sent to the complainant.

This stage should be resolved within 21 days. All complainants have the right to go straight to the formal (stage 2) stage.

Stage 2 - the formal stage

The complaint is formalised and agreed in writing by the complainant. This date is recorded. The complaint is overseen by the Complaints System Manager (CSM).

An Investigating Officer is appointed by the CSM. This person must not be directly involved in the service complained about and should have completed the required training. (Complaints investigated under The Children Act requires that an Independent Person is also appointed).

The Investigating Officer (and Independent Person) produce(s) a report, and the Divisional Director of the service, which has been complained about formally, responds to the complainant.
This stage should take no longer than 28 days from the date the complaint was formalised and agreed with the complainant. (Under Community Care Act guidance this can be extended for up to three months, but only where there is a good reason).

**Stage 3 - the review stage**

The complainant has 28 days from the formal response to stage two in which to request a Review Panel. The Panel will include an Independent Person (chair) and two local Councillors.

- The Review Panel should hear the case within 28 days of notification.
- The Review Panel must make their recommendations to the Director within 24 hours of their considerations.
- The Director must respond to the complainant within 28 days outlining any proposed action.

Complainants may take their complaint to the Ombudsman at the end of the process if they remain dissatisfied.

**Mental Health Act Commission**

Patients detained under the Mental Health Act have a complaints procedure linked to the Mental Health Act Commission. The Commission investigates complaints about treatment from anyone who has been detained under the Mental Health Act.

The NHS Complaints Procedure does not apply to any issues around detained patients, but detained patients may still complain about other aspects of their care under NHS procedures and these should be investigated normally.

Mental Health Act Commission (England and Wales), Maid Marian House, 56 Hounds Gate, Nottingham NG1 6BG, United Kingdom. Tel: 0115 943 7100. Fax: 0115 943 7101. Website: [www.mhac.trent.nhs.uk](http://www.mhac.trent.nhs.uk)

**Children’s Commissioner for Wales**

The office of the independent Children’s Commissioner for Wales is being established initially under the Care Standards Act 2000. The Commissioner’s functions will extend to all social care services for children regulated by the
Care Standards Act and not just to those for looked after children. The services include: children’s homes, local authority and private adoption and fostering services, domiciliary care services for children with disabilities, private and voluntary hospitals and clinics, and the welfare aspects of day care provision for the under-8s and children living away from home in Boarding schools.

The Commissioner’s functions under the Act include:

- Ensuring that children’s rights are respected through the monitoring and oversight of the operation of complaints and whistle blowing procedures, and the arrangements for children’s advocacy;
- Examining particular cases;
- Assisting children in making a complaint or representation or in other proceedings.

The detail of these functions will be established by Assembly regulations.

It is intended to extend the statutory role, functions and powers of the Commissioner to all children and across different sectors and services in Wales. This will include Local Health Boards and NHS Trusts.

Children’s Commissioner for Wales

[Links to the website are provided here.]

South Wales
Oystermouth House
Phoenix Way
Swansea Enterprise Park
Llansamlet
Swansea SA7 9FS
Tel: 01792 765600
Fax 01792 765601

North Wales
Penrhos Manor
Oak Drive
Colwyn Bay
Conwy LL29 7YW
Tel: 01492 523320
Fax: 01492 523321
Personal Medical Services and Personal Dental Services were introduced by the NHS (Primary Care) Act 1997. Essentially they differ from General Medical and General Dental Services in that service providers can choose, to a certain extent, which services they will provide. NHS Directions to health authorities concerning the implementation of pilot schemes for these services required pilots to have in place a complaints procedure for handling complaints made by patients or former patients. The Directions also required pilots to co-operate with any investigation of the complaint by the health authority beyond the Local Resolution stage and required health authorities to extend the provisions relating to conciliation, independent complaints facilitation and Independent Review to Primary Care Act pilots. The Directions to health authorities apply equally to Local Health Boards. Currently, there are no pilot schemes providing Personal Medical or Personal Dental Services operational in Wales. In the event of any such pilots being operated further guidance will be issued.
4.6 Sources of Further Information

Useful addresses

**Advocacy services and support for complainants**

General: Support and advocacy is provided by Community Health Councils. You can find the contact details for your local CHC by visiting the website of the Welsh Association of Community Health Councils.

Website: [www.wales.nhs.uk/chc/](http://www.wales.nhs.uk/chc/)

**MIND Cymru**
3rd Floor, Quebec House, Castlebridge, 5-19 Cowbridge Road East, Cardiff, CF11 9AB
Tel: 029 20395123
Fax: 029 20402041
Website: [www.mind.org.uk/mindcymru/index.asp](http://www.mind.org.uk/mindcymru/index.asp)

**AVMA (Action for Victims of Medical Accidents)**

Individuals who think they may have suffered injury or harm as a result of inappropriate medical care, poor treatment, or misdiagnosis/failure to diagnose, can contact AVMA for free practical help and advice.

Action for Victims of Medical Accidents
44 High Street
Croydon
Surrey CRO 1YB
Tel: 020 8686 8333
Website: [www.avma.org.uk/](http://www.avma.org.uk/)

**Care Standards Inspectorate for Wales**

For information about CSIW and its regional and local offices see
Website: [www.wales.gov.uk/subsocialpolicycarestandards/index.htm](http://www.wales.gov.uk/subsocialpolicycarestandards/index.htm)
Dental Practices Board for England and Wales

Compton Place Road
Eastbourne
East Sussex  BN20 8AD
Website: www.dpb.nhs.uk

General Enquiries & Helpdesk
Email: helpdesk@dpb.nhs.uk
Tel: (01323) 433550
Tel: 01323 433550.

Dental Reference Service
Email: DRS@dpb.nhs.uk
Tel: (01323) 433554

Health Service Ombudsman

Office of the Welsh Administration and Health Service Ombudsman
5th Floor
Capital Tower
Greyfriars Road
Cardiff  CF10 3AG
Tel: 0845 601 0987
Fax: 029 2022 6909
e-mail: WHSC.Enquiries@ombudsman.gsi.gov.uk
Website: www.ombudsman.org.uk

Independent Review Secretariat

Mid and West Wales
PO Box 2
Brecon LD3 0XR
Tel: 01874 712748
Fax: 01874 712756
Lesley Preston  e-mail: lesley.preston@dyfpws-ha.wales.nhs.uk
South Wales
P O Box 21
Cardiff CF10 2ZR
Tel: 029 2040 2262
Fax: 029 2040 2398
Corrine Clarke e-mail: corrine.clarke@bro-taf-ha.wales.nhs.uk

North Wales
P O Box 125
Mold CH7 1WH
Tel: 01352 700227
Fax: 01352 754649
Margaret Roberts e-mail: margaret.roberts@nwales-ha.wales.nhs.uk

Mediation services

Information about mediation services in Wales can be obtained from:

Mediation UK
Alexander House
Telephone Avenue
Bristol
BS1 4BS
Tel: 0117 904 6661
Fax: 0117 904 3331
Email: enquiry@mediationuk.org.uk
Website: www.mediationuk.org.uk

National Clinical Assessment Authority (NCAA)

9th Floor,
Market Towers,
1 Nine Elms Lane,
London SW8 5NQ
Tel: 0207 273 0850
Fax: 0207 273 0851
Website: www.ncaa.nhs.uk
NHS Direct Wales

Tel: 0845 46 47  
Website: www.nhsdirect.wales.nhs.uk

National Patient Safety Agency

National Patient Safety Agency  
4-8 Maple Street  
London W1T 5HD  
Tel: 0207 868 2203  
E-mail: enquiries@npsa.org.uk  
Website: www.npsa.org.uk

Professional bodies

General Medical Council  
178 Great Portland Street,  
London W1W 5JE.  
Tel: 020 7580 7642  
Fax: 020 7915 3641  
Website: www.gmc-uk.org

General Dental Council,  
37 Wimpole Street,  
London W1G 8DQ.  
Tel: 020 7887 3800  
Fax: 020 7224 3294  
E-mail complaints@gdc-uk.org  
Website: www.gdc-uk.org

Nursing and Midwifery Council  
23 Portland Place  
London W1B 1PZ  
Tel: 020 7637 7181  
Website: www.nmc-uk.org
Health Professions Council

(Regulates arts therapists, chiropodists/podiatrists, clinical scientists, dietitians, medical laboratory scientific officers, occupational therapists, orthoptists, prosthetists and orthotists, paramedics, physiotherapists, radiographers, speech and language therapists)

Park House
184 Kennington Park Road
London SE11 4BU
Tel 020 7582 0866
Fax: 020 7820 9684
Website: [www.hpc-uk.org](http://www.hpc-uk.org)

Royal Pharmaceutical Society of Great Britain
Secretary, Welsh Executive
Gloucester House
14 Mount Stuart Square
Cardiff CF10 5DP
Tel: 029 2041 2800
Fax: 029 2041 2810
E-mail wales@rpsgb.org.uk
Website: [www.rpsgb.org.uk](http://www.rpsgb.org.uk)

General Optical Council
41 Harley Street
London W1G 8DJ
Tel: 020 7580 3898
Email reg@optical.org
Website: [www.optical.org](http://www.optical.org)
4.7 Publications

Government reports and guidance

‘Acting on Complaints’, the Welsh Assembly Government’s revised policy and proposals for a new NHS Complaints Procedure in Wales, was published in March 1995 (see EL(95)37)


Health of Wales Information Service (HOWIS) www.wales.nhs.uk


Signposts: A practical guide to public and patient involvement in Wales: www.wales.gov.uk/signposts

General NHS complaints


Good practice developed in England, see www.doh.gov.uk/complain.htm

Complaints in primary care

Medical Defence Union (1996) Problems in General Practice. Complaints and How to avoid them. London. MDU.

Conciliation and mediation


Information for complainants


‘What to do if you have a problem with your dentist’, Available from the General Dental Council, 37 Wimpole Street, London W1G 8DQ. Tel: 020 7887 3800, Fax: 020 7224 3294, e mail complaints@gdc-uk.org

Children and Young People in Hospital, Leaflet for children and young people outlining their rights, including consent and complaints. North West Wales NHS Trust. Available from: www.northwestwales.org

Your Information, Your Rights, Leaflet on data protection and access to information, published by the Welsh Assembly Government
### Glossary

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>CLASS Database</strong></td>
<td>Contains accredited clinicians to act as clinical advisers and clinical assessors and lay people to act as screeners, lay chairs and panel members. It is held by the Welsh Assembly Government and the Department of Health.</td>
</tr>
<tr>
<td><strong>Community Health Council (CHC)</strong></td>
<td>Local independent NHS body that provides support and advocacy for complainants and monitors the quality of health services.</td>
</tr>
<tr>
<td><strong>Complainant</strong></td>
<td>Anyone making a complaint under the NHS Complaints Procedure.</td>
</tr>
<tr>
<td><strong>Complaint</strong></td>
<td>An expression of concern about NHS treatment or services, whether verbal or written, which requires a response.</td>
</tr>
<tr>
<td><strong>Complaints Manager</strong></td>
<td>The member of staff in an NHS Trust, Local Health Board, FHS practice or independent provider responsible for ensuring the efficient working of the NHS Complaints Procedure for the body is responsible.</td>
</tr>
<tr>
<td><strong>Family Health Services (FHS)</strong></td>
<td>Services provided on a contractual basis to the NHS by general medical and dental practitioners, pharmacists and ophthalmic practitioners.</td>
</tr>
<tr>
<td><strong>Family Health Service Practitioners</strong></td>
<td>General practitioners, dentists, pharmacists and ophthalmic practitioners.</td>
</tr>
<tr>
<td><strong>Independent Panel</strong></td>
<td>Panel of lay people who may investigate a complaint as part of the second stage of the NHS Complaints Procedure.</td>
</tr>
<tr>
<td>Term</td>
<td>Description</td>
</tr>
<tr>
<td>-------------------------------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Independent Provider</td>
<td>A non-NHS body covered by the NHS Complaints Procedure when offering a service for patients commissioned and funded by the NHS</td>
</tr>
<tr>
<td>Independent Review</td>
<td>The second stage of the NHS Complaints Procedure in Wales..</td>
</tr>
<tr>
<td>Independent Review Secretariat</td>
<td>Responsible for administering Independent Reviews, as part of the All-Wales Business Services Centre.</td>
</tr>
<tr>
<td>Local Health Board (LHB)</td>
<td>Responsible for commissioning health services and contracting and monitoring family health services. (In Powys where the LHB is also responsible for providing community health services).</td>
</tr>
<tr>
<td>Local Representative Committee</td>
<td>Covers a local area and made up of local practitioners representing their discipline (e.g. Local Medical Committee, Local Dental committee).</td>
</tr>
<tr>
<td>Local Resolution</td>
<td>First stage of the NHS Complaints Procedure.</td>
</tr>
<tr>
<td>NHS Trust</td>
<td>Acute hospital, mental health and community health services and specialist health services including ambulance services.</td>
</tr>
<tr>
<td>Patient</td>
<td>Anyone who is receiving or has received NHS treatment or services.</td>
</tr>
<tr>
<td>Person complained against</td>
<td>Usually a health professional who is a practitioner (hospital doctor, GP, nurse, therapist etc), or a manager of health services or facilities where health care is delivered by or for the NHS.</td>
</tr>
</tbody>
</table>
Primary Care
Health care services provided mainly in the community (in other words not as a hospital inpatient or outpatient) by professionals such as general medical, dental or nurse practitioners, community nurses such as Health Visitors or District Nurses, therapists and managerial staff working in GP practices, community pharmacy and optical services.

Reviewer (formerly ‘convener’)
The independent lay person responsible for Independent Reviews and deciding whether to hold an Independent Review.

Secondary Care
Health care provided within hospitals or other dedicated healthcare institutions to both inpatients and outpatients, including emergency care and maternity services.
Index

Access to Health Records 1.57-65; 1.89; 2.22-4; 4.2.8
Adverse Incidents 1.94-96
Advocacy see support for complainants
Annual Reports 1.124-6; 3.8
Caldicott Guardians 1.8-9
Child Protection 1.24; 1.98; 1.104-5
Children and young people, complaints by 1.19-20; 3.3; 4.5
Clinical Advisers, role 2.17-21, 3.12
Clinical Assessors, role 2.46-52; 2.66
Clinical governance 1.127; 2.67-80
Code of Openness 4.2
Commissioning decisions, complaints about 1.21-2
Community Health Councils 1.44-48; 2.12; 2.73
Conciliation see Independent Complaints Facilitation
Confidentiality, also see access to health records 1.9; 1.122; 2.74-5; 4.2
Consent 1.16-20; 3.2
Continuing Care Reviews 1.23
Coroner’s court 1.110
Data Protection, see also access to health records 1.9; 1.89; 1.122; 2.74-5; 4.2
Dental Practice Board 1.78
Dentists 1.31
Deputising services 1.29
Disciplinary procedures 1.97-103; 2.32; 2.35
Fees and expenses 2.45
Fraud 1.98; 1.109
Freedom of Information Act 4.2
General Medical Council see professional regulatory bodies
General practitioners 1.10; 1.27-9; 1.40; 1.118-9
Habitual complainants 1.114-9, 3.7
Health Records 1.57-65; 2.22-4; 2.57
Health Service Commissioner 2.36; 2.81-5
Human Rights Act 4.4
Independent Complaints Facilitation 1.79-82; 3.5
Independent health care providers 1.12-13
Interpreting services 1.44
Legal proceedings 1.111-3
Local authority complaints procedures See Social Services Complaints Procedures
Locums 1.30
Mediation See independent complaints facilitation
Mental Health Act Commission 1.26, 4.5
Multi-agency complaints 1.91-3; 2.67-8
<table>
<thead>
<tr>
<th>Topic</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>National Clinical Assessment Authority</td>
<td>1.98; 1.108; 2.35</td>
</tr>
<tr>
<td>National Patient Safety Agency</td>
<td>1.96</td>
</tr>
<tr>
<td>NHS pay beds</td>
<td>1.25</td>
</tr>
<tr>
<td>Nursing Homes</td>
<td>see independent health care providers</td>
</tr>
<tr>
<td>Ombudsman</td>
<td>2.36; 2.81-5</td>
</tr>
<tr>
<td>Opticians and Ophthalmic practitioners</td>
<td>1.33</td>
</tr>
<tr>
<td>Pharmacists</td>
<td>1.33</td>
</tr>
<tr>
<td>Private services</td>
<td>see independent providers</td>
</tr>
<tr>
<td>Professional regulatory bodies</td>
<td>1.106-7; 2.33</td>
</tr>
<tr>
<td>Quarterly Reports</td>
<td>1.123; 3.8</td>
</tr>
<tr>
<td>Race Relations (Amendment Act) 2000</td>
<td>4.3</td>
</tr>
<tr>
<td>Record keeping</td>
<td>1.120.2; 2.86-88; 3.9</td>
</tr>
<tr>
<td>Retention of records</td>
<td>2.88; 4.2</td>
</tr>
<tr>
<td>Social Services Complaints Procedures</td>
<td>1.93; 2.68; 4.5</td>
</tr>
<tr>
<td>Specialised services, complaints about</td>
<td>1.22</td>
</tr>
<tr>
<td>Staff complained against, support for</td>
<td>1.50-1; 2.64-5</td>
</tr>
<tr>
<td>Support for complainants</td>
<td>1.44-9; 2.64-5</td>
</tr>
<tr>
<td>Surveys, satisfaction</td>
<td>1,121; 1.134; 3.10; 3.15</td>
</tr>
<tr>
<td>Time limits</td>
<td>1.52-55, 1.136</td>
</tr>
<tr>
<td>Training</td>
<td>1.6</td>
</tr>
</tbody>
</table>
Vexatious complainants  see habitual complainants

Violence against staff

Vulnerable adults  see Child Protection

Young people  see children

Zero tolerance  1.114
5 TRAINING ON COMPLAINTS

Dealing with comments, concerns and complaints

A resource for staff of NHS Trusts, Local Health Boards and Family Health Services Practices in Wales

Contents

About the training programme 157

Sessions:

1. Why comments, concerns and complaints are important 160

2. Dealing with complaints 175

3. Dealing with difficult situations 194

4. Learning from complaints 200

Setting up a course 210

Evaluation form 212
About the training programme

The key to effective complaints handling is dealing with comments, concerns and complaints as they arise. At this stage many concerns can be resolved before they become complaints. These training materials provide a framework that NHS Trusts and Local Health Boards can use as a basis for delivering training programmes for staff who are in direct contact with patients in hospitals, community services, and Family Health Services practices.

Four half-day sessions are outlined that can be built on and adapted to meet local requirements and to incorporate local contacts, policies and experiences. The Complaints Manager or Trainer in NHS Trusts or Local Health Boards can deliver them.

Aims of the training

The training sessions aim to help participants learn to examine and, where necessary, change their understanding and attitude to comments, concerns and complaints and the circumstances in which people make them. Giving participants information about the NHS Complaints Procedure is of limited value without the skills and attitudes that underpin effective local complaints handling.

The course aims to enable participants to:

- Use empathy and appropriate communication to avoid concerns turning into complaints;
- Deal with complaints effectively when they arise and avoid them escalating;
- Ensure individuals and organisations learn lessons from comments and complaints to improve service quality;
- Understand the changes in the NHS Complaints Procedure in Wales from April 2003.

Who the training programme is for

This material has been designed for people who are generally on the ‘front line’ of patient care:
• Clinicians and managers in NHS Trusts and Local Health Boards who deal with patients, their relatives, carers and the public and who may receive comments and complaints;
• Practice managers and others working in Family Health Services practices (medical, dental, optical, pharmacy) who deal with patient comments and complaints;
• Staff of non-NHS bodies who provide healthcare to NHS-funded patients and are required to operate a complaints procedure.

Participants will normally be involved directly with patients, carers or the public and have some practical experience of dealing with their concerns and complaints. For staff with no practical experience in this area but who wish to gain more understanding of good complaints management, the Trainer may wish to provide extra background or resource material.

Clinical and managerial staff can use these training sessions as part fulfilment of continuing professional development requirements.

Note: These sessions are not designed for complaints staff, patient services or support officers or advocates in Community Health Councils or other advice agencies. They need specific training in their roles, though they should be aware of the training content offered to colleagues and may be invited to contribute to specific sessions.

Delivering the training

The training has been designed to be delivered by Complaints Managers or Trainers from NHS Trusts or Local Health Boards who have practical and technical knowledge of the NHS Complaints Procedure.

The materials are designed to be used over four sessions each lasting 2 – 2½ hours. Ideally the sessions should be delivered over four consecutive weeks in order to allow time for preparation and reflection by the participants. At the end there is a section giving advice on how to prepare for and set up training sessions.

A self-completion evaluation form should be completed at the end of all four course sessions.
Adapting the material

This programme provides some ideas and suggestions about how staff may be given training in dealing with concerns and complaints. The training sessions and participants’ material can be used flexibly to build on local procedures, existing good practice or to address a particular problem experienced locally.

The Trainer may also want to adapt the training programme according to the level of information and training the participants need. For example, staff in NHS Trusts and Local Health Boards may primarily need to know about how the NHS Complaints Procedure works and how to deal with people when they raise a concern or complaint. Family Health Services staff may be responsible for the investigation and writing letters to the complainant and may need additional skills.

Case examples are provided. Other case studies from the Trainer’s or participants’ own experiences can be used, provided care is taken to make sure neither the patient nor the complained against can be identified.

To meet particular needs, the Trainer may decide to offer a session as a one-off, free-standing module. If this is done, the Trainer should ensure that participants are not left with an unbalanced understanding of the wider issues involved in complaints handling.
SESSION 1

Why comments, concerns and complaints are important

Resources in this section:

Aim and learning objectives

Session outline

Trainer’s notes

Exercises

1. What do you think about complaints and people who complain?
2A. Hospital Role Play – making and receiving a concern made orally (with Trainer’s notes)
2B. Family Health Services: Role Play – making and receiving a concern made orally (with Trainer’s notes)

Handouts

1. TIPS - What to do when you receive a comment, concern or complaint
SESSION 1

Why comments, concerns and complaints are important

Aim:
To increase participants’ awareness of why comments, concerns and complaints are important and deepen their understanding of what complaints handling procedures aim to achieve for the complainant and for the individual or organisation complained about.

Learning Objectives:
By the end of the session, the participants will:

• Understand the importance of their role in avoiding the escalation of complaints;
• Understand why good handling of concerns and complaints is important to how they do their jobs;
• Gain some understanding and empathy for what it feels like to be a complainant and a person complained against;
• Appreciate some common reasons why people complain.
<table>
<thead>
<tr>
<th>Time</th>
<th>Subject Matter</th>
<th>What Participants Are Expected to Do</th>
<th>What the Trainer Is Doing</th>
</tr>
</thead>
<tbody>
<tr>
<td>00:00</td>
<td>Welcome from Trainer</td>
<td>Listen</td>
<td>Distribute session programme and explain about facilities, rules of engagement, etc</td>
</tr>
</tbody>
</table>
| 00:05   | Introductions - Trainer invites participants to introduce themselves briefly and state expectations, and what they would like to take away at the end of the session | 1) Introductions in pairs, introducing each other to the group  
2) Discuss as a group what experiences they have had in dealing with comments, concerns and complaints | Note participants’ expectations and make a list of ‘take away’ wishes on flip chart              |
| 00:20   | Overview  
Why complaints are important & related themes | Listen and discuss                                                                                   | Using points pre-prepared on flip chart or overhead projector (see Trainer’s notes)       |
| 00:45   | Examine attitudes to complaints & complainants                                | Fill in questionnaire                                                                                | Distribute Exercise 1 and explain its purpose                                              |
| 00:50   | Record, discuss & compare responses to Exercise 1 statements                   | Each participant gives statement rankings 1-10. Discuss group’s rankings                             | Record rankings on a master sheet made up on a flip chart. Encourage group to comment on results |
| 1:15    | Comfort break                                                                 |                                                                                                      |                                                                                           |
| 1:20    | Role play - making and receiving an oral complaint (NB: use hospital or FHS version depending on participants in the session) | Participate or observe role play. If there is time, the role play can be run a second time with two new participants before the general discussion | Distribute Exercise 2 (ensure version is appropriate to the participants ) and explain role play |
| 1:50    | Discussion on the role play experience                                        | Discuss how it made role players feel                                                                 | Guide discussion so that everyone can participate                                          |
| 2:15    | Reflection                                                                    | Reflect on individual responses to the session                                                      | Distribute Handout 1 and explain its use                                                   |
| 2:30    | Session ends                                                                  | Listen to explanation of next session and study material                                             | Distribute Handout 2 and explain purpose of Session 2                                     |
Session 1: Trainer’s Notes

Welcome

At the start you will need to give participants information including:

- Explain the mobile phone policy;
- Availability of refreshments;
- Location of toilets;
- Emergency procedures for venue;
- Explain aims of the training programme/sessions;
- Agree ‘rules of engagement’ for the training session (not interrupting each other, keeping confidentiality, etc).

Overview

You may wish to cover the following points, drawing on your own experiences and bringing in local information where relevant. Prepare a flip chart in advance with key words or phrases and use these to guide the presentation.

Alternatively: With more experienced participants, you can introduce each theme and ask participants to brainstorm their views.

Theme 1: Why are comments, concerns and complaints important?

We are all ‘patients’ at one time or another. Staff should be helped to appreciate that what they provide for ‘others’ is essentially what they would want for themselves and their family when they receive care.

When any of us use a service or buy something, we expect to be able to express our views and, if we make constructive suggestions, to have them taken seriously. The right to make complaints, to have them taken seriously, and to expect better services in future is essential if the public is to retain its confidence in the NHS.

Handling comments, concerns and complaints well contributes to overall service quality by providing feedback about services. Patients, relatives and carers often have important information about their experiences that we need to know. If you don’t invite people to say why they are dissatisfied, how will you ever find this out?
Complaints provide feedback and an opportunity for us to establish better patient relations and improve services. Here are some examples:

• Complaints about an outpatient service led to a major reorganisation of the way in which appointments were handled and notified to patients;
• Complaints about the continence service led to an NHS Trust arranging additional training for staff to help clients who were experiencing difficulties;
• Complaints to a commissioning body about delays in elective orthopaedic surgery led to additional investment to employ an additional surgeon for knee and hip operations;
• Complaints about GP practices have led to changes in how patients experience the service, such as:
  o How patients access the out of hours telephone service to request home visits;
  o Practices taking a different approach to telephone enquiries from parents concerned about MMR immunisations;
  o Dealing with repeat prescription requests from patients who have been recently de-registered because they have moved out of the practice’s catchment area.

Theme 2: Why do people complain?

One of the most important lessons that healthcare staff need to learn is how to listen and react appropriately when patients, carers or relatives express a concern or make a complaint. Not everything that patients, relatives and carers raise as a concern is necessarily a ‘complaint’ even if it is made in an anxious or strident manner. ‘Niggles and grumbles’ need not automatically be shunted into a formal complaints process if they can be handled well and promptly by staff as they arise and if everyone is satisfied with the outcome.

People complain for many different reasons. The vast majority of people receiving NHS healthcare do not set out to become complainants, so when they do express a concern or a complaint it is usually a highly significant thing for them to do.
You might suggest that participants consider the view that:

‘A complaint is an emotion wrapped up in a process’

Get them to discuss what is more important - understanding the emotion and dealing with it, or focusing on administering the complaints process? If the latter is their first course of action, it may inflame the emotion, extend investigation time and considerably escalate the complaint.

Theme 3: What is a successful resolution of a complaint?

Understanding why someone complains and what they hope to achieve by voicing their concerns is essential to good complaints handling. Talking with people about what they want to come out of their comment, concern or complaint is important. What does success look like to them? To achieve patient satisfaction is to address what is on their mind and then to leave them ready to let the matter go.

Participants need to consider what a ‘good result’ might look like from the patient’s or relative’s perspective, for example, receiving a prompt and sincere apology or explanation. That may not be possible, but it should always be explored.

Sometimes patients, and particularly relatives, have unrealistic expectations about what healthcare and the NHS can achieve and this may lead to dissatisfaction and complaints. Where people understand what to expect from their care and from the NHS and how to use services appropriately, anxieties, concerns and complaints may be less likely.
Exercise 1

What do you think about complaints and people who complain?

**Activity Instructions:** Below is a list of ten statements about complaints and people who make them. Read through all of the statements first. Then go through them one by one again. Using the box to the left of the statement, rank each one on a scale of 1-10

1 is the statement you most strongly **agree** with

10 is the statement you most strongly **disagree** with

After you have finished, the Trainer will ask everyone to give their rankings from 1-10 so the group’s views can be discussed.

There are no right or wrong answers so say what you really think!

<table>
<thead>
<tr>
<th>Rank</th>
<th>Statements</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>NHS users should be encouraged to complain if they aren’t happy because we don’t complain enough in this country</td>
</tr>
<tr>
<td></td>
<td>These days people seem too ready to complain about the smallest things</td>
</tr>
<tr>
<td></td>
<td>People who complain make me feel negative about the NHS</td>
</tr>
<tr>
<td></td>
<td>NHS patients shouldn’t complain because it’s a free service</td>
</tr>
<tr>
<td></td>
<td>We can learn from complaints if we take the time to understand why people are raising particular issues</td>
</tr>
<tr>
<td></td>
<td>Patients aren’t health professionals, so we shouldn’t take their complaints too seriously</td>
</tr>
<tr>
<td></td>
<td>Most people don’t know what they want when they complain</td>
</tr>
<tr>
<td></td>
<td>Some patients can never be satisfied so it’s best to ignore them</td>
</tr>
<tr>
<td></td>
<td>We don’t hear from people who really have something to complain about</td>
</tr>
<tr>
<td></td>
<td>Front line staff should not have to deal with complaints</td>
</tr>
</tbody>
</table>
Exercise 2A

Hospital role play – Making and receiving a concern made in person

In the role play, one person is James’ relative (male or female) and one person is the ward sister/charge nurse/ward manager.

The relative makes the concern known to the staff member orally based on the facts of the scenario.

The ward sister receives the oral concern, summarises it back to the relative to get their agreement to the facts and tells the relative what s/he will do next.

The rest of the group observes the action and participates in the following discussion.

**Roles:**
1) James’ cousin
2) ward sister/charge nurse/ward manager

**Scenario**

James, a widower in his late 60’s, was admitted to the local general hospital for surgery to correct a common urological problem. He was welcomed to the ward and shown where the washing facilities and toilets were.

James had a drip inserted in his hand when he retired to bed. The drip was attached to a wheeled stand so he was able to move around. Later that night James felt an urgency to visit the toilet. He called for assistance, but there were no nurses available to help. As he was unable to get a nurse to help him, he got out of bed to find the facilities.

As James was preparing to go to the bathroom his need became urgent and in his haste to reach the toilets he did not have time to put on his slippers.

He reached the toilet, only to find it in total darkness. In the gloom he only just managed to reach the pan. He turned around in the toilet cubicle to find a means to switch the light on. He pulled the alarm cord instead of the light. As he did this, however, he slipped on the wet floor and went crashing down hitting his head on the wall as he fell.
The nursing staff had been alerted by the alarm in the toilet and they helped James back to bed; they asked him how he was feeling and told him to stay in bed and they would assess him again in the morning. They gave James urinal bottles to use for the rest of the night in case he needed them.

When he awoke the following morning, James’ leg was extremely painful and bruised and he was unable to bear his own weight on it. His left side was also badly bruised and he was in considerable discomfort. He was taken for x-rays and a decision was taken not to continue with his surgical procedure because of the trauma he had suffered. His operation was cancelled and re-arranged.

A relative visited James on the ward the following day and became very distressed by what s/he saw of his injuries. S/he raised concerns with the Ward Sister in an emotional manner asking for something to be done.
Trainer’s notes on Exercise 2A (Hospital)

1. Give everyone in the group a copy of the scenario. Read the scenario about James and his experiences on a hospital surgical ward.

2. Identify participants to take the roles. Make sure participants understand their roles and take the time to read the scenario thoroughly.

3. Before the role play starts, ask the rest of the group to divide into two sections, one focusing particularly on the relative’s role and how the oral concern is made and the other focusing on the ward sister’s reaction and how she decides what to do next.

4. Highlight the key skills that the Ward Sister needs to use in order to:
   - Keep the situation calm;
   - Summarise what the relative is concerned about;
   - Secure the relative’s agreement that the Ward Sister has understood the facts;
   - Determine what the relative wants to happen, then tell the relative what will happen next and make sure it is understood;
   - Reassure the relative that James’ immediate care needs are being met.

5. Get the whole group to discuss what they have seen and probe for a consensus on what happened when the relative made her/his oral concern. Get the group to think about the following:
   - Is this a ‘complaint’ that should be put in writing to be dealt with through the Trust’s complaints procedure, or can it be handled immediately to address the relative’s immediate concerns about James?
   - What does the relative actually want? Is the Ward Sister the right person to sort the problem out? If not, who is?
   - What should happen next in terms of good practice? Does this include making a written summary of the oral concern and passing it to the Complaints Manager? Or recording it as an adverse incident?
   - Are there any changes that could be made to prevent such an incident happening again?

NB. This scenario is based on fact. James stayed in hospital for the rest of the week and was then discharged. Two weeks later he had a rescheduled operation, which was successful.
Family Health Services role play – Making and receiving a concern made in person

In the role play, one person is Mrs Davis and one person is the receptionist.

Mrs Davis makes the concern known to the staff member orally based on the facts of the scenario.

The receptionist receives the oral concern, summarises it to back to the Mrs Davis to get her agreement to the facts and tells her what s/he will do next.

The rest of the group observes the action and participates in the following discussion.

Roles: 1) Mrs Davis
2) Part-time practice Receptionist

Scenario

The Davis family live in a rural area and the whole family has used the same GP practice for many years. Mrs Davis’ elderly parents lived with them until recently, but her father died and her mother decided to move into sheltered accommodation in the nearest large town to be closer to the local hospital where she receives treatment for diabetes and a heart condition as an outpatient.

A week after her mother’s move, Mrs Davis went to the practice to collect her mother’s repeat prescriptions as she had done for years. A new receptionist told Mrs Davis there was nothing to be collected but there was a note in the repeat prescriptions basket from the Local Health Board saying that Mrs Davis’ mother has been de-registered as a patient with the practice.

Mrs Davis was taken aback to be told this and also embarrassed because there were other people in the waiting room who knew the family and they could hear what was being said. The receptionist only worked part-time. She couldn’t explain what ‘de-registered’ meant or give any more details.
Mrs Davis asked if she could talk to someone else right away, but the practice manager had a day off and there was no-one more senior on the premises to refer the concern to. No prescription could be issued and Mrs Davis became frustrated and angry.

She rang her mother on her mobile phone to tell her what had happened. Her mother became very worried that she would not be able to get her usual medication and that she had been ‘struck off’ the doctor’s list. Her mother’s evident distress over the phone made Mrs Davis upset and she said she would not leave the surgery until someone sorted out the problem about her mother’s repeat prescription.
Trainer’s notes on Exercise 2B (Family Health Services)

1. Give everyone in the group a copy of the scenario. Read the scenario about Mrs Davis and her experience in the GP’s practice.

2. Identify participants to take the roles. Make sure participants understand their roles and take the time to read the scenario thoroughly.

3. Before the role play starts, ask the rest of the group to divide into two sections, one focusing particularly on Mrs Davis’s role and how the oral concern is expressed and the other focusing on the receptionist’s reaction and how s/he decides what to do next.

4. Highlight the key skills that the Receptionist needs to use in order to:
   • Keep the situation calm;
   • Summarise what Mrs Davis is concerned about;
   • Secure Mrs Davis’s agreement that she has understood the facts;
   • Determine what Mrs Davis wants to happen, then tell her what will happen next and make sure it is understood;
   • Reassure Mrs Davis that the practice will make sure her mother’s immediate care needs will continue to be met.

5. Get the whole group to discuss what they have seen and probe for a consensus on what happened when Mrs Davis made her concern known. Get the group to think about the following:
   • Is this a ‘complaint’ that should be put in writing to be dealt with through the practice’s complaints procedure, or can it be handled immediately to address Mrs Davis’ immediate concerns about her mother’s care?
   • What does Mrs Davis actually want and is the Receptionist the right person to try to sort the problem out? If s/he isn’t, who is?
   • What should happen next in terms of good practice? Does this include making a written summary of the oral concern and passing it to the Complaints Manager?
   • Are there any changes that could be made to prevent such an incident happening again?

NB. This scenario is based on fact. The practice implemented a policy for dealing with repeat prescription requests from patients who had recently moved out of the practice’s catchment area and were therefore automatically de-registered. A simple handout explained what ‘de-registration’ by the LHB meant and the new overlap period of two months to allow things to be sorted out.
Even if they seem trivial to you, the issues raised have obviously caused the patient/relative/carer/visitor some concern and must be taken seriously if they are not to escalate immediately.

1. Deal with the cause for concern immediately, if possible, especially if it is about patient distress.

2. Introduce yourself and explain your role.

3. Express regret that the person has a complaint.

4. Be courteous at all times and try not to be defensive. Do not respond to anger with anger.

5. Find somewhere quiet and private to talk, away from a busy ward/department.

6. Offer the complainant a chair, without a table or desk in between. If taking a complaint on the phone, find a quiet extension without distracting background noise and do not take other calls while listening. Colleagues laughing in the background can be interpreted by a caller as laughing at the complainant.

7. Listen carefully; clarify points you are unsure of.

8. Establish the facts and ensure that you understand them.

9. Take time to consider your responses - do not rush in to defend the NHS Trust/Practice or attack the complainant.

10. Never give explanations or justifications that cannot be substantiated. If you do not know the answer, offer to find out.

11. Never blame someone else, or ‘lack of resources’ as this will be interpreted as ‘passing the buck’.

12. Never promise anything you can’t follow through.

13. Always offer an apology and empathise with the patient’s situation: ‘I can see that you would have found that very upsetting’.
14. Provide a copy of the NHS Trust/Practice complaints leaflet, which should explain how patients can raise an issue and about the support the local Community Health Council can give.

15. If you cannot help, explain why, and locate your line manager in an effort to resolve the problem. If you can’t find an appropriate member of clinical or management staff immediately to help with the problem, offer to telephone the patient/relative/visitor within 1 working day with an explanation. Inform your line manager of the situation.

16. Make a record of what has been said at the time.
SESSION 2

Dealing with complaints

Resources in this section:

Aims and learning objectives
Session outline
Trainer’s notes
Handouts

2. NHS complaints procedure
3. Summary of the complaints process
4. What to do when you receive a complaint – questions and answers
5. TIPS - Running a successful complaints meeting
6. TIPS - Writing letters to complainants (Family Health Services practices)
SESSION 2

Dealing with complaints

**Aims:**

- To understand the NHS Complaints Procedure;
- To know what to do if a patient or relative expresses a concern orally;
- To know how to respond if a patient or relative makes a complaint in writing (Family Health Services practices).

**Learning Objectives:**

By the end of the session, the participants will:

- Understand the basic operation of the NHS Complaints Procedure;
- Understand what to do if they receive a concern or a complaint:
  - Orally
  - Written (especially Family Health Services practice staff);
- Be able to analyse and summarise a complaint;
- Be aware of role CHCs and patient support staff can play.
<table>
<thead>
<tr>
<th>Suggested Times</th>
<th>Subject matter</th>
<th>What participants are expected to do</th>
<th>What the Trainer is doing</th>
</tr>
</thead>
<tbody>
<tr>
<td>00:00</td>
<td>Recap on last session’s learning &amp; outline Session 2 objectives</td>
<td>Listen</td>
<td>Establish continuity between sessions</td>
</tr>
<tr>
<td>00:05</td>
<td>NHS complaints procedure</td>
<td>Discuss</td>
<td>Using Handout 2 check that participants have read handout distributed at end of Session 1 - discuss any questions</td>
</tr>
<tr>
<td>00:45</td>
<td>What should you do when you you receive a complaint - responding to the individual &amp; helping people express themselves</td>
<td>Exercise - discuss what should happen and what can go wrong and why</td>
<td>Record key discussion points on flip chart</td>
</tr>
<tr>
<td>1:30</td>
<td>Comfort break</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1:35</td>
<td>Supporting complainants and helping them express themselves - you may wish to invite a CHC complaints advocate or patient support officer to explain their work</td>
<td>Listen and discuss</td>
<td>Discuss and record key points on flip chart</td>
</tr>
<tr>
<td>2:00</td>
<td>For FHS practice staff 1) running a complaints meeting 2) writing letters to complainants</td>
<td></td>
<td>Distribute Handouts 5 and 6 Explain relevance to complaints handling procedures</td>
</tr>
<tr>
<td>2:20</td>
<td>Preparation for session 3</td>
<td>Listen to explanation of next session and study material Think about any difficult situations experienced or observed</td>
<td>Explain purpose of Session 3 and suggest how participants can prepare to recount personal experiences of communicating in difficult circumstances</td>
</tr>
<tr>
<td>2:30</td>
<td>Session ends</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Session 2: Trainer’s Notes

Preparation for Session 2

This session focuses on the NHS Complaints Procedure. At the end of Session 1 give participants Handout 2 and charts 1 and 2 (page 10-11 of guidance). Ask them to look at their own organisation’s complaints procedure and also any leaflets they produce for patients on how to make a complaint, before the next session.

Theme 1: The NHS Complaints Procedure

Participants should have read Handout 2 by the time this session begins. If so, you may be able to answer questions and lead a discussion.

You need to make sure that participants understand the following:

• The principles of the NHS Complaints Procedure;
• Local Resolution;
• Community Health Councils and advocacy services;
• Arrangements for staff complained against;
• Independent Review;
• The role of the Ombudsman.

Theme 2: What happens when you receive a complaint

You can try and resolve complaints in a range of ways, depending on the nature of the complaint and what outcome (apology, compensation, service change, etc) the complainant wants from the complaint.

You can ask participants about their own organisation’s complaints policy and ways they deal with complaints. You may wish to explore with participants the different options and when they might be useful or bring a complaint from your experience that they can analyse and discuss.

Some questions and answers about how individuals may be affected by complaints are given in Handout 4. The trainer can supplement this by getting the group to brainstorm some additional questions and answers or by asking individuals to create questions and answers that are not covered in Handout 4 before the next session and then get the whole group to comment on whether or not they feel the answers are appropriate.
Trust staff:

- When should a complaint be passed on to the Complaints Manager?
- What can they do to resolve the situation – what options can they offer?

Family Health Services staff:

As Family Health Services staff are likely to be dealing directly with complaints and their investigation, they may need to be aware of other options. These include:

- Meetings;
- Arranging a second clinical opinion;
- Using an external or independent lay person, facilitator, conciliator or mediator.

⇒ See Complaints in the NHS. A Guide to handling complaints in Wales, 1.179-182.

Theme 3: Supporting complainants and helping people express themselves

People consulting health professionals or going into hospital may already feel anxious, upset or be in pain. If anxious or in pain, it can be hard to take in what is said to you. Giving explanations and making sure patients understand what you tell them takes time and staff are likely to be under pressure.

- Community Health Councils can provide advice and support to complainants.
- NHS Trusts and Local Health Boards should have policies and arrangements for helping people who may find it difficult to speak for themselves.

Most important is to treat people with dignity and respect and communicate clearly with them, even in very trying circumstances.

You may want to consider inviting the advocate from the Community Health Council or patient support staff to meet participants and explain their role.

Theme 4: Writing letters to complainants (FHS)

You may want to hand out an example of a letter of reply sent to a complainant and ask participants to discuss the good and bad points and how they would expect the complainant to feel if they received that letter.

Alternatively you could brainstorm on what should be included in a letter to a complainant (perhaps taking the case study used in the previous week). You can use the Handout 6 as a checklist for yourself in leading the discussion.


Reference material

Trust/LHB policy and procedures for providing interpreters

Trust/LHB/Practice Complaints Procedure

National leaflet for complainants

Information about the local CHC and its services.
NHS complaints procedure

A complaint is an expression of concern about NHS treatment or services, whether verbal or written, which requires a response. All NHS bodies, Family Health Services practices and independent healthcare providers who care for NHS patients must have a complaints procedure that meets certain criteria. The NHS Complaints Procedure is laid down in Regulations. The Assembly has issued a guide: Complaints in the NHS: A Guide to handling complaints in Wales.

The NHS Complaints Procedure has two stages:

- Local Resolution: staff are encouraged to attempt to resolve concerns and complaints as they arise;
- Independent Review: complainants who are not satisfied with Local Resolution can ask for an Independent Review of their complaint.

Local Resolution

When a member of staff in a Trust, Local Health Board or practice receives a complaint orally, the person to whom it is made should listen to the concern and decide on the most appropriate action. Some concerns can be dealt with on the spot, others may need to be referred to a senior person or the Complaints Manager. If the complaint cannot be dealt with to the satisfaction of the complainant in 48 hours, it should be put in writing and referred to the Complaints Manager in the NHS Trust, Local Health Board or practice.

Complaints received in writing should be sent directly to the person responsible for dealing with complaints in the organisation or practice (normally the Complaints Manager) who will:

- Acknowledge the complaint within two working days and provide a leaflet on the procedure;
- Investigate the complaint;
- Provide a full written reply within four weeks signed by the Chief Executive or senior partner or practitioner in the practice;
- Ensure that any general issues raised in the complaint are reported to the appropriate person so changes can be made if appropriate.
How the Complaints Manager investigates the complaint will depend on the nature of the complaint. In addition to interviewing the complainant and staff involved, complainants may be invited to meet with staff and clinicians to discuss their concerns. In some cases it may be useful to ask an independent person to conciliate or mediate between the complainant and complained against. Local Health Boards are required to make arrangements for independent lay facilitators (formerly called conciliators) to be available to FHS practices and NHS Trusts.

Some complainants may want support and help in making their complaint and this is provided by Community Health Councils.

Local representative Committees (the Local Medical Committee or Local Dental Committee) can advise FHS practices on particular complaints they receive.

Normally 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. If a complaint is out of time, the Complaints Manager can extend the time limits where it would be unreasonable to expect the complaint to have been made earlier. If a complaint is not investigated because it is out of time, the complainant must be told the reasons and informed that they can complain about this decision separately, and if this also fails, they can ask for an Independent Review.

**Independent Review**

If complainants are not satisfied with Local Resolution they can contact the Independent Review Secretariat to request an independent review of their complaint within 28 days of receiving the letter at the end of Local Resolution. They will need to say why they are not satisfied with the way their complaint was dealt with and why they want an Independent Review of it. They should provide this information within 28 days of asking for an Independent Review.

When the complainant asks for an Independent Review, their complaint will be considered by two independent lay people appointed by The Assembly and, where relevant, a Clinical Adviser. The Independent Complaints Reviewer (formerly called the Convener) with a Lay Adviser will consider what actions might help resolve the complaint. They may suggest the NHS
body or Family Health Services practice takes further action under Local Resolution, or decide to set up an Independent Panel.

Where an Independent Panel is set up to investigate the complaint, NHS bodies and practitioners are required to co-operate with this. The Panel may make recommendations for NHS Trusts, Local Health Boards and practices about improving systems to avoid future problems or to give redress.

The Independent Review Secretariat is managed by Powys Business Services Centre and accountable to The Assembly.

The Health Service Ombudsman

If complainants are still dissatisfied, they can write to the Ombudsman and ask for a further investigation. Complainants need to provide reasons why they are still dissatisfied and consider that they have suffered hardship or injustice. Unhappiness about the outcome of the complaints process is not sufficient cause for the Ombudsman to investigate. Practitioners and their staff may also complain to the Ombudsman about the Local Health Board or NHS Trust if they feel that they have been treated unfairly by the administration of the complaints process. Where the Ombudsman investigates a complaint, they are published and reported to The Assembly.
### Summary of the complaints process

<table>
<thead>
<tr>
<th>Action</th>
<th>Explanation</th>
<th>Note</th>
</tr>
</thead>
<tbody>
<tr>
<td>Connection</td>
<td>Empathy, listening, building trust</td>
<td>Do not rush into ‘facts’ - stay with emotion until connection is made. Do not judge</td>
</tr>
</tbody>
</table>
| Assessment | First meet patient’s immediate needs  
Identify root cause(s) of complaint  
Offer CHC support if required  
Assess various courses of action  
Identify options available  
Consider resource implications | Deploy professional skills.  
If necessary take advice from colleague or supervisor.  
Share reasoning with complainant |
| Action     | Decide what is the best course of action  
Do you need to refer to Complaints Manager? | Do not exclude complainant; create balanced approach.  
Offer more support where language/literacy/cultural difficulties |
| Follow-up  | If action has been promised, follow up to verify delivery.  
Is the case closed? | Assume nothing.  
Follow-up can be time-consuming; automate wherever possible |
| Improvement| Create statistical record and include in report designed to reveal trends.  
Highlight priorities and prevent recurrence | This contributes to overall quality and clinical governance.  
Include user data to enliven internal management data |
What should I do if a patient/client states they wish to make a complaint?

Any member of staff who receives a request for information on how to complain, should give a copy of the NHS Complaints Leaflet to the patient/client and tell them how to contact the Complaints Manager. You should also tell them about the Community Health Council who can provide independent help and support.

These leaflets should be available within each Trust and Local Health Board department and Family Health Services practices in a prominent position where they can be seen and are readily accessible to patients.

What should I do when a complaint is made to me?

Many minor concerns and criticisms raised by patients can and should be dealt with as they arise. Comments or misgivings should be discussed promptly. At all times treat a complainant as you would wish to be treated yourself.

Experience has shown that how you come across initially to a complainant is very important. The tone of your voice, the language you use, the way you phrase questions, your body language - all have the potential either to reassure patients or to antagonise them and exacerbate a situation.

Where appropriate complainants should be referred on to a member of staff who is able to answer the queries. If this member of staff is not available, an explanation should be given and arrangements made for a meeting at the earliest possible opportunity. Patients, clients, relatives and carers must always feel that senior staff are accessible and ready to listen. If the complainant prefers, they can go straight to the Complaints Manager.

Where an oral complaint or concern is received and dealt with, the member of staff should record this, enabling the Trust, Local Health Board or Practice to monitor all the oral complaints that are received.

Where a satisfactory conclusion cannot be reached, you should put the complaint in writing and contact the Complaints Manager as soon as possible.
How do I decide whether to deal with the complaint or to refer it to the Complaints Manager?

A complaint can be made in writing, in person or by telephone. Any letters of complaint should be passed immediately to the Complaints Manager in the Trust, Local Health Board or Family Health Services practice.

All staff should be able to take initial action with regard to any complaint which they receive. When deciding whether to deal with a complaint yourself, or whether to pass it on to the Complaints Manager, you should consider the following:

1. Can the complaint be adequately resolved within 48 hours?
2. Does the complainant wish to address their complaint to someone who has not been involved in their care?
3. Are you able to resolve the complaint adequately?
4. Are you able to give the assurances the complainant is clearly looking for?
5. Is the complaint sufficiently serious to require more independent investigation and assessment?

In any case of doubt, you should seek advice from your line manager and/or the Complaints Manager.

What happens to me if a patient makes a complaint about me? Will I be disciplined?

Most complaints are about a service, but some complaints concern individuals. The complaints procedure is concerned only with resolving complaints and not with investigating any disciplinary matters.

Inevitably, however, some complaints will identify information about serious matters which may indicate a need for disciplinary action. Consideration as to whether or not disciplinary action is warranted is a separate matter for management outside the complaints procedure, and will be investigated separately, although information gathered in the complaints process can be made available for a disciplinary investigation.
If I am asked by my manager to make a ‘written statement’ in response to a complaint, what should it contain?

- The statement should be in plain English, without abbreviations (or abbreviations fully explained) or use of jargon, and in black ink.
- The statement should be typed or be in legible handwriting.
- The total number of pages should be noted on the front page and stapled together with a paragraph confirming that you have had sight of the relevant health records prior to making the statement (if appropriate).
- Any technical or medical terms used must be clearly explained.
- The statement should include a chronological diary of events (where appropriate with detailed timings), with reasons for any actions/omissions.
- The statement should be signed by the you as the ‘witness’, dated and your name printed with the relevant professional qualification of the witness. If any clinicians are referred to in the statement there should be an indication of their status.
- Any changes in the statement should be initialled in the same black ink pen as used to sign the statement.
- Contents of the statement should be confined to fact rather than opinion. You should only deal with issues you are involved with in respect to the complaint.

Your statement may be disclosed to the complainant. If you have any concerns about providing a written statement you should liaise in the first instance with the Complaints Manager. Staff can check their statements with their professional body or union.

Does the NHS Complaints Procedure cover children?

In respect of Family Health Services practitioners, a child under the age of sixteen cannot bring a complaint on their own behalf. The parents or those with legal responsibility should bring a complaint on behalf of a child. Where staff are aware that parents are separated or divorced, the Complaints Manager may need to find out who has parental responsibility for the child.
For services provided by an NHS Trust, Local Health Board or independent provider, a child under the age of sixteen may bring a complaint on their own behalf if they are judged to ‘competent’. This means the child has to have sufficient intelligence and maturity to understand what is involved in bringing a complaint, what the procedure entails, what will be expected of them and the likely consequences of complaining. The more ‘serious’ the complaint, the greater the level of understanding that will be required.

Where a child has given information in confidence to the professional, which they do not want shared with their parents, their privacy must be respected. However, where a complaint indicates that there may have been abuse, Child Protection Procedures should be invoked.

What are the important things to note about confidentiality?

Confidentiality is a complex area of work arising from legislation and good practice. The Data Protection Act 1998 creates a set of 8 principles which must be complied with for any use of personal data to be lawful. Building on this is a long established principle of common law: the duty of confidence; good practice; and the principles contained in the Caldicott report (December 1997).

I have read a lot about Caldicott but can’t quite get my head around it. Where can I get further help?

The Caldicott report provides a number of principles on safeguarding personal information about patients and recommends ways the NHS can improve the way it handles patient identifiable information. Care must be taken at all times throughout the complaints procedure to follow Caldicott principles and ensure that only information about the patient relevant to the investigation of the complaint is disclosed and only to those who have a demonstrable need to know in order to investigate the complaint. Where a complaint is made on behalf of a patient who has not authorised someone to act for them, care must be taken not to disclose personal health information to the complainant.

The principles and recommendations highlight all areas of information handling, including the obtaining, storing and sharing of data. There is also a requirement to appoint a Caldicott Guardian by each health organisation (NHS Trusts and Local Health Boards) and a lead individual (Family Health Services) to co-ordinate a programme of work.
Further information on the Caldicott report and on the Data Protection Act and common law and its implications for your organisation is available from the following sources:

- Your Caldicott Guardian
- Your Professional bodies (if applicable)

What should I do if I require further guidance on complaints?

You can speak to the Complaints Manager, who can answer any queries you may have.
TIPS - Running a successful complaints meeting

(The relevance of this will depend on the post held by participants. It is particularly relevant to Family Health Services practices)

It can sometimes help to offer a complainant the opportunity to meet with someone (a senior manager, GP partner, medical or nursing adviser etc) who can explain things to them.

How such meetings are offered and organised may decide whether or not they are successful. The following should be kept in mind when arranging complaints meetings:

1. Ensure the place and timing of the meeting are convenient for the complainant;

2. Make clear what form and how long the meeting will take; who will attend and who will lead it; whether notes will be taken. (If notes are taken, then a summary must be made available to the complainant afterwards);

3. Emphasise that the meeting does not prevent them from using the rest of the complaints procedure;

4. Ask if there is anyone the complainant does not want to see at the meeting;

5. Encourage the complainant to bring someone from the CHC and/or a friend or relative for support;

6. Make sure the meeting covers the whole complaint. If two NHS organisations are involved, they should both be represented by someone who can answer the complainant’s questions.

7. Suggest the complainant provides written questions in advance that may help you to give more detailed answers at the meeting. (However it must be made clear to the complainant that they do not need to do this);

8. Tell them that they, or whoever accompanies them, can make private notes during the meeting;

9. If asked, tell the complainant whether or not they can make a tape recording of the meeting for their private use.
TIPS - Writing letters to complainants
(Family Health Services practices)

Do not begin writing your response until your investigation is complete.

• Content and style both require accuracy. Check for spelling, grammar and punctuation. Do not include any facts which cannot be substantiated if necessary.

• Keep the response to a minimum without being discourteous or abrupt, or disregarding any of the queries which have been raised.

• Avoid jargon and complex language. Keep your vocabulary simple and your sentences short. The easier your message is to understand, the easier it is to accept.

• Avoid being judgmental, trivialising the complaint or responding emotionally.

All letters need to include the following components:

Acknowledgement

Acknowledge the complainant’s right to complain. If the complainant is correct, say so clearly. If on investigation the facts do not appear to support the complainant’s version of events, it is still possible to thank the complainant for taking the time to write and give you a chance of seeing how the misunderstanding arose.

If the complaint is unjustified, it is still possible to thank the complainant for taking the time to write.

Apology

Complainants expect to receive an apology (irrespective of whether their complaint is valid or not). Consequently, a well-worded apology early on in the letter can do a great deal to appease a dissatisfied patient. An apology at the end can look like an afterthought, although a conclusion can include a reiteration of the apology given earlier.
Condolences

If there has been a bereavement, offer condolences. It can be good practice to write a short covering letter to the full response along the lines of:

I am writing in answer to the complaint you made about … in relation to the treatment of … Firstly, please accept my sincere condolences on behalf of our staff.

I am very aware, given your sad loss, that our reply may cause distress by revisiting events, which are still very upsetting to you. I therefore enclose our full reply as a separate letter in case you wish to delay reading it until you want to.

Explanation

Answer all the points or questions raised by the complainant.

Explain the circumstances. Keep the explanation short and to the point. The explanation should not undermine the apology. Do not make excuses or pass the blame.

Give all the facts as objectively as possible and include those which differ from those given by the complainant. Avoid any note of triumphalism. The complainant may be mistaken or have misunderstood you, but they are never wrong. Always respect the complainant’s position. A belittled complainant is an aggrieved complainant.

Check that all issues raised in the initial letter of complaint have been covered. Taking each issue in turn and/or putting events in chronological order can give a structure to the reply.

Demonstrate that the matter has been thoroughly investigated, no matter how trivial. Be open about any general comments made in the complaint that cannot be dealt with – such as ‘the NHS does not care’.

Where authorities, policies or people exist to support your response, mention them without using them to avoid investigating the complaint or suggesting that the complainant should be aware of them.
Remedy

Set out the action that you propose to take following the complaint and explain how this may prevent the problem happening again and/or mitigate the complainant’s loss or suffering.

Do not suggest that the incident or your response is in any way routine. The more the solution or explanation can be discussed in the context of the patient’s feelings the more convincing the letter will be.

Tell the complainant that they have the right to ask for an Independent Review if they are unhappy with the response and remind them that the CHC may be able to help them.

Reassurance

Reassure the complainant that the problem has been addressed.

Tell the complainant that all such incidents are recorded and the statistical data will be reported. Avoid saying that the problem will not reoccur unless you can be sure that it will not.

Conclude with an expression of regret that the problem arose and hope that it has now been satisfactorily resolved, that relationships can be renewed and that the principal goal – their and/or their family’s health – can be the focus of everyone’s efforts.

Examples of letters to complainants can be seen in Complaints in the NHS. A Guide to handling complaints in Wales, 3.6.
SESSION 3

Dealing with difficult situations

Resources in this section:

Aim and learning objectives
Session outline
Trainer’s notes
Handouts

7. TIPS - Dealing with difficult patient relationships
SESSION 3

Dealing with difficult situations

**Aim:**

To understand ways of communicating effectively with patients, relatives and carers who may be distressed, angry or violent.

**Learning Objectives:**

By the end of the session, the participants will:

- Understand the principles of communication;
- Be better able to handle difficult situations (including angry and distressed people);
- Be aware of procedures for dealing with habitual complainants.
<table>
<thead>
<tr>
<th>Suggested Times</th>
<th>Subject matter</th>
<th>What participants are expected to do</th>
<th>What the Trainer is doing</th>
</tr>
</thead>
<tbody>
<tr>
<td>00:00</td>
<td>Recap on last session’s learning</td>
<td>Listen</td>
<td>Establish continuity between sessions</td>
</tr>
<tr>
<td>00:05</td>
<td>Outline session objectives</td>
<td>Listen</td>
<td>Set framework for sessions</td>
</tr>
<tr>
<td>00:10</td>
<td>Dealing with difficult situations</td>
<td>Invite a speaker from local mental health services to advise on dealing with distressed or angry people. And/or recount difficult personal experiences communicating with concerned patients, relatives or carers</td>
<td>Guide contributions and invite discussion</td>
</tr>
<tr>
<td>1:00</td>
<td>Reflect on presentations by group members. Are there common experiences?</td>
<td>Discuss and record key points on flip chart</td>
<td></td>
</tr>
<tr>
<td>1:15</td>
<td>Comfort break</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1:20</td>
<td>What general lessons can we draw from this?</td>
<td>Distribute Handout 7 and invite discussion on relevance of advice</td>
<td></td>
</tr>
<tr>
<td>1:45</td>
<td>Handling ‘habitual complaints’</td>
<td>Consider Trust’s/ Local Health Board’s guidance and relevance to their situations</td>
<td>Introduce subject and guide discussion; distributing copies of local policy if available</td>
</tr>
<tr>
<td>2:20</td>
<td>Preparation for session 4</td>
<td>Start to think about what can be learned from complaints especially in contexts of clinical governance and patient involvement</td>
<td>Explain purpose of Session 4 and suggest preparation</td>
</tr>
<tr>
<td>2:30</td>
<td>Session ends</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
**Session 3: Trainer’s notes**

This session is about dealing with patients and relatives who raise concerns and complaints, and who may be distressed or angry. You may wish to consider inviting someone from the local mental health service to talk about how they deal with people who are very anxious, distressed or even violent. Sometimes aggressive or distressed complainants have mental health problems.


**Preparation for session 3**

To prepare for this session you may wish to suggest that participants:

- Find out about any procedures in their Trust, Local Health Board or Practice for dealing with habitual or vexatious complainants or violent patients; and
- Think of any experiences of a difficult situation and how it was handled.

**Theme 1: Handling difficult situations**

Experiencing a failure in care is obviously distressing for the patient or relatives, but it can also be very difficult for health professionals and the staff team. As a result, you may fail to respond to the complaint in a way that recognises the complainant’s distress (which may make them more angry so that they pursue the complaint to the highest level). But being over-defensive also means that you may fail to take steps to avoid the problem happening again.

Some of the more common difficult situations are where the patient/relative or carer:

- Has a rude or aggressive attitude to staff;
- Is disruptive or threatening in relationships with staff;
- Abuses systems, (for example, regularly turning up without an appointment, not attending appointments, misusing the out of hours service or demanding home visits on a regular basis);
- Intimidates clinical and other staff;
• Where the family intervenes unnecessarily in the patient’s care.

You can ask participants to recount an example of difficult personal experiences they have undergone or observed. Once they have recounted this, you can ask them to reflect on presentations by group members.

• Are there common experiences?
• What are the best ways of calming a situation?
• What are the things to avoid in order to prevent the situation escalating?

**Theme 2: Habitual or vexatious complainants**

Some people make complaint after complaint and want to continue when nothing further can reasonably be done to assist them or to rectify a real or perceived problem. They may be habitual or vexatious complainants.

You can ask participants to discuss their experiences and how they handled or observed someone else handle a difficult situation.

• What can they learn from each other?
• Did they need support? How did they get it?

Participants need to:

• Appreciate that even habitual complainants may have grievances, which contain some genuine substance;
• Make sure that the NHS Complaints Procedure has been correctly implemented as far as possible and that no material element of a complaint is overlooked or inadequately addressed.

**Reference material**

Trust’s/Local Health Board’s policy on habitual complainants

⇒ See Complaints in the NHS. A Guide to handling complaints in Wales, 3.7.

Trust’s/Local Health Board’s policy on dealing with violence.
Handout 7

TIPS - Dealing with difficult patient relationships

DO

• Avoid risk to yourself and others.
• Look confident, not arrogant – a confident person is less likely to be attacked.
• Avoid confrontation.
• Try to deflect or defuse the situation.
• Be prepared to escape from a situation when in real danger.

DON'T

• Meet aggression with aggression; ‘strong language’ and tone that is interpreted as condescension is often seen as aggressive behaviour.
• Get physically involved.
• Patronise or otherwise demean the complainant with sarcasm.
• Look uninterested or bored or impatient – watch your mannerisms, such as tapping pencil on desk or reading a file while the other person is talking.

Be aware of the NHS ‘Zero Tolerance’ Policy and how it applies to where you work
SESSION 4

Learning from complaints

Resources in this section:

Aim and learning objectives

Session outline

Trainer’s notes

Handouts

8. Clinical governance and influencing the organisation

9. TIPS - Avoiding misunderstandings in clinical consultations

10. Local contacts
SESSION 4

Learning from complaints

Aim:

To enable participants to learn from complaints to improve the quality of services given by individuals and organisations.

Learning Objectives:

By the end of the session, the participants will:

- Understand how some complaints might be avoided;
- Understand about recording and reporting complaints;
- Understand how complaints can be used in their organisation to improve quality;
- Be aware of local arrangements for clinical governance;
- Be aware of local arrangements for patient and public involvement.
## Session 4: Outline

<table>
<thead>
<tr>
<th>Suggested Time</th>
<th>Subject Matter</th>
<th>What Participants Are Expected to Do</th>
<th>What the Trainer Is Doing</th>
</tr>
</thead>
<tbody>
<tr>
<td>00:00</td>
<td>Recap on last session’s learning</td>
<td>Listen</td>
<td>Establish continuity between sessions</td>
</tr>
<tr>
<td>00:05</td>
<td>Outline session objectives</td>
<td>Listen</td>
<td>Set framework for sessions</td>
</tr>
<tr>
<td>00:10</td>
<td>Capturing information. Why recording and reporting concerns and complaints is important</td>
<td>Listen and contribute views</td>
<td>Introduce theme, ask what participants do and prompt discussion</td>
</tr>
<tr>
<td>00:20</td>
<td>Can some complaints be avoided?</td>
<td>Brainstorm on what they have learnt about avoiding complaints</td>
<td>Guide the discussion, noting points on a flip chart</td>
</tr>
<tr>
<td>00:50</td>
<td>Learning to do things better: Reviewing systems and procedures. Seeing services ‘through the user’s eyes’. Patient and public involvement</td>
<td>Recount personal experiences where changes have happened (or should have happened) Listen and discuss</td>
<td>Introduce theme, guide contributions and invite discussion</td>
</tr>
<tr>
<td>1:15</td>
<td>Comfort break</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1:20</td>
<td>Clinical Governance. Local arrangements</td>
<td>Invite relevant clinical governance lead</td>
<td>Distribute Handout 5. Draw out more examples of avoiding and learning from complaints and about clinical governance from their own experience</td>
</tr>
<tr>
<td>2:20</td>
<td>Evaluation</td>
<td>Discussion. Complete evaluation questionnaire</td>
<td>Ask participants to reflect on the course, and any suggestions they have. Explain purpose of evaluation, and distribute forms and collect when complete</td>
</tr>
<tr>
<td>2:30</td>
<td>Session ends</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Session 4: Trainer’s Notes

This session puts complaints in the wider context of clinical governance and patient and public involvement. You may want to invite the clinical governance lead to tell participants about local arrangements.

Preparation for participants

In advance you can ask participants to prepare for this session by:

• Finding out about the clinical governance framework in their organisation;
• Finding out how concerns and complaints are recorded; and
• Thinking about any times when comments, concerns or complaints from patients have led to changes.

Theme 1: Capturing information - Why recording and reporting concerns and complaints is important

If complaints are not recorded, the information from them is lost. If you record them it also easier to see trends. Often concerns and complaints are just the tip of the iceberg of a much wider problem. Remember that a high number of complaints or comments does not necessarily mean your service is any worse than another Department or practice that records none. In fact it may be because you are open and encouraging people to share their concerns, while others are not giving patients the opportunity.

⇒ See Complaints in the NHS. A Guide to handling complaints in Wales, 1.120-126.

For Family Health Services practices

An example of a record sheet is given in the Guide at 3.9. This can be handed around and discussed. You will also need to point out the requirement to make an annual return to the Local Health Board (see Guide 1.126)
You can ask participants to consider:

- What happens to information from complaints in your department or practice?
- Does your department/practice/regularly review comments, concerns and complaints you receive?

**Theme 2: Avoiding complaints**

Looking at services and procedures from the patient’s point of view can avoid many situations which may start out as comments or concerns but later give rise to complaints. Sometimes acknowledging that the person’s feelings of anger, emotion or frustration are real and understandable, regardless of whether the complaint can be ‘justified’ or not, is enough to defuse the situation. Simply saying ‘sorry’ face to face or in a well-written letter to a patient or relative may be all that is needed and is not an admission of liability.

- If clinical staff are participants, you can give them Handout 9 to consider.
- You can ask participants to brainstorm how they think about ways that some complaints can be avoided?

**Theme 3: Learning to do things better**

Comments, concerns and complaints from patients and relatives can be an important indicator of problems that patients may have with the care you are giving. So the complaints system is an important element of clinical governance.

Accepting that something went wrong is the first step to putting it right. If you recognise problems, you can do something about them and you will have improved the quality of the services you are providing for your patients. This is what clinical governance is all about. The health team should strive to achieve a no-blame culture, whereby any member of the team feels able to tell their colleagues if they get something wrong.

Whatever the circumstances, a great deal can be done to reduce the likelihood of complaints arising in the first place.
Robust systems and procedures

Sometimes the way the service is run can trigger aggression from patients or encourage them to misuse the service. Confusion or mistakes can lead to complaints. Robust systems for obtaining informed consent, telling patients about referrals or results of tests and discharge arrangements are important.

Some of the most difficult complaints arise following the death of a patient. Explanations are important in helping family and friends come to terms with the death and avoid misunderstandings.

- Can participants think of systems or procedures that have led to complaints or concerns?
- Can they be changed? If so, have they been changed? If not why not?

Keeping patients informed

Many complaints result from misunderstandings and poor communication. Sometimes patients, and particularly relatives, have unrealistic expectations and this may lead to dissatisfaction and complaints. Where people understand what to expect from their care and from the NHS, and how to use services appropriately anxieties, concerns and complaints may be less likely.

Providers of services have many opportunities to inform and educate patients, relatives and carers about services as well as about their personal health. Information on services should be given to patients and carers when they use a hospital service or register with a GP or dental practice for the first time.

- How well do participants feel that their organisation keeps patients informed?

Involving patients and the public

Complaints can highlight areas which you may want to look at in more depth. Service providers can benefit by involving users in commenting on and monitoring services. This can enable them to plan patient-centred services and give early warning of any problems that may arise that lead to simple but important changes. For further information see Signposts: A practical guide to public and patient involvement in Wales: www.wales.gov.uk/signposts
• Have participants any experience of surveys or consultations with patients or the public?
• What happened?
• How are these relevant to complaints?

Keeping good records

A separate file must be kept for complaints records and complaints letters should never be filed in the patient’s medical records. Clear and accurate documentation is essential about complaints handling. Good records can demonstrate that the complaint was investigated adequately, if the complainant asks for an Independent Review or appeals to the Health Service Ombudsman. The most likely reason that complainants go to Independent Review is inadequate or inappropriate handling during Local Resolution.

Keeping good health records help staff deal with complaints should they arise and assist if there are different perceptions or recollections of what was said and what actions were taken. In general practice, this includes recording when you do not find anything or tests are clear. Record and information sharing can also give patients more confidence and help them take part in the consultation.

Reference material

Trust or Local Health Board Clinical Governance Framework.
Clinical governance and influencing the organisation

The Trainer can prepare a one-page handout on the local arrangements for clinical governance. Advice will be available from the Trust/Local Health Board Clinical Governance Manager.

You may wish to include the following points:

What is clinical governance

Clinical Governance is a framework through which NHS organisations are accountable for continuously improving the quality of their services and safeguarding high standards of care by creating an environment in which excellence in clinical care will flourish. Any efficient organisation has a system for improving quality; clinical governance is the system in the NHS. Information from complaints are an important part of this framework.

Many activities come under the umbrella of clinical governance: risk management, clinical audit, significant event audit, evidence-based practice, consulting skills, learning from complaints, involving patients and carers, and professional development.

Each Local Health Board and NHS Trust has a clinical governance lead.

Complaints and clinical governance

Major issues and trends identified from complaints, both at Local Resolution and Independent Review, will be raised through the clinical governance process. Such reports will not normally identify individuals.

The importance given to complaints is reflected at Board level. A Non-Executive Director or Non Officer Member has designated responsibility for maintaining an overview of complaints and for reporting to the Board. NHS Trust and Local Health Board members receive monthly or quarterly anonymised reports on complaints received and any emerging trends. They also ensure that action plans are produced following recommendations by an Independent Review Panel and that agreed actions are implemented.

Local structures for clinical governance

To add local information here.
One of the most common causes of complaints is the attitude that patients feel the professional has to them. The first step towards changing this is to think how you might feel if you were a patient in that situation. The following is good practice in consultations:

1. Identify what the patient is actually trying to say, which means being in a position to listen and engage with the patient. Maintain eye contact and an open upper body stance.

2. Examine the patient carefully and explain what you are doing and why. Avoid discussion when patient may feel vulnerable (such as lying on an examination table or half-undressed).

3. Consider taping the consultation for patients to take home.

4. Review your diagnosis. Anxious patients can develop physical illnesses. People who keep coming back often benefit from a fresh look at their condition.

5. Explain your findings and thinking to the patient. Don’t assume that they will not understand or want full details. More and more people have access to the Internet and are well informed.

6. Where appropriate, explain your findings and thinking to carers or relatives.

7. Ask the patient or carer to repeat what they have understood you to say, to make sure any misunderstandings or misinterpretations are avoided or corrected immediately.

8. Make sure your findings and treatment are recorded in the notes.

9. Note discussions with relatives. Relatives can forget and claim that ‘no one told them anything’.
Local contacts

This should include local information that staff and practices may need, such as:

- Complaints Manager in the Trust or Local Health Board
- Community Health Council and other local organisations that can support patients
- Patient support staff
- Local representative committees (for Family Health Services practices).
**Setting up a course**

Whether you are an experienced trainer or if this is the first time you have delivered a training programme about complaints, remember that the sessions in this programme are not designed for complaints specialists. Nor are they intended to turn the participants into technical experts on the NHS Complaints Procedure. Participants will be staff who come into contact with patients, relatives, carers and the public. What they need most is the knowledge, skills and attitudes to be on the receiving end of comments and complaints and to respond appropriately.

**Training materials**

The materials for each session cover:

- The aims and learning objectives
- An outline for the session and suggested timing
- Background notes for the Trainer
- Exercises for participants with suggested activities
- Handouts with tips and summary sheets to give to participants which they can keep and refer to later.

**What to send out in advance**

The optimum size of the group is 6-8 participants for one Trainer. You will need to send out in advance:

- Joining instructions (travel directions, car parking availability, request for any special dietary requirements if lunch is provided, other special needs, etc)
- Outline programme
- Advance reading material, such as information on local procedures or contacts, handouts provided or excerpts from *Complaints in the NHS. A Guide to handling complaints in Wales*. What you choose will be determined by the roles and experience of the participants.

**Preparing the room**

Before participants arrive, the Trainer should ensure that the venue is acceptable for:
• **Lighting** - glare-free and bright enough to allow everyone to see the flip charts

• **Ventilation** - no draughts, but good circulation of air to ensure the room does not become stuffy and reduce participants’ concentration

• **Temperature** - avoid hot, dry rooms and cold, damp ones; a cooler room will warm up as the session progresses so good ventilation is essential

• **Ambient noise** - outside noise can be very distracting and tiring for Trainer and participants

• **Water and cups** - everyone will need a good supply of water during the session and plenty of disposable cups

• **Toilet facilities** - the venue must also include convenient toilet facilities and be accessible and equipped for special needs of the participants (which will have been established in advance)

**Things you need for each session**

- A1 sized flip charts, markers and spare pads - two flip charts will be required
- Pens and paper for participants
- Copies of handouts
- Coloured sticky notelets;
- Sticky labels for making name badges
- Blutack (if you want to stick any flip chart sheets on walls)
- Overhead projector (if you want to use overheads).

**Reference material available during the session**

Make sure you as the Trainer are familiar with, and have several copies available of, the following to consult and refer to during the sessions:

- Complaints in the NHS. A Guide to handling complaints in Wales. (April 2003);
- Directions
- Patient’s Leaflet on the Complaints Procedure (April 2003);
- Any specific complaints material and examples used by the NHS Trust, Local Health Board or Family Health Services practice of participants.
Evaluation form

Participants should complete this evaluation when all four training sessions have been completed.

Dealing with comments, concerns and complaints
Training course held on ..........................

1. What was your overall impression of the session?

<table>
<thead>
<tr>
<th>Circle one</th>
</tr>
</thead>
<tbody>
<tr>
<td>It met my expectations completely</td>
</tr>
<tr>
<td>It met most of my expectations</td>
</tr>
<tr>
<td>It met some but not all of my expectations</td>
</tr>
<tr>
<td>It met very few of my expectations</td>
</tr>
<tr>
<td>It met none of my expectations</td>
</tr>
</tbody>
</table>

COMMENTS. If you have circled 1 or 2, please tell us more about what you expected from the course:

2. How did you rate the following aspects of the day?  
(5 = excellent; 1 = poor)

| Administration before the event | 5 | 4 | 3 | 2 | 1 |
| Administration on the day | 5 | 4 | 3 | 2 | 1 |
| Course content | 5 | 4 | 3 | 2 | 1 |
| Trainer: Knowledge of subject | 5 | 4 | 3 | 2 | 1 |
| Trainer: Communication skills | 5 | 4 | 3 | 2 | 1 |

3. In your opinion, which part of the training is likely to be of most use to you?
4. In your opinion, which part of the training is likely to be of least use to you?

5. How satisfied were you with the course overall?

<table>
<thead>
<tr>
<th></th>
<th>Circle one</th>
</tr>
</thead>
<tbody>
<tr>
<td>I was very satisfied overall</td>
<td>5</td>
</tr>
<tr>
<td>I was quite satisfied overall</td>
<td>4</td>
</tr>
<tr>
<td>I was neither satisfied nor dissatisfied</td>
<td>3</td>
</tr>
<tr>
<td>I was quite dissatisfied</td>
<td>2</td>
</tr>
<tr>
<td>I was very dissatisfied</td>
<td>1</td>
</tr>
</tbody>
</table>

6. Would you recommend the course to colleagues?

<table>
<thead>
<tr>
<th></th>
<th>Circle one</th>
</tr>
</thead>
<tbody>
<tr>
<td>I would definitely recommend it</td>
<td>5</td>
</tr>
<tr>
<td>I would probably recommend it</td>
<td>4</td>
</tr>
<tr>
<td>I am not sure either way</td>
<td>3</td>
</tr>
<tr>
<td>I would probably not recommend it</td>
<td>2</td>
</tr>
<tr>
<td>I would definitely not recommend it</td>
<td>1</td>
</tr>
</tbody>
</table>
COMMENTS. Please tell us about the reasons behind your ratings especially if you were disappointed by any aspect of the sessions:

Thank you for your help. Please leave this evaluation form with us.