



The MDU's guide to the combined NHS complaints procedure

Scottish complaints procedure



The NHS complaints procedure in Scotland was amended by directions¹ from 1 April 2005. The directions set out the responsibilities of NHS bodies for complaints made about NHS treatment by hospital doctors and GPs. GPs need to consider the complaints directions in conjunction with the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004 (as amended) which sets out their obligations to respond to complaints at paragraph 82 of Schedule 5. A helpful guide to the new procedures, *Can I Help You?* is available from www.show.scot.nhs.uk

One of the principles of the complaints procedure is to ensure there are clear lines of accountability for complaints management and for there to be integration into the organisation's clinical governance and quality improvement arrangements. The MDU advises you to have a system in place for reviewing and learning from complaints. You are also advised to inform complainants of any action that has been taken as a result of a complaint to prevent a recurrence of the same problem and this can help to resolve the complaint.

The procedure has two stages: local resolution is the first stage and patients who remain dissatisfied after local resolution must complain direct to the Scottish Public Services Ombudsman.

Who can complain

Complaints may be made by a patient, former patient or their agent. Where the patient or former patient is a child, a complaint can be made by either parent or, in their absence, by a guardian or person who has care of the child. If a child is in care, the local authority may complain. If the patient is an adult who is

incapable of making a complaint, a relative or 'other adult person who has an interest in their welfare' may complain. In particular, you will need to consider the provisions of the Adults with Incapacity (Scotland) Act 2000 and seek the views of a welfare attorney (if appointed). For deceased patients, a complaint may be made by a relative or other adult who had an interest in the patient's welfare.

Bear in mind the importance of patient confidentiality – especially if the patient is not making the complaint, is a child or lacks capacity. If patients are deceased, the duty of confidence extends after death. If in any doubt, members should seek advice from the MDU.

Time limits

The period for making a complaint against an NHS body or GP is:

- six months from the event which is the subject of the complaint, or
- six months from the patient becoming aware of the subject of the complaint provided this is not later than 12 months after the event.

The directions and GMS contract regulations make it clear that these guidelines must be operated flexibly. Complaints should be accepted where it would be unreasonable for the patient to have complained earlier and it is still possible to investigate the facts. There may be many reasons why patients cannot bring their complaint within these timescales and responding to the complaint, even some time after the event, may help to resolve a patient's concerns. A complainant who believes a doctor's refusal to respond to a complaint is unreasonable may complain to the Ombudsman or the GMC.

Responding to a complaint

Complaints must be acknowledged within three working days and a response should be provided within 20 working days (hospitals) and 10 working days (GPs), or as soon as is reasonably practicable.

A timely response is more likely to resolve the complaint. If you cannot respond within the time limit, inform the complainant, give reasons for the delay and tell them when they may expect a response. *Can I Help You?* suggests the investigation should not normally take longer than 40 working days (hospitals) or 20 working days (GPs) in total, other than in exceptional circumstances.

For advice on a written response see our *Medico-legal Guide 1.3 Writing a response to a complaint*.

Hospital complaints

The directions advise that a hospital complaint 'may be investigated by the complaints officer in any manner which appears appropriate'. This may include offering the complainant a meeting with senior staff or a conciliation process.

Any meetings or discussions should be documented carefully and a letter sent to the complainant setting out any agreements reached or further action to be taken. *Can I Help You?* advises that complaints records should usually be kept separate from health records.

The guidance makes it clear that, for clinical complaints, the **draft** findings and response **must** be shown to the clinicians involved to ensure factual accuracy, before it is sent to the complainant. Given the importance of learning from complaints, and their use in appraisal, it is vital that clinicians are able to take part in the resolution of complaints about care they provide.

GP complaints

GPs need to designate a person to be responsible for operation of the procedure and investigation of complaints, and a partner or other senior person to manage the procedure. It is advisable to keep complaints records separate from medical records.

Patients can complain to the practice or the NHS board, which will agree a way forward with the complainant. This could include acting as an 'honest broker' between the patient and the practice, by attending meetings or by arranging conciliation. *Can I Help You?* advises, and the MDU agrees, that the most effective way to resolve complaints is for the patient to deal directly with the practice. Whatever the board's involvement, responsibility for investigating issues raised by the complaint remains with the practice. The GMS contract requires GPs to co-operate with investigations of complaints about matters connected with the provision of services under the contract undertaken by the health board and the Scottish Public Services Ombudsman.

Conciliation

Part 4 of the directions obliges health boards to provide conciliation services for complaints about GPs (at the request of the patient or the GP) where:

- (a) a person wishes to complain and, in the opinion of the health board, it would be unreasonable for the person to complain directly to the GP
- (b) a complaint is already being investigated by the GP, or
- (c) the practice based complaints procedure has been completed and the complainant remains unsatisfied.

Both parties must agree to conciliation. The conciliator may adopt whatever procedures they consider appropriate.

The Ombudsman

The Scottish Public Services Ombudsman Act 2002 set up a single office to deal with complaints about a number of bodies including the Scottish Executive and the health service (see www.scottishombudsman.org.uk).

The Ombudsman's office usually only considers complaints that have been addressed fully by the complaints procedures of the body concerned, though there is the power to waive this requirement.

Complaints made more than 12 months after the complainant first had notice of the matter complained of must not be considered unless the Ombudsman is satisfied that there are special circumstances (s10 of the 2002 Act).

Possible outcomes from an Ombudsman investigation include:

- an apology or explanation
- practical action to mitigate any injustice
- reimbursement of any actual losses/costs necessarily incurred
- a modest payment in recognition of time and trouble
- exceptionally, asking the authority complained about to propose appropriate action
- recommending changes to procedure or policy
- recommending staff guidance or training.

The MDU's view is that compensation should only be paid if negligence has been proven and that it has no part in the complaints procedure. We suggest you seek our advice when the question of any payment to the complainant might arise.

How the MDU can help

The MDU has extensive experience in assisting members with complaints and we are happy to help at any stage of the complaints procedure. Members are encouraged to phone the MDU's 24-hour advisory helpline.



For individual medico-legal advice:

24-hour advisory helpline 0800 716 646

Email: advisory@the-mdu.com

Web: www.the-mdu.com

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