



## The MDU's guide to the combined NHS complaints procedure

### Welsh complaints procedure

The National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011, which came into force on 1 April 2011, introduced significant changes to complaints handling in Wales.

The new regulations define 'concerns' broadly to include expressions of dissatisfaction or complaints from patients and reports of adverse incidents from staff. They also removed the Independent Review Secretariat and introduced a new requirement for NHS hospitals and local health boards to consider whether it is appropriate to offer patients financial redress of up to £25,000 where there has been negligence.

However, it is important to stress that the redress requirement does *not* apply to primary care providers or independent providers of care to NHS patients.

Part 7 of the regulations, relating to provisions for redress by NHS organisations outside Wales, comes into force on 1 October 2011.

The following new regulations apply to Welsh NHS bodies, including local health boards and primary care providers in Wales. Independent providers of treatment to NHS patients are covered by these regulations but they are excluded from the redress requirements. If NHS patients are referred by a Welsh NHS body to an independent provider for NHS treatment it is important to ask the contractor to make clear what indemnity arrangements will apply if something goes wrong.

### The procedure in Wales is split into two stages:

1. **Local resolution** – by the hospital or practice
2. **Public Services Ombudsman for Wales**

The MDU has extensive experience in assisting with complaints and members can contact us at any stage of the procedure.

### Who can notify a concern?

Concerns can be notified by anyone who has used NHS services or facilities. A relative or friend can notify a concern on behalf of a patient. However, never assume that someone complaining on behalf of a patient has authority to do so. The investigation of a concern does not remove the need to respect a patient's right to confidentiality. Adult patients whose mental capacity is unimpaired should usually notify a concern themselves, although they can appoint a suitable representative to act for them. Children may need assistance in pursuing concerns they raise themselves.

If the patient lacks capacity, the Mental Capacity Act 2005 provides for a person to be given lasting powers of attorney and if this extends to welfare decisions, that person would be able to notify a concern on behalf of someone lacking capacity. If the person notifying the concern is not the welfare attorney or the patient's next of kin, the patient's relatives need to be consulted, and their views considered. If the next of kin refuse to authorise an investigation, members are advised to call the MDU.

If a patient has died, the GP or hospital should proceed with an investigation.

## Time limits

The period for making a complaint is:

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

These guidelines should be operated flexibly. Notifications 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 raise a concern within these timescales and we advise members to deal with concerns, even some time after the event, in order to help the patient to resolve them.

## Local resolution

*Please note: the new regulations do not apply to oral complaints that are resolved locally within one working day.*

Concerns must first be addressed locally by the primary care provider or hospital. If they involve more than one responsible body, Part 4 of the regulations requires that the organisations co-operate and provide a co-ordinated response to the issues raised.

The MDU strongly supports the principle of local resolution. Often speed, sympathy and a willingness to listen and explain are all that is necessary to resolve concerns.

Hospitals and practices should appoint a **responsible officer**, normally the chief executive or a partner, to oversee arrangements for dealing with concerns.

When an incident reported by a member of staff is being investigated, the hospital or practice is expected to involve the patient. They are not obliged to do so if it would not be in the patient's interests but it is difficult to think of circumstances in which this would happen because the GMC also expects doctors to tell patients when something goes wrong.

The responsible officer has an obligation under Part 8 of the regulations to ensure that lessons are learnt from concerns.

There must also be a **senior investigations manager** who is responsible for the investigation and consideration of concerns.

Concerns should be acknowledged within two working days. If the concern is made orally, a written record setting out the details of the concern must be provided to the complainant. At the same time the organisation must offer to discuss:

- how the investigation will be conducted
- what advocacy services are available
- the likely timescale to complete the investigation and to provide a full response.

If the complainant does not wish to take up the offer to discuss this, these details must be provided to the complainant in writing.

Local resolution and investigation should be appropriate to the particular concern, and may include:

- inviting the complainant to meet staff, practitioners and clinicians to discuss their concerns further
- arranging an independent opinion on clinical issues
- offering alternative dispute resolution.

Once the investigation is complete, a full response signed by the responsible officer should be sent to the complainant within 30 working days of receipt of the complaint. If it is not possible to complete the investigation within this timescale, complainants should be informed of the reason for the delay and told when they can expect to receive a reply.

For advice on providing a written response to a complaint see our Medico-legal Guide to the NHS complaints procedure 1.3 – *Writing a response*.

All GPs are required by their contract (paragraph 90 of Schedule 6 of the National Health Service (General

Medical Services Contracts) (Wales) Regulations 2004, as amended) to have a practice-based system for handling complaints.

Practices must co-operate with the local health board in the investigation of concerns (paragraph 95 of the GMS contract regulations). Concerns about primary care providers can be raised with the local health board, but the board must then determine whether it would be more appropriate for the primary care provider to consider the complaint. This decision and the reasons for it should usually be notified to both the complainant and the primary care provider within five working days.

### Redress

Part 6 of the regulations requires that Welsh NHS bodies (NHS trusts and local health boards – but not primary care providers or independent providers treating NHS patients) who are investigating a concern must consider whether an offer of redress should be made.

If the Welsh NHS body considers that there may be a qualifying liability, ie that there may have been negligence, it must inform the complainant, provide copies of the records and any expert evidence (which would come from an expert agreed by the complainant) and offer free legal advice. Financial redress of up to £25,000 can be offered.

Part 7 of the regulations comes into force on 1 October 2011. This will require other NHS bodies, such as NHS trusts in England, Scotland and Northern Ireland and PCTs, to consider redress when they are involved in a concern made under the Welsh redress regulations. Again, this excludes primary care providers and independent providers of care to NHS patients.

However, because the procedure for redress by Welsh NHS bodies requires them to share expert evidence with the complainant and to provide them with free legal advice, it is possible that primary care providers and private practitioners treating NHS patients within and outside Wales could be contacted by a complainant who is pursuing a case against them. Please inform the MDU immediately if you are contacted in this way.

### Public Services Ombudsman for Wales

Complainants who are still dissatisfied or feel they have suffered hardship or injustice, or who have not yet sought an independent review of their case can write to the Ombudsman and ask for a further investigation. They need to provide reasons why they are unhappy with the outcome of their complaint.

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.

The Ombudsman will not accept a complaint older than 12 months unless there is a good reason why the complaint could not have been made earlier. The Ombudsman has no power to enforce recommendations or impose sanctions. Where the Ombudsman investigates a complaint, this will be reported in regular reports to the National Assembly of Wales.



For individual medico-legal advice:

**24-hour advisory helpline 0800 716 646**

Email: [advisory@the-mdu.com](mailto:advisory@the-mdu.com)

Web: [the-mdu.com](http://the-mdu.com)

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