

## Cause for Complaint? Evaluating the NHS Complaints Procedure

### *Summary of recommendations*

#### **Local resolution**

3. PLP accepts that the principle of local resolution, whereby health agencies themselves attempt to resolve the complaints they receive, is generally sound. When conducted properly it enables complaints to be dealt with promptly and at the point of service delivery, encourages accountability by requiring providers to investigate and explain their actions, enables less serious complaints to be dealt with promptly without invoking complex procedures and encourages resolution and conciliation rather than confrontation.

4. However, local resolution also has inherent weaknesses which seriously impede the ability of complainants to achieve satisfaction or resolution:

- it fails to take account of the imbalance in power in the health professional-patient relationship and does not recognise how difficult it is for complainants to have to confront and challenge the very organisation or people that treated them;
- it lacks impartiality. Organisations investigate their own complaints giving rise to a potential conflict of interest;
- it fails to demonstrate the accountability of the NHS. As local resolution is internally conducted it can be invisible to complainants, it is not open to external scrutiny and providers of care are not seen to be publicly accountable.

In the primary care sector and in relation to serious complaints these weaknesses are particularly apparent.

#### **The problem with local resolution in primary care**

5. At the heart of the problem with local resolution in primary care is the requirement that users complain directly to the practitioners they are criticising. Trusts usually have a separate department for dealing with complaints whereas in primary care the process can become very personalised. The research revealed that this was a concern for many complainants and in some cases was even acting as a deterrent to complaining. Complainants were fearful of retribution, such as being struck off the doctor's list, or being adversely treated. They also felt daunted at the idea of having to confront the person concerned, particularly if they were feeling vulnerable. Some were sceptical about whether they would receive honest and impartial explanations. Research participants highlighted a need for users to be able to address their grievances to an independent authority,

who would take responsibility for overseeing the investigation of their complaints.

### **Complaints which raise serious questions about competence and conduct**

6. Participants in PLP's research felt strongly that there were insufficient mechanisms in place to deal appropriately with complaints that raise serious questions about performance, conduct or competence that place patients at risk. It was in these cases where the credibility of local resolution was most undermined and its appropriateness questioned.

7. In the interviews with complainants there were a number of accounts which raised profound concerns about the justice of local resolution. None of these went beyond local resolution and none of the complainants were satisfied with the handling or outcome of the complaint. Examples of complaints included:

- alleged lack of supervision leading to a suicide on a ward in a mental health unit;
- a case of alleged profound neglect in nursing care;
- sudden unexpected death in epilepsy, due to alleged mismanagement of medication.

8. In these cases, complainants reported:

- delegation of the investigation of the complaint to people too closely involved in the background to the complaint;
- lack of honesty and openness in explanations and responses;
- a tendency to believe the accounts of the staff involved rather than those of the complainant;
- chief executives, or senior managers, failing to take a close enough interest in the complaints;
- the need for disciplinary action, or any other form of remedial action, not being taken seriously;
- because of the complexity of the cases, local resolution becoming very protracted.

9. All of these issues contributed to complainants' disillusionment with the impartiality of local resolution and of the accountability of the NHS. Their level of dissatisfaction with the process indicated a pressing need for alternative procedures to local resolution, which would allow for early referral of such complaints to more independent investigatory and remedial processes.

## **Convening**

10. The role of conveners is to decide whether or not a complaint should be referred for independent review. They are usually a non-executive director of the organisation whose complaints they are assessing. Impartiality is crucial to the credibility of the procedure, yet the research revealed serious doubts about the ability of conveners to fulfil this goal. The most striking result was that nearly one half (46%) of conveners in healthcare trusts themselves felt that it was difficult to maintain their independence. They felt that being involved in the trust as a non-executive director and knowing the staff inevitably introduced a bias. Such difficulties were compounded in some cases by conveners taking advice from those who could unfairly influence their judgement. Conveners also recognised that complainants did not see them as independent. The requirement on a convener to consult a lay chair for an independent view on a complaint was not considered a sufficient safeguard against potential bias, because ultimately the decision whether or not to hold a panel still rests with the convener.

11. A further important finding in relation to conveners was the evident inefficiency in having a convener based in every trust. Trust conveners who had been in position for two years had considered on average only nine requests for independent review and nearly half (48%) had not attended a panel hearing. This compares with health authority conveners who had considered on average 18 requests, and just nine percent had not had experience of a panel. Conveners themselves stressed how important it was to have an ongoing caseload, both to develop the necessary expertise and maintain familiarity with the guidance, yet it was clear that many conveners did not have the caseload to sustain their expertise. The requirement to consult a lay chair had also led to delays in decision-making causing frustration for complainants. The findings highlighted a need for reform of convening to make the role both more efficient and independent.

## **Independent review**

12. A flexible and informal approach to complaints handling may be desirable during local resolution, but is less appropriate at independent review stage. Having failed to achieve satisfaction at local resolution, complainants expect to see a level of formality in the conduct of stage two that does justice to the seriousness of the grievances being heard. PLP's research revealed that the way independent review panels are established and conducted did not give complainants confidence in either their independence or effectiveness in holding the NHS to account. For example, in trust cases the panel is established as a committee of the trust and paid for by the trust.

They are also seldom held on neutral premises and are sometimes administered by the same staff who are involved in local resolution.

13. With regard to the conduct of panels, the preference was clearly for an investigatory style in which parties did not meet, question each other or hear evidence presented. This lack of transparency in the way the panel was conducted contributed to a lack of confidence among complainants about the fairness of the proceedings and the decisions they reached. Moreover panel members and clinical assessors did not always behave in a way which reassured complainants of their impartiality in the process. Some conveners and chairs themselves called for the introduction of clear standards for the conduct of panels both to enhance the transparency of the process and to demonstrate to complainants that the process is conducted in a fair and rigorous manner.

### **Improving services and performance in the NHS**

14. The emphasis of the complaints procedure is on 'quality enhancement' yet the research demonstrated that the NHS has only weak mechanisms in place for ensuring that this happens. Many of the complainants interviewed for the research were doubtful about whether their complaint would have any impact on the quality of services, although one of the main reasons for complaining was to prevent what happened to them from happening to others.

### **Acting on complaints at local resolution**

15. Whilst many health organisations endeavour to use complaints as an indicator of the need to improve services, 'closing the loop' on complaints is hampered by the fragmentary organisation of complaints procedures, audit, risk management and other quality strategies within trusts. Moreover, they do themselves a disservice by not always informing complainants exactly what action has been taken in response to their complaint.

16. A major concern of research participants was the lack of external monitoring of primary care complaints. Because the emphasis is on practice-based resolution, and only limited data are formally collected about complaints in primary care, health authorities have no means of meaningfully monitoring trends in complaints. It was questioned how continuing bad practice or poor performance would come to the attention of the appropriate bodies, and be satisfactorily addressed, if no one was responsible for monitoring where failings in service lay, or if complainants could not direct

their complaints to a higher authority. It was widely felt that this had led to a loss of accountability of primary care practitioners.

### **Acting on independent review panel reports**

17. Among respondents there was a lack of confidence in the effectiveness of independent review panels in achieving improvements in services. The principal concerns raised were:

- the lack of commitment on the part of some organisations to the process. This, combined with the fact that panel recommendations are not enforceable, made respondents question whether recommendations would have any impact on the quality of services where there was not the will to implement change;
- in the absence of an external body formally charged with monitoring and overseeing the implementation of panel recommendations, there was concern across all groups that NHS organisations could too easily avoid their responsibilities to improve services where it was not expedient to do so.

Many respondents called for the introduction of formal procedures to monitor the implementation of panel recommendations.

### **The relationship between complaints and discipline**

18. While recognising that the relationship between complaints and discipline is a sensitive one, there was anxiety that the separation of the procedures had resulted in not only a perceived loss of accountability of NHS employees and health professionals but also a real loss, particularly in primary care. Since the introduction of the complaints procedure, there has been a very marked decline in primary care cases that now go through the disciplinary procedures. Furthermore, fewer complaints are now proceeding to independent review than were previously upheld under the disciplinary process, suggesting that the complaints procedure is failing either to pick up or address serious breaches in care. In situations where failings in performance are identified, these are increasingly dealt with through more informal processes of review. While this may be positive in that the emphasis is on retraining and improving skills, the drawback is that they lack the threat of sanction. Furthermore, by being invisible processes, complainants are not seeing health professionals being held accountable.

19. In relation to those complaints that **are** referred for disciplinary action, this is also an invisible process for complainants and they have no right to know the outcome of such action except in general terms. Thus, in both instances, complainants may be denied information about one of the most important outcomes they seek in making a complaint – that remedial action has been taken to address failings in care for the benefit of future health

service users. Without such information a common feeling and perception is that the health professional 'got away with it'.

## **Summary of main recommendations**

20. The following highlights and summarises a selection of PLP's main recommendations for reform of the complaints procedure. A full review and discussion of all PLP's recommendations is given in the final chapter of the report.

### **Improving the operation of local resolution**

- The Department of Health (and its counterparts in the other countries of the UK) should produce national guidance and standards of good practice for the conduct of local resolution. Measures should also be introduced which improve the efficiency and speed of local resolution for all complaints, and which will also allow those which are appropriate for independent review to proceed faster to that stage.

### **Reform of local resolution in primary care**

- As a matter of priority, the Department of Health should reform local resolution in primary care to enable users to complain directly to an officer who is independent of the practice concerned and who has responsibility for overseeing investigation of the complaint.

### **Proposals for complaints which raise serious questions about performance**

- The Department of Health should develop a framework for 'fast-tracking' complaints which raise serious questions about performance, conduct or competence which puts patients at risk. Under this proposal, complaints which satisfied certain defined criteria would initially be examined by an independent 'screener' who would decide whether they justified immediate referral to more formal investigatory and remedial processes, such as independent review, discipline, litigation or to the professional regulatory bodies.

### **Proposal for the reorganisation of the independent review process**

- The Department of Health should establish independent regional complaints centres which are responsible for handling complaints which fail to be resolved at local resolution. Under this proposal, conveners would no longer be part of the organisation complained about but an independent appointment. The rationale for this approach is to give the independent review process greater independence and efficiency.

## **The conduct of panel hearings - enhancing transparency and accountability**

- The Department of Health should draw up explicit guidance on the rules of procedure for the conduct of panels. This should ensure that complainants have a right to a fair and transparent hearing. Guidance should direct that the hearing be held in the presence of both parties unless the complainant objects. All information relevant to the investigation, including documentation relating to local resolution and the clinical assessors' reports, should also be made available to parties before the start of the hearing.
- A contractual requirement should be introduced requiring all NHS employees to attend panel hearings if called to do so. Failure to attend without good reason should become a disciplinary matter.

## **Demonstrating the accountability of the NHS and its staff**

- In primary care, health authorities should be given authority actively to monitor complaints handled under practice-based complaints procedures. As part of this process, primary care practitioners should be required under their terms and conditions of service to submit more detailed information to health authorities about the nature of complaints they have received, and their outcome.
- At independent review, panel reports should be able to recommend that disciplinary action be considered.
- The disciplinary process should be made more transparent and complainants should be routinely informed of the outcome of disciplinary action.

## **Ensuring the implementation of panel recommendations**

- The Department of Health should introduce procedures for monitoring the implementation of independent review panel recommendations by an external body, and for ensuring that quality issues identified by panels are disseminated for the benefit of the NHS as a whole. This information should be collated and made publicly available, having due regard for confidentiality.

## **Improving support and representation for complainants**

- The Department of Health should formally recognise the role of health councils in assisting complainants through the complaints procedure, by including it in their statutory remit. Resources should be specifically allocated to support this work, including funding for the appointment and training of a complaints officer for every health council.
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