

# **Reforming the NHS Complaints Procedure**

## **Patient Focus and Public Involvement**

**A draft for consultation**

*Draft for consultation*

## **REFORMING THE NHS COMPLAINTS PROCEDURE**

### **Proposals**

Deadline for responses 2 June 2003

Responses should be sent to:

Mrs E Neil  
Scottish Executive Health Department  
Area GER  
St Andrew's House  
Edinburgh  
EH1 3DG  
(Business reply envelope provided)

**or:**

**Liz.neil2@scotland.gsi.gov.uk**



## Contents

Section	Paragraph
<b>Proposal</b>	
Introduction	1
<b>The current NHS complaints procedure</b>	3
A national evaluation	4
Developments since 1996	10
A patient focused NHS	14
The complaints procedure in a patient focussed NHS	17
The formal complaints procedure: when patient focus fails	24
Principles for an effective complaints procedure	25
An executive team responsibility	27
Supporting individuals	29
<b><u>Local Resolution</u></b>	
<b>Local resolution in family health services</b>	
The independent contractor	36
The independent contractor and The NHS Complaints procedure	38
Options for change	42
'Facilitation'	43
Target for responding	49
Monitoring	50
Further recommendations for improving local resolution	51
<b>Local resolution in NHS boards and community health services</b>	52
The Liaison Officer	55
<b><u>Independent review</u></b>	
A National Complaints Authority	63
An earlier role for the Ombudsman	70
Resource implications	74
Further recommendations for improvement	75
<b>Summary</b>	76
<b>Annex A:</b>	<b>The NHS Complaints Procedure flow chart</b>
<b>Annex B:</b>	<b>National Evaluation: Executive Summary</b>
<b>Annex C:</b>	<b>Service First Principles</b>
<b>Annex D:</b>	<b>Glossary of terms</b>
<b>Annex E:</b>	<b>Advisory Group Members</b>
<b>Annex F:</b>	<b>List of relevant documents</b>



## **INTRODUCTION**

1. This section sets a context for the advisory group's proposals by setting out:

- the background to the current NHS Complaints Procedure
- the conclusions of a national evaluation of its operation
- how recent developments are requiring the NHS to adopt a more 'patient focused' approach to the way in which it engages with the people it serves.

2. Words underlined in this document are explained in the Glossary of Terms in Annex D.

### **The Current NHS Complaints Procedure**

3. The current UK-wide NHS complaints procedure was introduced in April 1996. It has three stages:

*Local Resolution:* where the service provider attempts to resolve a complaint as directly and as quickly as possible, with the primary aim of being fair to both the person making the complaint and to its staff.

Local resolution may involve an immediate informal response from frontline staff or it may require an internal investigation, use of conciliation or direct action by a Chief Executive.

*Independent review:* where a complaint cannot be resolved locally, the person making the complaint may apply for an *independent review*. The right to have a complaint reviewed is not automatic. A request for a review is considered by the Convener<sup>1</sup>, in consultation with an independent lay person who has received training in chairing review panels.

*Ombudsman review* where the person making the complaint is refused an independent review or is dissatisfied with the outcome of such a review, they may ask the

---

<sup>1</sup> underlined word in the text are explained in the glossary

## ***Draft for consultation***

Scottish Public Services Ombudsman<sup>2</sup> to consider the matter. The person complained against can also seek an Ombudsman review in certain circumstances.

Information on how the current procedure operates, the timescales it uses etc can be found at Annex A.

### A national evaluation

4. A UK-wide independent evaluation of the operation of the complaints procedure has been undertaken. It surveyed and interviewed people who had used the complaints procedure, patients representatives and NHS staff in all 4 UK countries.

5. Briefly, the evaluation report (summarised in Annex B) identifies the level of dissatisfaction as higher among those complaining about family health services than about hospital and community services.

6. The main areas for dissatisfaction with the current local resolution procedures included:

- the time taken to complete the process
- poor complaints handling, including poor communication with patients
- perceived bias
- the stress it creates
- lack of information and support.
- lack of a coherent system to allow learning from a patient's experience or to make improvements following a complaint.

7. In addition, for family health services, it was considered that:

- the process did not meet the reasonable expectations of the people making complaints
- the system is biased against people making complaints.

8. The main areas of dissatisfaction with independent review procedures included:

- a lack of impartiality
- a time consuming and costly process

---

<sup>2</sup> <http://www.scotland.gov.uk/library5/government/amcs-01.asp>

## **Draft for consultation**

- unrealistic targets
- an inconsistent standard of panel members
- an inability to compel clinicians to attend a panel
- an inability to enforce recommendations.

9. The report made a number of suggestions for improving the way in which complaints are handled and the procedure for doing so. The advisory group has taken account of these detailed suggestions in this paper.

### **Developments since 1996**

10. The NHS aims to provide effective and efficient health care to the people of Scotland. The organisations and staff that make up NHSScotland are committed to providing the highest quality of care possible. However, in the thousands of encounters between the NHS and the people it serves each day, there will inevitably be occasions when we will fail to meet our own expectations or those of the people who use our services.

11. The needs of the 'system' can sometimes get in the way of meeting the needs and reasonable wishes of the people it is designed to serve. Therefore in developing our proposals to revise the NHS complaints procedure, we recognise the importance of listening, learning and really hearing whether our service meets or does not meet the standards that we strive to achieve.

12. We believe a modern, person-centred healthcare system is one which:

*listens to and acts on complaints from those who feel let down by the service they have received. It must also be quick to learn from what patients say has worked well for them<sup>3</sup>.*

13. The emphasis should be on putting people, their views and experiences at the centre of the planning and delivery of local services. We should tackle the shortcomings that concern the people who use our services. We must empower our frontline staff to address any concerns they may have about the service they receive quickly and effectively. They should not have to make a formal complaint to be heard.

---

<sup>3</sup>Page 53 Our National Health: A plan for action, a plan for change

## ***Draft for consultation***

### A patient focused NHS

14. Changing the culture of the NHS in this way is part of a wider agenda. A document entitled '*Patient Focus and Public Involvement*'<sup>4</sup> committed the NHS to developing 'patient-focused' services. A patient focused service

*'exists for the patient and ... is designed to meet the needs and wishes of the individual receiving care and treatment'*<sup>5</sup>.

15. Work to implement the *Patient Focus and Public Involvement* Framework is specifically aimed at strengthening the voices and influence of people who use services. It encourages the NHS to use a range of approaches<sup>6</sup> and opportunities to hear concerns, suggestions, worries or comments, learn from them and change the way that things are done. It encourages the meaningful involvement of those who know how services are currently delivered, and makes a special effort to hear from those whose voice is quiet or excluded. It seeks to create a culture where comments and suggestions are welcomed and acted upon by the staff delivering the care.

16. Being patient-focused puts people, not systems, first. It requires local services to:

- get to know and respect the people who use their service and the people that care for them, and treat them as individuals who should be involved in decisions about their own care
- listen to, understand and act upon their views, comments and reasonable needs
- empower frontline staff to respond flexibly to the specific needs of individuals
- ensure quick and effective action is taken to improve services
- provide feedback to the people consulted on the action taken.

### The complaints procedure in a patient focussed NHS

17. The current NHS complaints procedure reflects a different culture, which does not fully value the voice of the patient and focuses on

---

<sup>4</sup> '*Patient Focus and Public Involvement*' Framework: SEHD, December 2001

<sup>5</sup> Page 2 '*Patient Focus and Public Involvement*' Framework

<sup>6</sup> A range of different approaches to help are described in 'Building Strong Foundations' published separately by the Scottish Executive [www.show.scot.nhs.uk/involvingpeople/readinglist.htm](http://www.show.scot.nhs.uk/involvingpeople/readinglist.htm)

## ***Draft for consultation***

dealing with breakdowns in relationships. It encourages a culture of defensiveness and closed ranks – perceived or actual.

18. We now understand that many people do not actually want to enter the formal complaints procedure. However, they feel they have no other recourse in order to communicate effectively with the people who can change things.

19. Evidence suggests that the current procedure is ineffective because many observations, worries or concerns never reach the system:

- people who say ‘I don’t really want to complain... but I do not want this to happen to anyone else’
- people who feel so disempowered that they would never complain – or even voice their real concerns – because they do not want to make a fuss or draw attention to themselves, or because they worry that their care may be prejudiced in the future.

These people may have interesting and informative contributions to make to help improve the services they use. The NHS must therefore develop the feedback systems that encourage these individuals to express themselves.

20. The *Patient Focus and Public Involvement* Framework aims to change the culture of the NHS. It has the needs of patients at its heart.

21. Success in achieving its aims will ensure that local health care systems become more responsive to the needs of the people they serve and focused on action to meet these needs. It will:

- encourage suggestions and comments as opportunities for change
- ensure that individuals are given the help they need to have their voice heard
- provide staff with the training and support to consistently display sensitivity and understanding to people who are at a vulnerable and stressful point in their life
- empower staff to listen to and act upon the suggestions of the people they care for
- let people who use services see action being taken to change a negative experience into one of empowerment
- form a partnership between staff and patients that will improve the quality of care for everyone who uses that service.

## ***Draft for consultation***

22. Listening to, understanding and acting upon the views and concerns of patients, their carers and families about the quality of service they receive is the simplest and most effective way of improving the quality of local services. A number of local NHS organisations have developed 'patient focussed' protocols to do this.

23. NHS Boards should therefore require **all** local services, including Family Health Service practitioners, to have effective 'patient focussed' protocols in place to ensure that the concerns and comments of the people who use their services and their relatives/carers are heard and dealt with quickly and sensitively. These protocols, however, are not a matter for this document and should be addressed by service providers as part of a separate exercise.

### **THE PROPOSED NHS COMPLAINTS PROCEDURE**

24. This section sets out the principles adopted by the advisory group and proposals for:

- clarifying management responsibility for the complaints procedure
- providing advice and support to people using the complaints procedure.

#### Principles for an effective complaints procedure

25. A Complaints Procedure should be credible, easy to use, demonstrably independent<sup>7</sup>, effective and sensitively applied. Making a formal complaint can be stressful for people involved – for those making the complaint and for the staff involved. The procedure must be seen to be fair to both sides. It must support the person making the complaint and be fair to the staff complained against. It must also ensure that the NHS can learn and grow positively from the experience.

26. Drawing on comments made on the evaluation report and the Cabinet Office's '*Service First Principles*'<sup>8</sup> we suggest that an effective complaints procedure would:

- be well publicised, accessible and subject to independent monitoring

---

<sup>7</sup> Our National Health, page 53

<sup>8</sup> [www.servicefirst.gov.uk](http://www.servicefirst.gov.uk)

## ***Draft for consultation***

- contribute to achieving a patient focussed health service where comments and suggestions are welcomed as a learning opportunity
- have clear lines of accountability for complaints handling
- be integrated into the clinical governance/quality framework of the NHS organisation
- provide support to those making and handling complaints
- be demonstrably fair to both the person making the complaint and the staff complained against
- resolve complaints within a 'reasonable' time frame.

### An executive team responsibility

27. While the Chief Executive of each NHS organisation is ultimately responsible for the quality of care delivered by his or her organisation, they should appoint a named senior member of their executive team to take responsibility for delivering the organisation's patient feedback and complaints process. This individual should hold a position allowing them to remain abreast of major potential problem areas.

28. Each NHS organisation, including GP practices, should assign the task of dealing with complaints to a person of sufficient seniority to be able to deal with the issues raised quickly and effectively without needing to refer, in all but the most exceptional circumstances, to more senior staff. This complaints officer's role should include:

- developing ways of encouraging effective patient feedback, including for example telephone and internet-based systems
- managing the operation of the complaints procedures under the directions published by the Scottish Executive
- arranging the provision of high quality local training on responding to patient feedback and handling complaints
- ensuring that there is a local policy for dealing with vexatious and habitual complaints.

Q	<i>Do you agree with the roles and responsibilities set out above?</i>
---	--

### Supporting individuals

29. It is vital that individuals who wish to use the NHS Complaints Procedure have access to help to understand and navigate the system and, where necessary, the support to draft letters and attend meetings

## ***Draft for consultation***

with them. Currently, local Health Councils<sup>9</sup> offer help to individuals who approach them, though they do so to a varying extent. This is not, however, part of their agreed core functions, and the extent to which NHS Boards give additional funds to support this work also varies.

30. It should become a clear requirement on each NHS Board to ensure that a suitable source of independent advice and support is set up for this purpose, at arm's length from itself. This may be done in a variety of ways, for instance, a local advice service or voluntary or advocacy organisation could be commissioned to provide this service. Ideally, this might be done in conjunction with the local authority or authorities in the Board area. This would have the advantage that there would be one source of help for people with queries or views about issues crossing organisational boundaries, such as many community care issues.

31. To provide firm assurance that these arrangements were truly independent and effective, we propose<sup>10</sup> that, before they are set up or commissioned, they should be subject to the approval of the local Health Council, which should be represented on the commissioning group or committee. The Health Council it is suggested should not be involved in actively managing the advice and support service, but would have the right to monitor its effectiveness to ensure consistent quality standards, training and monitoring.

32. The precise form of this function will have to take account of any changes to the local Health Council structure that may flow from a consultation exercise that will shortly take place.

33. Some service users who are vulnerable or find it difficult, for whatever reason, to articulate and put forward their views, may need help of a more intensive kind or help over an extended period of time. In these circumstances it will be essential for the advice and support service to have effective referral arrangements with specialist advocacy services. NHS Boards are already required to commission independent Advocacy arrangements<sup>11</sup> which have been the subject of separate guidance.

<b>Q</b>	<b><i>Do you agree with the above proposals for supporting individuals?</i></b>
----------	---

---

9 A separate consultation exercise on 'A new public involvement structure for NHS Scotland' is looking at the future role of local Health Councils

10 subject to the outcome of consultation exercise on the future of local Health Councils

11 NHS HDL (2001) 8 [www.show.scot.nhs.uk/sehd/mels/hdl2001\\_08.htm](http://www.show.scot.nhs.uk/sehd/mels/hdl2001_08.htm)

## **LOCAL RESOLUTION**

34. The first stage of the complaints process involves staff in the local service attempting to resolve a complaint as directly and as quickly as possible, with the primary aim of being fair to both the person making the complaint and to its staff. This 'local resolution' stage may involve an immediate informal response from frontline staff or it may require an internal investigation, use of conciliation or direct action by a Chief Executive.

35. This section sets out proposals for improving the effectiveness of this process:

- in family health services through the introduction of support to make the process of resolution easier and fairer for both the person making the complaint and the person complained against
- in hospital and community health services through improved management support for front line staff in resolving the concerns of the people they serve.

### **Local resolution in family health services**

#### The independent contractor

36. Family Health Services practitioners, such as GPs, dentists, opticians and community pharmacists, are not employed by the NHS. They are "independent contractors" who hold a contract with the NHS to provide services to patients. They are responsible for their own actions in exercising their clinical duties and for the administrative and organisational aspects of running their practices. In general, they also directly employ the staff within their practices, and are, therefore, responsible for their actions too.

37. A Family Health Service contract defines the practitioner's "terms of service". Under their terms of service Family Health Services practitioners are obliged to have in place and operate a practice based complaints procedure, which complies with minimum criteria, for the NHS services they deliver. Failure to do so would break the practitioner's terms of service and could result in disciplinary action.

## ***Draft for consultation***

### The independent contractor and the NHS complaints procedure

38. The disciplinary process is entirely separate from the complaints process and the aims of the two are very different. The focus of the complaints process is to resolve issues between parties and to learn lessons for improvement to service delivery where appropriate. The complaints process is not, and should not be, restricted in what it can deal with. However, matters that would constitute a breach of the terms of service if proved, can not be dealt with under the complaints procedure.

39. The way in which the NHS Complaints Procedure operates in Family Health Services must therefore recognise the independent status of practitioners. This means that the NHS has:

- no direct management responsibility for practitioners
- no authority to enforce recommendations for action as a result of a complaint
- cannot impose a solution or recommendation upon a practice, if that practice does not accept it is warranted or simply does not wish to take the recommended action.

40. Family Health Services are also very personal services. The majority of an individual's contact with the NHS is with Family Health Services and their professional relationship with their GP may, literally, last a lifetime. The vast majority of Family Health Service contacts already demonstrate a 'patient focussed' approach but, when things go wrong, this special relationship can make resolution more difficult. Patients may not want to raise a concern directly with the practitioner and, sometimes, issues can lead to a breakdown in the professional relationship.

41. The advisory group therefore sought to formulate revised proposals for Family Health Service complaints which:

- were workable
- provided a level of monitoring and involvement in which the public could have confidence
- recognised the practitioner's status as an independent contractor.

## ***Draft for consultation***

### Options for Change

42. The advisory group propose that in future complaints could be made:

- direct to the practice, or
- indirectly to the practice through the Primary Care Trust<sup>12</sup> (PCT), or
- direct to the PCT with a request that they 'facilitate' (see below) resolution.

The PCT should therefore provide access for people making complaints to a named individual whose responsibility would be to handle complaints about member practices.

### *'Facilitation'*

43. A definition of “facilitate” is “to make easier”. That is the role envisaged by the advisory group - to make the resolution of complaints easier and more straightforward. PCTs should put in place robust mechanisms to support or 'facilitate' the local resolution process.

44. However, to carry out such a role the PCT must not in any way have been involved in the complaint itself. In providing a 'facilitation service' the PCT would be supporting the practice to ensure that procedures were in place which made the process of resolution easier for both the person making the complaint and the person complained against.

45. The role of the 'facilitator' would **not** be to investigate the complaint, but to provide impartial advice and support to both parties and participate at a practical level in its resolution. The practice would be responsible for:

- investigating the issues raised
- providing information and co-operating in the resolution of the complaint
- the factual accuracy of information passed to the facilitator
- ensuring a response is provided to the complainant.

46. The facilitator should consider the appropriateness of independent conciliation. To this end NHS Boards should assess the availability of trained conciliators locally and address any remuneration, recruitment and training needs.

---

<sup>12</sup> or, in Island Boards and unified NHS Boards, the NHS Board

## ***Draft for consultation***

47. The advisory group saw the advantages of this proposal as:

- there is no need for the person making the complaint to deal direct with the practice, unless they choose to do so
- responsibility for dealing with expressions of concern remains with those responsible for delivering the service
- advice and support to practices may lead to more effective resolution and to increased public confidence
- helping address concerns about making a complaint to a single-handed practitioner.

48. They saw a disadvantage being that the PCT 'facilitation' role might not be seen as sufficiently 'independent'.

Q	<i>Do you agree with the above proposals for 'facilitation'?</i>
---	--

### Target for responding

49. Where a PCT acts as a 'facilitator' they should send a full written response to the person making the complaint. The person making the complaint should be advised of how to pursue their complaint further if they remain dissatisfied with the outcome of these PCT processes.

### Monitoring

50. The PCT should agree monitoring arrangements with practices to ensure they receive regular information on the causes of complaints and on action taken or proposed.

### **Further recommendations for improving local resolution**

51. The advisory group accepted the following evaluation report recommendations for improving the local resolution process:

51.1 The Scottish Executive Health Department (SEHD) should work with the NHS and local Health Councils to update and develop clear guidance on the standards expected in the management of complaints (evaluation report reference 6.12).

51.2 The board of every NHS organisation should be held accountable for the performance of the organisation in handling complaints. In particular, the board should ensure that:

## ***Draft for consultation***

- staff are trained to deal with complaints and are supported in the event of a complaint being made against them
- training in handling complaints must be a compulsory part of induction and continuing education
- staff managing complaints must be appropriately trained, have adequate administrative resource and access to senior managerial supervision and support
- the complaints procedure must be integrated into the clinical governance/quality framework of the organisation. (6.12)

51.3 The organisation's chief executive, or executive team member responsible for the complaints process, should present a report to the board at least quarterly analysing the causes of complaints, emerging trends and the action taken, or proposed to prevent recurrence. The board will be held responsible for ensuring that the agreed actions are implemented. (6.16)

51.4 The board report should be copied to the local Health Council who will monitor the implementation of action plans agreed in response to complaints. The local Health Council's annual assessment of the organisation's complaints handling should be an explicit part of its accountability review process. (6.31)

51.5 The member of the executive team responsible for the complaints process must play a central part in ensuring that front line staff are adequately trained and supported in dealing with comments, expressions of concern and complainants. Local training must be provided on a regular basis. (6.37)

51.6 Performance targets for a full response to a complaint at local resolution should be the same in all sectors (6.46).

Q	<i>Do you agree with the above further recommendations for improving local resolution?</i>
---	--

### **Local resolution in NHS boards and hospital and community health services**

52. The NHS, normally, employs staff in NHS Boards and Hospital and Community Health Services. They have a managerial relationship with their staff that allows them to be more directly involved in addressing issues raised by the complaints process.

## ***Draft for consultation***

53. The advisory group's aim in reviewing the procedure for the Hospital and Community Health Services and NHS Board was to:

- ensure front line staff are supported to deal promptly, effectively and with adequate respect for the concerns of the individual
- increase the accessibility and fairness of the process
- shorten the time taken to process complaints.

54. The advisory group supported the suggestion in the evaluation report that the initial stages of the NHS Board and Hospital and Community Health Services process could provide more opportunity for senior Trust staff to meet with and resolve issues of difficulty. Their proposal (see paragraph 22) that all services should put in place 'patient focussed' protocols would ensure that:

- front line staff have the training and authority to directly address the concerns and comments of the people they serve; and
- senior staff are trained to act as 'liaison officers' and are readily available to support front line staff resolve the concerns of the people they serve.

### The Liaison Officer

55. The liaison officer's role would be to:

- clarify what gave rise to the concern or comment
- identify what can be done to address it
- provide an explanation or apology
- explain what will be done to avoid this happening again.

They would consider whether it would be helpful to arrange a formal discussion with, for example, the Clinical Director or a member of the Executive Team.

56. The organisation's complaints officer must not carry out the liaison officer role.

57. Where a liaison officer's intervention fails to answer a person's concern, they should be given information on the Complaints Procedure and the support and advice available to them.

58. The advisory group saw the advantages of this proposal as:

## ***Draft for consultation***

- frontline staff responsible for delivering a service are given management support in dealing with expressions of concern
- wherever possible, expressions of concern are resolved without the added stress and delay of an 'official' complaint.

59. The advisory group saw the disadvantages as:

- it may increase the time taken by the local resolution process.

Q	<i>Do you agree with the above role and responsibilities identified for 'Liaison Officers'?</i>
---	---

## **INDEPENDENT REVIEW**

60. The second stage of the complaints process begins when a complaint cannot be resolved locally and the person making the complaint applies for an *independent review*. The right to an independent review is not automatic. A request for a review is considered by the Convener, in consultation with an independent lay person who has received training in chairing review panels. If the application is granted a panel will review the complaint.

61. Given the concerns identified in the evaluation report, the advisory group saw little advantage in refining the existing 'internal' independent review procedure and recommend it be dispensed with. They offer two options for addressing the identified concerns:

- review by an NHSScotland Complaints Authority operating at national level, or
- proceeding direct to review by the Ombudsman.

### A National Complaints Authority

62. The first option the advisory group considered was replacing the system where every local NHS organisation could be required to establish an 'independent review panel' with a single NHS Complaints Authority. The Authority, which could be established as an 'arms length' division of the Common Services Agency or NHS Quality Improvement Scotland, would be charged with providing an external review facility independent of the NHS organisation complained about.

## ***Draft for consultation***

63. The person making a complaint would have the right to ask the Authority to review their case if they remained dissatisfied with the outcome of the local processes. The Complaints Authority would only consider issues already dealt with locally. The Complaints Authority would not consider new issues.

64. The Complaints Authority would recruit and train lay and clinical representatives for independent review panels. A national Secretariat would service the review process.

65. While the procedures to be operated by the Authority are for it to decide, the advisory group assumed for the purposes of this paper that it would establish a national panel to consider whether a review was required. If this 'sift' panel decided no review was necessary, the person making the complaint could still ask the Ombudsman to review the case.

66. If the 'sift' panel decided a review was justified, a second panel appointed by the Complaints Authority would meet in the Board area to carry it out. The panel would produce a report with recommendations, where appropriate. If the person making the complaint remained dissatisfied, he or she could ask the Ombudsman to review the case.

67. The advisory group saw the advantages of this proposal as:

- review of local complaints handling is retained within the NHS
- it increases the element of 'independence' as the review function is not carried out by the NHS body which is the subject of complaint
- it retains the 'user perspective' provided by lay involvement
- procedures would be in place to ensure national consistency in the work of panels.

68. They saw the disadvantages of this proposal as:

- largely duplicating the role of the Ombudsman
- legislation would be required if the Complaints Authority was to have a power to summon witnesses
- it would not shorten the time taken to review a complaint
- it may be seen as lacking independence and being overly bureaucratic.

## ***Draft for consultation***

### An earlier role for the Ombudsman

69. The advisory group also considered the option of dispensing with the 'independent review' stage of the process completely and allowing the individual making a complaint to ask the Ombudsman to review their case if they were dissatisfied with the outcome of local resolution.

70. While this would increase the number of cases referred to the Ombudsman's office, it would not change its role or procedures. The Ombudsman's staff would still screen all cases initially to decide whether further action was required.

71. The advisory group saw the advantages of this proposal as:

- reducing the total time taken to deal with a complaint
- offering a simpler and, potentially, less traumatic process
- the Ombudsman already has power to summon witnesses and take evidence
- providing a review stage that was clearly independent of the NHS
- potentially, enabling a complaint with health and social care elements to be dealt with by the Scottish Public Services Ombudsman in a single process.

72. The advisory group saw the disadvantages of this option as:

- the review process is taken out of the NHS
- no members of the public are involved in the Ombudsman process.

### Resource implications

73. The advisory group saw both options as having resource and funding implications. A National Complaints Authority, as a new national body, would require additional staffing and funding to meet the demands placed on it. Expanding the Ombudsman's office would also require additional staffing and funding.

Q	<i>Two options are offered for improving the 'independent review' stage. Which option would you support</i> <ul style="list-style-type: none"><li>• <i>A National Complaints Authority, or</i></li><li>• <i>Widening the role of the Ombudsman?</i></li></ul>
Q	<i>Do you feel that there is an alternative option that we should consider?</i>

## ***Draft for consultation***

### **Further recommendations for improvement**

74. The advisory group accepted the following evaluation report recommendations (evaluation report reference 7.43) for improvement:

74.1 NHS Boards will be required to take *active* responsibility for all aspects of complaints handling in their area. The Board will receive a copy of all Complaints Authority or Ombudsman reports relating to their organisation, including those for member practices. The Board will be responsible for ensuring that an action plan is produced and that agreed actions are implemented.

74.2 Complaints Authority or Ombudsman reports and action plans should also be copied to:

- the local Health Council to monitor compliance with agreed action plans
- NHS Quality Improvement Scotland.

74.3 The local Health Council should prepare each year an assessment of effectiveness of the complaints handling in that NHS Board area. These reports will inform NHSScotland's accountability review process.

Q	<i>Do you agree with the further recommendations for improving independent review?</i>
---	--

### **Summary**

75. We began by stating that we believed that a modern, person-centred healthcare system was one which:

*listens to and acts on complaints from those who feel let down by the service they have received. It must also be quick to learn from what patients say has worked well for them.*

76. An advisory group of representatives of NHS staff, the public and patients has developed proposals for creating an NHS Complaints Procedure which is:

*credible, easy to use, demonstrably independent and effective.*

77. Their proposals envisage improving local resolution by requiring all local services to implement effective 'patient focussed' protocols to

## ***Draft for consultation***

ensure that the concerns and comments of the people they serve and their relatives and/or carers are heard and dealt with quickly, sensitively and fairly.

78. In Family Health Services, they propose a new supportive role for Primary Care Trusts in which they would 'facilitate' the local resolution process where either party desired this.

79. They propose replacing the existing independent review process by either:

- establishing a National Complaints Authority or
- involving the Ombudsman at an earlier stage.

80. They also propose a 'quality assurance' role for local Health Councils and their proposed successor, the Scottish Health Council. Each year they would prepare an assessment of effectiveness of the complaints handling in each NHS Board area and these reports would inform the accountability review process.

### **What do you think?**

81. We are keen to obtain your views on our draft proposals. This consultation paper is being distributed widely across Scotland and views received on it will be used to develop our final proposals. We have identified a number of questions we would like you to answer and we would be grateful if you would take the time to complete the form provided. Your comments should be returned to the address shown on the front of this document **by 2 June 2003**

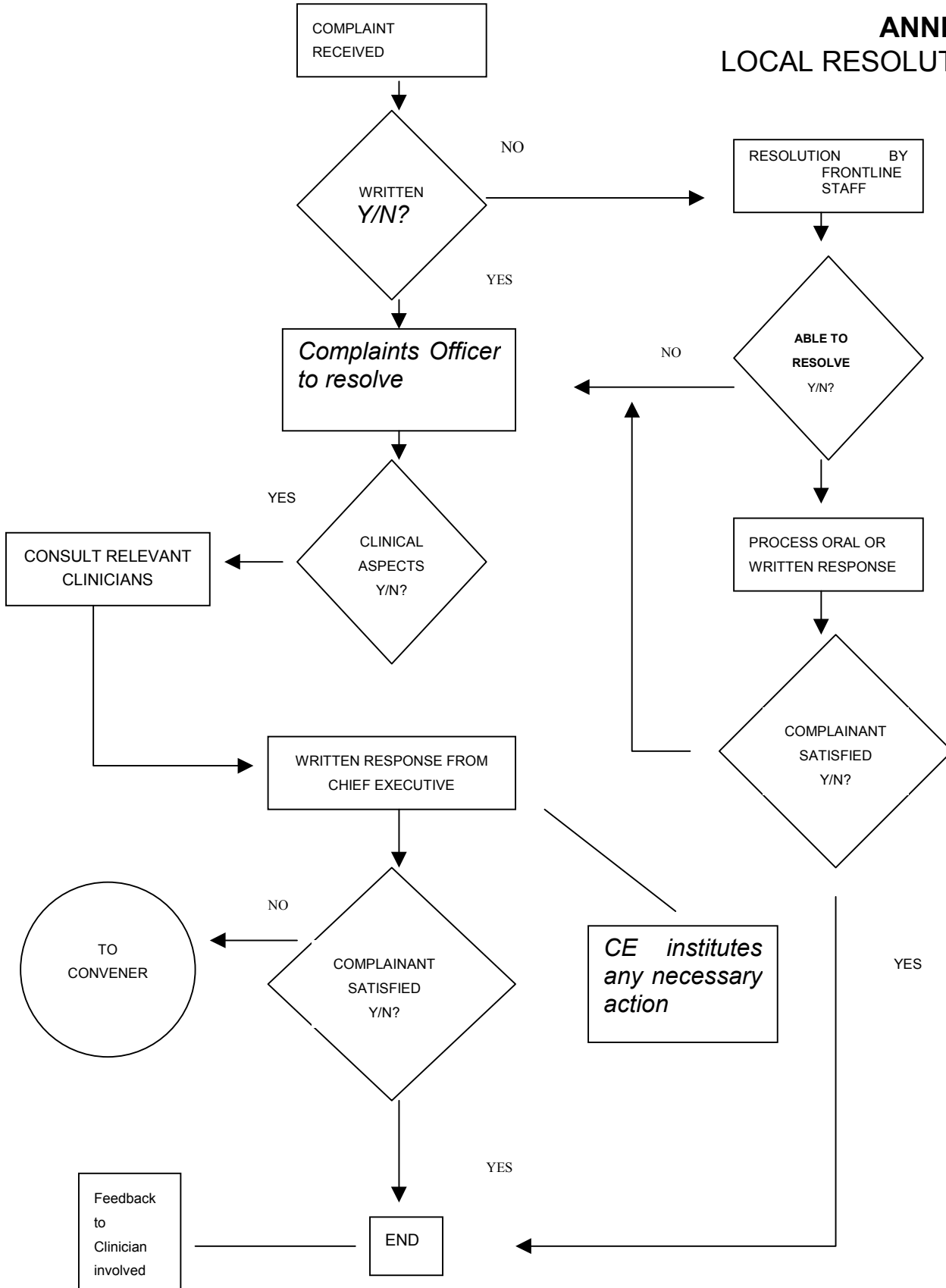
SEHD  
February 2003

***Draft for consultation***

**REFORMING THE NHS COMPLAINTS PROCEDURE:  
A CONSULTATION DOCUMENT**

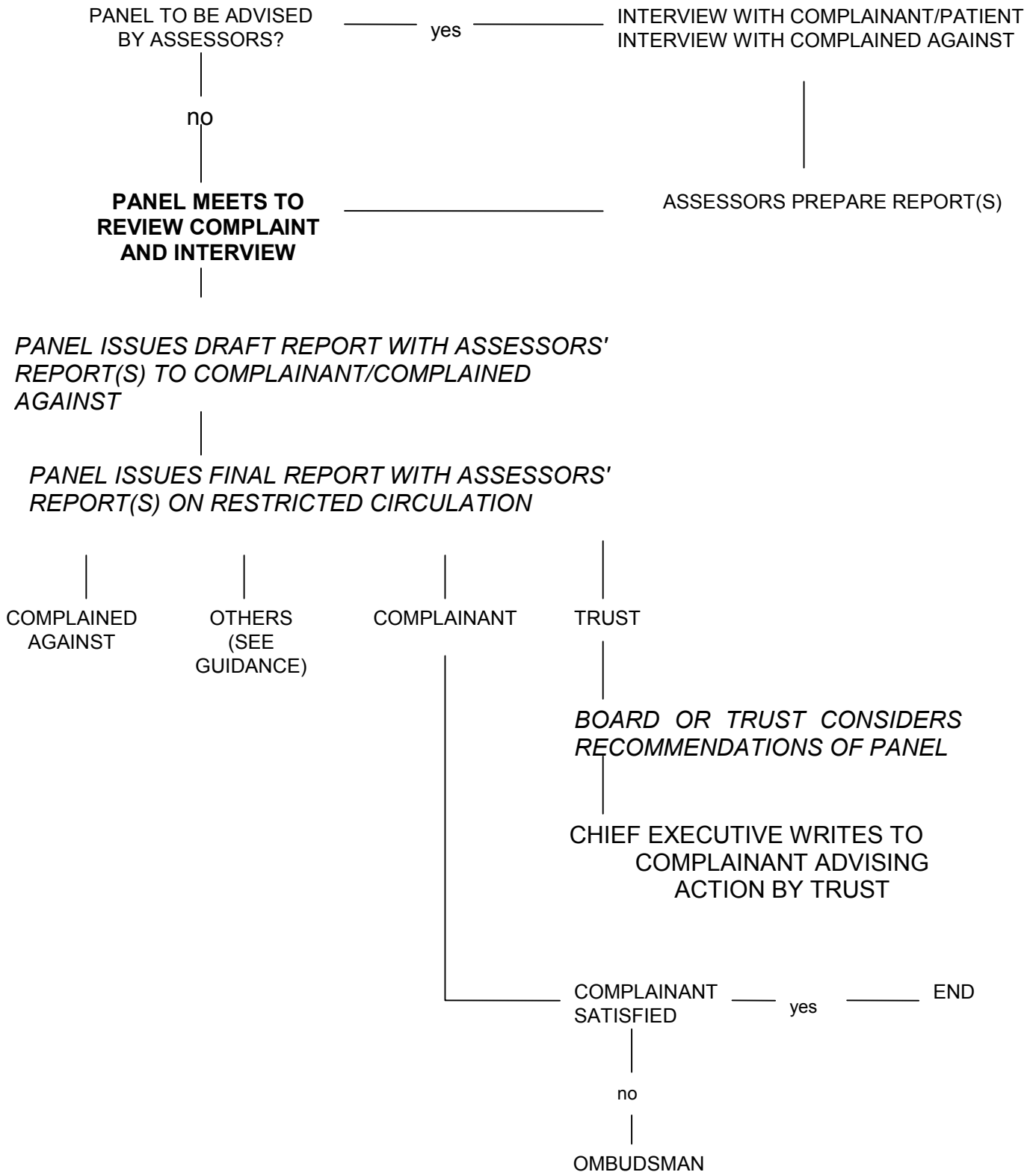
<b>The NHS Complaints Procedure flow chart</b>	<b>Annex A</b>
<b>NHS Complaints Procedure national evaluation: Executive summary</b>	<b>Annex B</b>
<b>Service First Principles</b>	<b>Annex C</b>
<b>Glossary of terms</b>	<b>Annex D</b>
<b>Advisory Group membership</b>	<b>Annex E</b>
<b>List of documents referred to</b>	<b>Annex F</b>

# ANNEX A LOCAL RESOLUTION



# INDEPENDENT REVIEW

## COMPLAINT TO PANEL



### **TIME LIMITS**

A person must lodge a complaint within 6 months of the event or 6 months from becoming aware that there was cause for complaint. Complaints would not normally be considered more than 1 year after the event.

Expressions of concern (verbal complaint) –should be dealt with on the spot

### **Hospital and Community Health Services**

#### Local Resolution

Complaints should be

acknowledged within 3 working days of receipt

a full response should be issued within 20 working days of receipt

The person making the complaint then has 28 calendar days to request an independent review.

#### Independent Review

Acknowledgement within 3 working days of receipt

Decision by convener on request within 20 working days of receipt

Panel appointed within 20 working days of decision by convener

Draft panel report within 50 working days of appointment of panel

Final Report within a 10 further working days

Trust response to person making complaint within 20 working days of receipt of panel's report.

**Family Health Services**

Local Resolution

Complaints should be

acknowledged within 3 working days of receipt  
a full response should be issued within 10 working days of receipt

The person making the complaint then has 28 calendar days to request an independent review.

Independent Review

Acknowledgement within 3 working days of receipt

Decision by convener on request within 10 working days of receipt

Panel appointed within 10 working days of decision by convener

Draft panel report within 30 working days of appointment of panel

Final report of panel within a further 10 working days

Final report sent to person making the complaint within 5 working days of receipt of panel's report

### NHS COMPLAINTS PROCEDURE NATIONAL EVALUATION: EXECUTIVE SUMMARY

#### Objectives

1. The current NHS complaints procedure was introduced in April 1996 following the report of a review committee (Wilson, 1994) and the Government's response (*Acting on Complaints*, March 1995). The objective of this study was: *to provide an evaluation of how the new complaints procedures are operating across all parts of the NHS...and to meet the information needs of policy makers and managers concerned with the future development of the system* (Research Brief).

#### Methods

2. We have carried out a questionnaire survey of those with experience of operating the complaints procedure (complaints managers, convenors, chief executives, chairs and lay panel members, family health services (FHS) contractors, conciliators and clinical assessors) and those with experience of using the procedure (complainants, staff complained against, patient interest groups and health councils (or their equivalent in Scotland and Northern Ireland). More than 4,000 questionnaires were distributed.
3. We have also conducted more than 300 interviews with complainants, staff complained against, regional and national complaints leads and the Health Service Commissioners. We have facilitated focus group meetings with those working in primary care and workshops with key stakeholders. We have received a large number of written submissions from individuals and representative organisations.

#### Research Findings

4. The complaints procedure has two stages: *local resolution* involves the service provider attempting to resolve a complaint as quickly and as directly as possible. If a complaint cannot be resolved locally, a complainant may apply for *independent review*. The right to review is not automatic. A request for review is considered by a convenor (who

is normally a non-executive of the organisation complained against) in consultation with an independent lay chair.

### ***Views of those using the complaints procedure***

5. Many complainants express a high level of dissatisfaction with the operation of the current procedure. This is true for complaints which do not proceed beyond local resolution as well as for those which give rise to a request for independent review:
  - Among individuals whose complaint was dealt with locally, only one-third believed that their complaint had been handled well. No more than 20%-30% was satisfied with the time taken to deal with the complaint and a majority were dissatisfied with the outcome. A majority thought that the current procedure was either unfair or biased and a high proportion found the process to be stressful or distressing.
  - Among individuals who had requested independent review, around a quarter believed that their complaint had been handled well. No more than one in ten were satisfied with the time taken to resolve their complaint and only 13% were satisfied with the outcome. Almost three-quarters believe that the complaints procedure is either unfair or biased. A significant majority found the process to be stressful or distressing.
6. The main causes of dissatisfaction among complainants are operational failures: unhelpful, aggressive or arrogant attitudes of staff, poor communication and a lack of information and support. The most important structural failure is the perceived lack of independence in the convening decision and in the review process generally.
7. Patient interest groups draw attention to the fact that some potential complainants are deterred by the fear that services will be withdrawn. This is more likely where the provider has a personal relationship with the patient and where a complaint may be thought to signal a breakdown of trust. Some complainants have been removed from a practice list on this basis, although the concern is not restricted to primary care services.
8. The views of NHS staff who have been the subject of complaint are in marked contrast to those of complainants. A majority of staff thought that the complaint against them had been handled well and they were

generally satisfied with the outcome. Staff were well supported by professional and managerial colleagues and the majority thought that the process was both fair and unbiased. The only consistent source of dissatisfaction was that they were not always kept informed of the progress of a complaint against them. A number of respondents noted that they were initially unaware that a complaint had been made against them.

### ***Views of those operating the complaints procedure***

9. A majority of those with experience judge the current system to be superior to the systems in place pre-1996 on most criteria. Chief executives are supportive of the principles of local resolution and most believe that this aspect of the complaints procedure works well. Positive aspects include the encouragement to respond promptly to a complaint, the opportunity offered by complaints to improve the quality of services and the opportunity to meet complainants face-to-face.
10. Among those responsible for operating the procedure there is a broad consensus about the elements which need to be improved:
  - There is a wide measure of agreement that independent review should be more independent and should be seen to be so. Irrespective of the impartiality of a convenor, it is accepted that complainants do not perceive the current procedure to be independent.
  - There is a perception that current procedures, particularly those involving independent review, are time-consuming and costly to operate.
  - Performance targets relating to the convening decision, the appointment of panel members and drafting a report of a panel are all perceived to be difficult to meet.
  - There is agreement that procedures need to be improved to ensure that services improve following a complaint.
  - Procedural improvements include the need for quicker access to clinical assessors and (in England and Wales) to lay chairs. Lay chairs in all countries would like to have better feedback on panel reports and on the outcome of complaints and more opportunities for networking and training. The desire for additional networking and training is common to almost all of the groups involved in operating the procedure.

## Policy Implications

### *Local resolution*

11. Because the process of local resolution is internal to the organisation, how well it works varies between organisations depending on the training and attitude of individual members of staff and on the culture of the organisation itself. Current mechanisms are inadequate to *ensure* that complaints are adequately addressed or that necessary action follows from a complaint.
12. Thus views on local resolution are equivocal. On the one hand there is support for the principles of local resolution and recognition of the potential value of complaints as a source of information for service improvement. There is also evidence that local resolution works well in many cases. On the other hand, many complainants express a high level of dissatisfaction and this is indicative that the current procedure also frequently fails. The key issue is lack of consistency.
13. Among complainants about family health services the level of dissatisfaction is higher on most measures than it is for other services. A majority of health council respondents believe that in primary care, local resolution performs poorly or very poorly. One reason for the particular focus on primary care may be the fact that, in comparison with other NHS organisations, most practices are relatively small and informally managed. In this situation the attitude of an individual practitioner in shaping the success of local resolution is more decisive than it is in a larger, more formal organisation.
14. In order to improve performance the culture of all NHS organisations must be such that satisfactory resolution of complaints is an important objective and information generated by the complaints process is valued. Resources must be appropriate to ensure that front-line staff are adequately trained and supported and that complaints can be investigated promptly and with authority. The organisation should be held accountable for its performance in handling complaints and for ensuring that serious mistakes are not repeated. Three factors in particular are likely to be central to improving performance:
  - Those with responsibility for managing the performance of chief executives and chairs should be required to demonstrate that

complaints handling is an explicit part of the performance management framework.

- The board of every NHS organisation should be held accountable for the performance of the organisation in handling complaints. In particular, the board should ensure that: (a) all staff are adequately trained to deal with complaints and are supported in the event of a complaint being made against them. Training in handling complaints should be a compulsory part of induction and continuing education; (b) staff managing complaints are appropriately trained, have adequate administrative resource and access to senior managerial supervision and support; (c) the complaints procedure is integrated into the clinical governance/quality framework of the organisation.
- Consideration should be given to the development of a National Service Framework or its equivalent for the management of complaints. A service framework would provide clear guidance to NHS organisations on the standards which are expected and it would establish a framework for performance management.

15. In the particular context of primary care there is a need to ensure more openness and to offer complainants an opportunity to avoid the need to complain directly to the practice. We believe that the best way to achieve this is to encourage practices to work together within the structure of a primary care group (or primary care trust) to share information and to offer support in providing acceptable procedures for handling complaints.

- Complaints about family health services should be handled in the same way as complaints about all other services provided by the NHS. The board of a primary care trust or its equivalent should have the responsibility in relation to complaints about family health services contractors which currently lies with a health authority/board. Primary care trusts in Scotland already have this responsibility.

16. We have suggested a number of changes which, taken together, are likely to lead to improvements in the way in which complaints are handled locally. Many of these changes are already possible within the current procedure, and part of the emphasis in the future must be on ensuring that current mechanisms are properly enforced. A complete list of suggested changes is given at the end of this Summary.

## ***Independent review***

17. As a second stage in the complaints procedure, a system of review offers two important safeguards: it provides an additional opportunity to identify clinical or professional problems which may be overlooked when complaints are dealt with internally and, so long as the review process is linked to a system of monitoring, it offers an opportunity to ensure that necessary changes follow from complaints.
18. In order to offer these safeguards the review process must be *independent* and it must have the *authority* to ensure that recommendations are enforced. The current system does not meet either of these requirements.
19. Nor does it currently perform well. Of individuals who requested independent review, no more than one in ten were satisfied with the time taken and only 13% were satisfied with the outcome of their complaint. Almost three-quarters believed that the procedure was unfair or biased. Even those involved in the operation of the complaints procedure agree that the review process should be more independent and less time consuming.
20. Suggested improvements include both procedural and structural changes (details are given at the end of this Summary). However, the fundamental requirements are to ensure that the review procedure is genuinely independent and that organisations are *actively* monitored in order to ensure that actions agreed following an independent review are implemented.
  - Consideration should be given to the proposal that in future both the convening decision and the conduct of a review should be the responsibility of a regional or sub-regional lay panel appointed for the purpose. Panels may be accountable to a national complaints authority *or* to the regional offices of the NHS Executive (in England) and national or sub-national bodies in Scotland, Wales and Northern Ireland.
  - The regional and national bodies responsible for NHS performance should ensure, through the performance management framework, that an acceptable action plan is produced in response to the report of an independent review and that the plan is implemented.

## References

The Report of the Review Committee on NHS Complaints Procedures, chaired by Professor Alan Wilson: *Being Heard*, May 1994

The Government's Proposals in Response to "Being Heard": *Acting on Complaints*, March 1995

## **SERVICE FIRST PRINCIPLES**

### **Access to the complaints procedure**

- Encouraging complaints and compliments by advertising your procedures and making them easy to use.
- Telling all your users about your service standards and how to complain if you do not meet them.
- Making it clear that you welcome complaints and comments and will use the information to improve your services.
- Allowing for users who have special difficulties, for example, those with a reading disability or whose first language is not English.
- Carrying out surveys to check that your system really is easy to use.

### **Handling complaints**

- Encouraging frontline staff to 'own' complaints.
- Having clear written procedures that focus on sorting out complaints quickly.
- Consulting staff and users when drawing up and revising complaints procedure.
- Making sure that the procedures are fair to staff and users, and that information is treated as confidential.
- Recognising the importance of good communication skills when recruiting and training staff who handle complaints.
- Making sure that all staff, especially those who have most contact with users, know your policy and receive training.
- Drawing up a menu of remedies and making sure that staff and users understand the options, including the role of any ombudsman.
- Supporting your staff, and getting senior managers' commitment to handling complaints properly.

### **Results**

- Recording all complaints and analysing them to understand users' views and the improvements they want.
- Publishing information at least once a year on:
  - the number and type of complaints;

- how quickly they were dealt with;
  - users' satisfaction; and
  - actions taken as a result.
- Passing information from complaints to policy makers.
  - Taking advantage of new information technology, including putting your complaints procedure on the Internet.
  - Having complaints reviewed by someone not responsible for the person or service complained about.

***Glossary of Terms***

**Clinical Adviser** – person who provides advice, as required, on clinical elements of a complaint to those handling or reviewing complaint; usually from the same clinical specialty as person who is subject of a complaint.

**Clinical Governance** – corporate accountability for clinical performance; an initiative to ensure and improve clinical standards at local level and throughout the NHS.

**Common Services Agency** – agency which is part of the NHS family and which provides various central support services to the NHS.

**Community Pharmacy** – retail outlet providing pharmaceutical services, including the dispensing of prescriptions.

**Complaints Officer** – person employed by a NHS body to fulfil certain functions in respect of the complaints procedure; functions will vary from NHS body to NHS body.

**Conciliation** – confidential process of assisting parties involved in a complaint to come to a solution which is satisfactory to both sides.

**Conciliator** – person independent of the NHS, appointed by the NHS Board for a particular area, who assists parties involved in a complaint to come to a solution which is satisfactory to both sides.

**Convener** (of independent review panel) – person who reviews a Local Resolution process with a view to determining whether that process has been carried out appropriately; he/she makes decision on whether an Independent Review should be carried out.

**Discipline** – action taken where it has been proved that a Primary Care practitioner has not complied with terms of service; action taken where employing body has concluded that actions of an employee constitute misconduct.

**Facilitate** – to assist with a process, the aim being to make it easier and produce better results.

**Facilitator** – person who assists with the complaints process to make it easier to use and to produce better results.

**Family Health Services** – type of health services provided by GPs, dentists, opticians and community pharmacists.

**Family Health Services Practitioner** – GP, dentist, optician or community pharmacist.

**Front line staff** – any member of staff, clinical or non clinical, who comes into direct contact with patients, relatives, carers etc.

**Health Board/NHS Board** – strategic body accountable to the Scottish Executive Health Department and Ministers for certain health

functions and for the performance of the local NHS system as a whole.

**Hospital & Community Services** – type of health services provided from a hospital base (e.g. general surgery) or in a community setting (e.g. district nursing services).

**Independent Contractor** – another term for Family Health Services Practitioner.

**Independent Review** – process for reviewing the way a complaint has been handled at Local Resolution.

**Lay Chairman** – person independent of the NHS; appointed by the NHS Board for a particular area, to consult with Conveners on whether to convene Independent Review Panels, and to run and produce reports on, any Panels that are convened.

**Liaison Officer** – person whom it is proposed will link with patients and the relevant service, with a view to resolving matters before they escalate into formal complaints.

**Local Health Care Co-operative** – voluntary grouping (often geographic) of primary care contractors and others providing services in the primary care setting.

**Local Health Council** – statutory body which exists to represent the interests of the local population within the NHS.

**Local Resolution** – resolution at point of service delivery/by organisation complained against.

**NHS Quality Improvement Scotland** – Special Health Board formed from the amalgamation of Scotland's main clinical effectiveness organisations and charged with developing a national system of quality assurance of health care services in Scotland.

**Ombudsman** – person who investigates complaints about NHS after Local Resolution and Independent Review processes are exhausted. Independent of NHS and the Government.

**Panel Members** – any person appointed to an Independent Review Panel.

**Practice** – term to define the business or business premises of any of the 4 categories of Family Health Services Practitioners, i.e. GPs, dentists, opticians and community pharmacists.

**Primary Care** - health services that are provided by a Family Health Services Practitioner or by nurses or allied health professionals in the community.

**Primary Care Contractor** – another term for Family Health Services Practitioner.

**Primary Care Practitioner** – another term for Family Health Services Practitioner.

- **Primary Care Trust** – type of Trust responsible for the provision of family health services, community services and mental health services.
- **Reference Committee** – Committee of Primary Care Trust or NHS Board that determines whether disciplinary proceedings should be commenced against Primary Care Contractors.
- **Secondary Care** – health services provided when a patient has been referred on from a Primary Care setting or is admitted direct to hospital, e.g. when a patient is referred to hospital for treatment by a GP.
- **Single Handed Practice** – term used to define a Practice (usually GP practice) which has only one practitioner.
- **Single Handed Practitioner** – practitioner (usually GP) who practices on his/her own, i.e. he/she has no partners.
- **Terms of Service** – basis of the contract between Family Health Services Practitioners and Primary Care Trusts.
- **Trust** – body responsible for the provision of health services to the local population.

**Advisory Group Members**

Dr Kenneth Harden, Scottish General Practitioners Committee (replaced by Robin Balfour on retirement)

Merlyn Branston, Chief Officer, Lothian Health Council

Dr Alex Clark, Scottish Committee for Hospital Medical Service, BMA

Martyn Evans, Director, Scottish Consumer Council

John Hamilton, Head of Board Administration, Greater Glasgow NHS Board

George Keil, Investigations Manager, Ombudsman's Scottish Office (replaced by Eric Drake on retirement)

Pamela McCamley, Complaints Officer, Greater Glasgow Primary Care NHS Trust

Wendy Nganasurian, Patient Representative

Yvonne Osman, Complaints Officer, Mental Welfare Commission

Dr Jim Rodger, Medical Advisor, Medical DDUS

Richard Walter, Complaints Officer, Lothian Primary Care NHS Trust

**List of documents referred to**

The NHS Complaints Procedure: National Evaluation Report – The York Health Economics Consortium and NFO System Three Social Research available at [www.scotland.gov.uk/library3/health/nhscomplaints.pdf](http://www.scotland.gov.uk/library3/health/nhscomplaints.pdf)

Responses to the pre-consultation on the National Evaluation Report are available at:

<http://www.show.scot.nhs.uk/sehd/publications/preconsultationresponses/responses%20to%20complaints%20pre-consultation.htm>

*Our National Health: A plan for action, a plan for change*, SEHD, 2001 is available at [www.show.scot.nhs.uk](http://www.show.scot.nhs.uk)

*'Patient Focus and Public Involvement'* Framework: SEHD, December 2001 is available at [www.show.scot.nhs.uk](http://www.show.scot.nhs.uk)

*'Building Strong Foundations'*: SEHD, 2001 is available at [www.show.scot.nhs.uk/involvingpeople/readinglist.htm](http://www.show.scot.nhs.uk/involvingpeople/readinglist.htm)

© Crown copyright 2003

Further copies are available from The Scottish Executive;  
Health Care Division,  
St Andrew's House,  
Regent Road,  
Edinburgh  
EH1 3DG  
Tel:0131 244 2346

Astron B29421 2/03

ISBN 0-7559-0770-1

