BMA

The NHS complaints procedure (England only): guidance for primary care

August 2015

Introduction

This document provides LMCs (local medical committees), practices and GPs with guidance on the requirements of the NHS complaints system, including advice on how to deal with complaints received by GP practices.

This guidance also addresses some of the concerns GPs and practices may have about the way the complaints system operates and offers advice on ensuring that the system works for GPs and practices as well as patients.

This document covers England only. Scotland, Wales and Northern Ireland operate separate complaints procedures.

Practice procedures

It is probable that all practices will receive a complaint at some time, so establishing a complaints process that works for your practice and your patients will be essential.

GPs must have in place a complaints procedure that informs patients of ways in which their views can be heard, including information on how the procedure works and also information on how patients can give positive or constructive feedback.

CQC (Care Quality Commission) inspectors may also ask the GP practice about how it shares the patterns and trends of complaints and the evidence of change to improve the service offered.

Every practice must appoint a 'responsible person' whose job is to ensure compliance with the current complaints regulations. This person must be a partner in the contract, but is permitted to delegate their practical responsibilities.

It is also essential to appoint a complaints manager, responsible for handling and considering any complaints. This role may be carried out by the 'responsible person', by another employee? or by an individual who is not a practice employee.

Practices are also permitted to share complaints managers if a full-time, one-practice role is not considered necessary. Complaints managers can also delegate their practical responsibilities.

British Medical Association
bma.org.uk

A complaint made to the practice

When a complaint is made directly to a practice it is the responsibility of the practice to deal with it. There is at present no requirement for the complaint to be sent to NHS England and no funding will be provided for any costs arising from the complaints process.

It is a contractual obligation for practices to follow the complaints procedure and any failure to do so could be considered a breach.

The importance of dealing with a complaint swiftly and effectively is clear. If an oral complaint is dealt with to the complainant's satisfaction within 24 hours then it will not be necessary to embark upon the formal complaints process. Swift resolutions are therefore good for the image of the practice and for avoiding bureaucratic burdens.

In the formal process, practices must send some form of acknowledgement to a complainant within three days of the complaint being received. This acknowledgement need not address any of the issues relating to the detail of the complaint itself, but should inform the complainant that the matter will be investigated. This acknowledgement can be made in written form or by telephone. If made by telephone, a record should be kept.

A meeting should be arranged for the investigator to discuss the complaint with the complainant. It is important to quickly establish what outcome the complainant expects, and to let them know whether this is a realistic possibility. Establishing a good plan and direction for the investigation at an early stage will be beneficial in the long run.

Complaints made to NHS England

When a complaint is made to NHS England about a practice, they will seek permission from the complainant to share the details of the complaint with the practice. If permission is not granted, the complainant will be informed that the matter cannot be taken further.

The DH guidance encourages NHS England to pass complaints to the practice to be dealt with. This can be done with the permission of the complainant and at this point the complaint would be considered to have been made to the practice itself. However, NHS England is permitted to take on the investigation itself, on behalf of the complainant.

It is essential that NHS England takes a consistent approach to the complaints system. There are currently no specifications for how NHS England should make the decision on whether or not to investigate a complaint themselves.

LMCs should ask NHS England to openly set out their policy on how this decision will be made. This process should be open and transparent with the criteria used being consistent and non-prejudicial. Practices should be advised to contact their LMC if they feel they are being treated unfairly or inappropriately and LMCs should inform the BMA (general practitioners committee) if they have concerns that this matter is being addressed inadequately or inappropriately.

Complainants

Complaints can be made either by patients or by someone 'who is affected, or likely to be affected, by the action, omission or decision of the responsible body which is the subject of the complaint'. This means that potential complainants stretch way beyond the confines of the practice list or patient representatives and there is potential for abuse of this system.

Vexatious complaints that come directly to the practice can be rejected, with confirmation of the rejection and the reasons for the rejection to be sent to the patient. The practice should also inform their LMC if they feel that the complaints system is being abused. However, this does not diminish concerns about vexatious complaints that are made to NHS England. Once again, if the practice feel they are being unfairly treated by NHS England, they should make their concerns known to their LMC.

When a complaint is made on behalf of a child, the practice must be satisfied that there are reasonable grounds for the complaint being made by this individual rather than the child. The practice must also be satisfied that the complaint is being made in the best interests of the child. If the practice is not satisfied that this is the case, written notification of this decision must be sent to the representative.

Complaints about more than one service

There is a single complaints procedure for all health and social care services. Usually, the organisation with the largest part in the complaint would be considered the lead agency and would be responsible for co-ordinating the investigation.

NHS England complaints managers

NHS England complaints managers can advise you on practice procedures as well as on dealing with individual complaints, if the problem persists or is particularly complex. The complaints manager can discuss the options with you, including whether the complaint is suitable for conciliation.

Complaints managers may provide support to practice staff, such as:

- Advice and help to staff on handling difficult situations
- Help with wording letters and patient information
- Obtaining feedback from patients on particular practice issues
- Patient focus/customer care training
- Arranging for a conciliator
- Acting as an 'honest broker'.

PALS and Local Healthwatch

NHS England and NHS trusts have a Patient Advice and Liaison Service (PALS) that is available to help patients sort out any problems if they are unhappy about something but do not want to lodge a complaint. Patients can be put in touch with PALS or may contact PALS independently to ask for help.

The main aims of PALS are to:
- Help resolve problems when they arise by working with the staff concerned to negotiate a
- mutually agreed solution
- Provide information about local health services.

In addition, Local Healthwatch was introduced by the Health and Social Care Act 2012 with the aim of building on the existing functions of LINks (local involvement networks), including the provision of information and advice to help people make choices about health and care services as well as the possibility of providing an advocacy service for people making a complaint using the NHS complaints process.

PHSO

The PHSO (parliamentary and health service ombudsman) encourages complainants to contact their GP practice in the first instance in a bid to resolve the problem. They are likely to get involved only if this initial approach is unsuccessful. The PHSO does not investigate every complaint that it receives and isn't required to do so. It has legal criteria that need to be satisfied before it can take any complaint forward.

If it does proceed the PHSO will check whether the local complaints process has been completed; public organisations are given the opportunity to put things right before the PHSO will consider the matter. If they have not had that opportunity, the investigation is usually declined at that point and the complainant asked to make full use of the local complaints process.

If these preliminary checks are satisfied, then a formal investigation follows. The PHSO may talk to the practice to attempt to resolve the issue, or it may carry out an investigation and look in detail at what's happened. This might mean gathering additional evidence and information by speaking to the complainant and the practice, or they might obtain expert advice. The steps taken will vary depending on the nature of the complaint.

There are two likely outcomes:

- The PHSO decides that the practice has acted correctly or that there was a problem but they've already done enough to put things right, or
- They find the practice has done something wrong that needs to be put right, in which case they will work with them to get that done. This could mean asking them to acknowledge their mistake, apologising, paying compensation and/or preventing the same mistake happening again.

Seeking advice from LMCs and defence organisations

If there are any concerns about the way that a complaint issue is handled, even if seems to be a simple problem, support can be sought from LMCs and your medical defence organisation.

Points to consider

- A separate file must be kept for complaints records and letters. Under no circumstances should these be filed in a patient's medical records.
- Any complaint resolved by the practice via the formal complaints procedure should be kept on record for 10 years. This is the same length of time as for litigation cases.
- Complaints can be made up to 12 months after the incident that gave rise to the complaint, or from the time the complainant was made aware of it. Beyond this timescale it is at the practice's discretion whether or not to investigate the matter.
- In the event that a complainant has raised major issues but does not want a full investigation, the practice should investigate fully even if the complainant does not wish to be informed. The issues may not be of interest to the complainant, but the investigation could be extremely important for the future of the practice.
- It is necessary for practices to seek an agreement from locums that they will participate in the complaints procedure if required to do so. As complaints can be made to the practice up to a year after the reason for the complaint, it is possible that complaints will arise after the locum GP has moved on. Practices should ensure that locums involved in the complaints process are given every opportunity to respond to complaints and it is important that there is no discrepancy between the way the process treats locums, salaried GPs or GP partners. This does not apply to out-of-hours organisations.
- It is possible for the complaints procedure to run simultaneously with a disciplinary or legal procedure where such procedures will not be compromised by the complaints process. Practices should now be prepared for the possibility of facing disciplinary, complaints and legal proceedings concurrently. LMCs should clarify with NHS England how they intend to ensure that their handling of performance investigation and complaints procedures are separated appropriately and should report concerns to the GPC; similarly, practices should contact their LMC for advice if they feel NHS England's actions are unfair or inappropriate.

Investigating a complaint

Before an investigation can begin, it is important to assess the seriousness of the complaint. Even if a complainant does not wish to pursue an issue, it may be that the practice still feels the need to investigate the issue to be satisfied that there is not a problem. It is important for practices to use complaints as part of a learning process that assists in the improvement of the service.

A toolkit on investigating complaints can be found in Appendix 1 and a flowchart for the complaints process in Appendix 2.

Further information

- The toolkit (Appendix 1) is taken from the Department of Health document *Listening, Responding, Improving: A Guide to Better Customer Care,* 2009 (www.dh.gov.uk) (steps 1-3) and from the Primary Care Complaints Consortium document *Complaints: A Guide for General Practices,* Third Edition, 2009.
- Appendix 2 is a simple flowchart for the complaints process.

Appendix 1: Investigating complaints toolkit

Step 1: Decide how serious the issue is

Seriousness	Description
Low	Unsatisfactory service or experience, not directly related to care. No impact or risk to provision of care. OR Unsatisfactory service or experience related to care, usually a single resolvable issue. Minimal impact and relative minimal risk to the provision of care or the service. No real risk of litigation.
Medium	Service or experience below reasonable expectations in several ways, but not causing lasting problems. Has potential to impact on service provision. Justifiable complaint. Some potential for litigation.
High	Significant issues regarding standards, quality of care, and safeguarding of, or denial of rights. Complaints with clear quality-assurance or risk-management issues that may cause lasting problems for the organisation, and so require investigation. Possibility of litigation and adverse local publicity. OR Serious issues that may cause long-term damage or death, such as grossly substandard care or professional misconduct. Will require immediate and in-depth investigation. May involve serious safety issues. A high probability of litigation and strong possibility of adverse national publicity.

Step 2: Decide how likely the issue is to recur

Likelihood	Description
Rare	Isolated or one-off – slight or vague connection to service provision
Unlikely	Rare – unusual but may have happened before
Possible	Happens from time to time – not frequently or regularly. May occur again at some time but only occasionally
Likely	Will probably occur several times a year
Almost certain	Recurring and frequent, predictable

Step 3: Categorise the risk

Seriousness	Likelihood of recurrence				
	Rare	Unlikely	Possible	Likely	Almost certain
Low	Low				
Medium		Moderate			
			High		
High				Extreme	

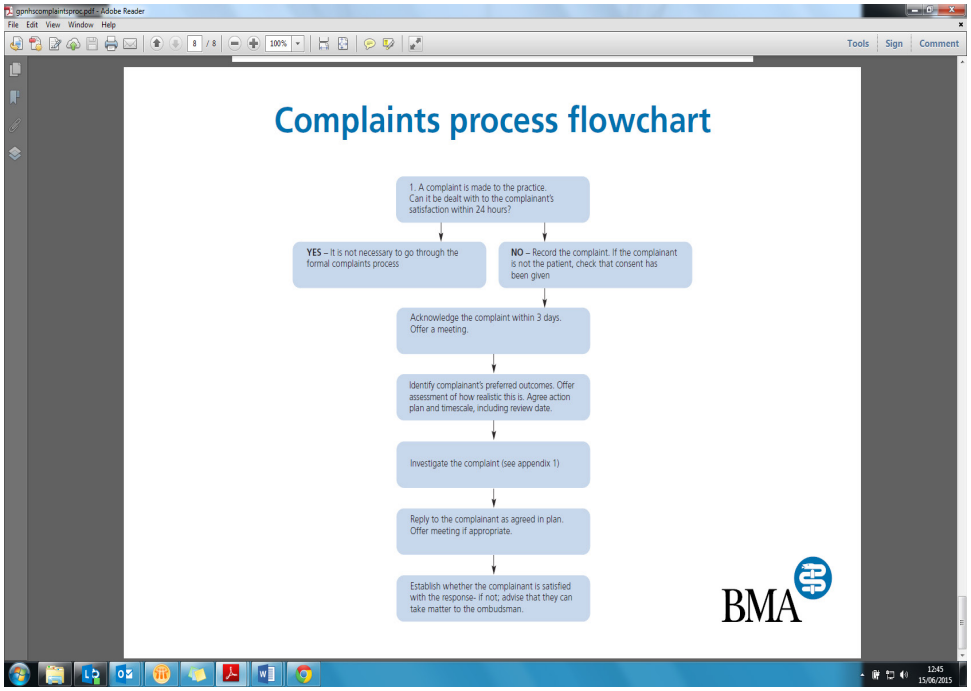
Examples that are low, moderate, high or extreme risk

Low	Moderate	High	Extreme
(simple, non-complex issues)	(several issues relating to a short period of care)	(multiple issues relating to a longer period of care, often involving more than one organisation or individual)	(multiple issues relating to serious failures, causing serious harm)
			Delayed or cancelled appointments
			Event resulting in minor harm (eg cut, strain)
Loss of property	Event resulting in moderate harm (eg fracture)	See moderate list	Events resulting in serious harm or death
Lack of cleanliness	Delayed discharge	Event resulting in serious harm (eg damage to internal organs)	Gross professional misconduct
Transport problems	Failure to meet care needs		Abuse or neglect
Single failure to meet care needs	Miscommunication or misinformation		Criminal offence (eg assault)
Medical records missing	Medical errors		
Staff attitude or communication	Incorrect treatment		

Step 4: Decide the best course of action

Low
Front-line staff response, verbal or written Possible involvement of PALS Offer advocacy to complainant Consider financial redress Consider seeking advice from LMC/defence organisation Timescale to be negotiated
Medium
Practice manager/GP investigates (possibly involving a senior partner or another partner if complaint is about senior partner) Notify NHS England complaints manager Advice from LMC/defence organisation Meeting with complainant Offer advocacy to complainant Offer conciliation/mediation Written response directly from practice or with NHS England covering letter Consider financial redress Follow-up call to complainant to ensure resolution Timescale to be negotiated
High
Discuss with NHS England complaints manager Offer advocacy to complainant Consider financial redress Seek advice from LMC/defence organisation Involve designated partner (or another partner if complaint about designated partner) Involve external agencies, for example to seek external clinical advice (eg NHS England complaints manager, another GP practice, independent investigator). This is compulsory for single-handed practices Meeting/direct contact with complainant before investigation Meeting/direct contact with complainant after investigation Offer conciliation/mediation Send a written response directly from practice or with NHS England covering letter Ask for a review of complaint file by NHS England Involve the responsible officer for the GMC (General Medical Council) affiliate May require a significant event procedure. Timescale to be negotiated
Extreme
Discuss with NHS England complaints manager Offer advocacy to complainant Consider financial redress Seek advice from LMC/defence organisation Involve designated partner (or another partner if complaint about designated partner) Initiate an external investigation (eg NHS England complaints manager, another GP practice, independent investigator). This is compulsory for single-handed practices Meet/direct contact with complainant before the investigation Meet/direct contact with complainant after investigation Offer conciliation/mediation Send a written response via NHS England Ask for a review of complaint file by NHS England Involve GMC (General Medical Council) affiliate responsible officer Initiate a significant event procedure. Timescale to be negotiated

Appendix 2



British Medical Association
BMA House, Tavistock Square, London WC1H 9JP
bma.org.uk

BMA 20150587