

Complaints

Listening Acting Improving

THE HPSS COMPLAINTS PROCEDURE

GUIDANCE

ON HANDLING

**HPSS COMPLAINTS: HOSPITAL AND
COMMUNITY HEALTH AND SOCIAL SERVICES**

April 2000

1/10/2000

THE SECRETARY OF STATE

DEPARTMENT OF HEALTH AND SOCIAL SECURITY

MEMORANDUM

FOR THE SECRETARY

RE: [Illegible]

[Illegible]

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INTRODUCTION

The HPSS does all that it can to make sure its patients and clients are treated properly and promptly. But sometimes things can go wrong. The complaints procedure set out in this guidance is intended to ensure that patients and clients who are dissatisfied with the service or treatment provided have their concerns dealt with fully.

The key objectives of the complaints procedure include - ease of access, with rapid, open processes; an approach that is fair, honest, and aims to resolve the problem and satisfy the concerns of complainants; and learning from complaints. It aims to provide a quick but thorough response that answers the concerns raised. Where possible, this is done by those directly involved in the care of the individual concerned. The guidance should be read **in conjunction with** the 'Guidance on Implementation of the HPSS Complaints Procedure', issued March 1996.

This guidance deals with complaints about hospital and community health and social services. The target audience is those dealing directly with the complaints process at Board and Trust levels. It is not designed to be all-embracing and Boards and Trusts are expected to operate the complaints procedure within the spirit of the Guidance, while adhering to the legal requirements of the appropriate Directions and Regulations.

The guidance issued to general medical and dental practitioners, pharmacists and opticians in 1996 remains current.

Complaints in relation to the provision of personal social services for children are not incorporated within the HPSS complaints procedure and should be handled through the procedures put in place under the Children (NI) Order 1995. See paragraph 4.21.

SECTION 1

LOCAL RESOLUTION

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SECTION ONE - LOCAL RESOLUTION

What is a Complaint?

1.1 A complaint is "*an expression of dissatisfaction*". Patients/clients may not always use the word "complaint". They may offer a comment or suggestion that can be extremely helpful. It is important to recognise those comments which are really complaints and need to be handled as such.

1.2 The aim should be to resolve most complaints at local level. Each HPSS body dealing with the public must establish and publicise its complaints procedure. The first stage of that procedure is local resolution.

1.3 The objective of local resolution is to provide the fullest opportunity for investigation and resolution of the complaint, as quickly as is sensible in the circumstances, aiming to satisfy the complainant while being scrupulously fair to staff.

1.4 Local resolution should not be seen as a 'run-up' to independent review: its primary purpose is to give a comprehensive response that fully addresses the complainant's concerns. The process should provide different ways of responding to the complainant. **Rigid bureaucratic and legalistic approaches should be avoided at all stages of the procedure, particularly during local resolution.**

Who can complain?

1.5 Complaints may be made by:

- a patient or client
- former patients, clients or visitors using HPSS services and facilities;
- someone acting on behalf of existing or former patients/clients providing they have obtained the patient's/client's consent;
- any appropriate person in respect of a patient/client who has died, e.g. the next of kin or their agent.

Patient/Client Consent

1.6 Complaints by a third party should be made with the written consent of the affected individual. Exceptions are if that individual is a child, is incapable, (for example, rendered unconscious due to an accident; judgement impaired by learning disability, mental illness, dementia, or brain injury, serious communication problems) or where the subject of the complaint is deceased.

1.7 Where a person is unable to act for him/herself, his/her consent shall not be required. Where a complaint is made on behalf of an individual, it is good practice to explain to the person making the complaint that information from an individual's health and social services records may need to be disclosed to those investigating the complaint¹.

1.8 A person with parental responsibilities (eg a parent or guardian) can pursue a complaint on behalf of a child. Where the child is of sufficient maturity and understanding², they can either pursue a complaint themselves or be expected to consent to the complaint being pursued on their behalf by a parent or other third party. The position should be explained to the child in simple language, with sensitivity given to the child's condition. It may also be good practice to obtain the child's consent in writing to information being released, where this is possible.

1.9 The complaints officer may refuse to deal with a complaint if he/she decides that the person making the complaint - on behalf of a patient/client who is unable to act for him/herself, or in respect of a patient who has died - is not a suitable person to pursue the complaint. The complaints officer can then arrange for a suitable/acceptable person to act with respect to the complaint. The refusal to deal with a complaint should only be used in **exceptional** circumstances and should not be used indiscriminately. The situation where a person may be deemed to be unsuitable to represent an incapacitated person might include:

- where the person has a serious conflict of interest; or
- where the person has no legitimate interest in the welfare of the patient/client.

1.10 Staff handling a complaint, which is clearly arising from a patient's mental disorder, should deal with it in a way that does not leave the patient feeling disregarded. It should be remembered that to the patient concerned their complaint is real and valid and that any distress they are experiencing could be increased if he/she believes that their concerns are being minimised by staff. Further guidance is set out in Annex 1D

Role of Front-line Staff and their Manager

1.11 Complaints may be made to any member of staff, for example receptionists, auxiliaries, nurses, and doctors. Staff need to be trained and empowered to deal with complaints on the spot. Front-line staff should seek assistance and advice from senior staff as necessary. Senior staff must also ensure that there are procedures in place to use the information gained from these complaints to improve service quality.

1.12 The first responsibility of a recipient of a complaint is to ensure that, where applicable, the patient's/client's immediate health and social care needs are being met before taking action on the complaint. Thereafter, the complainant's concerns should be dealt with rapidly and in an informal, sensitive and confidential manner.

1.13 Some complainants may prefer to make their initial complaint to someone who has not been involved in the care provided. In these circumstances, the complaint should be

¹ Access to Health Records (Northern Ireland) Order 1993

² The Protection and Use of Patient and Client Information - Children and young people, paragraph 4.10, HSSE, March 1996

dealt with by an appropriate senior officer, a patient liaison officer, or the complaints officer. The complaints officer is also available to support and advise front-line staff on the handling of complaints.

1.14 Where a complainant raises a clinical matter, the response should be discussed with the clinician or other relevant professional officer concerned.

Time Limits for making Complaints

1.15 A complaint should be made as soon as possible after the action giving rise to it, normally within **six months** of the event.

1.16 If a complainant was not aware that there was cause for complaint, the complaint should normally be made within **six months** of their becoming aware of the cause for complaint, or **twelve months** of the date of the event, whichever is the earlier.

1.17 **There is discretion for the complaints officer to extend this time limit where it would be unreasonable in the circumstances of a particular case for the complaint to have been made earlier and where it is still possible to investigate the facts of the case. This discretion should be used with sensitivity.**

1.18 If the discretionary extension of the time limit is rejected by the complaints officer then the procedure will be as follows: -

- the complainant may complain about the refusal to exercise discretion to waive the time limits;
- if the refusal is maintained, the complainant may request the convenor to consider setting up a panel for Independent Review of the complaint about refusal to waive the time limit: the normal requirements as to convening decisions will apply – including a time limit for a convening request;
- the convenor may then decide to take no further action; or
- to refer the complaint back for Local Resolution; or
- to set up a panel to consider a complaint.

1.19 If the convenor decides to refer the complaint about the time limit back to the Trust/Board, the Complaints Officer - or Chief Executive, if it is referred specifically to him/her - should review very carefully the decision not to accept the complaint in the light of the convenor's conclusion that further action through Local Resolution is possible.

1.20 If the Convenor rejects the request, then the complainant has the right to complain to the Commissioner for Complaints.

Immediate Response

1.21 In many cases, complaints are made orally. It is important that front-line staff are trained and confident in dealing with comments and concerns expressed by patients, clients and their relatives. Staff should encourage complainants to speak openly and freely about their concerns and reassure them that whatever they say will be treated with appropriate

confidence and sensitivity. It may be appropriate for the entire process of local resolution to be conducted orally. The complaints officer, or a patient liaison officer, should be available to support staff in the local resolution of concerns or complaints.

1.22 All oral complaints should receive an honest and objective full response. The response should:

- show that the complainant's concerns have been considered;
- offer an explanation and an apology, if appropriate;
- give an explanation of what further steps can be taken in the complaints process if not satisfied; and
- give an indication of remedial action that is to follow.

1.23 Best practice suggests that local resolution should normally be rounded off with a letter. If it is considered that a complaint can be resolved by discussion, then there should be a clear record made of that discussion. If a letter is considered appropriate, it should confirm the oral response given. Trusts should endeavour to issue this letter within five working days from receipt of the complaint. See Summary of Target Timescale.

1.24 **The complainant should be asked or assisted to put the complaint in writing, if he/she wishes to pursue the matter after consideration of the oral complaint, by the complaints officer or other relevant person.** Consideration should be given to collecting data on oral complaints, even when they are not confirmed in writing, so that lessons can be learnt which may help to improve service delivery.

Responding to Complaints

1.25 A written complaint should be acknowledged within **two working days**. This includes complaints that are received orally or by telephone which are considered sufficiently serious or difficult to resolve that they need to be recorded in writing.

1.26 The acknowledgement letter should always thank the complainant for drawing the matter to the attention of the Trust. For example:

- *"Thank you for bringing this matter to my attention. I understand that you are concerned about ..."*
- *"Further to our telephone conversation of ... I would like to thank you for bringing this matter relating to ... to my attention".*

1.27 There should be a statement expressing sympathy or concern over the incident. This is a statement of common courtesy, not an admission of guilt. For example:

- *"I regret the discomfort experienced"*
- *"I regret the anxiety this incident has caused you and your family".*

1.28 An outline of the proposed course of action to be taken or of investigations being conducted should be included.

1.29 A full investigation of a complaint should normally be completed **within twenty working days**. The complainant must be informed of any delay where this target is not being met.

1.30 All written complaints should receive a written response that is honest, factual, and addresses all the issues raised.

Complaints Officer

1.31 The Trust must designate a 'complaints officer', who is readily accessible to the public and front-line staff. The complaints officer's role is to oversee the complaints procedure on behalf of the Chief Executive to whom he/she is accountable.

1.32 The complaints officer should:

- deal with complaints referred by front-line staff;
- provide support and help to staff to respond to complaints;
- have access to all the relevant records (including personal medical records) which are essential for the investigation of any complaint referred to him/her;
- take account of any corroborative evidence available relating to the complaint, e.g. witness to a particular event;
- identify training needs associated with the complaints procedure and ensures that these are met³;
- be aware of the availability of, and advise complainants about, the support available from the health and social services councils (see Annex 1A) or through advocacy (see Annex 1B);
- be aware of the role and availability of conciliation services (see Annex 1C);
- be aware of the role and availability of the Medical and Dental Defence Union to assist staff.

Concluding Local Resolution

1.33 The Chief Executive should 'sign-off' all formal complaints. However, there may be some circumstances (for example a major Trust with multiple sites) where, in the interests of a speedy reply a designated executive director of the Trust undertakes this task on the Chief Executive's behalf. In such circumstances, the arrangements for clinical governance must ensure that the Chief Executive maintains an overview of complainants' concerns and the organisation's ability to deal with those concerns.

1.34 The response should:

- address the concerns expressed by the complainant and show that each element has been fully and fairly investigated;
- include an apology where things have gone wrong;
- report the action taken to prevent a recurrence;

³ Acting, Listening, Improving: A Training Manual on Effective Complaints Handling within the HPSS, HSS Executive, April 1996, under cover of PRSC (PR) 2/96

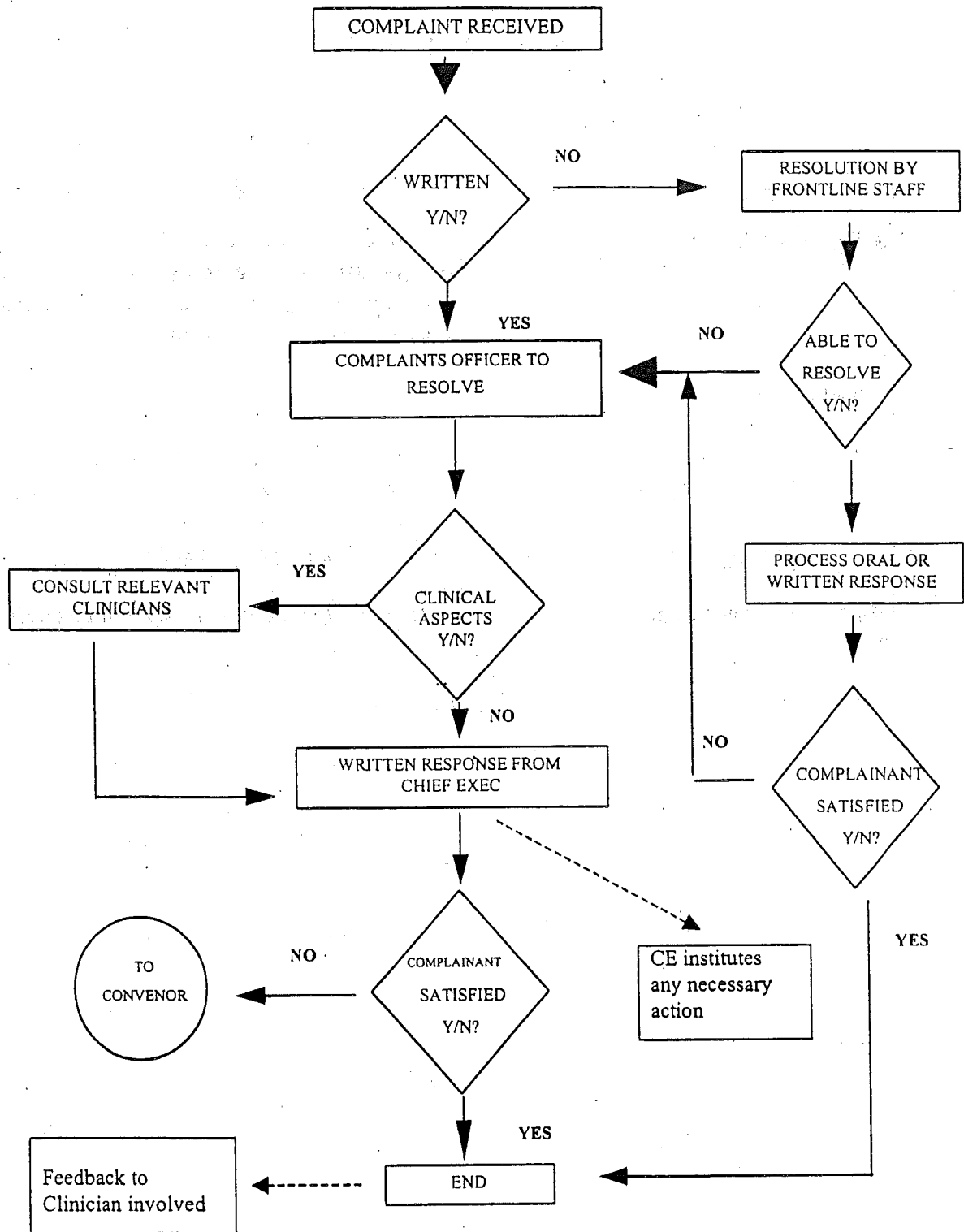
- inform the complainant of their right to seek advice from the health and social services councils;
- include the right to request an independent review of the complaint within **28 days** of the date of the letter if the complainant remains dissatisfied with any aspect of the response, and ask the complainant to clearly state the points on which he/she remains dissatisfied.

SUMMARY OF TARGET TIMESCALES

EVENT	TIME ALLOWED
Original complaint	6 months from event, or 6 months of becoming aware of a cause for complaint, but no longer than 12 months from event: discretion to extend
Local Resolution:	
Verbal complaint	Dealt with on the spot or referred
Acknowledgement	2 working days of receipt unless full response issued within 5 working days
Full Response	20 working days of receipt
Apply for Independent Review	28 calendar days of the date of response to Local Resolution

NB: A working day is any weekday (Monday to Friday) which is not a local or normal public holiday.

SUMMARY: LOCAL RESOLUTION



ROLE OF HEALTH AND SOCIAL SERVICES COUNCILS

1. Health and social services councils are independent bodies established by statute to represent the public interest in the HPSS.

2. The main duties of the health and social services councils are to:

- monitor the quality of local services;
- represent the public's interest in health and social services issues;
- provide information, advice and support on health and social services issues;
- offer advice, information and help to people who want to complain about a service.

3. If a person feels unable to deal with the complaint alone, the staff of the health and social services councils can offer a wide range of assistance and support at any stage of the complaints procedure. This assistance may take the form of:

- information on the procedure and advice on how to make a complaint;
- help in accessing medical/social services records;
- discussing the substance of the complaint and drafting letters;
- making telephone calls;
- support in preparing for meetings;
- support at meetings and independent reviews;
- referral to other agencies, for example advocacy services;
- preparing a request for an independent review; and
- preparing a complaint to the Commissioner for Complaints.

4. All advice, information and assistance with complaints are provided free of charge and are confidential.

ADVOCACY

1. Advocacy is recognised as an important way of giving people a stronger voice by helping them to make informed choices about, and to remain in control of, their own health and social care. Advocacy helps people gain access to information they need to understand the options open to them, and to make their views and wishes known.
2. Advocacy is not new. People do it every day for their children, for their elderly or disabled relatives, and for their friends. Concerned individuals do it for people who are particularly vulnerable or undervalued.
3. In the HPSS, advocacy has been available mainly for vulnerable groups, such as people with mental health problems, learning disabilities, and older people (including those with dementia). However, people who are normally confident and articulate can feel less able to cope because of illness, anxiety, and lack of knowledge and be intimidated by professional attitudes that may seem paternalistic and authoritarian.
4. Boards and Trusts should encourage the use of advocacy services, including those provided by health and social services councils, to facilitate access to the complaints procedure.

CONCILIATION

1. Conciliation is a voluntary process that seeks to resolve difficulties by examining and reviewing a complaint with the help of an outside person who is qualified, trained and experienced as a conciliator. Conciliation can be especially useful in resolving difficulties arising from a breakdown in the relationship between a health service professional and his/her patient/client. Boards and Trusts should offer to make a conciliation service available to the staff and the patient/client as early in the complaints resolution process as possible.
2. The aim of conciliation is to enable both parties to address the issues in a non-confrontational manner with the aim of reaching an agreement that both can accept. It is best used at an early stage in the handling of the complaint. The function of the conciliator is to assist the process, **not to impose a solution**. Any resolution of the complaint must come from the parties concerned. The conciliator seeks to clarify the issues and to help explore the options. Essentially, the conciliator works to ensure that good communication takes place between the parties.
3. Confidentiality is vital in the conciliation process. The conciliator should encourage the participants to explore the issues involved in the complaint in an open manner. The content of the conciliation process remains confidential and neither the conciliator nor the participants should provide information from the process to any other person. The conciliator should advise the Board/Trust when conciliation has ceased and whether a resolution was reached. No further details should be provided.
4. Conciliation can also be a useful means of resolving complaints where the complainant has requested an independent review but the convenor believes further local resolution would be appropriate, for example where the complaint involves a difficulty in a relationship with a member of staff. Boards should ensure that their induction training for convenors makes them aware of conciliation, its usefulness and limitations, and equips them to consider its use as a means of resolving appropriate complaints.
5. Serving members of health and social services councils are ineligible to take up posts as lay conciliators as there may be conflicting interests involved. It is not recommended that those engaged in advocacy take up posts as conciliators for the reasons outlined above. A helpful introduction to good practice in the use of conciliation is *Conciliation and Mediation in the NHS - a practical guide*, Bob Debell, Radcliffe Medical Press, 1997.

PATIENTS WITH MENTAL HEALTH PROBLEMS

1 Making a complaint about health and social care can be intimidating, especially for people with mental health problems or learning disabilities. Complainants should not be deterred from using the HPSS complaints procedures because clinical staff believe their complaints to be based on mental disorder.

2 Complaints made by people with learning disabilities, who are not mentally ill, should be treated in exactly the same way as complaints made by other patients. Special care must be taken to help all patients who have difficulties with communication.

3 There should be explicit arrangements for advising and supporting complainants with mental health problems or with learning disabilities. People suffering mental health problems are very vulnerable members of society and care needs to be taken to ensure that this is not an excuse not to investigate legitimate complaints.

4 If a patient makes a complaint during an acute illness, the complaints officer should register the complaint and consider advising the patient that inquiries into it should be delayed until the patient's condition has improved. The complaints officer will want to take medical advice on this matter. When the patient is feeling better, he/she should be asked whether he/she wishes to proceed with the complaint. A delay such as this will need either the agreement of the patient or someone who is able to act on behalf of the patient and who is independent of the complaints officer. The decision about whether a patient is well enough to proceed with the complaint should be made by a multi-disciplinary team, and the complaints officer should refer regularly to this team to establish when this point has been reached.

5. Where the complaints officer believes that a complaint should not be investigated because it appears that it is a manifestation of the patient's mental illness, a full report on the patient's mental state should be sought.

6. If the report confirms the complaints officer's view, a system should be set up whereby the current and any subsequent recurrent complaints are scrutinised by an independent assessor, such as a senior clinician or manager who is entirely independent of the patient's current clinical team. Each episode of complaining should be treated as a fresh complaint.

7. Where a complainant is alleging physical injury, a physical examination should be carried out without delay in each case by medical staff and clearly reported. If a patient refuses a physical examination, or if his or her mental state (for example, degree of agitation) makes this impossible, this should be clearly documented. A further physical examination should be attempted as soon as possible.

8. Very careful consideration must be given to complaints alleging offences that could be reportable to the police, and there should be explicit policies about the arrangements for such reporting. Staff need to be aware that a decision not to report an alleged offence is a serious decision, while the reporting of trivial or clearly delusional matters is unlikely to be in

the patient's best interests.

9. Particular attention should be paid to any suggestion of corroboration of the complaint from other patients, visitors, or staff. Such corroboration should be precisely recorded and careful consideration given to its relevance to any decision about delaying investigation of the complaint.

SECTION 2

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SECTION 2 - INDEPENDENT REVIEW

2.1 Complainants who are dissatisfied with the result of local resolution may request an independent review. This request should be made within **twenty-eight days** of the date of the letter concluding local resolution. Any request for an independent review received orally or in writing by any member of/or employee of the Trust/Board should be passed to the convenor immediately through the convenor's office. **A complainant does not have an automatic right to an independent review.**

Appointment of Convenors

2.2 HSS Boards are required to appoint one of their non-executive directors as a convenor. The workload in some Boards may require the appointment of more than one convenor and the Board may wish to consider appointing other people to this role who are not employees of the Board but who have received appropriate training. It is suggested that any such appointments are initially short term and, if successful, they can be extended. Appointments should be staggered where more than one convenor is appointed. Any person appointed in this way may carry out the full role of a convenor, including serving on a panel. All such convenors should be indemnified as if they were non-executive directors.

The Role of the Convenor

2.3 The rôle of the convenor is crucial in deciding whether there should be an independent review. It also provides complainants with an independent and informed view on whether any more can be done to resolve their complaint. The convenor must decide whether to:

- refer the complaint back for further local resolution (possibly suggesting that both parties might be offered conciliation);
- set up a panel to consider the complaint; or
- take no further action.

2.4 **It is not the convenor's role to seek a view on the merits or otherwise of the complaint or to investigate it.** The convenor should be fully apprised of guidance and issues relating to his/her role.

The Convenor's Office

2.5 Boards should provide any administrative support that the convenor needs. However, it is important that the convenor acts, and is seen to act, independently of the Board. Boards therefore should consider establishing a convenor's office. For further information see Annex 2A.

Action by the Convenor

2.6 The convenor is responsible for ensuring the complainant's request for an independent review is acknowledged in writing within **two working days**. The acknowledgement should:

- indicate how the independent review process request will be activated;
- request that the complainant or their representative set out their concerns in writing, stating why they are dissatisfied with the outcome of local resolution, if they have not already done so;
- indicate how to seek independent help and support from the health and social services councils and/or patient advocacy services.

2.7 The convenor is also responsible for ensuring that:

- the complained against is advised in writing as soon as possible of what the complainant has stated are his/her concerns;
- a full picture of the events relating to the complaint is obtained, including relevant medical records;
- appropriate clinical advice is taken when a complaint relates to the exercise of clinical judgement (see Annex 2B).
- the complaint is dealt with impartially;
- all opportunities for resolving the complaint during local resolution have been explored and fully exhausted.

2.8 In reaching a decision, the convenor must:

- consult an independent review panel lay chairman;
- take appropriate clinical or professional advice where the complaint relates in whole or part to action taken in consequence of the exercise of clinical judgement;

This process must be completed within **twenty working days** of the date of receipt of the complainant's request by the convenor.

2.9 In considering the request for an independent review, the convenor must **not**:

- re-run the action taken during local resolution;
- investigate or attempt to resolve the complaint on his/her own;
- try to defend either those complained against or the complainant.

Consulting a Lay Chairman

2.10 A lay chairman will assist the convenor in making an independent assessment of the complaint. However, deciding whether to establish a panel is the convenor's sole responsibility. The convenor must explain in writing his/her decision to the complainant, and any person alleged in the complaint to have taken any part in the action complained of. (See Annex 2C - role of independent lay chairman)

Clinical Complaints

2.11 The convenor must seek appropriate clinical advice where a complaint relates in whole or in part to action taken as a consequence of the exercise of clinical judgement. Clinical advice initially should be sought from the medical director of the Board, or equivalent professional officer. Where these officers are the subject of the complaint, or where possible conflict of interest arises (for example, if this person has already been involved in the handling of the complaint) then the convenor should seek the advice of an independent professional person. This may be one of the Department's professional officers, or someone from the list of clinical assessors for panels. See Annex 2B.

2.12 Clinical advice should relate to whether the response already made to the clinical aspects of the complaint at local resolution has been thorough, correct and fair, and in terms the complainant can understand. If not, whether further local resolution or a panel would be an appropriate next step. In reaching a view on this, the clinical adviser may need to consider whether appropriate care or treatment was provided. Clinical advice should not be given to the convenor in the form of a report passing judgement on the quality or adequacy of the clinical care given to the patient. Clinical advice must be restricted to answering the question asked.

Social Services Complaints

2.13 Where the convenor considers that a complaint relates in whole or in part to action taken in consequence of the exercise of professional social work judgement (i.e. any judgement that is made by a member of the social work profession in the HPSS by virtue of their knowledge and skill, which a layman could not make), he/she must take appropriate professional advice in deciding whether to convene a panel.

2.14 Advice should be sought in the first instance from the Board's Director of Social Services who may in turn suggest someone else who is qualified to advise. Where the Director is the subject of the complaint, or where possible conflict of interest arises, some other appropriate independent opinion should be sought. This may be the Department's Chief Inspector of Social Services, or someone from the list of clinical assessors for panels.

Decisions of the Convenor

2.15 After seeking appropriate advice, the convenor must decide whether to:

- take no further action;
- refer the complaint back for further local resolution (perhaps involving conciliation - see Annex 1C); or
- set up a panel to consider the complaint.

2.16 The reasons for any decision to refuse a panel or to refer back to local resolution should be clearly stated and the Chief Executive of the Trust/Board informed accordingly.

2.17 The convenor may decide that local resolution has been adequately pursued - in that the complaint has been properly investigated and an appropriate explanation given - and that nothing further can be done, even though the complainant remains dissatisfied. The complainant should be advised in writing of the reason for this decision and informed of their right to put their case directly to the Commissioner for Complaints. See Section 3.

2.18 The letter should refer to the following:

- consultation with the independent lay chair;
- the fact that clinical advice has been sought where the complaint is of a clinical nature;
- each of the complainant's concerns having been fully addressed.

Referral for Local Resolution

2.19 Where, having taken any appropriate clinical advice, the convenor feels that local resolution has not adequately addressed a complainant's concerns, the case should be passed back to the service provider for further local consideration, perhaps involving conciliation. The complainant should be informed in writing of the reason for this decision.

2.20 If the complainant remains dissatisfied following the referral he/she may ask the convenor to reconsider whether an independent review panel should be convened.

Convening a Panel

2.21 When the convenor feels, for whatever reason, that further local resolution would not be appropriate and that there are grounds for the complainant's continued dissatisfaction, he/she may decide to convene an independent review panel. The cost of instituting an independent review panel is not a reason for refusing to convene a panel.

2.22 Convenors should not set up an independent review panel where:

- the complainant has stated orally or in writing that he/she intends to pursue a remedy by way of proceeding in a court of law; or
- he/she considers there may be a case for a disciplinary investigation. See Section 4 Useful Information.

2.23 In either of these cases, the papers should be referred immediately to the person in the Board who deals with these matters.

2.24 Consideration of whether to set up an independent review panel should follow automatically if disciplinary action is not pursued. Should a complainant decide against proceeding with litigation, they can ask for their request for an independent review to be re-considered.

2.25 The convenor's decision to establish a panel must be given in writing to:

- the complainant;
- any person alleged in the complaint to have taken any part in the action complained about;
- the Chief Executive of the relevant Trust/Board/independent provider;
- senior partner for FHS complaints.

Terms of Reference

2.26 Having decided to establish a panel, the convenor must define its terms of reference drawing on the complainant's written statement of complaint. Terms of reference set out what the panel is to investigate, for example:

- *'What information was made available to Mrs X about her husband's condition'.*
- *'How was Mr 'X's' discharge from hospital managed'.*

2.27 The convenor must inform those listed at para 2.25 and the nominated panel members of the terms of reference. If the complainant disagrees with the terms of reference he/she may ask the convenor to reconsider them. While the convenor's decision is final, the complainant should be advised of their right to take the matter up with the Ombudsman if they remain dissatisfied.

2.28 In order to avoid delay, Boards are advised to give delegated powers to the Chief Executive and an alternate executive director to establish a panel as a committee of the Board as soon as the decision of its convenor becomes known.

Appointment of Panel Members

2.29 The Convenors Office is responsible for communicating with, ascertaining availability of, and formally appointing the chosen panel members.

2.30 Independent review panels must be composed of three members:

- independent lay chairman (from the Board list);
- the convenor (non-executive of the Board or appointed person); and
- a third independent lay panel member (from the Board list).

2.31 Where, having taken appropriate clinical advice, the convenor decides that the complaint has clinical elements, the panel must be advised by at least two independent clinical assessors. See Annex 2D. See Annex 2C for Role of Panel Members.

2.32 In considering a complaint from, or on behalf of, a person suffering from mental disorder, the convenor should consider co-opting a member of the Mental Health Commission onto a panel.

2.33 In order to avoid accusations of bias members or officers of health and social services councils will be excluded from panel membership.

2.34 The convenor's office should arrange for panel members and clinical assessors to:

- be told the composition of the panel and its assessors;
- have indemnity cover. In the most unlikely event of legal proceedings, no financial risk would be taken by the panel member or clinical assessor, assuming they acted in good faith;
- have appropriate background and briefing papers.

Role of Assessors

2.35 The role of the clinical assessors is to advise the panel, as and when required, on those aspects of the complaint involving clinical judgement having regard to this guidance and the advice of their professional body, e.g. the appropriate Royal College. Ideally, the assessors should provide an agreed report. This report should be in two parts:

- a summary report that excludes all personal clinical information relative to the patient/client being examined; and
- a confidential annex that incorporates any personal, clinical information that the clinical assessors feel is essential to enable the panel to make sense of the complaint.

2.36 **The confidential annex will only be made available to the panel members, the complainant, the patient/client, if a different person from the complainant and alive and competent to receive it, and the complained against but to no-one else (see Annex 2D).**

Role of Independent Lay Chairman

2.37 The role of independent lay chairman is to:

- provide independent advice and support during the convening period;
- chair panels when established;
- promptly issue the report of the panel.

2.38 The responsibility for leading the organisation of the panel's business rests with its chairman. See Annex 2C.

The Panel's Remit

2.39 The panel is established to:

- consider a complaint whose terms of reference have been clearly defined;
- investigate the facts of the case, taking into account all the evidence;
- investigate the complainant's concerns in a conciliatory way;
- provide a written report setting out its conclusions with appropriate comments and suggestions.

Conduct of Panel

2.40 The Chairman, in consultation with the other members of the panel, will decide how to consider the complaint keeping in mind the Directions and this guidance. However, the general rules of conduct for the panel are:

- the process should be informal, flexible, and not confrontational, adversarial, legalistic or tribunal-like;
- its proceedings must be held in private;
- it has a right of access to all the records relating to the handling of the complaint;
- it must be able to see the relevant parts of the patient's health or social services records when dealing with a clinical/social services complaint;
- the complainant, and any person complained against, must have a reasonable opportunity to express their views;
- advice may be taken from appropriately appointed assessors if the complaint is a clinical one;
- the complainant, the complained against or any other person invited to give information to the panel, may be accompanied by a person or persons of their choosing to provide support, for example a friend, relative or health and social services council representative;
- if the person supporting the complainant or the complained against has a legal background or qualification he/she cannot act in a legal capacity;
- only with the approval of the chairman may those accompanying the complainant and the complained against contribute to the panel's proceedings;
- the needs of the complainant, including the specific needs of those from ethnic minority communities and those with physical and other disabilities, should be considered fully. For example, people with mental health problems may find it hard to concentrate and require regular breaks from the proceedings;
- reasonable records of the panel's proceedings should be kept to facilitate the preparation of its report. Tape recording panel proceedings or using stenographic or shorthand notewriters to provide a verbatim record of the discussion is not recommended.

Concluding the Investigation

2.41 The panel chairman may find it appropriate to meet the complainant as a way of rounding off resolution of the complaint. This may be particularly helpful in a complex case to ensure that the two parties understand the outcomes. If the complaint relates to clinical matters, at least one assessor should be present to give a personal explanation to the complainant of any clinical findings. Where there are assessors from different disciplines, each should be present.

Report of the Panel

2.42 At the conclusion of the panel's work, a report will be produced. The chairman is responsible for issuing the report within the target timescale of **sixty working**

days from the date of the formal appointment of the panel and assessors. The Chairman may delegate the writing of sections of the draft to panel members and, subsequently, edit the report into a final draft. **However, the final report remains the responsibility of the Chairman.**

2.43 The panel should provide the complainant and the complained against with the opportunity to check its draft report (which might not include the final conclusions of the panel) for factual accuracy within, say, a period of **fourteen days** before it is formally issued in its final form. The assessors' report should be made available in time, for its circulation with the panel's draft. Those receiving the draft should be reminded that the report is confidential to them and the panel members.

Report Structure

2.44 There is no right or wrong way of framing and structuring a panel report. The report of the panel **must** include:

- findings of fact relevant to the complaint;
- the opinion of the panel on the complaint, having regard to the findings of fact;
- the reasons for the panel's opinion;
- the report of the assessors; and
- where the panel disagree with any matter included in the report of the assessors, the reason for its disagreement.

2.45 The panel may include in its report:

- action the service provider might take to satisfy the complainant; and
- suggestions arising from its investigation that it considers would improve the services provided or the provider's efficiency and effectiveness.

2.46 **The report of the panel must not suggest that disciplinary proceedings be taken against any person.**

2.47 **Panel chairmen have the right to withhold any part of the panel's report and all or part of the assessors' report in order to ensure confidentiality of clinical information.** Panel chairs should judge each case on its own merits. In exceptional cases, the chairman may decide that the complainant should not see the full report. This may be because the chairman considers that it would be detrimental to the complainant's health. Or because the chairman judges it to contain information by or about a third party which, if the complainant was allowed to see it, would constitute a breach of confidentiality (for further guidance see Section 4, Useful Information).

2.48 For further good practice on Report Structure, see Annex 2E.

Report Circulation

2.49 Unless the chairman decides otherwise, the panel's final report, including the assessors' summary report and the confidential annex, should be sent to the:

- complainant;
- patient/client, if a different person from the complainant and alive and competent to receive it;
- panel members;
- complained against;
- clinical assessors.

2.50 Unless the chairman decides otherwise, the panel's final report including the assessor's summary report, **but not the confidential annex**, will have a restricted circulation. It should be sent to:

- any person interviewed by the panel (other than the complainant or the complained against);
- the Trust/Board Chairman and Chief Executive;
- the senior partner in the case of FHS complaints;
- the Chairman and Chief Executive of the independent provider, where the complaint involves services provided by the independent sector; and
- the service commissioner.

2.51 The panel shall not send the report to any other person or body. The complainant may wish to show the report to a representative of the health and social services council or other appropriate adviser.

Completion of the Complaints Procedure

2.52 Following receipt of the panel's report, the Trust Chief Executive/Independent Provider Chief Executive may need to show the report, or sections of it, to his/her board so that it can consider the action needed to implement its recommendation(s). Any such arrangement must protect the overall confidentiality of the report.

2.53 The Chief Executive is responsible for ensuring the board's decisions are communicated quickly and clearly to the complainant. The Chief Executive or a designated senior Director (see para.1.29) should send a letter to the complainant, within **twenty working days** from the receipt of the panel's report. This should inform the complainant of:

- any matters such as a formal apology or approval of an ex-gratia payment;
- action being taken as a result of the panel's deliberations and an indication of the timescale for its implementation;
- his/her right to refer the complaint to the Commissioner for Complaints .

2.54 The issue of this letter completes the HPSS complaints process. If, following this action, the board takes further decisions relating to the outcome of the case, then the complainant should be informed by the Chief Executive.

Administrative Support, Fees and Expenses

2.55 The panel and its assessors should be provided with appropriate administrative

support.

2.56 The Board establishing the panel will meet all the expenses arising out of the independent review process, including any allowances paid to panel members and any payments and expenses paid to assessors. Assessors who find it more convenient to make their own arrangements for, say, typing their reports, will need to agree a rate of payment with the Board in advance.

2.57 The Board should speak to assessors to estimate the likely time commitment in individual cases before work begins and, where appropriate, to authorise additional work. Payment will be for work done (i.e. there is no four day minimum payment). While the amount to be paid in an individual case is a matter for local decision, it would be understandable if assessors were not willing to contract for less than half a day.

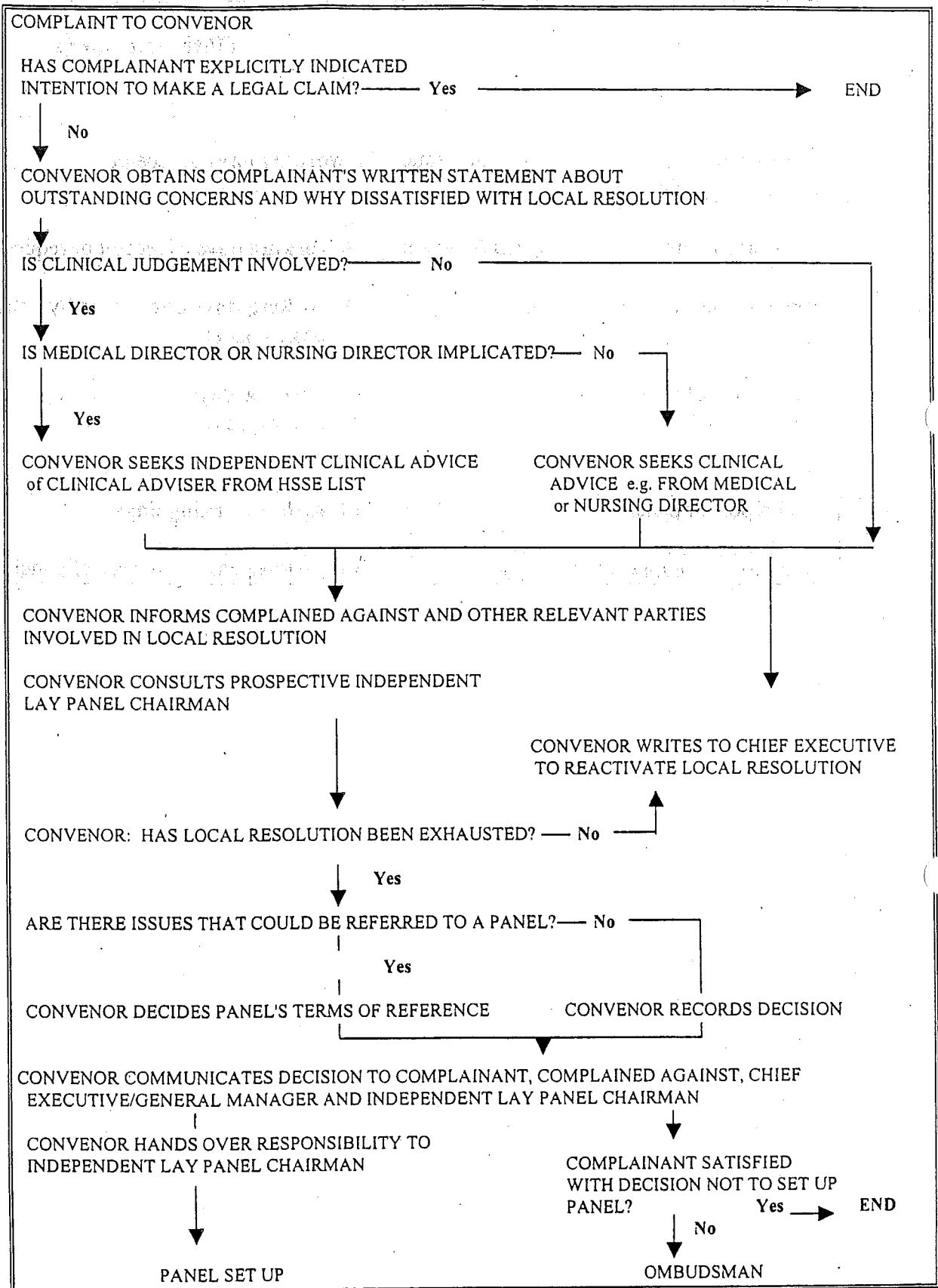
2.58 Panel members, including convenors, are eligible for travel expenses and subsistence and loss of earnings allowances⁴. Boards should indicate in appointment letters that the particular panel chairman and the third panel member will be appropriately indemnified.

⁴ Current rates are set out in HSS Executive circular PRSC (PR) 1/96

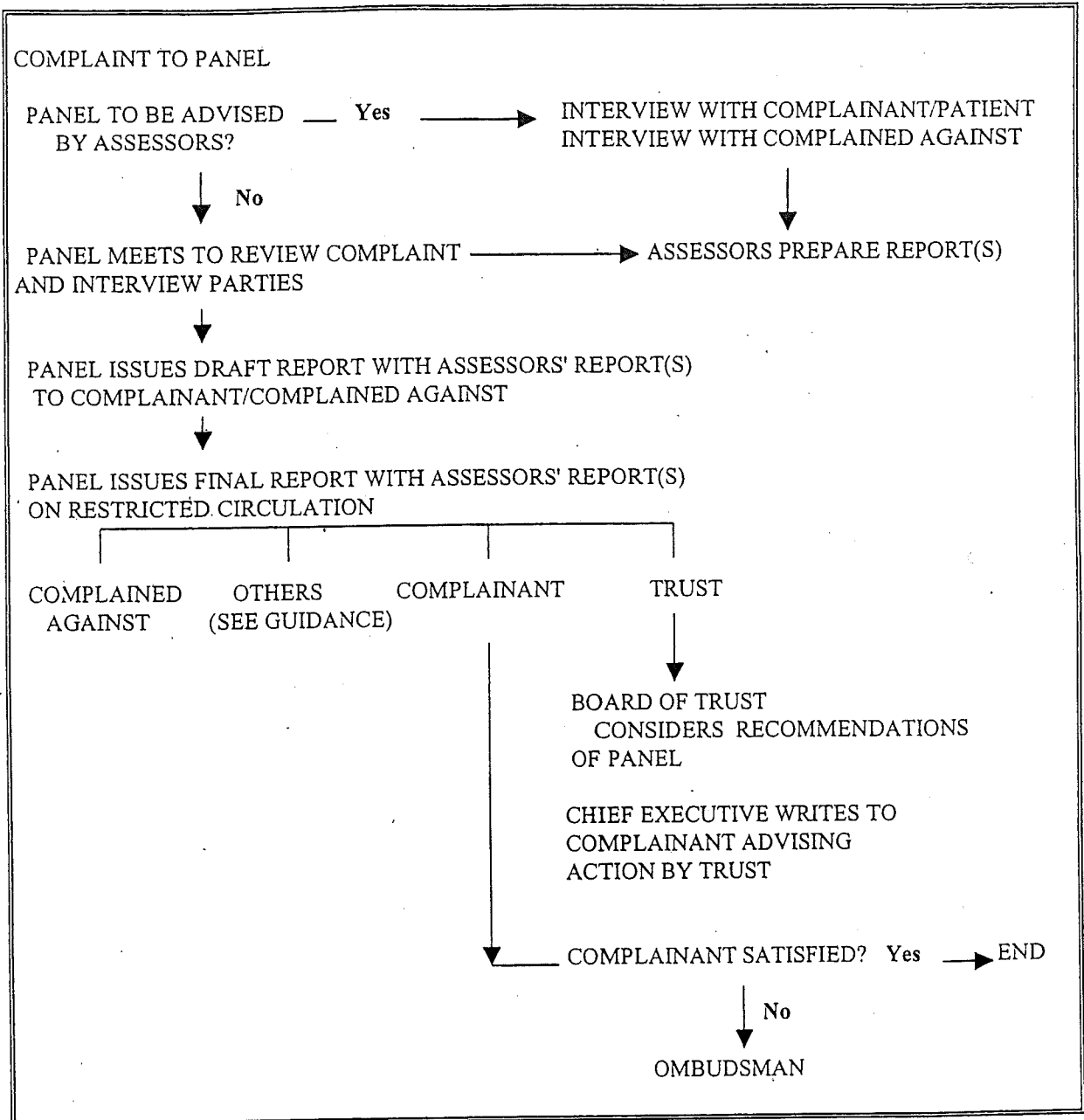
TARGET TIMESCALES: A SUMMARY

EVENT	TIME ALLOWED
Acknowledgement by convenor of request for independent review	2 working days of receipt
Decision by convenor to set up panel, or not	20 working days of receipt of request
Appointment of panel members	20 working days of decision by convenor to establish a panel
Draft report of panel	50 working days of formal appointment of panel and assessors
Final report of panel	10 further working days
Response to complainant by Trust	20 working days of receipt of panel's report

CONVENING - A SUMMARY



INDEPENDENT REVIEW – A SUMMARY



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CHECKLIST FOR CONVENOR'S OFFICE

1. It is important that the convenor acts, and is seen to act, independently of the Board. The office therefore should use its own letterhead paper headed 'Office of the Independent Lay Convenor'. The use of a PO Box address may reinforce independence of the convenor. A senior member of staff should manage the convenor's office.

2. Responsibility for the following action rests with the convenor supported by administrative staff as appropriate.

Initial Action

3. The convenor should:

- acknowledge the oral or written request for an independent review within 2 working days;
- ask the complainant to provide a written statement of why he/she remains dissatisfied, if not already provided;
- immediately obtain the name of a person held on the list of independent lay panel chairmen;
- call for all papers and documents relating to the local resolution;
- advise anyone who is complained against;
- advise the complainant that help is available from the health and social services council or other source of patients' support;
- seek appropriate independent clinical advice where there is a clinical element to the complaint;
- consult an independent lay panel chairman, and decide whether or not a panel should be set up; and
- liaise with other convenors if the complaint involves more than one body.

Independent Review refused

4. The following must be informed in writing of the reasons for the decision, and whether local resolution should be reactivated:

- the complainant, who should be advised of the right to approach the Ombudsman;
- the Trust Chief Executive/senior FHS partner/Independent Provider Chief Executive;
- any person who is complained against;
- the independent lay panel chairman, and anyone else who was consulted.

Panel is to be convened

5. The following must be informed in writing of the decision, the agreed terms of reference for the panel, any issues excluded from its consideration and why, and when the panel is likely to be set up:

- the complainant;
- any person who is complained against;
- the independent lay panel chairman consulted;
- the Trust Chief Executive/Senior FHS partner/independent provider Chief Executive.

6. The Board should provide:

- the lay panel chairman;
- the third panel member;
- the names of clinical assessors required to assist the panel.

7. The convenor's office should:

- formally appoint clinical assessors;
- provide the panel members and the clinical assessors with all necessary papers, including the complainant's written statement of concern;
- provide indemnity cover for the panel and its assessors;
- inform the complainant of the names of the appointed panel members and assessors.

ROLE OF THE CLINICAL ADVISER AT CONVENING STAGE

1. Convenors are reminded of the need to obtain appropriate clinical advice when necessary. Such **clinical advice should relate to whether the response already made to the clinical aspects of the complaint has been thorough, correct and fair and in terms the complainant can understand; and if not, whether further local resolution or a panel would be an appropriate next step.**
2. At the convening stage, the clinical adviser is being asked for their opinion on whether the clinical aspects of the complaint have been fully and fairly addressed at local resolution. They are not being asked to give an opinion on, or a report on the clinical aspects of the care. This is the clinical assessor's task whenever a panel is convened.
3. There will be cases where the clinical adviser needs to form an opinion on the clinical care given, but this should only be used to give advice on whether the clinical aspects of the case have been fully and fairly addressed at local resolution. Any opinion on the clinical care received should **NOT** be passed to the convenor.

ROLE OF INDEPENDENT LAY CHAIRMAN AND THIRD PANEL MEMBER

The Board's Role

1. Boards are responsible for putting in place arrangements for holding lists of independent chairmen and lay panel members. Boards must organise access to and training of chairmen and panel members⁵.
2. Boards should assist each other in finding an appropriate chairman and panel members where circumstances demand a wider trawl. Boards should organise the allocation of chairmen and members in a balanced independent way, so that no one person becomes regularly linked with a particular Trust or particular type of complaint.

The Chairman's Role

3. At the convening stage, the lay chairman should:
 - provide the convenor with support and advice; and
 - keep a record of the part he/she played at this stage.
4. When appointed to a panel, the lay chairman, with appropriate administrative support, will be responsible for ensuring that:
 - all panel members have a clear understanding of the panel's terms of reference;
 - arranging and chairing all meetings of the panel;
 - ensuring that members and assessors have all necessary documents;
 - ensuring reasonable records of the panel proceedings are kept.
5. The Chairman is responsible, in consultation with the other panel members, for:
 - deciding how the panel will conduct its business;
 - arranging meetings with the complainant and complained against and ensuring that, if appropriate, at least one assessor is present;
 - discussing the required format of their report with assessors;
 - leading the panel in drafting its report;
 - setting out the agreed conclusions and findings; and any comments or recommendations; and
 - ensuring no recommendation relates to disciplinary matters;
 - circulating the draft report to the complainant and complained against to check factual accuracy.

⁵ Independent Review - A Training and Information Pack for Independent Review Panel Members, HSS Executive, 1996

6. The Chairman is responsible for finalising the report and ensuring the final report (including the clinical assessors' summary report and the confidential annex) is sent to:

- the complainant;
- the patient/client if a different person from the complainant and alive and competent to receive it;
- the complained against;
- the panel members;
- the clinical assessors.

7. A copy of the final report, (including the assessors' summary report but not the confidential annex) should also be sent to:

- any person named in the complaint;
- any person interviewed by the panel at the Chairman's discretion;
- the Trust/Board Chairman and Chief Executive;
- senior FHS partner;
- the Chairman and Chief Executive of the independent provider where the complaint is about services provided by the independent sector;
- Service commissioner.

8. **Where there is disagreement within the panel, the chairman's decision will be final.**

9. A sample checklist that may help chairmen to 'sign-off' the final report is given at Annex 2F.

The panel member's role

10. The third panel member must:

- seek to resolve the complaint in a fair and impartial manner;
- work under the terms of reference laid down for the panel;
- consider the information gleaned from reports and interviews in a fair and unbiased way;
- consider the assessors' advice on clinical matters;
- contribute to the development of appropriate ways of working to gain information from interviewees;
- contribute with the other panel members to the completion of the report.

ROLE OF CLINICAL ASSESSORS

Appointment of Clinical Assessors

1. Where the complaint is wholly or partly related to clinical matters, independent review panels must be advised by at least two independent clinical assessors on relevant matters. Assessors are not formally part of the panel; their role is to advise on clinical issues and, wherever possible, make a joint report, to the panel. The assessors should decide, in consultation with the panel, how to exercise their responsibilities having regard to guidance issued by the Department⁶ and their professional bodies. **Assessors should not act independently to resolve a complaint.**

Nomination of Assessors

2. On receipt of a request for assessors to advise a panel, the Board should take advice from the professional body on the selection of appropriate assessors from the list held centrally by the Department.

3. Where a complaint raises issues about more than one medical discipline or health and social care profession, at least one assessor from each relevant discipline or profession should be appointed to advise the panel. In cases where only one discipline is under scrutiny, two assessors should be appointed from that discipline. In some cases it may be appropriate for there to be more than two assessors and it will be for the panel chairman to make this decision.

4. The Department holds the UK-wide lists of assessors for all types of complaints. Professional organisations are involved in ensuring lists are kept up to date.

5. Clinical assessors for hospital and community health and social services should be selected from outside the Board area. The Board's convenor's office will check availability and issue a formal letter of appointment, provide indemnity cover and copies of all necessary documents.

Gathering Information

6. One assessor in each discipline must be present when the panel, or a member delegated by it, interviews either or both of the parties about matters of clinical judgement.

7. The assessors must have access to all of the patient's/client's health or social services records relating to the handling of the complaint held by the Trust. They will need to acquaint themselves with any circumstances where the patient/client might have been denied access to information in the record, or where the patient/client has expressed the wish for information to be withheld from other parties.

⁶ Independent Review - A Briefing Pack for Clinical Assessors, HSSE, October 1996

8. The assessors may interview the patient/client who is the subject of the complaint with their consent. The patient/client may have someone of their choosing present. These interviews may be held before the day the panel is due to meet or on the same day. The Assessors may also interview any person complained against, who may also have a person of their choosing present. Assessors must take care not to break any third-party confidence. Assessors should not normally explain their findings to either the patient/client or complainant before advising the panel of their views.

9. Where a patient's/client's health or social services record is no longer in the possession of the complained against, the Trust or FHS practitioner should make every effort to provide them with access to it for the purpose of framing a response.

The Assessor's Report

10. The assessors' report/s should be divided into two parts:

- a summary report that excludes all personal clinical information relative to the patient/client being examined; and
- a confidential annex that incorporates any personal, clinical information that the clinical assessors feel is essential to enable the panel to make sense of the complaint.

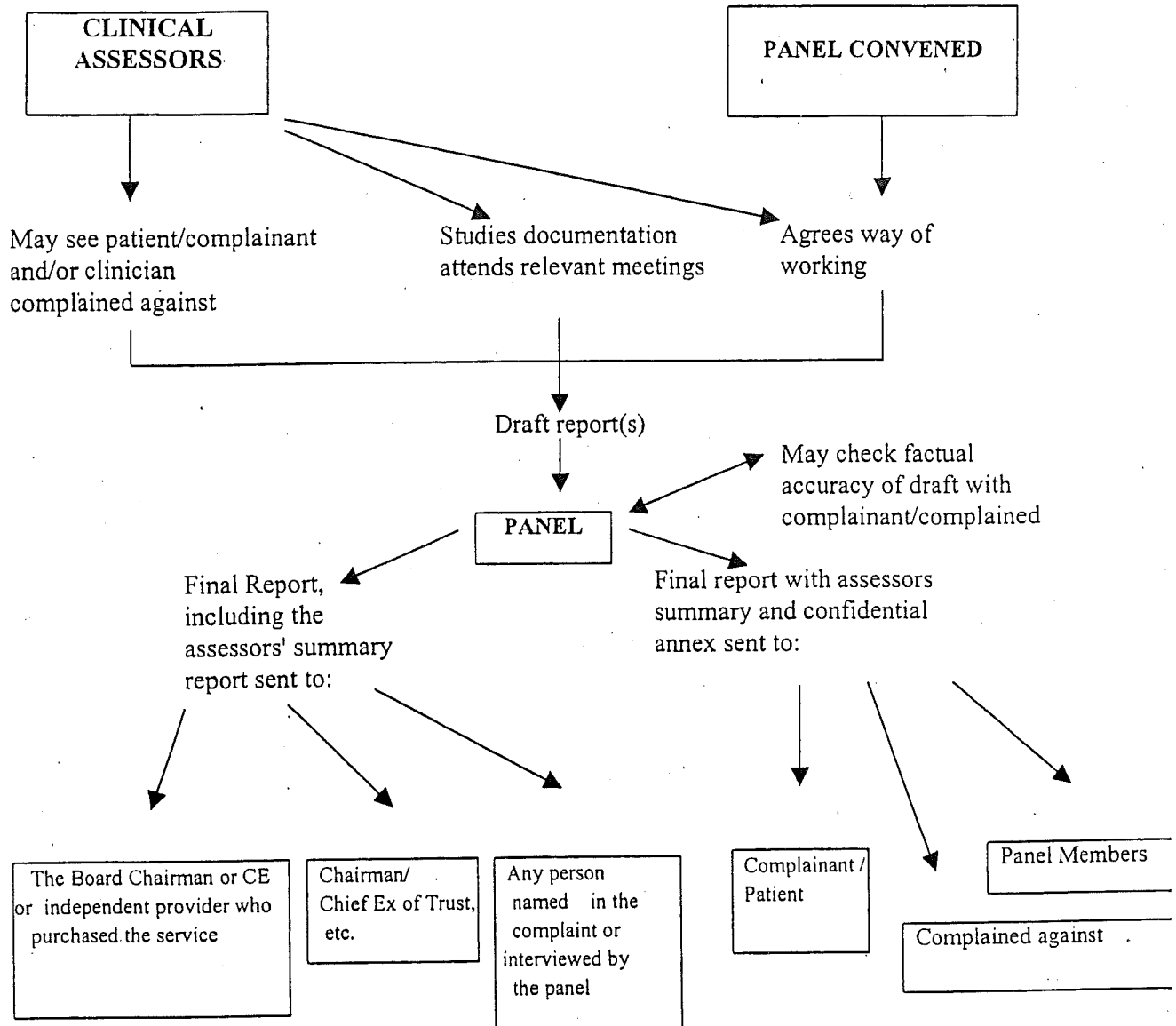
11. The assessors' summary report will be attached to the panel's final report when it is issued. **The confidential annex will only be made available to the panel, the complainant and the complained against.**

12. The assessors' report should not be made available to the complainant or the complained against before it is made available to panel members. The panel may decide, in consultation with the assessors, to release the report to the complainant and the complained against if they believe this might aid resolution of the complaint. Otherwise the assessors' report will only be made available to them when the panel's draft report is issued for checking its factual accuracy.

13. Assessors should remember that their report may be made available at a later date to other than panel members and ensure that neither it, nor the confidential annex contains information that might cause serious harm to the physical or mental health of the patient/client or of any individual. They should also ensure that it does not contain information about, or provided by a third party (other than a health professional involved in the patient's care) who could be identified from that information, unless he/she has consented to such a disclosure.

14. **If the panel disagrees with the assessors' report, it must discuss this with them and, if the matter cannot be resolved, state in its report its reason for doing so.**

ROLE OF CLINICAL ASSESSORS



STATE OF TEXAS

COUNTY OF DALLAS

BY _____
CLERK OF COURTS

REPORT STRUCTURE

1. There is no right or wrong way of framing and structuring the panel report. However, experience suggests the report should:
 - address each issue in the terms of reference;
 - include a brief summary of the background, identifying the complaints considered. It is not necessary to include a case history;
 - summarise all the oral evidence given to the panel for each aspect of the complaint, referring, as necessary, to documentary evidence from the contemporaneous records and from correspondence or other sources;
 - explain the findings for each aspect of the complaint clearly;
 - consider whether any matters could have been handled better and whether a recommendation would be appropriate; (Recommendations should not relate to issues of a disciplinary nature.)
 - provide clear explanations of meaning if it is necessary to use abbreviations and HPSS terminology;
 - be short and focused on the main concerns of the complainant;
 - be circulated to the complainant and complained against in its draft form to check for factual accuracy.

2. When circulating the draft report:
 - fourteen days can be considered a reasonable consultation period;
 - remind those receiving the draft that the report is confidential to them and the panel members;
 - ask the complainant, and anyone complained against, to inform the panel, if he/she wishes to consult on the content of the draft report with an adviser who has not been previously involved in the complaint, e.g. the health and social services council.

3. The panel may decide to feed the report back in person to the complainant and complained against.

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CHECKLIST FOR INDEPENDENT REVIEW PANEL REPORTS

A. DOES THE PANEL'S REPORT MEET THE REQUIRED STANDARD?

Compulsory Elements - covers points which the guidance¹ and directions² stipulate must be covered.

Tick for Yes

- | | | |
|----|---|--------------------------|
| 1. | Does the report include all relevant findings of fact? | <input type="checkbox"/> |
| 2. | Has the panel expressed its opinion with regard to the facts ? | <input type="checkbox"/> |
| 3. | Has the panel given reasons for its opinions ? | <input type="checkbox"/> |
| 4. | If the complaint is clinical, is the assessors' report appended ? | <input type="checkbox"/> |
| 5. | If the panel disagrees with the assessors have they given reasons ? | <input type="checkbox"/> |
| 6. | The report <u>must not</u> suggest disciplinary proceedings against anyone. Has it complied with this ? | <input type="checkbox"/> |

Discretionary Elements - covers points, which the guidance suggests, may be included in the report but which are not compulsory.

- | | | |
|----|--|--------------------------|
| 7. | Does the report include suggestions on ways to improve services ? | <input type="checkbox"/> |
| 8. | Does the report include suggestions on ways to improve efficiency/effectiveness ? | <input type="checkbox"/> |
| 9. | Does the report suggest action which the HSS Trust / Board / FHS practitioner / independent provider might take to satisfy the complainant ? | <input type="checkbox"/> |

¹ *Complaints - Listening...Acting...Improving: Guidance on implementation of the HPSS Complaints Procedure,*
issued 25 March 1996 under cover of HSSE circular PRSC (PR) 1/96.

² The HPSS Complaints Procedures Directions (NI) 1996
 - articles 25 (1) (b) assessors' report, 27 (1-5) report of panel;
 Miscellaneous Complaints Procedures Directions (NI) 1996
 - articles 26 (1) (b) assessors' report, 28 (1-5) report of panel;
 The HPSS (Special Agencies) Complaints Procedures Directions (NI) 1996
 - articles 25 (1) (b) assessors' report, 27 (1-5) report of panel;
 Directions to HSS Boards for Dealing with Complaints about FHS Practitioners
 - articles 32 (1) (b) assessors' report, 34 (1-5) report of panel;

Good Practice - covers general points of good practice.

10. Is the report dated ?
11. Is it signed ?
12. Are the names and status of panel members given? (e.g.: chairman , convenor, independent lay member)?
13. Is there information on the qualifications and speciality of each assessor ?
14. Does the report make clear what use the panel has made of the assessors' advice?
15. Is clinical evidence presented so that a lay person can understand it ?
16. Does the report contain the necessary background information to make sense of the complaint?
17. Are the terms of reference (TOR) stated clearly at the beginning of the report?
18. Does it say whether the TOR was agreed with the complainant ?
19. Have all the terms of reference been fully addressed in the report ?
20. Does the report include information on how the review was conducted ?
21. Does it say who gave oral and/or written evidence ?
22. If the complaint is clinical, have all relevant clinicians given evidence ?
23. Does the report refer to all the oral and documentary evidence needed to support the findings of fact and opinions?
24. Is it clear in the report which type of evidence is being referred to (e.g.: oral/written)?
25. If suggestions/recommendations are given, are they clear and unambiguous?
26. Do they follow logically from the findings ?
27. Does the report say whether the complainant saw all or part of the report in draft?
28. Is the report factually accurate?

B: ASSESSORS' REPORT

29. Have the assessors provided a written report as required to under the directions ?
30. Is it dated ?
31. Is it signed ?
32. Are the assessors' qualifications given ?
33. Do the assessors have appropriate qualifications/experience ?

- 34. Is it clear on what issues the assessors were asked to advise ?
- 35. Is it clear what written or oral evidence they had in giving their advice ?
- 36. Does the assessors' report express the views of both/all assessors ?
- 37. If the assessors reported separately, are both reports attached ?
- 38. If a joint report, is it clear where they agree and/or disagree ?
- 39. Does the report explain clinical terms ?
- 40. Does it reach clear conclusions supported by evidence/expert opinion ?

C: CIRCULATION OF THE PANEL'S DRAFT REPORT

The guidance says that the panel may circulate the draft report so that it can be checked for factual accuracy. Circulation should be restricted to those who need to see it.

- 41. Was the draft report circulated to:
 - (a) the complainant ?
 - (b) any person complained against ?
- 42. Was the assessors' report issued with the draft report ?

D: CIRCULATION OF THE PANEL'S FINAL REPORT

See question 47 for reports about FHS practitioners.

- 43. Was the report issued to:
 - (a) the complainant ?
 - (b) the patient/client, if he/she is not the complainant ?
 - (c) the person subject to the complaint ?
 - (d) anyone else who was interviewed by the panel (*only where appropriate - see 46a*) ?
 - (e) the assessors (*only where appropriate - see 46b*) ?
 - (f) the Chairman of the HSS Trust / Board ?
 - (g) the Chief Executive of the HSS Trust / Board / independent provider / FHS practitioner ?

Withholding the Panel Report - chairs have the right to withhold any part of the report where it is necessary to protect a person's confidentiality or health and welfare.

- 44. In order to protect confidentiality was the report/part of the report withheld from:
 - (a) a relevant person ?
 - (b) any third party ?

45. Was the report/part of the report withheld to protect the health and social welfare of:

- (a) the complainant ?
- (c) a relevant person ?
- (d) a third party ?

Extracts from the Report - in order to protect confidentiality, chairs have discretion to only send extracts from the report to interested parties. This could include sections referring to named individuals, i.e. interviewees, while assessors may only need to see the summary of findings and recommendations.

46. Were relevant extracts (*where appropriate*) sent to:

- (a) anyone else who was interviewed by the panel ?
- (b) the assessors ?

Complaints about FHS Practitioners - the guidance and FHS directions outline arrangements for issuing reports about FHS practitioners. Chairs must make any circulation requirements clear to HSS Board CEs when issuing the final report on a FHS complaint. See also questions 47-49 on protecting confidentiality.

47. Was the report issued to the Chief Executive of the HSS Board ?

48. Was the Chief Executive instructed to forward the report, as required, to:

- (a) the complainant ?
- (b) the FHS practitioner complained about ?
- (c) any person who is not a participant but who was interviewed by the panel (*only where appropriate - see 46a*) ?
- (d) the patient if he/she is not the complainant ?
- (e) the assessors (*only where appropriate - see 46b*) ?
- (f) the chairman of the HSS Board ?

Commissioner for Complaints - chairs must ensure that complainants are aware of their right to contact the NI Commissioner for Complaints.

49. Did the copy sent to the complainant include a notice explaining their right to approach the Commissioner for Complaints if they are not content with the outcome of the review ?

SECTION 3

ROLE OF THE COMMISSIONER FOR COMPLAINTS (THE OMBUDSMAN)

- The Ombudsman's Jurisdiction
- What can the Ombudsman investigate?
- Is there anything the Ombudsman can't investigate?
- What can the Ombudsman do for the complainant?
- The Ombudsman's Initial Investigation
- Good Practice for Trusts.
- Professional Advisers

SECTION 3 - ROLE OF THE COMMISSIONER FOR COMPLAINTS (THE OMBUDSMAN)

The Ombudsman's Jurisdiction

3.1 The Ombudsman deals with complaints from people who claim to have suffered injustice because of maladministration by government departments and public bodies in Northern Ireland.

3.2 The Northern Ireland Ombudsman's Office was established in 1969. Current powers and responsibilities are laid down in the Ombudsman (Northern Ireland) Order 1996 and the Commissioner for Complaints (Northern Ireland) Order 1996. From 1 December 1997 these powers were extended, by the Commissioner for Complaints (Amendment) (Northern Ireland) Order 1997, to include all complaints by, or on behalf of, HPSS patients.

3.3 The legislation, for the first time, brought within the Ombudsman's jurisdiction complaints about:

- HPSS services provided by primary care services practitioners, their staff, or their deputies or locums;
- actions taken wholly or partly as the result of the exercise of clinical judgement.

3.4 The legislation also made other changes:

- to clarify the Ombudsman's powers to investigate complaints about independent sector providers where they have contracted to provide HPSS services;
- to give staff employed by Trusts, Boards, FHS practitioners; independent providers and those working for them, a right to complain to the Ombudsman if they consider that they have suffered injustice as a result of complaints procedures operated by HPSS bodies. Staff would be expected to have gone through established local grievance procedures before approaching the Ombudsman.

3.5 The legislation allows the Ombudsman to pass information discovered in the course of an investigation to a professional regulatory body (for example, the General Medical Council) and/or to an employing authority, if he believes that to be necessary to protect the health or safety of patients or the public.

What can the Ombudsman investigate?

3.6 The Ombudsman can consider complaints from people who claim to have suffered injustice because of maladministration by any body within the Ombudsman's jurisdiction.

3.7 The term 'maladministration' is not defined in the Ombudsman's legislation but is taken to mean poor administration or the wrong application of rules. Some examples, which the Ombudsman may regard as maladministration, include:

- avoidable delay;
- faulty procedures or failing to follow correct procedures;
- not telling complainants about any rights of appeal they have;
- unfairness, bias or prejudice;
- giving advice which is misleading or inadequate;
- refusing to answer reasonable questions;
- discourtesy and failure to apologise properly for errors;
- mistakes in handling claims;
- not offering an adequate remedy where one is due.

3.8 The main stages at which complaints may be made to the Ombudsman are where:

- the responsible HPSS body, primary care services practitioner, or independent provider, has refused to investigate a complaint because it fell outside the HPSS time limits, and the relevant convenor has upheld that decision;
- a complainant is dissatisfied following local resolution and the convenor has refused his request for an independent review;
- the complainant is dissatisfied with the process or the outcome of the independent review.

3.9 Where a complaint falls into one or other of the first two of these categories, the Ombudsman may, if he considers the complaint warrants it, recommend that the decision of the convenor should be reconsidered, in preference to an Ombudsman investigation of the substance of the original complaint. This reflects the Ombudsman's view that the HPSS complaints procedure should be fully exhausted before he investigates, and that such investigations should be a local HPSS responsibility wherever possible. Similarly, when a complaint falls into the third category, he may recommend that the panel reconsider it, or that a fresh panel is set up.

3.10 When the Ombudsman decides to investigate a complaint, HPSS Trusts and Boards should appoint a liaison officer who has suitable seniority and authority. The Ombudsman provides advice on the functions of liaison officers when a Statement of Complaint is sent to the Trust/Board.

Is there anything the Ombudsman can't investigate?

3.11 The Ombudsman generally will not investigate a complaint if:

- the action complained of took place more than 12 months ago;
- a person can appeal to a tribunal;
- a person could go to court;
- the organisation has not done anything wrong;
- it is about government policy or the content of legislation; or
- the Ombudsman thinks the action or decision being complained about is reasonable.

3.12 A number of the decisions taken by government and public bodies are left to the discretion of the individual body, i.e. the decision is one which depends on the judgement of the decision maker(s) rather than, for example, on satisfying any stated conditions. The Ombudsman can only investigate such a discretionary decision if there is evidence that there has been maladministration in the way the decision is made, or if the decision is clearly unreasonable.

What can the Ombudsman do for the complainant?

3.13 Following an investigation, the Ombudsman may conclude that a complaint was wholly or partly justified, or that it was not justified. If it is found that the complaint is justified, the Ombudsman can recommend that the body complained about should provide a remedy. Although the Ombudsman has no power to enforce the recommendations the bodies almost always accept them. Where a recommendation is made under the Commissioner for Complaints legislation, the complainant may seek damages in the County Court if a public body fails to provide the recommended remedy.

3.14 It is not the Ombudsman's role to obtain compensation for individuals. However, if it is decided that a person has suffered because of something an organisation has done wrong, the Ombudsman will try to get the organisation to put the person in the position he/she would have been in if they had been treated fairly in the first place. This may involve recommending a consolatory payment, but often the Ombudsman may consider that an apology is sufficient and will also tell the organisation to improve its procedures so that no-one else suffers in the same way.

The Ombudsman's Initial Investigation

3.15 In deciding whether to investigate a complaint the Ombudsman will have access to all papers relating to any local resolution and independent review investigations. Where a case has been the subject of an independent review, these papers will include the report of the panel and the associated independent assessors' reports. In deciding whether to take on a case, the Ombudsman will wish to satisfy himself that there are sufficient grounds for an investigation by him. He will obtain independent professional advice as necessary to help him with cases involving clinical issues.

Good Practice for Trusts

3.16 The possibility of an investigation by the Ombudsman reinforces the need to ensure that complainants are always given clear and specific reasons why any request for local resolution or independent review is not accepted. Panel reports and subsequent letters from Chief Executives to complainants about the action to be taken, should clearly address the concerns of the complainants. Similarly, where complaints are not upheld following local resolution or independent review, there should always be well-reasoned explanations, demonstrably grounded wherever possible, on verified facts. Where action is being taken, for example to change procedures or improve services, the complainant should always receive a specific indication of what those are.

3.17 Trusts/Boards should ensure that appropriate references are made to the role of the Ombudsman when publicising their complaints procedure, and in the responses they make to individual complainants. **It is important that all complainants know when and how they can complain to the Ombudsman**, and understand that the Ombudsman has discretion, case-by-case, on whether he investigates complaints within his jurisdiction, and that he will determine whether there are adequate grounds for any investigation.

3.18 The Ombudsman has published a leaflet for the general public to explain his new powers. Copies were sent to Trusts. As a matter of good practice, complaints officers and convenors may wish to enclose a copy of the Ombudsman's leaflet with any letter referring to the complainant's right to take their concerns to the Ombudsman.

Professional Advisers

3.19 The Ombudsman has access to independent medical, dental, nursing, PAMs, and pharmaceutical advisers, to help him on a case-by-case basis. While independent of the HPSS complaints procedure, the Ombudsman is a key component of it. The prompt release by Trusts and other employers of professional staff invited by the Ombudsman to advise on particular cases is essential in ensuring that he is able to discharge his new responsibilities effectively. Releasing staff to advise the Ombudsman must be regarded as of equal priority to the release of staff to advise independent review panels.

SECTION 4

USEFUL INFORMATION

- Legal Framework
- Key Objectives of Complaints Procedure
- Patient/Client Confidentiality
- Third Party Confidence
- Use of Anonymised Information
- Distribution of Statement of Complaint and Independent Review Panel Reports
- Role of Chief Executives
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- Complaints about services commissioned by Boards
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- HPSS Private Pay Beds
- Training
- Monitoring

Annex 4A: Definition of a Habitual/Vexatious Complainant

SECTION 4 - USEFUL INFORMATION

Legal Framework

4.1 The following Directions provide the legal framework for the complaints procedure:

- The Health and Personal Social Services Complaints Procedures Directions (NI) 1996, issued 1996;
- Directions to Health and Social Services Boards on procedures for dealing with complaints about family health services practitioners, issued 1996;
- The Miscellaneous Complaints Procedures Directions (NI) 1996, issued 1996;
- The Health and Personal Social Services (Special Agencies) Complaints Procedures Directions (NI) 1996, issued 1996;
- Directions to Health and Social Services Boards on Procedures for Dealing with Complaints about Family Health Services Practitioners and Providers of Personal Medical Services, issued 1998; and
- Directions to Health and Social Services Boards Concerning the Implementation of Pilot Schemes (Personal Medical Services), issued 1998.

4.2 The following Regulations affect the complaints procedure:

- The General Medical Services Regulations (NI) 1997;
- The General Dental Services Regulations (NI) 1993;
- The General Ophthalmic Services Regulations (NI) 1986;
- The Pharmaceutical Services Regulations (NI) 1997
- The Health and Social Services (Fundholding Practices) Regulations (NI) 1993.

Key Objectives of Complaints Procedure

4.3 The key objectives of the HPSS complaints procedure, introduced on 1 April 1996, are:

- ease of access for patients and complainants
- a simplified procedure, with common features for complaints about any of the services provided as part of the HPSS
- separation of complaints from disciplinary procedures
- making it easier to extract lessons on quality from complaints to improve services for patients
- fairness for staff and complainants alike
- more rapid, open processes
- an approach that is honest, thorough, with the prime aim of resolving the problems and satisfying the concerns of the complainant.

4.4 The Department remains committed to achieving all these objectives. They are a key part of action flowing from the Charter for Patients and Clients and Well into 2000, the agenda for improving health and well-being⁷.

Patient/Client Confidentiality

4.5 Advice on patient/clients confidentiality is given in a code of practice⁸ and Trusts must follow this advice in its use and handling of personal health information connected with a complaint.

4.6 It is not necessary to obtain the patient's/client's express consent to the use of their personal information to investigate a complaint. Even so, it is good practice to explain to the patient/client that information from his/her health or social services records may need to be disclosed to the complaints officer, to clinical assessors, and possibly to the convenor and panel members, but only if they have a demonstrable need to know, for the purposes of investigating the complaint. If the patient/client objects to this, it should be explained to him/her that this could compromise the investigation and his/her hopes of a satisfactory outcome to the complaint. The patient's/client's wishes should always be respected, unless there is an overriding public interest in continuing with the matter.

4.7 Where a complaint is made on behalf of a patient/client who has not authorised someone to act for him/her, care must be taken not to disclose health or social services information to the complainant, unless the patient/client has expressly consented to its disclosure.

Third Party Confidence

4.8 The duty of confidence applies equally to third parties who have given information or who are referred to in the patient's/client's records. Particular care must be taken where the patient's/client's records contain information provided in confidence, by, or about, a third party who is not a health or social services professional. Only that information which is relevant to the complaint should be considered for disclosure, and then only to those *within* the HPSS who have a demonstrable need to know in connection with the complaint investigation. Third party information must not be disclosed to the patient/client unless the person who provided the information has expressly consented to the disclosure.

4.9 Disclosure of information provided by a third party outside the HPSS also requires the express consent of the third party. If the third party objects then it can only be disclosed where there is an overriding public interest in doing so.

Use of Anonymised Information

4.10 Where anonymised information about patients/client and/or third parties would suffice, identifiable information should be omitted. Anonymising information does

⁷ Well into 2000 - A Positive Agenda for Health and Well-being, DHSS, 1997

⁸ The Protection and Use of Patient and Client Information - Guidance for the HPSS, HSS Executive, March 1996

not of itself remove the legal duty of confidence but, where all reasonable steps are taken to ensure that the recipient is unable to trace the patient/client or third party identity, it may be passed on where justified by the complaint investigation. Where a patient/client or third party has expressly refused permission to use information, then it can only be used where there is an overriding public interest in so doing.

Distribution of Statement of Complaint and Independent Review Panel Reports

4.11 The statement of complaint should be sent to any person who is subject to a complaint about a Trust, Board, or independent provider. For complaints about family health services the statement must go to the person subject to the complaint and to any other person named in the complaint. Convenors may also need to give a copy to the lay chairman with whom they consult, or to any advisors in respect of clinical issues. Only exceptionally should it be necessary to circulate the statement more widely at the convening stage. If a panel is established further limited circulation to panel members and assessors will be necessary.

4.12 The distribution of the final report of an independent review panel is set out in paragraph 2.42. Panel chairmen have authority to withhold any part of the report from any person or organisation if they consider it necessary to protect the confidentiality of the patient/client or third party, or the health of the patient/client or complainant.

4.13 Lay chairmen need to ensure that the covering letter to Chief Executives of Trusts / Boards / independent providers / FHS practitioners enclosing their copy of the report explains that the report should be circulated only to those officers and professionals who need to see the report. Others, for example those who are not themselves the subject of the complaints should receive only those parts of the report that relate to the information given by them.

Role of Chief Executives

4.14 The circulation of final reports on FHS complaints is not the responsibility of panel chairmen. The chairman is only required to send a copy to the Chief Executive of the Board that established the panel. It is the duty of the Chief Executive to arrange for distribution. The Chief Executive however does **not** have authority to decide if any part of the report should be withheld from any of those to whom he is required to send it. That authority lies with the panel chairman. The Chief Executive should abide by a chairman's decision to withhold any part of a report.

Access to Health or Social Services Records

4.15 The complaints procedure may be used to investigate a complaint about any aspect of an application to obtain access to health or social services records as an alternative to making an application to the courts. This does not affect the patient's/client's right to take the matter to a court if he/she remains dissatisfied with the outcome of an investigation.

4.16 Where the complaint relates to a decision to withhold access to all or part of the record, the role of an independent review panel is to advise the record holder of their opinion. It remains the responsibility of the record holder to decide whether access should be

granted. Care must be taken to ensure that in reporting the outcome of an investigation into a complaint about access to health or social services records, the patient/client does not obtain information to which he/she is not entitled. This is particularly important in the following circumstances:

- when access has been denied on the grounds that it would cause serious harm to the physical or mental health of the patient or any other individual;
- where information relates to or was provided by a third party who could be identified from that information and who had not consented to its disclosure; or

4.17 Access to health records compiled before 30 May 1994 is at the discretion of the record holder, having regard to the fact that such records were not compiled in the expectation that they would be disclosed to the patient. This is an additional factor to be borne in mind when considering whether to grant access to such records.

4.18 It remains current policy that patients/clients should be allowed to see what is written about them in their health or social services records whenever possible.

4.19 Complaints records should normally be kept separate from health or social services records, subject to the need to record any information that is strictly relevant within the patients/clients health or social services records.

Code of Practice on Openness in the HPSS

4.20 Complaints about non-disclosure of other information under the Code⁹ can be considered under the HPSS complaints procedure.

Complaints under the Children Order

4.21 Complaints made in relation to personal social services for children should always be considered under the Representations and Complaints Procedures established under the Children (NI) Order 1995.

4.22 The Children Order Representations and Complaints Procedures apply to services provided under Part IV of the Order and to Schedule 5, paragraph 6 (matters regarding the "usual fostering limit"). The effect of Part IV is that the Children Order procedure applies to all personal social services provided to children and their families under the order. Complaints from those providing services for children (day care, child minding, residential care) which relate to registration requirements do not fall within the Representations and Complaints Procedures and should be addressed under the specific procedures set out in the Order.

4.23 Some personal social services for children fall outside the scope of Part IV of the Children Order, for example, adoption, matters relating to the work of the Area Child Protection Committees, and the production of welfare reports in private law cases. Guidance

⁹ Code of Practice on Openness in the HPSS, HSS Executive, October 1996

already issued under the Children Order urges Trusts to adopt a flexible approach and to consider all matters relating to personal social services for children under the procedures for Children Order cases. Particular regard should be given to Volume 3 (chapter II) in the Children Order Guidance and Regulations. **It is most important that in the event of any uncertainty as to the procedure to be adopted in a particular case that the matter is resolved speedily.**

The Role of Registration and Inspection Units

4.24 Independent and statutory residential and nursing homes that provide services under contract to the HPSS must operate a complaints procedure that meets the requirements of the HPSS complaints procedure. Complainants should normally be encouraged to complain to the service provider under local resolution, but retain the right to complain directly to the local registration and inspection unit, if they so wish.

4.25 Registration and inspection units have a statutory duty to investigate any complaint that they receive about the care and well-being of residents. Complaints handled by units will normally be investigated in line with the requirements of the HPSS complaints procedure¹⁰. The unit will seek to resolve complaints under local resolution, with residents having the right to seek independent review if they remain dissatisfied. Exceptions will be those of a serious nature that indicate a breach of registration requirements, including the fitness of those working in or responsible for the home that may lead to cancellation of registration. These will be handled separately under the statutory duty imposed by The Residential Homes (NI) Order 1992.

Complaints affecting more than one HPSS body

4.26 Where an HPSS body receives a complaint which is solely concerned with services provided by another health body or a body outside the HPSS, the complaints officer, in consultation with the complainant, should arrange that it is passed immediately to the correct body. This action should be confirmed in writing to the complainant and the body concerned.

4.27 Where a complaint relates to the actions of two or more HPSS bodies - for example, two Trusts, or a family health services practitioner and a Trust, there should be full co-operation between the complaints staff of these bodies to resolve the complaint. Where a complainant wishes to pursue such related complaints to independent review, the convenors involved should liaise with the aim of establishing close co-operation with the respective bodies. Good practice suggests that a final draft response should be shared prior to being sent. Legally, separate panels need to be established, but they might nevertheless comprise the same panel chairman and, in some cases, the same third panel member. It may also be possible in these circumstances for the same assessors to be used.

4.28 The chairman might also wish to establish close working arrangements between the panels - possibly meeting on the same day, in the same place - and ensuring that between them they deal with all issues. While each panel must make its own separate report,

¹⁰ Registration and Inspection Unit Complaints Procedure, Eastern HSS Board, November 1997

this could help the chairman ensure commonality of findings and also that each HPSS body received appropriate advice.

Continual/vexatious complainants

4.29 Habitual and/or vexatious complainants can be a problem for HPSS staff. The difficulty in handling such complaints can cause undue stress for staff and placing a strain on time and resources. HPSS staff are trained to respond with patience and sympathy to the needs of all complainants but there are times when there is nothing further, which can reasonably be done to assist them or to rectify a real or perceived problem.

4.30 There are two key considerations when determining how to handle such complaints. The first is to ensure that the complaints procedure has been **correctly implemented** so far as possible; that **no material element of a complaint has been overlooked or inadequately addressed**; and to appreciate that even habitual or vexatious complaints may have aspects that contain some substance. The need to ensure an equitable approach is crucial.

4.31 The second is to identify the stage at which a complaint has become habitual or vexatious. One approach is to develop an approved policy that is formally incorporated into the complaints procedure. Implementation of such a policy should only occur in **exceptional circumstances**. Information on the handling of habitual and vexatious complaints could also be made available to the public as part of the material on the complaints process as a whole.

4.32 **A vexatious complaints policy should only be used as a last resort after all reasonable measures have been taken to resolve the complaint using the HPSS complaints procedure, for example through local resolution, conciliation, or involvement of the health and social services council as appropriate.** Judgement and discretion must be used in applying the criteria to identify potential habitual or vexatious complainants and in deciding the action to be taken in specific cases. The policy should only be implemented following careful consideration by, and with the authorisation of, the Chairman and Chief Executive of the Trust or their deputies in their absence.

4.33 Where complainants have been identified as habitual or vexatious in accordance with the criteria in Annex 4A, the Chief Executive and Chairman (or appropriate deputies in their absence) will determine what action to take. The Chief Executive (or deputy) will implement such action and will notify the complainant in writing of the reasons why he/she has been classified as habitual or vexatious complainants and the action to be taken. This notification may be copied for the information of others who may be involved, for example conciliator, health and social services council, Member of Legislative Assembly, Member of Parliament. A written record must be kept of the reasons why a complainant has been classified as habitual or vexatious.

4.34 The Chief Executive and Chairman may decide to deal with complaints in one or more ways, for example:

- Try to resolve matters, before invoking this policy, by drawing up a signed 'agreement' with the complainant (and if appropriate involving the relevant practitioner in a two-way agreement) which sets out a code of behaviour for the parties involved if the Board is to continue processing the complaint. If these terms are contravened, consideration would then be given to implementing other action as indicated in this section.
- Decline contact with the complainants either in person, by telephone, by fax, by letter or any combination of these, provided that one form of contact is maintained.
- Notify the complainant in writing that the Chief Executive has responded fully to the points raised and has tried to resolve the complaint but there is nothing more to add and continuing contact on the matter will serve no useful purpose. The complainants should also be notified that the correspondence is at an end and that further letters received will be acknowledged but not answered.
- Inform the complainant that in extreme circumstances the Trust reserves the right to pass unreasonable or vexatious complaints to its solicitors.
- Temporarily suspend all contact with the complainant or investigation of a complaint whilst seeking legal advice or guidance from the HSS Executive, or other relevant agencies.

4.35 Once complainants have been determined as 'habitual or vexatious' there needs to be a mechanism for withdrawing this status at a later date if, for example, complainants subsequently demonstrate a more reasonable approach or if they submit a further complaint for which normal complaints procedures would appear appropriate. Staff should previously have used discretion in recommending 'habitual or vexatious' status at the outset and discretion should similarly be used in recommending that this status be withdrawn when appropriate. Where this appears to be the case, discussion will be held with the Chief Executive and/or the Chairman (or their deputies). Subject to their approval, normal contact with the complainants and application of the HPSS complaints procedure will then be resumed. See Annex 4A for further guidance on the definition of a vexatious complainant.

Staff Grievance Procedures

4.36 It is important to recognise that the HPSS complaints procedure is designed to address the concerns of patients and clients, not those of staff. Trusts and other HPSS bodies have separate procedures for handling staff grievances. Local procedures will also cover more general grievances. Disputes about contractual matters between Boards and primary care services practitioners should not be handled through the complaints procedures. Staff may complain about the way they have been dealt with under the HPSS complaints procedure and provided they have exhausted the local grievance procedure, may take the matter up with the Ombudsman. FHS practitioners may also complain to the Ombudsman about the way they have been dealt with under the complaints procedure.

4.37 If any complaint received by a member or employee appears to raise matters normally dealt with by:

- an investigation under the disciplinary procedure;
- one of the professional regulatory bodies;
- an independent inquiry into a serious incident; or

- an investigation of a criminal offence.

the person in receipt of the complaint should **immediately** advise the complaints officer. The complaints officer (or the convenor) must not initiate any action on these matters, but must **immediately** refer them to the person appointed to deal with such matters.

Disciplinary Action

4.38 When a decision is made to embark upon a disciplinary investigation, action under the complaints procedure on any matter which is the subject of that investigation must cease. Where there are aspects of the complaint not covered by the disciplinary investigation, they should continue to be dealt with under the complaints procedure. The Chief Executive must advise the complainant in writing that a disciplinary investigation is under way; that they may be asked to take part in that process; and how any outstanding aspects of their complaint not affected by the disciplinary investigation will be taken forward.

4.39 If there are no outstanding issues from the complaint requiring investigation, the complainant should be advised in writing by the Chief Executive that no further action will be taken other than through the disciplinary procedure.

4.40 If referral for disciplinary investigation is made during local resolution, then this part of the procedure should be completed by a letter from the Chief Executive setting out the action taken by the Trust. When referral occurs during the independent review process, a similar letter should be issued on completion of that process. In drafting these letters, the overall consideration must be to ensure that when the investigation has moved into the disciplinary procedure, the complainant is not left feeling that their grievance has only been partly dealt with.

4.41 If the complainant asks to be informed of the outcome of the disciplinary investigation, the Trust's response must balance the need to reassure the complainant that their grievance has been dealt with seriously and satisfactorily, with the need to protect the right of confidentiality of its staff. The guiding principle should be that the complainant should receive the same consideration and information as if the matter had been dealt with under the complaints procedure. They therefore have a right to know what happened; why it happened; and what action has been taken to prevent it happening again. They can also be told, in general terms that disciplinary action may be imposed as a result of the complaint.

Investigation by a Professional Body

4.42 A similar approach should be adopted in a case referred to a statutory regulatory body, for example the UKCC for nurses, midwives and health visitors. The Chief Executive must inform the complainant in writing of the referral to the regulatory body, and explain that: the Trust now has no control over what happens or over what period; giving as full a response as possible on the matter; and indicating that the information may need to be passed to the regulatory body. The letter should also explain how any other aspect of their complaint not covered by the referral to the regulatory body will be investigated under the complaints procedure.

Independent Inquiries and Criminal Investigation

4.43 Where an independent inquiry into a serious incident or a criminal investigation is initiated, the Chief Executive should immediately advise the complainant of this in writing. As the complaints procedure cannot deal with matters subject to any such investigation, consideration of those parts of the original complaint must be suspended until the other investigation is concluded. When this happens before the investigation of the complaint has been completed, a full report of the investigation thus far should be made available to the complainant.

4.44 When the independent inquiry or criminal investigation has concluded, consideration of that part of the original complaint on which action was suspended can recommence if there are outstanding matters which remain to be dealt with.

Possible Claims for Negligence

4.45 In the early part of the process it may not be clear whether the complainant simply wants an explanation and apology, with assurances that any failures in service will be rectified for the future, or whether they are in fact seeking information with litigation in mind. It may be that an open and sympathetic approach will satisfy the complainant. **However, if the complainant indicates an intention to instigate or instigates legal action about a matter that is the subject of a complaint, the complaints procedure should be immediately brought to an end.** The Chief Executive should advise the complainant and the complained against in writing of this decision.

4.46 At the first indication of a possible claim for negligence, or where the complainant has initiated legal proceedings, the principles of good claims management and risk management should be applied. There should be a full and thorough investigation of the events. In any case where negligence has been accepted, a speedy settlement should be sought.

4.47 It is not the intention of the complaints procedure to deny someone the opportunity to pursue a complaint if the person subsequently decides **not to take legal action**. If he/she then wishes to pursue their complaint through the complaints process the investigation of their complaint should commence or resume.

Complaints about services commissioned by Boards

4.48 Complaints about commissioning decisions made by Boards may be made by or on behalf of any individual personally affected by a commissioning decision taken by the Board. Of course health and social services councils may wish to raise general concerns about commissioning issues with the Board. They should receive a full explanation of the Board's policy. These issues should not, however, be dealt with under the complaints procedure. Panels may criticise the way in which a commissioning decision has been reached - for example on the grounds that the Board did not consult properly or take appropriate clinical advice - but where a purchasing decision has been taken properly and reasonably, panels will not be able to suggest an alternative decision.

4.49 Where a complaint concerns the exercise of clinical judgement, the Board will nominate at least two clinical assessors to the panel with experience of exercising clinical judgement in a commissioning context. If the complainant wishes to pursue a complaint both about the actual services and the commissioning decision involved, the assessors will need to represent between them the appropriate clinical experience for both aspects.

Complaints against independent providers

4.50 The complaints procedure applies equally to services provided for HPSS patients and clients by the independent sector. Complaints about the actual services purchased from the independent sector must be treated as such and not as complaints about commissioning decisions. If a complainant wishes to complain about the related commissioning decision at the same time this should be pursued through the same procedure in parallel.

4.51 Boards should specify in their contracts with independent providers that the provider must set up and run a local resolution process as far as possible as identical to and as good as local resolution that HPSS providers are required to provide, and that they must cooperate with the independent review procedure. Contracts made by Boards and Trusts should include a requirement on the independent provider and its staff to co-operate with any independent review process that is set up, and to indemnify them for the costs of setting up and running the arrangements.

4.52 Where a Board has commissioned the service concerned, the convening and panel stages of the independent review process will be organised by the Board in the same way as for review of complaints against other commissioning decisions. However, the questions to be addressed will be about the service concerned. Complaints may be pursued in this way by, or on behalf of, existing or former HPSS users of services purchased from the independent sector by the Board. Such complaints must relate to the services in question.

4.53 A complaint under the procedures of the Registered Homes (NI) Order 1992 (through the Inspection Unit Manager of the Board and if the independent provider is registered under the Order) does not preclude a complainant pursuing a separate complaint under the HPSS complaints procedure.

4.54 If a complaint against an independent provider registered under the Order is not resolved locally the convenor may, with the complainant's consent, delay the instigation of independent review until the Inspection Unit Manager (of the Board registering the independent provider) has had the opportunity to attempt to resolve the complaint.

HPSS Private Pay Beds

4.55 The complaints procedure covers any complaint made about the Trust's staff or facilities relating to care in private pay beds, but not to the private medical care provided by the consultant outside his HPSS contract.

Training

4.56 Training is the key to making the complaints procedure work effectively. Training materials have been provided for Trusts and Boards, who have a responsibility to ensure that staff are competent and confident in dealing with expressions of concern or complaint. The improvement of these skills continues to be a high priority of Chief Executives and their boards. Boards should also consider the scope for joint training of staff, convenors, lay chairmen and panel members. Convenors and other staff should not be asked to undertake their role without appropriate training.

4.57 Good practice suggests that key players will benefit from regular informal discussion of matters of common interests. The annual publication of the Ombudsman's Report offers useful points for such discussions. The Department will consider holding seminars on matters of regional interest, and is in regular touch with complaints officers and convenors on such matters.

Monitoring

4.58 The boards of Boards and Trusts should receive quarterly reports on complaints, in order to:

- monitor arrangements for local complaints handling;
- consider trends in complaints; and
- consider any lessons that can be learned from complaints, particularly for service improvement.

4.59 Trusts/Boards* must publish annually (in their Annual Report) a report on complaints handling and send copies to relevant health and social services councils. These reports must not breach patient confidentiality.

**Only relevant to complaints about Boards themselves. Complaints against FHS Practitioners, GP Fundholders, and Independent Providers will not be included*

4.60 Directions require Boards to monitor arrangements for dealing with complaints. Patient's and Clients Charter guidance reinforces this and requires Trusts to keep the relevant commissioning authorities informed of progress in dealing with complaints. An increase in the number of complaints is not in itself a reason for thinking the service is deteriorating. It might mean the organisation is becoming more responsive to complaints. The important point is to handle complaints well and to feed the lessons into quality improvement.

4.61 Consideration should be given to collection of local data on:

- oral complaints not recorded in writing;
- patients' comments and suggestions;
- changes in practice and procedure as a consequence of complaints handling.

4.62 Complaints handling should be monitored on a regular basis through, for example patient satisfaction surveys. Such information will enable providers to improve the quality of their services, and help to inform purchasers in the contracting process.

4.63 The Department will continue to monitor the number and type of complaints, and action taken to improve the quality of services as a result of complaints. Hospital and community health and social services statistical collection will continue to be through the completion by Trusts and Boards of the CH8 and CHB returns.

DEFINITION OF A HABITUAL OR VEXATIOUS COMPLAINANT

1. Complainants (and/or anyone acting on their behalf) may be deemed to be habitual or vexatious complainants where previous or current contact with them shows that they meet **TWO OR MORE** of the following criteria:
2. Where complainants:
 - **Persist in pursuing a complaint** where the HPSS complaints procedure has been fully and properly implemented and exhausted (e.g. where investigation has been denied as 'out of time', where a convenor has declined a request for independent review).
 - **Change the substance** of a complaint or **continually raise new issues** or seek to prolong contact by **continually raising further concerns or questions** upon receipt of a response whilst the complaint is being addressed. (Care must be taken not to discard new issues that are significantly different from the original complaint. These might need to be addressed as separate complaints.)
 - Are **unwilling to accept documented evidence** of treatment given as being factual, e.g. drug records, nursing records or deny receipt of an adequate response in spite of correspondence specifically answering their questions; or **do not accept that facts can sometimes be difficult to verify** when a long period of time has elapsed.
 - **Do not clearly identify the precise issues** which they wish to have investigated, despite reasonable efforts of staff and, where appropriate, the local health and social services council to help them specify their concerns; **and/or where the concerns identified are not within the remit** of the Trust or Board to investigate.
 - **Focus on a trivial matter** to an extent that is out of proportion to its significance and continue to focus on this point. It is recognised that determining what is a 'trivial' matter can be subjective and careful judgement must be used in applying this criterion.
 - Have **threatened or used actual physical violence** towards staff at any time – this will in itself cause personal contact with the complainant and/or their representatives to be discontinued and the complaint will, thereafter, only be pursued through written communication. All such incidences should be documented.)
 - Have in the course of addressing a registered complaint had an **excessive number of contacts** with the Board placing unreasonable demands on staff. (A contact may be in person or by telephone, letter or fax. Discretion must be used in determining the precise number of 'excessive contacts' applicable under this section, using judgement based on the specific circumstances of each individual case.)

- Have **harassed** or been personally **abusive or verbally aggressive** on more than one occasion towards staff dealing with their complaint. (Staff must recognise that complainants may sometimes act out of character at times of stress, anxiety, or distress and should make reasonable allowances for this. They should document all incidents of harassment.)
- Are known to have **recorded** meetings or face-to-face/telephone **conversations without** the prior knowledge and consent of other parties involved.
- **Display unreasonable demands or patient/complainant expectations and fail to accept that these may be unreasonable** (e.g. insist on responses to complaints or enquiries being provided more urgently than is reasonable or normal recognised practice).

