



BRIEFING/DISCUSSION PAPER

The Proposed new Arrangements for handling Health and Social Care Complaints

**“Making Experiences Count”
Department of Health Consultation**

AUGUST 2007

Introduction

This briefing sets out the initial reaction of the charity Action against Medical Accidents (AvMA) to the Department of Health Consultation "Making Experiences Count: the proposed new arrangements for handling health and social care complaints". It is intended to stimulate discussion and debate and encourage responses to the consultation which ends on 17th October 2007. AvMA would welcome any feedback on the issues which will inform its own formal response to the consultation.

About AvMA

AvMA is the independent charity which promotes better patient safety and justice for people who have been affected by a medical accident. We have 25 years' experience of dealing with complaints and other clinical disputes. We currently deal with approximately 5,000 enquiries a year – often including the most serious and complex complaints which also have potential legal or fitness to practise implications in patient safety.

OVERVIEW

AvMA has some serious concerns about the practical implications of moving to the new system which we highlight below. There is a great deal in the proposals which we welcome (indeed we would like to think we have influenced the new approach). We have concentrated in articulating our concerns and suggestions as we feel this is more useful than stating all that we agree with.

AvMA warmly welcomes and supports the stated principles underpinning the new proposals and the intention to deliver a more joined-up system which is more responsive to complainants' needs and more conducive to learning lessons and improving safety. However, we do not believe that having the right principles and vision of the desired outcome is enough. We fear that without careful reconsideration of some aspects of the proposals, and very significant investment of resources in specialist staff and training to make the new system work, it could actually make things worse. The proposals are worryingly light on detail about what will be done to help achieve the desired goals. We are particularly concerned about the proposed loss of the independent review stage of the NHS Complaints Procedure without sufficient safeguards.

This briefing goes on to discuss in more detail our concerns and suggestions under specific headings.

SPECIFIC CONCERNS/SUGGESTIONS

Proposed Loss of 'Independent Review' Stage of complaints procedure

Arguably, the most radical proposal apart from the aligning of NHS and Social Care complaints procedures, is the scrapping of the 'independent review' stage of the procedure. It is proposed to move to a two-stage procedure of Local Resolution and then Ombudsman. Currently, the Healthcare Commission is responsible for handling the 'independent review' stage of NHS complaints. As a point of principle, we are disappointed that the Department does not appear to want to consult on this substantive proposals (the 'whether' rather than 'how'). However, there are also some serious practical concerns if the change is to go ahead.

We believe that unless there are changes in the way that the Ombudsman operates and massive increased resources for the Ombudsman, this proposal could have disastrous consequences. There has been a large increase in requests for independent reviews since the Healthcare Commission took on this responsibility. Our experience is that this is largely due to the increased confidence which complainants have in the independence and robustness of Healthcare Commission investigations. Although this caused big capacity

problems and delays, our sense is also that the Healthcare Commission have got on top of the problem. The results of their investigations that we have seen, have generally been much better quality and more robust and independent than the old system. There is also the added confidence that the Healthcare Commission being responsible for monitoring trusts brings, including the benefits of its knowledge of complaints feeding into its role in investigating 'system failures'. We challenge the assertion in the document that the Healthcare Commission simply duplicates the local investigation or that complaints do not sit comfortably with a regulator.

We are not opposed entirely to the principle of moving to a two-stage process with the Ombudsman being responsible for independently reviewing complaints not resolved at the local level. Although we believe there are advantages with the Healthcare Commission (or the new regulator) being involved, we accept that there may also be advantages in one less stage or 'tier' in the process. However, the Ombudsman currently has a rather different role to that of the Healthcare Commission. She only has capacity to investigate a much smaller number of complaints. Without a very significant injection of resources she would be unable to cope with the number of requests for independent review which the Healthcare Commission receives. There is no reason to believe that the number of people seeking independent review of their complaints after local resolution will decrease, at least in the short term. It will take a long time to achieve the desired cultural and quality changes hoped for at local resolution.

Suggestions:

Either the independent review role of the Healthcare Commission (or new regulator succeeding it) should be retained until the number of independent review requests drops to a number no higher than the number of complaints currently dealt with by the Ombudsman OR

The resources currently provided to the Healthcare Commission for its complaints function are transferred to the Ombudsman, and only reduced in line with reducing demand for this role.

Independent Advocacy

We welcome the acknowledgement that independent advocacy support for vulnerable people who wish to complain is important. However we would stress that anyone adversely affected by health or social care is in effect vulnerable and potentially in need of advocacy or support in making a complaint. This is very much our experience, having supported many people over the years who are intelligent, articulate and confident people, but feel unable to deal with these issues without specialist support.

We believe that the reforms to the complaints procedures provide an opportunity to take a completely fresh look at complaints advocacy services. The current Independent Complaints Advocacy Services (ICAS) have evolved by accident rather than design. We use caution over the assertion in the document that the new services should 'mirror' ICAS. They are not what the public and Parliament were promised as a replacement for the complaints service provided by Community Health Councils (CHCs) in England. Whilst some very good work is carried out by individual providers of ICAS, we perceive the need still exists to 'join up' the complaints advocacy/support function with the system for local patient and public involvement. We believe that the loss of CHCs' ability to act as a local 'one-stop shop', and of their complaints role directly informing their monitoring role, has left an unwelcome gap.

We also believe that it will make sense for ICAS or its successor service to have its remit broadened to act as the local first point of contact for both social and health sector complaints support. However, we believe that this broadening of remit will be a significant challenge for the service which even at this stage is still evolving. We believe it would be unrealistic and indeed dangerous to expect the service to also be able to provide specialist advocacy and support services that will be needed to support people going through the NHS Redress Scheme, or with other specialist advocacy needs such as in mental health and learning disabilities. **We recommend that specialist advocacy/support for these areas**

are commissioned or grant-aided, to be provided by voluntary sector organisations who are specialist in these fields.

Single-Portal or Helpline

Whilst the document refers to some recommendations from the various inquiries, no mention is made of the recommendation from the Shipman Inquiry for a 'single-portal' or signposting servicing to help people find the appropriate place to take their concerns. We believe there is a need for such a service and that it could be met at least in part by a national helpline service manned by specialist staff and volunteers who could provide initial advice and support and point in the right direction depending on the nature of the complaint. For example, to local resolution of the health and social care complaints system; fitness to practise procedures of the health professional regulators; the NHS Redress Scheme or legal actions or the 'systems failure' investigation branch of the Healthcare Commission.

Links with other Procedures

Whilst the document refers to other policy developments such as the development of the NHS Redress Scheme, it could say more about the need for processes to be closely aligned if not integrated. In its discussion of local resolution, the document refers to the need to consider 'internal' disciplinary action, there is also a need to build in consideration of referral to the fitness to practise procedures of health and social care professional regulators. The role of local GMC affiliates needs to be considered.

Ending the bar on use of complaints procedure if taking legal action

Previous policy recommendations from the Department of Health have recommended removing the bar on people using complaints procedures if they have started or intend to take legal action on the same issue. The current proposals do not mention this. There is wide consensus that this is an illogical and unfair policy, which is also often misinterpreted and wrongly applied. There should be no limitation on patients' rights to seek apologies, explanations and assurances from the complaints procedure because they are exercising their civil right to seek compensation through a legal action. The courts can only deliver compensation – not the fuller, human response which injured patients and their families need and deserve. The current system is perceived as punishing people who exercise their civil right (and often practical need) to take legal action.

Flexibility over Timescales – the need for 'bottom' line limits

We agree that the most important thing is to meet the needs of the individual complainant and that a quality response which takes slightly longer is preferable than a poor quality response rushed to meet a time limit. However, in addition to quality standards looking at the percentage of complaints responses within certain timescales, there is a need to retain the current safeguards which enable the complainant to take their complaint to the next independent stage if local resolution is taking an unreasonable length of time.

Local Resolution and Independent Input

We do not disagree with the principle that most complaints should be dealt with through local resolution close to the points of service delivery (or through the Commissioner of services). We very much welcome the fact that our and others' repeated calls for PCTs to be responsible for investigating complaints about commissioned services, including GPs, when the complainant asks for it, has been accepted. However, we would recommend re-enforcing the benefits even of local, internal investigations making use of independent opinions. In our experience, this is far more likely to result in successful resolution of complaints. Some trusts have taken up AvMA's suggestions of commissioning independent opinions from appropriate medical experts for example, as part of their local investigations and response.

Accountability for Complaints

We very much welcome the commitment to give more status and authority to complaints staff in the NHS – something we have long argued for. Also, for Boards and specified people to be responsible within NHS organisations. However, what we also need to see in addition to the positive encouragement of good practise, is for action to be seen to be taken over organisations who fail to live up to standards. We have seen too many examples of complainants going through hell and high water to have their complaints upheld by an independent review, only for there to be the equivalent of shrugging of shoulders over serious criticism of the local complaint handling. Any complaint upheld by independent review or the Ombudsman, or indeed through the Redress Scheme or litigation, should result in an investigation as to why the local investigation failed.