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Welsh Assembly Government

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Consultation Document

Putting Things Right

a better way of dealing with concerns about
health services

Date of issue: **11 January 2010**
Responses by: **2 April 2010**



- Please tell us your views:** The closing date for replies is 2 April 2010. You can reply in any of the following ways:
- By Freepost to:** Ann-Marie Carpanini-Lock
Improving Patient Safety Team
Quality Standards and Safety Improvement Division
Welsh Assembly Government
FREEPOST NAT 8910
Cathays Park
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CF10 3NQ
- By e-mail to:** puttingthingsrightconsultation@wales.gsi.gov.uk
- By using the online response form:** This is available on our webpage www.wales.gov.uk/consultations/healthsocialcare/puttingthingsright You can also take part in an **online forum** on this topic by going to our webpage.
- Other languages and formats:** This document is also available in other languages and formats (such as Braille) on request. Please telephone us on 029 2082 3218 or e-mail puttingthingsrightconsultation@wales.gsi.gov.uk to request your copy. It will take approximately two weeks for your copy to be prepared and to arrive with you.
- More information:** A first draft of the regulations that will support the new arrangements is available on our webpage, together with other relevant background information.
- Draft regulations and policy papers;
 - Other background papers and
 - Engagement and equality impact assessment papers.
- If you do not have access to the internet, then please contact us (as above) if you wish to receive copies of these papers.
- Data Protection:** The Welsh Assembly Government is the data controller for all personal data relating to your consultation response.
- The Welsh Assembly Government intends to publish a summary of the responses to this document, and in some instances, the responses in full. Normally, the name and address (or part of the address) of its author are published along with the response, as this gives credibility to the consultation exercise. If you do not wish to be identified as the author of your response, please state this expressly in writing to us.
- The Welsh Assembly Government will share consultation responses with officials across the Department to inform the preparation of all future consultations.

***Putting Things Right* – a better way of dealing with concerns about health services**

The Welsh Assembly Government wants to improve the way that health organisations deal with people's concerns about the health service. We want the health service in Wales to do as much as it can to put right mistakes and to learn lessons to stop them happening again. We feel that this can be done by improving the arrangements already in place to support all staff to be open with people when something has gone wrong and by developing further the skills and experience of staff who will investigate concerns. We also think that by giving health organisations the tools and techniques they need to carry out better investigations, more people will be satisfied with the result. The process should be easy to access and people should be able to get help and support to raise their concerns.

We know that there is already a lot of good work going on and that there are many people with skills and experience in the NHS in Wales and elsewhere who are working hard to put things right when they go wrong. This document sets out the further changes we would like to make and we hope you will let us know what you think of them.

The Minister for Health and Social Services has asked for regulations to be put in place to ensure that these changes happen – the first (draft) version is available to view on our website (www.wales.gov.uk/consultations/healthsocialcare/putthingthingsright). The regulations will be put before the National Assembly for Wales around May 2010 and we hope that the new system will be in place before the end of 2010.

What do we want to change?

Patients and their families, and those who help them to take forward their concerns (advocates) have told us that people do not always find it easy to say they are unhappy about their care and that when they do, they are not satisfied with the way in which their concern is dealt with. Many people would prefer to raise concerns as soon as something happens and have the matter sorted out on the spot but do not always feel they can do this because they fear that members of staff are too busy. Other evidence suggests that people are concerned that their healthcare will be affected if they

complain, or that they will be struck off their doctor's list. Many people feel there is not enough openness in the way concerns are dealt with.

Organisations felt that the way the separate processes for handling complaints, claims and incidents are currently arranged does not allow them to carry out investigations that are in proportion to what has happened. They also accept that the processes do not link together enough. This means that the same issue could be investigated more than once, and that opportunities for learning lessons may be missed.

Members of staff may feel reluctant to come forward and say if something has gone wrong because they are often unsure about what will happen to them. In these situation, healthcare workers will be concerned for the wellbeing of their patient and want to put things right, but they may be unsure of how to deal with the situation and whether they may be made to take the blame unfairly.

Everyone we spoke to felt that there was a need to focus on obtaining a fair outcome for patients and staff in these circumstances.

We therefore want to see a better way of handling concerns which:

- Is easy for people to use;
- People can trust to deliver a fair outcome;
- Recognises their individual needs (language, support, etc);
- Is fair in the way it treats patients and staff;
- Makes the best use of time and scarce resources;
- Pitches investigations at the right level of detail for the issue being looked at, and
- Can show that lessons have been learned.

Detailed summaries of the things people told us can be accessed on our webpage.

Progress made so far

The NHS in Wales has made good progress over the past few years in learning from mistakes and from the experiences of patients. Gradually, we are seeing more willingness to report

errors and incidents and that this is becoming part of day-to-day practice. Policies such as *Being open* <http://www.nrls.npsa.nhs.uk/resources/?entryid45=65077>, which has been adopted by the NHS in Wales and recently strengthened, and the *1000 Lives* campaign <http://www.wales.nhs.uk/sites3/home.cfm?orgid=781>, help to encourage a more transparent approach to things that go wrong, as well as to learning lessons and preventing problems happening in the first place.

The recent reform of the National Health Service in Wales has provided an excellent opportunity for the new and remaining organisations to build the structure that will deliver improvements in the way they deal with concerns. *Interim guidance on the handling of concerns in the new NHS structure*, issued to the NHS in Wales in October 2009, recognises that there are already a lot of people working in the service with skills, or the potential to develop them, who can help to do this. The guidance asks NHS organisations to bring together these staff within a single team accountable to a Board Member and to identify what other skills they will need. The Welsh Assembly Government will work with the NHS in Wales to secure training and support for staff in this area.

How we think the arrangements should look

One of the biggest problems facing people wanting to raise a concern is that they often do not know how. Some people make a complaint; others may consider taking legal action. Similarly, if members of staff think that something has gone wrong, they may be unsure how to behave and who to tell. We want to make this easier by having one system at the outset.

People who want to raise concerns may often be upset and worried about their own care or that of a family member, or in the case of staff, fear that they may have harmed a patient and the impact that this may have not only on the patient, but on themselves as well. We want to ensure that the process of raising a concern does not add to the stress they may already be feeling by keeping them informed, being open and giving them the support they need.

We are planning to replace the current two-stage complaints process of local resolution and independent review with a simpler, one-stage process for looking into all concerns, run by highly trained teams of people based in the NHS organisations. This will include looking at a situation to see if the NHS organisation is legally at fault and whether compensation should be offered. The number of such cases is likely to be small, but it is important that they are included, so that the NHS learns lessons from them. It is also important to give the message that people should not have to fight legal cases if an issue can be sorted out locally.

Every effort will be made to put matters right, but people will still be able to take their case to the Ombudsman, or to the Courts (if they believe there is legal fault) if they are not happy. People can therefore expect the following:

Patients and families

- Any patient, including a child, can raise a concern;
- A family member or other person can raise a concern on behalf of a patient, with the person's consent;
- Will have up to three years to raise a concern, although normally people will be expected to raise their concern within a year, because otherwise it becomes more difficult to investigate;
- People can raise their concerns in any form – verbally (in person or by telephone) or in writing (letter or e-mail);
- Concerns can be about any service provided by or any decision made by a health service organisation or family health service provider in Wales¹;
- If a concern is raised and it can be dealt with on the spot, then it will be;
- To be contacted within 2 days with further information on how their concern will be dealt with and how long it may take;
- To be asked whether they have any particular needs to enable them to take forward their concern (e.g. language; easy read; Braille; hearing assistance; cultural issues; advocacy support from a Community Health Council or specialist service);

¹ There will be a different process for decisions about individual patient funding because these cases often need to be reviewed more quickly. This will be covered in a separate consultation.

- A named individual who will be their point of contact throughout the investigation of their concern;
- A response within 30 days or sooner in the majority of cases;
- For every effort to be made to resolve their concern, including independent advice, second opinions or remedial treatment;
- To be kept informed on a regular basis if the investigation is going to take longer and the reasons why;
- For most complex cases to be resolved within 6 months;
- To be offered legal advice free of charge, if the NHS organisation agrees they are liable to pay compensation, to check that the offer is fair;
- If an offer of compensation is accepted, to agree not to take legal action about the same issue;
- Are able to take their concerns to the Public Services for Ombudsman for Wales (or the Courts if they believe there is legal fault) if they are not happy with the NHS organisation's attempts to resolve their concerns.

NHS staff

- If concerns are raised by a patient or family member and resolved on the spot, frontline staff will report the issue to the central team (see below) so that lessons can be shared;
- To be supported to be open with patients when something has gone wrong, including being put in touch with a trained *Being open* mentor;
- To be treated fairly during an investigation and to be given regular updates;
- Will be provided with the appropriate level of support to help them deal with the situation;
- Will be able to comment on investigation reports;
- Will be able to involve their trade union or defence organisation if they want to;
- Can be assured that actions will only be taken that are in proportion to the issue being looked at.

NHS organisations and family health services providers

- There will no longer be separate processes or departments for managing complaints, claims and incidents - a single, integrated, multi-skilled team will manage all concerns;

- This central team will work with staff across the organisation to ensure that investigations are carried out to a consistent standard;
- Specific staff will be trained to deal with various types of concern, including recognising and quantifying situations where the organisation may have been legally at fault;
- The central team's senior manager will report directly to an Executive Director on the Board, to be either the Medical or Nurse Director;
- Complaints about family doctors, dentists, community pharmacists (chemists) and opticians should be investigated first by the practice, but the local health board team can become involved if necessary – this can be requested by the patient or the practice;
- It will be the responsibility of the NHS organisations to make sure that there are sufficient staff employed to look into concerns and that they are trained and keep their skills up to date.

Process

- Normally, concerns should be raised within a year of the incident or of the date that the incident became known, but can be raised up to three years later in some cases;
- If it is possible to investigate, even if a long time has passed, then the organisation should consider it, if it is reasonable to do so;
- Concerns will be graded when they are received so that the right level of investigation can be carried out;
- Investigations should not be held up in waiting for consent from patients – organisations should consider whether there are any patient safety or public interest reasons for proceeding. This should be explained to patients and staff at the beginning of the process when consent is being asked for;
- Various tools should be considered, as appropriate, to help to resolve a concern – these could include independent clinical advice; independent facilitation or specialist advocacy and these should be considered and planned for as early as possible in the process rather than offered “after the event” or as a last resort;
- If the organisation believes it may have been legally at fault and proceeds to investigate this further, then the date of the

decision must be noted formally. This will then suspend the “Limitation Period” whilst the investigation carries on (this is the time available to a person to take legal action in the courts, usually 3 years; longer in the case of children);

- Compensation payable under the arrangements will have a limit of £20,000 for pain, suffering and loss of amenity (general damages) and actual financial losses (special damages) will be calculated on top of this. This would allow NHS organisations wishing to settle matters if they feel able to do so. On the other hand, it recognises the limitations of the arrangements in dealing with matters of significant complexity or high value in which the current litigation system may better serve the patient;
- To assist organisations to quantify claims, a tariff system will be developed to provide a reference system which will ensure consistent quantification of matters across Wales. This will be updated on a frequent basis;
- If compensation is payable in relation to a child, then an Infant Settlement Approval hearing may be required to protect the interests of the child;
- Legal advice to be provided by specialist solicitors;
- NHS organisations will have to report activity to the Assembly Government on revised statistical returns and to their citizens in their annual reports.

What will be different if the new arrangements are put in place?

The main changes will be:

- A requirement to be more open with people;
- One investigation, in proportion to what has happened;
- More support for patients and staff;
- Taking more account of people’s needs;
- More time to investigate when needed;
- Duty on NHS organisation to look at whether they are legally at fault;
- Simpler one-stage process;
- Better information about what lessons have been learnt and what improvements have been made to services.

Please note that the consultation ends on 2 April 2010

What do you think?

Please feel free to make any comment you wish on this document, the draft regulations or the background information. However, we would particularly welcome comments on the attached questions:

1. Do you agree with the proposals set out in this document (please tick)?		
<i>Agree with most</i>	<i>Agree/disagree with some</i>	<i>Disagree with most</i>

2. If you disagreed with something, please tell us about it below	
<i>Issue</i>	<i>Your concerns</i>

3. How helpful do you think the following would be (please tick)?			
<i>Issue</i>	<i>Helpful</i>	<i>Unhelpful</i>	<i>Don't know</i>
Grading concerns			
Support for patients			
Support for staff			
Simpler process with fewer stages			
The time limits			

4. Are there any other comments you would like to make?

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Your name/organisation and address (postal/e-mail)

--

I am a/an (please tick one only):

<i>Patient or former patient</i>	
<i>Family member or carer</i>	
<i>Member of the public</i>	
<i>Member of NHS staff</i>	
<i>Organisation with an interest in the health service</i>	
<i>Support organisation</i>	
<i>Legal organisation</i>	
<i>Other</i>	

Thank you for taking the time to read this document.