FORMAL RESPONSE:
The Proposed new Arrangements for handling Health and Social Care Complaints

"Making Experiences Count"
Department of Health Consultation

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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. AvMA has consistently campaigned for improvements to the NHS Complaints Procedure, has engaged constructively with the Department of Health over several reviews, and has provided evidence to parliamentary committees on the subject several times.

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 the 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, as well as poor responses at the local level. Although this caused big capacity problems and delays, our sense is also that the Healthcare Commission are getting 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. No evidence has been offered to support this assertion.

We have great respect for the role the Ombudsman currently plays and the ability of her staff to conduct robust and independent investigations. 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.

We believe it is imperative that, if the role of the Healthcare Commission (or its successor) in independently reviewing complaints is taken away, that people's access to an independent review is not put at risk. There must be a well planned transition, with the Healthcare Commission continuing to perform this function, or its resources for this being transferred to the Ombudsman. The resources available to support independent review of complaints must not be reduced unless and until there is evidence that there is no longer demand for independent review and the Ombudsman has sufficient resources to cope.

If the move to a two stage process goes ahead, the Healthcare Commission (or its successor) must continue to audit and hold organisations to account for their complaints handling. The Ombudsman will need to have formal reporting responsibilities to the regulator to ensure that there is systemic learning and follow up where necessary of the issues coming to her attention through complaints.

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 there needs to be more clarity about the role of 'PALS' . PALS should be seen as an internal trouble-shooting or customer relations service. It should not be confused with independent advocacy.

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. ICAS is not what the public and Parliament were promised as a replacement for the complaints service provided by Community Health Councils (CHCs) in England. It has never been independently evaluated. 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 with complex clinical complaints or those going through the NHS Redress Scheme.

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 service to help people find the appropriate place to take their concerns. We believe that a 'single portal' as such is unrealistic but that the need for better advice and support for people to navigate the different systems 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. The service would have to deal with different procedures pertaining to different parts of the UK. Such a service could be provided by specialist voluntary organisations working in these fields and across the countries of the UK.

We recommend that there is an independent evaluation of the ICAS service and a review conducted into how a newly configured service could be developed as the local generic source of advocacy/support for health and social care complainants.

We recommend that more specialist advocacy/support for serious or complex clinical complaints or those that may be subject to the NHS Redress Scheme is commissioned or grant-aided, to be provided by national voluntary sector organisations who are specialist in the relevant field.

We recommend the establishment of a UK helpline to advise people of the different complaints procedures across the UK, and alternative routes to resolving concerns, and signpost to appropriate systems and organisations. This should build on work already carried out by national voluntary organisations.

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.

The current bar on taking legal action whilst also pursuing a complaint should be dropped.

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. Failure to apply a 'bottom line' or trigger point for the complainant to access the next stage in the procedure would result in NHS and social care organisations taking unreasonable lengths of time to investigate and respond, and complainants being in danger of being worn down.**

We believe that any complaint should have the right to have their complaint dealt with under the second stage of the procedure if the organisation concerned has not completed its investigation and responded within six months.

The regulations should stipulate that it be made clear when a formal response is being made and that, unless agreed otherwise, the complainant has the right to have the complaint considered for investigation at the second stage at that point.

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.

If local resolution is going to work and the need for independent review decline in the way envisaged, there is going to need to be some independence brought to bear for some complaints at this stage. We recommend for more serious complaints, where harm is alleged or known to have been caused, the incident should always be the subject of a report from an independent source.

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. We believe it is essential that Boards and specified people with sufficient expertise and time are specifically responsible for complaints within NHS and social care organisations. This needs to be meaningful and realistic – not just naming a designated person which tends to happen now. 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.

Merging of Health and Social Care Complaints systems

The challenges and complexity of merging the two systems should not be underestimated. It is important that the best parts of both systems are retained and built upon and in particular that the support or rights available to complainants in either sector are levelled up, rather than levelled down compared to the other sector.

Further consultation

This consultation is based on a high level vision of what it is hoped to achieve. There is insufficient detail on which to base a considered appraisal of whether the new arrangements will work. Much will depend on the detail and the resources to be applied.

We are asking for a commitment from the Department of Health that there will be meaningful involvement of stakeholders in developing more detailed proposals and a full public consultation on the new arrangements when there is sufficient detail available to assess them.