Submission to the PHSO review of Clinical Advice

Introduction

AvMA welcomes the opportunity to feed into this review. We have many years of experience of advising and supporting people who have suffered avoidable harm as a result of lapses in patient safety. This includes helping people with complaints to be referred to the PHSO. Having an effective ombudsman is an essential component of the complaints systems and the appropriate sourcing and use of clinical advice is a crucial part of that.

We have concentrated on points of principle and good practice in this submission rather than answer every point in detail. We draw on our experience of supporting people who have taken their complaint to the PHSO. However, we do not have the time or resources at present to provide case examples. We know that some past complainants have submitted their own cases to the review.

Key themes

There are two key themes to our recommendations set out below: transparency and engagement with the complainant. Transparency is essential if the public are to have full confidence in the PHSO. The current process and even the review documentation is very light in respect to engagement with the complainant. The complainant should be engaged with at every step of the process – from assessment to investigation and decisions.

Our recommendations

- Case workers should always take independent clinical advice about clinical complaints if there are disagreements on the clinical elements of the complaint.
- No more weight should be given to clinical opinions provided by the care provider than to the arguments put forward by the complainant.
- Account should be taken of independent clinical opinions obtained by the complainant
- Before clinical advice is sought, the complainant and the care provider should have the opportunity to comment on questions to be put to the clinical adviser and suggest amendments and/or questions of their own to be added.
- The clinical advice provided should be shared with the complainant and care provider, who should be able to comment on the clinical advice.
- The complainant and the care provider should be able to see what each other have suggested about the clinical advice that is being sought/has been obtained.
- The clinical adviser should be sufficiently specialist in the area(s) of clinical treatment in question and the absence of conflict of interest be clearly documented. Consideration should be given to commissioning of medical experts from various specialities available from AvMA's database, and other sources.

- The name, experience and qualifications of the clinical adviser should be shared with the complainant and care provider, who should be able to suggest that more specialist clinical advice is sought.
- 'Local policies/protocols' should be critically assessed rather than assume that they are fit for purpose.
- When the PHSO 'strikes a balance' between the explanations of the care provider and the 'relevant standards' they should take equal account of the arguments put forward by the complainant.
- Any explanation provided by the care provider must be shared with the complainant who should be able to comment. There should be no room for doubt that the PHSO is giving undue weight to the provider's point of view.
- Any decision which is informed by clinical advice or a care provider's explanation must make it clear how that advice or provider's explanation influenced the decision or was preferred to alternative advice or arguments.

We agree the clinical standard proposed is clear and appropriate with the caveats above. We agree with the proposals set out in the appendix.

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