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Putting an Independent Lay Voice Back in the NHS Complaints Process

This note relates to the current review of the NHS Complaints Process being undertaken by Ann Clwyd MP and Prof Tricia Hart. The approach proposed applies to all NHS complaints in England, not just those arising from hospital treatment. The other devolved administrations of the NHS have their own complaints procedures.

Rationale

Getting better, much better, about handling complaints - and learning how to prevent them - is one of the most important things the NHS could do that really matters to users and the public. Healthcare pundit Roy Lilley puts it high up in his list of things that would make a difference and cost next to no money: *“Make superhuman efforts to nip complaints in the bud. Train all front line staff in handling complaints; Listen, sympathise, make notes, don't justify, agree a course of action and follow through. Fix it now.”*

This is the right advice, but NHS culture is resistant to quick change. While that objective is being worked on, there is something that could be done reasonably quickly to introduce an independent lay voice into the process which has the potential to improve the experience and outcomes for both complainants and organisations complained about.

Recent history

For many years, there was a pivotal lay role in the NHS complaints process - the complaints convenor. In many places this worked well and added substantial value to what could otherwise be an overly bureaucratized and often cumbersome process. But there was an increasingly troublesome governance problem: most complaints convenors were also non executive directors of NHS Trusts and PCTs (when those bodies had directly provided community services and oversight of GP and other primary care contractors). Thus there was usually a close relationship in theory between the convenors and the organisations complained about. This was perceived negatively by many complainants and advocates as prejudicial to due process.

The convenor role was never evaluated in terms of how it could be reformed and its best aspects taken forward. In successive complaint procedures reviews it became the view that NEDs acting as complaints convenors had an

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insurmountable perceived conflict of interest whatever their impartiality in practice. When the NHS process was most recently revised in 2009, this lay role was abolished along with complaints review panels chaired by lay people. The procedure was thus shortened to consist of two stages: local resolution and a second, escalated stage to the Health Services Ombudsman (PHSO).

In the view of MAC as specialist complaints advisers working with public and private organisations, this change has not achieved its objectives. Instead it has created a perverse incentive to push too many complaints up the system ("escalation") at too early a stage before robust local resolution has been really tried. This disadvantages all parties. Reports from the Ombudsman highlight the need to try harder to achieve speedy local resolution before referring matters upwards.

This rest of this note, therefore, is about a way to improve performance and responsiveness at local resolution and address the shortcoming identified in the current complaints process. It would also meet the greatest demand – for impartiality – arising from reviews of the complaints process in previous years.

Reintroducing an independent lay role, but not a convenor

On the basis of complaints procedure reform which MAC carried out for NHS Wales, we believe that an "independent lay reviewer for complaints" role which is entirely separate from NHS boards and bodies could be reintroduced into the English NHS complaints process. Details of that role are given under the following headings:

Title: Independent Lay Reviewer for Complaints

Purpose: to scrutinise the process and progress of local complaints resolution when complaints are referred to them for review and advice; to assess the quality and adequacy of the local resolution process; to determine whether more could be done to resolve the particular complaint and to give advice for that purpose to complainants and bodies complained against.

It must be stressed in this proposal that the lay reviewer role is not to investigate the substance of the complaint or to take clinical advice about it, but to scrutinise the process being followed locally to resolve the complaint and to give advice to the NHS and to complainants about what more might be done to achieve satisfactory local resolution without escalation.

Following a lay complaint review, if the complaint was still not able to be resolved locally, it could then be escalated to the PHSO who would take the lay reviewer's scrutiny findings and advice into account.

Selected and appointed by: Lay reviewers would be selected by the PHSO through open advertisement and interview and appointed on the basis of a role description and competency/experience in complaints management and related issues; training and periodic appraisal would be required. Individuals

appointed to terms (duration to be agreed) would most likely have self-employed status.

Accountable to: directly to the PHSO not to any NHS body; protocols and procedures for the role (time limits and performance standards etc) to be agreed.

Remuneration: on an inclusive “fee for case” basis at nationally agreed rates invoiced to PHSO

Accessible by: NHS bodies and other organisations which are required to operate the NHS complaints procedure (eg non NHS and independent providers) who are going through local resolution. This would include Foundation Trusts, NHS primary care contractors, and other providers such as social enterprises, voluntary bodies and commercial organisations operating contracts to provide NHS services.

Advice given to: NHS bodies and other providers (as above), complainants and ICAS (where they are involved). All advice would be in writing and subject to Freedom of Information disclosure.

Signposted to: by Local Healthwatch so that complainants could ask for an independent review of the local resolution process if they were dissatisfied with how it was being conducted or with its outcome.

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This note was authored by Dr Andrew Craig, based on years of personal experience inside the NHS complaints system. He was a complaints convenor and independent review panel member for Merton, Sutton and Wandsworth Health Authority while a non-executive director. Later he was a freelance complaints consultant taking referrals from Trusts, PCTs and the Ombudsman when complaints were referred back for better local resolution.

MAC created guidance for the NHS Wales complaints process (2003), devised training modules for lay members working in the system (2004), created their appraisal scheme (2005) and produced an interactive CDROM for primary care staff in Wales (2005).