Making a complaint in the independent sector

A guide for patients

October 2007

INDEPENDENT HEALTHCARE ADVISORY SERVICES

The Patients Association
listening to patients, speaking up for change

Supported by the Patients Association

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INTRODUCTION

The independent acute healthcare sector prides itself on providing patients with some of the best available healthcare. However, there may be times when expectations are not met. If you are not satisfied with the service you, or a close relative or friend has received in an acute hospital/clinic/treatment centre which is a member of the Independent Healthcare Advisory Services (IHAS)[1], it is your right to have your concerns investigated and to be given a full and prompt reply.

The IHAS Code of Practice for Handling Patients' Complaints has been introduced to provide a structure within which Providers may address patient complaints against Providers, and/or clinicians practising within the Provider organisation.

If you are thinking of making a complaint about your care, this guide tells you about the procedure and gives you advice about how to get the most out of the Code to achieve a satisfactory response. It should also be noted that all patients have the right to take their concerns to the healthcare regulator.

If you are a parent concerned about a child, or if you are a young person concerned about your treatment there is a special version of this leaflet called 'Mumbles and Grumbles' available from your provider, or go to: www.independenthealthcare.org.uk.

The Patients Association welcomes this leaflet which will be helpful to patients in understanding the complexities of making a complaint and raising their concerns.

What services are covered by the IHAS complaints code?

The IHAS complaints code covers the following:

- IHAS member acute healthcare Providers
- Clinicians and other independent practitioners who practice at any of these Provider's facilities, in relation to treatment provided there
- NHS patients receiving care within an independent hospital are entitled to use the Provider's complaints procedure.

1. For simplicity an acute hospital/clinic/treatment centre which is a member of the Independent Healthcare Advisory Services (IHAS) will be referred to as a 'Provider'

The code does not currently cover:

- Independent practitioners in private practice (for example, general practitioners or dentists)
- Services provided in consulting rooms located outside a Provider's premises.

What do I want to achieve?

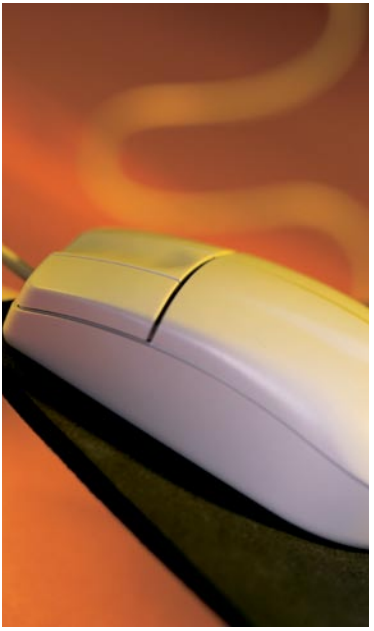
Before making a complaint, it is important to think about what you want to achieve, as the IHAS Code can only deal with certain matters.

Under the code, IHAS member hospitals CAN:

- Carry out an investigation and offer an explanation for what happened
- Offer to make an apology, or some other statement of regret
- Take steps to put matters right and reassure you that they have done so.

However, the Code CANNOT:

- Deal with any treatment provided in the NHS – even if in an NHS pay-bed unit (that is, if you paid privately for your treatment in an NHS hospital)
- Suspend the registration of a doctor or any other health professional.



HOW DO I START?

The IHAS Code has three progressive stages:

i. Local Resolution
ii. Internal Appeal
iii. Independent External Adjudication.

Before you make a complaint, ask the Provider for a leaflet about its own complaints procedure. At the Local Resolution stage, it is the responsibility of the Provider concerned to look into and respond to your complaint. The aim is to try and sort out any problems as quickly and informally as possible. In some cases a word with an appropriate member of staff is all that is needed to put things right.

If you address your concerns to a member of staff, it is a good idea to make a note of when you did this, who you spoke to and how the matter was dealt with. It is useful to have a record of this if you need to take the matter further at a later date. If you do not wish to speak to a member of 'frontline' staff, or if you are not happy with how they dealt with your concerns, you can take your complaint to the hospital/clinic manager.

The on-site service manager of every Provider has direct responsibility for dealing with complaints against their particular facility.

You can make your complaint verbally initially, but it is important that you confirm your complaint in writing. If your complaint is about a clinician/independent practitioner you should address it to both the clinician/practitioner and to the hospital/clinic manager.

Can I act on someone else's behalf – or they on mine?

If you feel anxious about making a complaint yourself, you can always ask a relative or friend to do so on your behalf. The Provider will ask the friend or relative to obtain your permission in writing. By taking this course of action you are waiving your right to confidentiality of your own clinical information, by sharing this with the person acting on your behalf.

Likewise, if you are unhappy with the way a friend or relative has been treated, you may make a complaint for them. However, you will need their permission in writing to do this.

Consent is not needed in situations where the person is not able to consent (for example, if the person is very young or too ill or if the person has died, when the Access to Health Records Act 1990 applies). There are limited access rights for the personal representative of a deceased relative under the Access to Health Records Act 1990.

What should I include in my letter?

You do not need to write a long and very detailed letter, but you should include all the points you wish to address. You should tell the Provider:

- Who or what has caused your concerns. Try to make clear the most important points. If you are complaining about a member of staff, give their name and position (if you know it)
- Where and when the events took place
- What action you have already taken, if any
- What results you want from your complaint.

What happens after you have sent your letter of complaint to the provider is described in more detail on page 7.

Can I access my health records?

You have a right to see your health records under the Data Protection Act 1998. However, please note that access to health records can be refused if disclosure is likely to cause mental or physical harm to yourself or some other person.

A fee may be charged for granting access to health records that are being automatically processed, or for accessing a mixture of manual and automated records. The maximum fee in England, Scotland, Wales and Northern Ireland as set out in the Data Protection Act is £50.

For further information about accessing your health records, you should contact the Provider concerned.

STAGE ONE

Should I keep a written record?

It is important for you to maintain an accurate record of events. Keep a record of:

- All your papers and correspondence relating to the complaint
- All the telephone calls you have had, including the date of the call, who you spoke to and what the call was about
- Any visits or meetings, together with details of what was discussed.

Local resolution – Stage One

The IHAS Code provides clear time frames within which the Provider should operate. These accord with standards set by the Healthcare Commission and the other regulators in the devolved countries.

The Provider's hospital/clinic manager should normally send you a written acknowledgement within two working days of receipt of your complaint (unless they send you a full reply within five working days).

The Provider's hospital/clinic manager should send you a full, written response within 20 working days of receipt of your complaint. Where the Provider's hospital/clinic manager is still investigating your complaint you should be sent a letter explaining the reason for the delay and you should receive a full response within five days of the Provider's hospital/clinic manager reaching a conclusion.

Occasionally it may take even longer than this to carry out a full and thorough investigation, particularly if your complaint is very complex. In such situations, as stated above, the Provider's hospital/clinic manager should let you know the reasons for the delay and tell you when he/she anticipates being able to respond.
In any event you should receive a holding letter every 20 working days pending a conclusion being reached.
In looking into your complaint, the Provider's hospital/clinic manager may ring you to talk to you about your concerns or offer to meet with you.

The timelines that Providers are required to follow are set out primarily, in the National Minimum Standards (NMS) in England and Wales and these are supported by the Private & Voluntary Healthcare (England) Regulations 2001 (PVH Regulations). Scotland and Northern Ireland have similar requirements.

What should I do if I am offered a meeting?

Before agreeing to attend a meeting it is a good idea to discuss arrangements for the meeting with the Provider's hospital/clinic manager and to give your views on how you would like it to be conducted:

- Ask what form the meeting will take so that you are well prepared
- Ask who will be at the meeting, and who will lead it
- Say who you would like to be there on your behalf. If there is someone you do not want to see, let the Provider manager know (for example, some people may not wish to meet the person who they are complaining about, whereas others may feel it is important for them to be present)
- Ask where the meeting will be held and how long it will be
- If you have any special challenges for moving, seeing or hearing make them known to the Provider

- If you have particular questions you would still like answered, tell the Provider's hospital/clinic manager in advance so that they can seek out the information or make sure that the right staff are at the meeting. It is a good idea to bring a copy of the questions to the meeting so you can remember what they are

- Ask that notes be taken at the meeting and that a copy of these be sent to you. Also make notes yourself as it is easy to forget what has been said.

Think about taking a friend or relative with you to the meeting. It can be helpful to have someone with you to give you support and to take notes. It is also useful to be able to talk to them afterwards to go over what was said and to think about what to do next. Make sure they know the questions you want to ask and what you want to achieve. Inform the Provider manager if you plan to bring someone with you.

After the meeting, if no further action is proposed, the Provider should send you a full, written response concerning local resolution. This response should also tell you what to do next if you are still not satisfied.

If you are not happy with the response to your complaint, let the Provider's hospital/clinic manager know that you are still not satisfied and explain why.

Normally, you will be expected to have completed each stage of the complaints procedure before you can proceed to the next stage. However, if you feel that the local investigation of your complaint is not being conducted properly (for example, it is taking an unreasonably long time) it may be worth asking for an internal appeal and give your reasons why.

STAGE TWO

Internal appeal – Stage Two

If you wish to request an internal appeal, you should do so within 20 working days of the date of the final written response. Your request should be made in writing but there may be exceptional occasions when it is acceptable for it to be made verbally.

The internal appeal stage is the responsibility of the Chief Executive Officer or Managing Director of the organisation (when the hospital/clinic belongs to a group), or in the case of independent hospitals/clinics, a non-executive director or trustee.

The Investigating Director will consider the complaint and may undertake a review of the correspondence and the handling of the issue at local Provider level. The Investigating Director will then either confirm the decisions and actions of the Provider manager or offer an alternative resolution.

In the event that the Investigating Director confirms the hospital/clinic manager's original decision, or if you are not satisfied with the alternative resolution offered – you have the right to refer the matter to independent external adjudication. You need to do this within 25 working days.

The Investigating Director will explain how you can request an independent external adjudication in his/her final letter to you at the completion of stage two.

STAGE THREE

Independent external adjudication – Stage Three

If you are dissatisfied with the results of the internal appeal or if the Investigating Director rejects your complaint under the internal appeal stage, you have recourse to independent external adjudication. You need to write to the Independent External Adjudication Secretariat (see page 15 for the address) within 25 working days of receiving the Investigating Director's final letter in which he/she reminds you of this right.

A Principal/Deputy Adjudicator has been independently appointed from outside the IHAS and its membership as co-ordinator of the independent external adjudication procedure.

If the Principal/Deputy Adjudicator decides to hear your case, a panel may be convened to review your complaint.

You have the right to object to the appointment of a member of a panel on the grounds that the person has a conflict of interest or inappropriate prior knowledge of your complaint.

Following a hearing at which your and the Provider's evidence will be heard, the panel will notify you of its decision as soon as possible, but in any case within 60 working days from the end of the panel hearing. If your complaint is upheld, the panel will also decide what remedial action (including compensation, if appropriate) is necessary.

It is important that you are aware of the following principles relating to the independent external adjudication procedure:

- You pay no entry fee to access or participate in the independent external adjudication procedure

- Before participating in the procedure you will be asked to sign a Participation Letter which explains the principles of the process

- Before participating in the procedure you must agree that the Principal/Deputy Adjudicator's decision will be the final resolution of all the matters you have raised in your complaint

- If you accept any payment offered by the procedure, you must accept it in full and final settlement of your complaint

- The Principal/Deputy Adjudicator has the right to reject cases without a panel hearing

- There is no appeal from the independent external adjudication procedure.

However, you can request that the report is sent to the Healthcare Commission England (or the Provider's regulator in the other three UK countries). It is important to know that the Healthcare Commission does not have the ability within its remit to:

1) obtain or to assist in securing the return of money paid

2) investigate those establishments or individuals who are not required to be registered by the Healthcare Commission

3) consider matters where the complaint is not a direct breach of a condition of registration or of a regulation.

The Healthcare Commission does not provide a complaints arbitration or resolution service but will use the information in the report in their regulatory work with the Provider. You may also send information to the Healthcare Commission about the complaint, at any time during the arbitration process.

FURTHER INFORMATION

For further information about complaints in England please go to: www.healthcarecommission.org.uk.

For complaints concerning Providers in Scotland please go to: www.carecommission.com which gives details of their complaints resolution process, or call 0845 603 0890 to speak to a complaints co-ordinator.

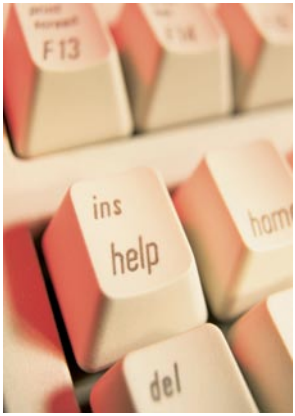
For complaints concerning Providers in Wales please go to: www.hiw.org.uk.

For complaints concerning Providers in Northern Ireland please go to: www.dhsspsni.gov.uk.

The Principal/Deputy Adjudicator's decision, although final and binding, does not affect your statutory rights.

You must express your wish for independent external adjudication/ mediation within 25 working days of the final decision under the IHAS member organisation's internal appeal procedure. Please write to the Secretariat for the Independent External Adjudication Procedure at:

Independent External Adjudication Secretariat, C/o Independent Healthcare Advisory Services, Centre Point, 103 New Oxford Street, London, WC1A 1DU.



What should I include in my letter

Your letter should include the following:

- Adequate details of your complaint, you can make use of the letter you wrote at stage one if you so desire

- Copies of all documents, correspondence and/or clinical records that you wish the Principal Adjudicator to consider

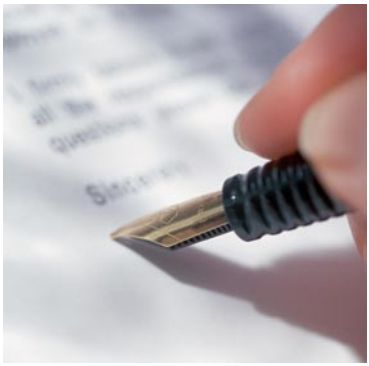
- What outcome you would like to achieve.

In addition, the Code permits (but does not require) the use of mediation as an alternative to Stage Three, where both parties are agreed that this is the preferred format for the resolution of matters between them. It should be emphasised that mediation is only appropriate in cases where both parties wish to use it and agree in advance that its outcome should be final and binding. It is also important to emphasise that mediation is an alternative to adjudication. By electing for mediation, the option of independent external adjudication is removed whether or not the mediation is concluded.

Is there a time limit for making a complaint?

You should normally complain within six months of the incident you are concerned about, or within six months of finding out that there was something to complain about. It is best to make your complaint as soon as possible, as memories will be fresher and it will be easier to investigate the facts.

The Provider may be willing to investigate complaints after this time if you have a good reason why you could not act sooner (for example, if you were unwell). For information, Department of Health guidance requires hospitals to keep adult patients' medical records for a period of eight years.



Litigation/Clinical negligence

Where you have stated that it is your intention to seek legal advice, the Provider should continue to follow the local complaints procedure.

Wherever feasible the Provider should attempt to resolve your complaint where appropriate and not abandon the use of the local complaints procedure due to a potential claim.

However, some cases will, because of the seriousness of the issues raised and their potential for legal compensation, not be suitable for being managed under the IHAS Code. If you think that you might fall into this category, contact the IHAS.

ABOUT THE IHAS

About the Independent Healthcare Advisory Services (IHAS)

The IHAS administers the Independent Sector Complaints Adjudication Service on behalf of all members of independent healthcare Providers.

A copy of the 'Independent Sector Complaints Adjudication Service Code of Practice for Handling Patients' Complaints' can be obtained by writing to the Independent External Adjudication Secretariat at:

Independent Healthcare Advisory Services
Centre Point,
103 New Oxford Street,
London WC1A 1DU

or at:
www.independenthealthcare.org.uk
or by telephoning: 020 7379 8598.

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