



AvMA Response to Consultation on CHAI's Proposals for the Independent Stage of the NHS Complaints Procedure

Summary and Overview

AvMA welcomes the introduction of more independence to the review and investigation of complaints through CHAI. This undoubtedly provides the potential for a fairer system which is more likely to enjoy public confidence than the present system. However, CHAI will need to work very hard to earn and maintain a reputation for independence and rigour. In the eyes of the public and disgruntled patients in particular, there may be scepticism about CHAI as a body which is ultimately responsible to the Secretary of State. The recommendations in this report would, if accepted, help engender public confidence in the NHS complaints procedure and CHAI.

More detailed suggestions are made in the text below and in our response to consultation on the draft regulations covering the NHS complaints procedure. However, we would like to highlight the following as our biggest concerns about CHAI's proposals as they stand:

- **Joining up Processes**

We would like to see more on how CHAI will ensure lessons from complaints are integrated with clinical governance and patient safety. The relationship between CHAI investigating serious incidents brought to its attention by patients and its role in the NHS complaints procedure needs to be defined.

- **Making sure things happen**

It is vital that the recommendations from investigations conducted by CHAI are not simply shelved or paid lip service to, which has been the case with some independent reviews. Below, we make recommendations for CHAI facilitating a 'closure' meeting between complainants and the body complained about to cover action plans in respect of recommendations made and face to face apologies where appropriate. We also recommend that CHAI check on progress in implementing its recommendations and keep the complainant informed.

- **Potential Actions following the Case Review**

The potential referral back to the bodies complained against for further attempts at local resolution should only be with the agreement of the complainant. We think it imperative to avoid the situation that some complainants currently find themselves in, where they have experienced extremely poor complaints handling which has exceeded the stated time limits and yet are still denied access to an independent investigation. In these circumstances, an independent investigation should be conducted unless the complainant agrees that further attempts at local resolution are desirable. The onus should be on the bodies complained against to ensure that every realistic option at local resolution stage is explored.

- **The role of the Independent Panel**

Neither the draft regulations nor CHAI's own proposals are clear about the role and powers of the proposed Independent Panel of lay people. It would appear that this is a further stage open to a complainant after CHAI has completed its investigation. It is not clear what status the panel would have. For example, would it have the power to overturn or amend the findings of CHAI's investigation conducted by staff or not? If not, what is the point of it?

Detailed Comments:

Page 3. Background: It should be made clear that these arrangements apply to the NHS in England. CHAI's role in the NHS complaints procedure, if any, in Wales should be explained.

Page 4. When people first contact CHAI: Caution is needed over the interpretation of 'desired outcome' being outside CHAI's jurisdiction. Complainants may have a key desired outcome which is outside CHAI's jurisdiction, but still have a perfectly valid case for having CHAI conduct an investigation. The draft regulations make it possible for different investigations to be run concurrently.

Page 5. When people first contact CHAI (last paragraph). As well as where appropriate suggesting that the complainant contact ICAS, complainants should *always* be informed of the availability of help and advice from ICAS. Information should also be given about other sources of advice and support, such as AvMA.

Page 5. The Case Review: We believe that referral back to the NHS organisation (or primary care provider) should only happen with the complainant's agreement. What most complainants want at this stage is an independent investigation. The onus should be on the organisation complained against to explore reasonable options for resolution at the local resolution stage and for their formal response to be as robust as possible and final. Where people have endured poor complaints handling or long delays it would not be fair to refer back for yet further local resolution.

Page 5. The Case Review: it should be noted that some complaints will come to CHAI as a result of the provision in the regulations for complaints which have not received a response after an excessive amount of time to be referred to CHAI. In the regulation 6 months is the time span which could generate such a referral. AvMA is

arguing that 6 months should relate only to complex cases, and that with non-complex complaints 3 months would be a suitable period to wait before this provision kicks in. Whatever the case, we believe that a referral made under this provision should warrant an automatic investigation by CHAI. The failure to comply with the complaints procedure is so gross at this stage that the complainant is unlikely to have confidence in an attempt at local resolution, and in any case, the NHS organisation's complaints handling would clearly warrant investigation.

Page 6. The Case Review: As already commented under "page 4 unless people first contact CHAI", it should not be assumed that because the complainant's 'desired outcome' is something CHAI cannot achieve, that the case does not warrant investigation by CHAI. For example, a complainant may well have as a desired outcome that a member of staff be disciplined or that they themselves are given compensation. Because CHAI itself cannot deliver this outcome does not mean that an investigation is not justified. Indeed, it may only be that by conducting an investigation that it comes to light that some further action or referral is justified. The regulations allow for different investigations to run concurrently.

Page 6-7. Further Action by CHAI – the Panel: Whilst we welcome the involvement of independent lay people in the process and the opportunity for the complainant to have a 'hearing' of some kind, the role of the independent panel as set out in the draft regulations and this document is far from clear. Whilst the CHAI document suggests that the panel will make recommendations based on their findings the regulations do not seem to provide for this. What status would the panel's findings and recommendations have? If the panel disagrees with the findings and recommendations of the investigation by CHAI's staff, which would take precedence? There are also practical issues to address such as who would service the panel, and what opportunity would they have to consider any new evidence. Would they have access to the same clinical advisers as were used in the CHAI staff investigation?

If the panel is to adjudicate over the CHAI staff investigation, it would be vital that the panel were given statutory powers to over-rule the staff investigation findings and for CHAI and the NHS bodies to accept the panel's findings. An alternative approach might be making the independent panel part of the CHAI investigation itself, if the complainant wants it to be. The final report would benefit from the evidence gleaned from the panel hearing as well as the staff investigation.

We note that the panel, according to the CHAI document (but not as far as we can see reflected in the draft regulations), could make recommendations concerned either with redress for the individual or for the improvement of services. We welcome this, and as part of recommendations for redress we would advocate the ability to recommend financial compensation. If an NHS Redress Scheme is developed (as discussed in 'Making Amends'), CHAI and the panel could provide the appeal mechanism over the findings of that process (which should be integrated with the complaints process).

Additional Points

- We think that the arrangements should provide for CHAI facilitating a 'closure'

meeting with the agreement of the complainant at the conclusion of its investigation. This would bring together the complainant and representatives of the NHS body/primary care provider to discuss the findings and provide an opportunity for the subject of the complaint to provide face to face assurances about measure it has or intends to take as a result of the complaint, and apologies for the shortcomings that have been identified by the independent investigation.

- We believe that CHAI should undertake to review progress on implementing its recommendations six months after its report, and at periods it deems appropriate thereafter and provide feedback to the complainant. The Clinical Governance review conducted by CHAI should include a review of actions taken in respect of any recommendation that has been made to an NHS body following a complaints investigation.
- Consideration should be given as to how a serious incident investigation as a result of a patient bringing such an issue to CHAI relates to CHAI's role in the NHS complaints procedure.
- Consideration should be given as to how CHAI can ensure that complaints are integrated with the clinical governance processes within NHS bodies, and how information it becomes aware of through complaints will feed into its own clinical governance reviews of NHS bodies.
- Whilst we appreciate this consultation concerns the independent stage of the NHS complaints procedure, we think it imperative that CHAI assumes the same role with respect to private sector health complaints as soon as possible.

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