

Response form

Any comments on the proposals to update the legislative framework for complaints should be returned by 6th January 2009.

Responder details			
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Having read the section 'Areas where the legislation will change', please indicate with an 'X' how you would rate our proposed changes to the legislative framework:			
Area of change	Positive	'Neutral' (Some Concerns)	Negative
What people can complain about	X		
What people cannot complain about		X	
Coordinated working across boundaries	X		
Complaints culture	X		
Complaining to a Primary Care Trust about an NHS provider		X	
Complaints handling staff		X	
Who may make a complaint	X		
Time-limit for making a complaint	X		
Complaints handling		X	
Response and 'organisational sign-off'	X		
Senior accountability	X		
Support		X	
Monitoring and reporting	X		
Publicity	X		
Transitional arrangements	X		
If have given a 'negative' value to an area of legislation, please indicate why? Do you have any other comments on our proposals?			
<p>Please note that we have marked the 'Neutral' box where we have any concerns or suggestions about the proposals, which we have then explained below. We thought this more appropriate than saying we are 'negative' about the proposal, as we see at least some positives in all of the proposals!</p> <ol style="list-style-type: none"> 1. What people can not complain about: We feel strongly that there should be an unequivocal statement about making it a right to having a complaint investigated regardless of whether there is an intention to take legal action or whether legal action has been commenced. The Department has signalled this policy intention previously but the language in the document itself is non committal. In our view there can be no justification for denying access to the complaints 			

procedure due to litigation or the intention to litigate. This would suggest that people who litigate or intend to litigate do not deserve full explanations or apologies where appropriate and/or that the NHS is frightened of 'giving too much away' which might be used against it in litigation. This can be the only explanation for the most often used excuse for the current policy – that to respond to a complaint might 'prejudice' civil proceedings. This goes against the spirit of the NHS policy on 'Being Open'. The current policy is also misguided in that it encourages people to adopt a more adversarial or litigious approach. For instance, people sometimes say to us that if the NHS takes this kind of attitude there clearly is no point in asking for a complaint to be investigated objectively. There is evidence to show that if people receive suitable investigations, explanations and apologies where appropriate, they are less likely to litigate.

2. Complaining to PCTs about NHS providers:

We very much welcome the ability to complain directly to the PCT and for complaints to have to be copied to the PCT. We submitted evidence to this effect in the Shipman inquiry. However, we are concerned about the apparent contradiction in the document which on the one hand says that the question of who investigates will be determined ultimately by the complainant's wishes, and on the other implies that the decision about this rests with the PCT. At least with regard to primary care practices such as GPs and Dentists, we believe complainants should have the right to have their complaint investigated by the PCT if they wish.

3. Complaints handling staff:

We would recommend that care is taken not to confuse the complaints function with that of patient/user advice and liaison functions or functions such as Litigation or Claims Manager. Complaints staff should be more senior than many currently are within their organisation, possess a common knowledge base and skills set, and be free from any real or perceived conflict of interest. PALS in the NHS are seen as at arms length within the organisation and are focussed on problem resolution rather than complaint investigation. Complainants are unlikely to have confidence in an objective complaints investigation being carried out by someone who in another part of her/his job is responsible for defending the organisation against claims.

4. Complaints handling:

We agree with the principle of more flexible approaches centred on the individual complaint and the preferences of the complainant. However, we do not agree that there should not be any time limits on the time taken to investigate and respond to a complaint. We believe that there should be a right for the complainant to have a complaint investigated by the Ombudsman if the body has not investigated and responded to their satisfaction, or agreed an alternative course of action or plan for dealing with their complaint, after say, six months. Undue delays and obfuscation can have terribly serious consequences for patients who may for example, lose their opportunity to take civil legal action. AvMA have examples of this happening.

5. Support:

We support of course the notion that staff of the NHS body receiving a complaint should be as helpful as possible in enabling the complainant to use the complaints procedure. However, we think that 'support' in making a complaint needs to be provided

independently. We believe that the regulations should require NHS and social services bodies to advise complainants and potential complainants of where they can obtain appropriate independent advice and support with their complaint. It should not be permissible to imply, as some current NHS literature which we have seen does, that it is necessary first of all to seek to resolve issues through PALS and only then will they advise you of who else can help. The information to be provided about independent providers of this kind of support should not be left entirely to local discretion. It is important that there is national consistency in this and that complainants are made aware of more specialist and independent sources of advice and support as well as generic Department of Health commissioned services like ICAS. Specialist services are often provided at a national level, for example, AvMA.

Please continue on a separate sheet if necessary

Where to return this form

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