

Health inequalities impact assessment (HIIA)

Final Report of the HIIA of changes proposed to the NHS complaints procedure

November 2016

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1. Scope of the HIA

The Patient Rights Act (Scotland) 2011 introduced a right for people to give feedback and comments, and to raise concerns and make complaints about NHS services, and it placed a duty on the NHS to actively encourage, monitor, take action and share learning from the views they receive.

The Scottish Health Council's '[Listening and Learning](#)' report, which was commissioned by the Scottish Government, found that, while all Boards had made progress in responding to the requirements of the Act, and several could demonstrate innovative thinking and techniques in their handling of complaints and feedback, there was evidence of variation in the way complaints are handled across the NHS. It recommended that, as experts in the field, the Scottish Public Services Ombudsman's Complaints Standards Authority (the CSA) should lead on developing a more succinctly modelled, standardised and person-centred complaints process for NHS Scotland, in collaboration with the public, NHS Boards and the Scottish Health Council.

The NHS Model Complaints Handling Procedure (CHP) has been developed through a partnership approach, led by a Steering Group chaired by the Scottish Public Services Ombudsman (SPSO)'s Complaints Standards Authority and involving representatives from across NHS Scotland including territorial boards, the Scottish Health Council, NHS Education for Scotland, NHS National Services Scotland, the National Prisoner Healthcare Network, primary care and the NHS Complaints Personnel Association Scotland (NCPAS). The independent Patient Advice and Support Service (PASS) and Healthcare Improvement Scotland public partners have also been actively involved.

The revised procedure is intended to support a more consistently person-centred approach to complaints handling across NHS Scotland. It will bring a much sharper focus to the early, local resolution of complaints, wherever that's appropriate, and bring the NHS into line with other public service sectors by introducing a distinct, five working day stage for early, local resolution, ahead of the 20 working day stage for complaint investigations.

The procedure reflects the broader ambition for the NHS in Scotland to be an open, learning organisation that listens and acts when unintended harm is caused. The

procedure complements the Duty of Candour provisions in the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016, and the development of a national approach to reviewing and learning from adverse events. It is also complemented by the Apologies (Scotland) Act 2016, which is intended to encourage apologies being made, by making it clear that apologising is not the same as admitting liability.

The revised procedure will require amendments to the Regulations and Directions associated with the Patient Rights (Scotland) Act 2011. The Scottish Government intends these amendments to be made ahead of the proposed implementation date for the new procedure of 1 April 2017.

These include changes to the Regulations to:

- Introduce a distinct, five working day period in which responsible bodies, including NHS boards and service providers, may attempt to resolve complaints without the need for an investigation. This brings the NHS complaints procedure more closely into line with other parts of the public sector, including local authorities since 2013, and with the revised procedure for Social Work Complaints, which is due to be implemented from April 2017. Complaints may bypass early resolution and go straight to the investigation stage if the responsible body considers it is a serious or complex complaint which cannot be resolved without an investigation.
- Allow for investigations to exceed the 20 day limit if there are clear and justifiable reasons to do so. This is in line with other sectors and ensures that complaints can be investigated thoroughly where additional time is necessary, for example to gather essential statements, or where the person making the complaint has agreed to mediation.
- Enable anonymous complaints to be considered as far as possible as part of the NHS complaints procedure. This will support NHS bodies to ensure their complaints data is as complete as possible by systematically recording, monitoring and learning from anonymous complaints.
- Introduce flexibility for NHS bodies to offer to apply the complaints procedure in cases even where the complainant has stated in writing that they intend to take legal proceedings. This is intended to increase the use of the NHS complaints procedure as the initial route for resolving disputes, and to support the NHS to resolve people's complaints in the most straightforward and person-centred way possible.

Proposed changes to the Directions are intended to:

- Support Boards and service providers to learn from complaints and use them to continuously improve services.
- Ensure that the data that is recorded, reported and collected nationally about complaints demonstrates evidence of learning and improvement alongside effective processes.

2. Details of the process:

A Health Inequalities Impact Assessment (HIIA) workshop was held at the Thistle Centre in Edinburgh on the 25 August 2016, facilitated by NHS Health Scotland. This was a full day workshop involving NHS Equalities Leads from territorial and special Boards, a Healthcare Improvement Scotland Public Partner, and representatives from Alzheimer Scotland, Youth Link Scotland, the Scottish Public Services Ombudsmen, the Health and Social Care Alliance Scotland, Child Poverty Action Group and the Scottish Independent Advocacy Alliance. The Scottish Council on Deafness contributed to the process by email.

The workshop considered a wide range of evidence, including national complaints statistics, research findings and good practice guidelines. Specialist knowledge and experience brought by participants included:

- Direct experience of working with people with various protected characteristics in acute care settings.
- Clinical experience of providing mental health services, including in the forensic sector.
- Experience and expertise in working with and supporting older people, including those with dementia and their families and carers.
- Working with and advocating for young people, families and carers, including those who are living in poverty.
- Experience of supporting people with disabilities or who are living with long-term health conditions to be in the driving seat of their care.
- Experience of working with people from different faith backgrounds.
- Expertise in overcoming barriers to communication, including those experienced by people with a learning disability, sensory impairment, or who are not English speakers.
- Expertise in complaints handling.
- Expertise in independent advocacy.
- Legal expertise.

The full HIIA scoping report is available on request.

3. Key findings

Overall, the stronger focus on early resolution was considered to have a potential positive impact on equalities groups. One underpinning principle of the model complaints handling procedure is to resolve complaints at an early stage, wherever that's appropriate, to avoid prolonging the possible distress associated with submitting a complaint to a health provider. The revised procedure seeks to open communication channels at an early stage, acknowledging the needs of all protected characteristic groups in a non-discriminatory manner. This approach will support organisations to foster good relations with those who use their services. It will help to build relationships between people using services and those providing them, which will support services to make changes and improvements based on open feedback.

The sharper focus on communication and, where possible, resolution at an early stage does present challenges, particularly in relation to communications, which are recorded below in relation to various protected characteristics.

The new, model complaints handling procedure is intended to support a more consistent, rigorous and systematic approach to recording and reviewing complaints, with a view to acting on this feedback to improve services. If it is not effectively implemented, and the recommendations and action points effectively taken forward, there is a risk that health inequalities could increase, as services would reflect the voices only of those who felt able to complain

Age: Children and young people may prefer to contact services using social media. Older people with a cognitive impairment may require additional support to make a complaint.

Disability: People with a disability may need access to additional support to make a complaint.

Gender reassignment: Failure to recognise transgender people as the sex they identify as may impact negatively on the successful early resolution of their complaint.

Pregnancy and Maternity: Some people in this category, especially those living in rural areas, may be reluctant to make a complaint at all, due to concerns that this may impact on the future relationship with a care provider. Others may need additional reassurance that their concerns will be taken seriously.

Race and Ethnicity: No specific concerns were identified, although it was recognised that non-English speakers may face additional challenges in making their complaint at early resolution stage.

Religion and belief: The sex of the person making the complaint, and that of the person they are complaining to or about, may be an issue for some faith groups.

Sex: The procedure needs to accommodate people who may have had a negative experience with a healthcare professional of a specific sex and wish someone of the opposite sex to deal with their complaint. Aligned with this is the consideration of gender-based violence, and the need to ensure that the person dealing with a complaint is the appropriate sex.

Sexual Orientation: Staff attitude and behaviours, if not supportive, can be a barrier to LGBT individuals complaining. A particular positive impact was identified for this group, that the inclusion of anonymous complaints may make it easier for someone to complain.

Looked after (including accommodated) children and young people: A particular positive impact was identified for this group, that early resolution may help to relieve children's concerns that their complaint will not be considered and acted upon. Children who are looked after and accommodated may find the new process of early resolution less intimidating than the previous system, and may therefore be more likely to engage with the NHS to raise a complaint.

Carers: Carers may find it hard to make time to engage, even at the early resolution stage. Child carers may be fearful their complaint will be dismissed.

Homelessness: A particular positive impact was identified for this group, that early verbal resolution may negate the need for written materials being sent to an address.

Involvement in the criminal justice system: The stronger focus on early resolution is intended to support prison health services to resolve complaints locally, improving wait times for prisoners. Prisoners may, however, experience difficulty accessing independent advice and support.

4. Key recommendations

The following recommendations are intended to enhance the positive impact for these changes, and reduce any potential negative impacts.

4.1 NHS Boards and service providers should make it clear that all complaints are welcome and will be used to inform continuous improvements to services. They should make information about how to make a complaint or give feedback freely available in public / inpatient areas, and should provide evidence of how they are using the information provided to improve services in the feedback and complaints reporting required by the Patient Rights Act and associated legislation.

4.2 Information about the NHS model Complaints Handling Procedure should be clearly presented in ways that support people's health literacy needs. Public-facing documents, in particular, should be written in plain English and made available as required in a range of languages and formats.

4.3 Staff involved in responding to complaints should have access to training on how to conduct an early conversation with the person making a complaint, to establish what matters to them and the outcome they would like to see from their complaint. Staff should be supported to understand how they can make a meaningful apology, where appropriate. Staff involved in investigating complaints should, additionally, have access to accessible information training.

4.4 NHS Boards should support staff to recognise where the person making a complaint may need additional support, and to make appropriate links where necessary with organisations providing advice and support, including independent advocacy.

4.5 Children's rights could be adversely affected if the complaints process is not followed correctly. NHS Boards should provide clear guidance to staff about issues of consent as they relate to children.

4.6 Younger people, in particular, may wish to contact services via social media. NHS Boards should test the use of social media to gather feedback and complaints.

4.7 The changes to the procedure bring opportunities to resolve a significant proportion of prisoner complaints at the early resolution stage. Boards should explore the potential for

testing innovative approaches to early resolution in prison settings, building on the work already underway in some Board areas.

5. Taking action

5.1 All staff need to have an understanding of how to deal with complaints at the early resolution stage, and the appropriate knowledge and skills to do so effectively. This includes being aware of how to make a meaningful apology where appropriate. Investigative staff must also have the skills and training to effectively investigate and reach robust decisions on more complex complaints. It is for each NHS body (including NHS Boards and service providers) to identify the training needs of appropriate staff to ensure they have the skills and confidence to implement the procedure effectively.

5.2 The Scottish Government has published a NHS model complaints handling procedure, and an accompanying public-facing document, by means of a [Director's letter](#) on 3 October, six months ahead of the proposed implementation date. This is available online at <http://www.sehd.scot.nhs.uk/details.asp?PublicationID=5911>. These documents have been provided as templates for NHS Boards and service providers to adapt and adopt. The implementation guide that accompanies the documents provides information about the advice and support that is available from the SPSO (including on the 'Valuing Complaints' website at www.valuingcomplaints.org.uk), NHS Educations for Scotland and NCPAS in preparing for implementation.

5.3 The SPSO's training unit provides training courses on complaints investigation and complaint handling skills, such as listening, problem solving and conflict resolution. Other resources on relevant topics including carer awareness and LGBT good practice, and tools such as Emotional Touchpoints and Accessible Information Standards (SAIF), are freely available to NHS staff.

5.4 The Scottish Government is supporting NHS Education for Scotland (NES) and the CSA to jointly develop a programme of training and events as well as awareness-raising materials to support implementation of the model complaints handling procedure. This will complement the existing e-learning modules, which cover skills for frontline staff and complaints investigators and which are freely available for all staff providing NHS services.

5.5 The NHS Complaints Personnel Association Scotland (NCPAS) provides a forum for complaints practitioners to share their experiences and learning from complaints handling. NHS Education for Scotland is working with NCPAS to explore the potential to jointly develop an online learning resource for NHS complaints handlers in Scotland, which will include a links to relevant training resources and materials, and an open forum for consideration of live issues.

5.6 Scottish Government has opened discussions with NHS 24, to explore the potential to develop a shared NHS resource of accessible information, to reduce the cost and

burden on individual boards. Early discussions have focussed on the production of key information about people's rights to give feedback and make a complaint, and the provision of these materials online in a range of languages and formats, including film clips in British Sign Language. NHS Inform has recently launched a new resource called 'Info for Me', which can be used alongside the translation tool, Browsaloud, to translate additional materials as required.

5.7 As part of this work, the Scottish Government will explore with NHS 24 the potential to update the two easy read guides on giving feedback and making complaints about NHS services, which were developed by Health Rights Information Scotland in collaboration with a range of equalities groups, to reflect the new procedure.



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