



MEDICAL PROTECTION SOCIETY



This document has been produced by the Medical Protection Society in association with the NASGP to assist practice managers and primary care organisations to incorporate sessional GPs fully and appropriately into their complaints procedures.

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Sessional general practitioners, as with all general practitioners, have an obligation to be involved in the normal practice complaints procedures. Government legislation, Health Service Guidance and statements from the medical profession, such as 'Good Medical Practice for GPs',⁽¹⁾ have all underlined the importance of the practice complaints procedure. But, as with other areas of a sessional GP's work, how practices and doctors deal with complaints involving them is very variable. This paper discusses ways in which individual sessional GPs and their groups, as well as GP practices & PCOs, can ensure such complaints are handled in a way that is fair and helpful, both to patients, practices and sessional GPs themselves. It is especially important for freelance/ locum GPs who can still sometimes be clinically isolated and for whom one badly handled complaint can have devastating affects on their employability.

As a GP for over 35 years, I know the value of information from patients. Complaints are one way in which patients provide doctors with information that can help organisations do better.

For both the patient and the doctor, complaints are best resolved early on and at a local level. We know from experience that things go wrong when they are not. The underlying reality is this – that complaints, when resolved quickly and sincerely, help all of us to provide better quality service. The more that we as doctors become accustomed to dealing with and responding positively to comments and criticisms from members of the public and our peers, the better.

Complaints procedures are a vital part of quality. Through complaints patients highlight areas in need of improvement, and the absence of complaints also tells a story about what is being done right. The NASGP has produced this important discussion document, Complaints Involving Sessional GPs, which shows us why sessional GPs in particular have different levels of exposure to complaints because of the way they work. There are some very sensible and practical ways of ensuring that complaints against sessional GPs are handled thoroughly and appropriately. I wish it well.

Sir Donald Irvine CBE, MD, FRCGP Former President of the GMC

Sessional GPs sometimes find themselves outside the current complaints procedures because of the differences in their contractual and working arrangements:

- GP providers have formal obligations, set out in their GMS2 contracts(2) and in the Medical Act's regulations. While sessional GPs do not have the same direct contractual obligations as GP principals, they are still accountable for their clinical practice. GPs who employ them are also responsible for 'contractual acts, errors and omissions of locums' and they have a contractual obligation to take reasonable steps to ensure that anyone they employ/engage has adequate clinical experience and training to carry out the work they are employed to do. The GP provider must also ask for and check references from their employees.
- Sessional GPs generally have little or no say in how a practice complaints procedure is implemented by individual practices.

Sessional GPs, and particularly freelance/locums, are more vulnerable to complaints because they:

- may have little or no established relationship with the patients they treat
- are less likely to know about essential non-clinical information relating to their current clinical setting
- receive poor or no induction to a practice and its clinical- and non-clinical systems
- are commonly faced with unfamiliar handwriting in paper notes or with inaccessible computer records
- sometimes have poor access to, and provision of, Continuing Medical Education (CME)
- sometimes have lack of feedback from doctors they work with.

Then again, there are occasions when sessional GPs, particularly freelance, are in a position to earn patients' goodwill by providing a fresh input in to an ongoing clinical condition.

Additional factors

- If a practice receives a complaint about a sessional GP who is no longer working there, the complaints manager should make every effort to contact the doctor concerned and get their side of the story.
- If the sessional GP has moved away from the locality, this may affect their ability to deal with the complaint, and may impose a financial penalty in terms of travel costs and lost income.

- If the complainant institutes formal legal action, the complaint process should be discontinued.
- The complaints procedure should be concerned only with resolving the complaint, not with disciplinary matters or apportioning blame.

Independent review by the Healthcare Commission

If the complaint has not been resolved to the complainant's satisfaction, they have two months in which to refer the matter to the HC. The HC will then assess the complaint and decide whether to (a) take no further action, (b) recommend action to the practice to resolve the complaint, (c) investigate the complaint further.

The complainant will be notified of the decision (and the reasons for it). A copy should also be sent to the person or body which is the subject of the complaint.

HC investigation

If the HC decides to investigate the complaint, it must notify all concerned of the proposed terms of reference for the investigation within ten working days of notifying them of the decision. Anyone who is sent the terms of reference has a further ten working days in which to comment on them.

The HC may investigate the complaint in any manner it sees fit, and this may include appointing a panel of three lay people to consider the complaint. The panel has considerable latitude to decide what procedure to adopt, but is expected to take into account any representations the complainant or the subject of the complaint make to it.

Any requests from the HC for information must be made in writing. The request must be clear about what information or documentation is wanted, and why. (It cannot ask for confidential personal information without the consent of the individual concerned.)

If a lay panel is convened, it must keep everyone concerned informed about the composition of the panel, the dates and times of any hearings, and the names of people it intends to take advice or evidence from.

The complainant and the subject of the complaint are entitled to be accompanied by a friend or advocate if they have to attend a panel hearing, but they "may not be represented by a legal representative acting as such".ⁱ

Once the HC has completed its investigation, it will produce a report summarising the complaint, describing the investigation and summarising its findings, setting out the HC's opinion of the findings and its reasons for arriving at that opinion. The report will then go on to recommend action to resolve the complaint. It may also include suggestions for improving the practice's service.

Copies of the report will be sent to the complainant, the practice and the PCT.

A complainant who is dissatisfied with an HC decision may refer the matter to the Health Service Ombudsman. NHS employees may also refer the case to the Ombudsman if they are unhappy with an HC decision.

Additional notes

- The complaints procedure is not applicable when legal or disciplinary procedures are in progress or when the complaint relates to data protection. [The latter has been dealt with since Jan. 2005 via “The Freedom of Information Access Regime” & prior to that date, the “Code on Openness in the NHS”.]
- Complaints must be brought within six months of the date of the incident – ie from the date the incident occurred, or the date when the incident came to the complainant’s attention.
- Emails are now considered a legitimate means of written communication.
- The 2005 practice-based complaints procedure is now very similar to those for other NHS bodies.
- The investigation start date is the day the complaint is received by the complaints manager. An acknowledgement in writing is required within two working days of receipt of the complaint and a full response after 10 working days (20 days in secondary care).
- Foundation status is not included in the definition of an NHS body. (Foundation trusts are usually dealt with via the Independent Regulator.)
- The Healthcare Commission (HC) is the new name for the Commission for Healthcare, Audit & Inspection (CHAI). The Commission decides on further investigation within 10 working days and allows same time length for parties to comment on terms of reference of investigation.
- A lay panel has 3 lay members; 2 out of the 3 must agree a decision. You cannot bring official legal representation to this meeting, but a friend can accompany you.
- The GMC can also take complaints directly from complainants in some circumstances.

ⁱ Department of Health, *Guidance to Support Implementation of the National Health Service Complaints) Regulations 2004* (nd).

Further Reading

1. Maintaining Good Medical Practice, General Medical Council
http://www.gmc-uk.org/n_hance/good/mgmp.htm
2. The “Blue Book”
http://www.dh.gov.uk/PolicyAndGuidance/OrganisationPolicy/PrimaryCare/PrimaryCareContracting/PrimaryCareContractingArticle/fs/en?CONTENT_ID=4079003&chk=5nnqaM
3. NASGP Setting up a sessional GP group
http://www.nasgp.org.uk/setting_up_a_local_group.htm
4. NASGP Code of Good Practice
http://www.nasgp.org.uk/code_of_good_practice.htm
5. NASGP Practice Induction Pack
http://www.nasgp.org.uk/practice_induction_pack.htm
6. Guidance to support implementation of the National Health Service (Complaints) Regulations 2004
<http://www.dh.gov.uk/assetRoot/04/08/81/57/04088157.pdf>
7. NHS COMPLAINTS REGULATIONS 2004 No. 1768
<http://www.legislation.hmsso.gov.uk/si/si2004/20041768.htm>
8. An Organization with a Memory
http://www.dh.gov.uk/PublicationsAndStatistics/Publications/PublicationsPolicyAndGuidance/PublicationsPolicyAndGuidanceArticle/fs/en?CONTENT_ID=4065083&chk=PARoiF
9. Building a safer NHS
<http://www.publications.doh.gov.uk/buildsafenhs/>
10. Guidance for negotiating fees for locum services in General Practice
<http://www.bma.org.uk>

Appendix

The NHS complaints procedure

With a few minor differences, the complaints procedure is the same for both primary and secondary care. It comprises three levels:

1. Local resolution.
2. Independent review by the Healthcare Commission (HC).
3. Referral to the Health Services Ombudsman.

Local resolution: key points

The vast majority of complaints are dealt with satisfactorily at local (ie practice) level. Each practice is expected to set up its own complaints procedure, but it has to include the following:

- A senior member of the practice should be nominated as the complaints manager.
- The practice complaints procedure should be well publicised via notices and leaflets.
- Receipt of the complaint should be acknowledged within two working days.
- The complaints manager must send a copy of the complaint and the acknowledgement to any person identified in it as the subject of the complaint.
- The complaints manager must investigate the complaint in an open-minded and fair manner.
- The investigation must be conducted in a way that is supportive to those involved.
- The subject of a complaint should be provided with a full account of the reasons for the investigation, be kept informed of progress, and given the opportunity to talk to the person carrying out the investigation.
- The complaints manager is expected to consult those who have been complained about before making a formal response to the complaint.
- The results of the investigation and any decisions arising from them must be conveyed to the complainant within ten working days of receipt of the complaint (twenty days in secondary care). If the investigation is particularly complicated, the complaints manager should agree a new completion date with the complainant.
- A copy of the response should be sent to the subject of the complaint.
- The complainant should be told how to refer the complaint to the HC if they are dissatisfied with the results of local resolution.
- The complaints manager must document the complaint and its outcome and this should be kept separate from the patient's health record.