



National Assembly for **Wales**
Cynulliad Cenedlaethol **Cymru**

Complaints against the NHS in Wales

Abstract

This paper provides background briefing on procedures for making complaints against the NHS in Wales.

August 2005



Complaints against the NHS in Wales

Dan Stevenson

August 2005

Paper number: 05/ 030

Members' Research Service: Enquiry
Gwasanaeth Ymchwil yr Aelodau: Ymholiad



Cynulliad National
Cenedlaethol Assembly for
Cymru Wales



Contents

1	Introduction.....	2
2	Making a complaint.....	2
2.1	Help with making a complaint.....	2
2.2	Local Review.....	2
2.3	Timescale.....	2
2.4	The Independent Complaints Reviewer.....	2
3	The Public Service Ombudsman for Wales.....	3
4	Judicial review.....	3
5	Legal action.....	4
6	NHS Redress Scheme.....	4
7	Number of complaints to the NHS in Wales, 2000-01 to 2003-04.....	4
	Table 1: Complaints to the NHS in Wales, 2000-01 to 2003-04.....	5

1 Introduction

The process for dealing with complaints against NHS Trusts, Local Health Boards (LHBs), and Family Health Services in Wales (FHS) (GPs, dentists, pharmacists, and ophthalmic practitioners) is outlined in Welsh Assembly Government document *Complaints in the NHS: a guide to handling complaints in Wales*, published in April 2003.¹

2 Making a complaint

2.1 Help with making a complaint

The following organisations can provide help and advice in making complaints at any stage in the process:

- ◆ Community Health Councils (CHCs), offer free help and independent advice to anyone who has had a problem with their NHS healthcare. A list of contact details for CHCs in Wales is available at: <http://www.wales.nhs.uk/catorgs.cfm#3>.
- ◆ Information on how to complain is also available from NHS Direct (tel. 0845 4647 or visit <http://www.nhsdirect.wales.nhs.uk>).
- ◆ Cardiff Law Centre, the only Law Centre in Wales, provides a free and independent professional legal service to individuals. Its contact details are available at the Law Centres Federation website.²
- ◆ A guide to NHS complaints procedures entitled *Making A Complaint About the NHS* is available from the Citizens Advice Bureau.³

2.2 Local Review

The guidance advises that, wherever possible, complaints should be resolved locally through the internal procedures of the relevant NHS organisation.

2.3 Timescale

Normally, complaints will only be investigated by the NHS if made within six months of the event, or within six months of the complainant being aware of the subject of the complaint, up to a total of 12 months after the incident. Where it was not possible to make a complaint earlier, the complaint may still be investigated.

2.4 The Independent Complaints Reviewer

When Local Resolution is completed, complainants who are dissatisfied with Local Resolution may request an Independent Review of their complaint within 28 days of the date of the final reply. These will be considered by two independent lay people appointed by the Welsh Assembly Government and, where relevant, a clinical adviser.

¹The full guidance document is available at: <http://www.wales.nhs.uk/sites/documents/420/ACFB5F%2Epdf>. and a patient information leaflet is available at: www.wales.nhs.uk/documents/complaints-leaflet-e.pdf.

² <http://www.lawcentres.org.uk/>.

³ http://www.adviceguide.org.uk/wales/family_parent_wales/health_wales/nhs_complaints_wales.htm#nhs_complaints-makingacomplaint.

The Independent Complaints Reviewer with a Lay Adviser will consider what actions might help resolve the complaint. They may suggest that the NHS body or FHS practice takes further action under Local Resolution or decide to set up an Independent Panel. They may alternatively decide that no further action is necessary, if for example, Local Resolution is considered to have been carried out satisfactorily. Where an Independent Review Panel (IRP) is established to investigate the complaint, NHS bodies and practitioners are required to co-operate.

The IRP may make recommendations for Trusts, Local Health Boards and FHS practices about improving systems to avoid future problems or to give redress. Whatever the outcome, the reviewer will inform the complainant of the full reasons for the decision.

3 The Public Services Ombudsman for Wales

Under the *Public Services Ombudsman (Wales) Act 2005*, which received royal assent on 7 April 2005, a new Public Services Ombudsman for Wales will replace the Health Service Ombudsman, the Welsh Administration Ombudsman, Welsh Local Government Ombudsman and the Social Housing Ombudsman, in Wales from 1 April 2006⁴ (the Health Service Commissioner will retain responsibility for England). A person may ask the Ombudsman to investigate their complaint against the NHS, although the Ombudsman will not normally become involved unless a complaint has been taken up officially at local level and at independent review level, and the complainant is still dissatisfied. Examples could include cases where too long was taken to deal with the complaint locally; where a panel review was unreasonably refused; or where a satisfactory answer to the complaint was not provided.

The Ombudsman normally expects complainants to bring complaints within twelve months of becoming aware of the problem. Where time has already been spent complaining directly to the body concerned, the Ombudsman will make allowance for that. Otherwise he will not accept a complaint out of time unless there is a good reason why the complaint could not have been made earlier.

A form for submitting complaints to the Ombudsman is available at:
<http://www.ombudsman-wales.org.uk/uploads/publications/25.pdf>.

4 Judicial review

The Citizens Advice website⁵ contains information on judicial review, through which it may be possible to challenge the final decision on a complaint.

Judicial review is a form of court proceeding in which a judge reviews the lawfulness of a decision or action made by a public body. It is a challenge to the *way in which a decision has been made*. It is not concerned with the conclusions of that process and whether those were 'right', as long as the right procedures have been followed. The court will not substitute what it thinks is the 'correct' decision. This may mean that the public body will be able to make the same decision again, so long as it does so in a lawful way. If an individual wants to argue that the decision was incorrect, judicial review may not be best course of action. Further information on judicial review is available on the Public Law Project website, including circumstances under which a judicial review can be sought.⁶

⁴ <http://www.ombudsman-wales.org.uk>.

⁵ http://www.adviceguide.org.uk/wales/family_parent_wales/health_wales/nhs_complaints_wales.htm#nhs_complaints_judicialreview.

⁶ <http://www.publiclawproject.org.uk/simpleguide.html#1>.

5 Legal action

If an individual is considering taking legal action about an NHS complaint, then they will need to consult a solicitor. Citizen's Advice make clear on their website that these actions are costly and complex. All family practitioners are insured and legal action will usually be contested by an insurance company. Where the legal action is about the actions of an NHS employee of a Trust or Primary Care Trust, the NHS institution will be responsible for deciding whether to contest the action.

6 NHS Redress Scheme

A new Bill entitled *The NHS Redress Bill* which was included in the Queen's Speech for the 2005/06 parliamentary session, builds on a commitment made in the 2001 Labour Party manifesto to reform the clinical negligence system, and also proposals in the report *Making Amends* of June 2003, by the Department of Health's Chief Medical Officer.⁷

The Bill proposes the introduction of an *NHS Redress Scheme* with the aim of providing faster and appropriate responses in cases of clinical negligence, and compensation where appropriate.

The Welsh Assembly Government has stated that a decision has not yet been reached as to whether the Bill's coverage will extend to Wales.

7 Number of complaints to the NHS in Wales, 2000-01 to 2003-04

The Welsh Assembly Government publication *Complaints to the NHS in Wales, 2003-04* (SDR 70/2004) provides a range of data on complaints received by the Hospital and Community Health Services (HCHS) and the FHS at any stage of the complaints process, but not to the Ombudsman.⁸ Tables 7, 10, and 11 of the release give numbers of cases that have involved Independent Review in both the HCHS and the FHS. Table 6 gives statistics regarding the different subject areas of complaints made. Table 1 below, shows the total number of complaints from 2000-01 to 2003-04, and also the total number of complaints received by the HCHS in each year that were still being pursued at 31 March of that year.

⁷ Available at:

http://www.dh.gov.uk/Consultations/ClosedConsultations/ClosedConsultationsArticle/fs/en?CONTENT_ID=4072363&chk=qXY2KS.

⁸ Available at: <http://www.wales.gov.uk/keypubstatisticsforwalesheadline/content/health/2004/hdw200409294-e.htm>.

Members' Research Service: Enquiry
Gwasanaeth Ymchwil yr Aelodau: Ymholiad



Cynulliad National
 Cenedlaethol Assembly for
 Cymru Wales

Table 1: Complaints to the NHS in Wales, 2000-01 to 2003-04

	2000-01		2001-02		2002-03		2003-04	
	complaints received (a)	still being pursued at 31 March (b)	complaints received (a)	still being pursued at 31 March (b)	complaints received (a)	still being pursued at 31 March (b)	complaints received (a)	still being pursued at 31 March (b)
Total number of complaints	6,063	326	5,828	377	5,475	324	5,258	284

Sources: Welsh Assembly Government Statistical Releases SDR60/2001, SDR33/2002, SDR 56/2003, SDR 70/2004.

^(a) Includes the HCHS, and the Family Health Services.

^(b) All complaints received in by the HCHS that year that had not been resolved by 31 March of that year.

Data for the year ending 31 March 2005 is expected to be published in September 2005.

Sources: Board of Community Health Councils in Wales
 Citizens Advice
 Health of Wales Information Service (HOWIS)
 Law Centres Federation
 NHS Direct
 Public Services Ombudsman for Wales
 Welsh Assembly Government, Health and Social Care Department