



JOINT ADVICE FROM ABDO, AOP, FODO ON NHS COMPLAINTS SYSTEM IN ENGLAND

18 September 2009

Executive Summary

As a GOS contractor you are obliged to operate the NHS complaints system in accordance with regulations and with your contract with the PCT regarding the provision of GOS and other (but not private) locally commissioned primary eye care services. Your contract will be amended to take account of new regulations. You must take responsibility for the arrangements in your practice(s) for dealing with complaints and designate a complaints manager. You must inform the public of your arrangements, e.g. by means of a notice or your practice leaflet (if you have one). You must seek to resolve complaints in good faith and treat complainants appropriately. (An oral complaint resolved within 24 hours is not considered to be a complaint.) A complaint may be made up to twelve months after the incident in question. A complaint may be made directly to the practice or via the PCT. In either case, you must acknowledge receipt of the complaint within three working days. You must then offer to discuss the complaint with the complainant. Whether or not the complainant meets you, you must inform the complainant about how you intend to deal with the complaint and how long it will take. You must try to resolve the complaint within six months. You must keep a record of all the complaints that you have received and report on them annually to the PCT. You may wish to keep such records separately from patients' clinical records, although it would be a sensible procedure to note in the clinical record that there has been a complaint.

The following model documents are attached:

- model practice leaflet/poster
- model letter acknowledging receipt of written complaint
- model form to record receipt of oral complaint
- model action sheet recording investigation and resolution of complaint

Background

The NHS complaints system in England has been revised by regulations which came into effect on 1 April 2009. GOS contractors will have to adapt their paperwork as a result. However, in practical terms, most of the changes are not major.

The few major changes include the following:

- a patient can complain directly to the PCT, if they wish
- you must record all the complaints that you receive about GOS services, domiciliary sight-testing and locally commissioned enhanced NHS services which you provide
- you must record the remedial actions taken and the lessons learned
- you must report annually to the PCT the number and nature of all the complaints received and the important actions taken.

Note that, for the purpose of operating the system, a complaint:

- must relate to GOS or a locally commissioned service only
- can include the issuing of optical vouchers
- is not a complaint, if it is made orally and is resolved within 24 hours
- is not a complaint, if it concerns dispensing services or spectacles or lenses which are entirely private arrangements.

If a complaint specifically states or implies negligence, you are strongly advised simply to acknowledge receipt of the complaint and to consult your representative body or insurance provider, before attempting to resolve the matter or admitting liability.

Contents of the New Regulations¹

1. As a GOS contractor, you are obliged by law to have arrangements in your practice (or in respect of your domiciliary service) to deal with complaints about your NHS services. Complaints about your private services or dispensing are matters for you to decide. Thus, the rest of this advice refers to NHS matters only, including the issuing of optical vouchers (but not the dispensing connected with vouchers).
2. For the purpose of these arrangements, a complaint is not a complaint, if it is made orally and is resolved to the complainant's satisfaction within 24 hours. A complaint may not refer to a failure to comply with the Freedom of Information Act (dealt with by a separate procedure). Nor may a complaint relate to a subject which has already been dealt with as a complaint and been resolved. In other words, a complaint cannot be repeated *ad nauseam*.

¹ The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009 (Statutory Instrument 2009 No. 309)

3. Your arrangements for dealing with NHS complaints must ensure that:
 - complaints are dealt with efficiently and are properly investigated
 - complainants are treated courteously, fairly, expeditiously, appropriately and are informed of the outcome of the investigation of their complaint
 - action is taken in the light of the outcome of the investigation if any is necessary.
4. Your arrangements must designate a person to be responsible for ensuring compliance with the law and a person as a complaints manager. They may be the same person. The responsible person must be either the chief executive of a corporate body or the sole proprietor of a business or a partner of a partnership. However, the functions of the responsible person and the complaints manager may be delegated to another person. In the case of a body corporate it is sensible for a senior manager to be appointed as soon as possible to carry out the functions of the responsible person on the chief executive's behalf and for designated complaints managers to be appointed in each branch.
5. A complainant may be a patient; or a person acting on behalf, and in the interests, of a patient; or a third party actually or potentially affected by the substance of the complaint against you.
6. A complaint about your NHS service may be made directly to you or via the Primary Care Trust. If the complaint about you is made to the PCT, the PCT is obliged to consider the complaint and can decide to handle the complaint itself. Alternatively, the PCT may, with the complainant's consent, refer the complaint to you for resolution. This is the course of action recommended in most circumstances by Department of Health guidance. You are obliged to deal with the complaint in accordance with the law and to cooperate with the PCT. Whether the complaint is made directly to you or via the PCT, you must acknowledge receipt of the complaint within three working days, either orally or in writing.
7. A complaint must be made within 12 months of the date, on which the matter which is the subject of the complaint occurred or came to the complainant's notice.
8. A complaint may be made orally, in writing or electronically. If it is made orally, you are obliged to make a written record of the complaint – but only if 24 hours have elapsed since the complaint was made and if the complaint has not been resolved (see above). A copy of the written record must be given to the complainant.
9. If you choose to reply to the complainant electronically, you may only do so with the complainant's agreement, for example if they have provided you with their email address.

10. When acknowledging receipt of a complaint, you must offer to discuss with the complainant how and when you intend to investigate and resolve the complaint. If the complainant refuses your offer, you must tell the complainant in writing how long it is likely to take you to respond concerning the substance of the complaint (the 'response period').
11. If your investigation of the complaint takes a long time, you must endeavour to keep the complainant informed of the progress of the investigation. As soon as possible after completing your investigation, you must tell the complainant in writing how you have considered the complaint and what you propose to do to resolve the complaint and any consequent action. You must also inform the complainant of their right to pursue the complaint with the Health Service Commissioner (the 'health ombudsman').
12. You must endeavour to resolve the complaint within six months after receiving the complaint or, if you cannot, tell the complainant why you have not managed to do so.
13. You must make information available to the general public about your arrangements for dealing with complaints about NHS services and how further information may be obtained. This can be in the form of a poster.
14. You must keep a record of each complaint received, the subject matter and outcome of each complaint, each response period where applicable (see above), and, in the cases of a response period being applicable, whether the complainant was informed of the outcome of the investigation.
15. On the date agreed with your PCT in your contract, you must report annually to the PCT the number of complaints you received in the year in question, the number of complaints which were justified ('well founded') and the number referred to the ombudsman.² You must also summarise the nature of the complaints received, any matters of general importance arising out those complaints, or the way in which they were handled, and any action taken to improve NHS services as a result of those complaints. Finally, your report must be made available to anybody on request.

² The optical bodies recommend reporting by 30 June on the period of the preceding financial year.

[MODEL PRACTICE LEAFLET]

Do You Have a Complaint?

If you wish to complain about our services or products, please let us know as soon as possible. Whether you are a patient receiving General Ophthalmic Services under the NHS or you are a private patient, we hope that most problems can be sorted out quickly and easily. The sooner you tell us about the problem, the quicker it can usually be resolved.

If your complaint is about a NHS sight test or other NHS service, you should tell us - verbally, electronically or in writing - within 12 months of the incident itself or 12 months of you becoming aware of the problem.

Please raise your concern with any of our staff or please contact:

[name and title of individual in the practice].

Alternatively you can complain to [NAME] PCT. They will tell you how they intend to deal with your complaint. The PCT may deal with it itself or refer it to us, if you agree.

We will acknowledge receipt of your complaint within three working days; and, if you wish, we will explain to you in person how and when we will investigate and resolve the complaint. If the investigation takes longer than expected, we will keep you informed. Although we undertake to resolve complaints within six months, most complaints are dealt with much more quickly than that.

You can be sure that we will treat your complaint in strict confidence. If you are complaining on behalf somebody else, we will need that person's permission to respond to you.

If your complaint is not about NHS sight testing or other NHS services but about spectacles or contact lenses only and we are not able to resolve it to your satisfaction, further help is available from:

Optical Consumer Complaints Service
PO Box 219, Petersfield, Hampshire GU32 9BY
Telephone: 0844 800 5071.

[MODEL LETTER OF ACKNOWLEDGEMENT]

[DATE]

Dear

Thank you for your letter dated about [*brief description of alleged problem and date*].

I am so sorry that you are not happy. I am looking into the points you raise as a matter of urgency and will let you have a full response as quickly as possible.

[FIRST ALTERNATIVE]

[We would be very happy to discuss the points you raise in your letter with you in person, if you would like to come to the practice. In that way, we can go into more detail and explain to you how we plan to investigate and resolve the matter.]

[SECOND ALTERNATIVE]

[We understand that your preference is not to discuss the matter in person, but the offer to do so at any time always remains open. Our estimate is that it will take us ... [day/weeks/months] to fully investigate and report to you on the matter.

Yours sincerely,

[NAME]

[TITLE: practice owner/manager/complaints manager]

[MODEL ORAL COMPLAINT RECEIPT FORM]

Complainant's Details

Name:

Address:

.....

Telephone:

Email:

Patient's Details (if different from complainant)

Name:

Address:

.....

Date of birth:

NHS number (if known):

Details of complaint

(including date of complaint, date of incident, nature of incident and persons involved)

If the complainant is not the patient:

I.....authorise the person named above to make this complaint on my behalf. I agree that the practice may disclose to him/her any necessary confidential information about me or my care in order to resolve the complaint.

Patient's name and signature.....

Date.....

[MODEL ACTION SHEET ON HANDLING OF COMPLAINT]

Complainant's name.....

Patient's name (if different).....

Address.....

.....

Date of birth:

NHS number (if known):

Practitioner's name.....

Was the complaint received from the PCT? Yes / No

Date complaint received.....

Date of incident.....

Method of making complaint: in person/telephone/email/letter [delete as appropriate]

Date complaint acknowledged a) orally b) in writing

Details of complaint

Date of meeting with complainant (if any)

Date of letter of explanation sent.....

Details of explanation

Details of further action to be taken (if any)

Date of resolution

Name and signature of complaints manager.....