



Is the NHS Complaints Process fit for purpose?

Here's why it needs to be changed.

(And why a fully independent National Complaints Group is the answer).

How does the current complaints process work?

As it currently stands, when a complaint is made by a patient, carer or family member, the matter is usually directed to either the Patient Advisory Liaison Service (PALS) or to the complaints department of the Trust against whom the complaint is being made. Each NHS Trust has the ability and authority to prescribe their own complaints policy, but in general they all fall within the same form, with only minor local tweaks. Often, if the complaint is a relatively small or local issue, this may be dealt with within the department itself or certainly within the service where the complaint initiated. If possible, the complaint is dealt with quickly at a local level, to the satisfaction of the complainant. Where local and swift resolution is not possible or the complaint is larger or more complex in nature – it will follow the formal Complaints Procedure, as set out in the Trust's Complaint Policy. In essence, this means that the complaint is formally reviewed by the Complaints department, and may include an initial review of the complaint and agreement in determining the exact nature and details of the complaint. Once this is agreed, or the complaint is already detailed and robust enough – the complaints department will then allocate the case to be investigated. The investigator is drawn from within the Trust, under their own employ, and tasked with looking into the complaint, speaking to staff and colleagues relating to all aspects of the complaint. The Investigator is usually taken from a pool of staff who have been on a short training course in conducting a complaint investigation, and usually outside of the field / area / service of the Trust that is the subject of the complaint. Once the Investigation has been completed – the report is provided back to the Complaints department. The report from the investigation is then turned into a formal letter response to the complaint by the complaints department. Once the formal response is completed, this letter is vetted by the investigator, and then multiple levels of management, upto and including the CEO of the Trust – who ultimately signs off on the content, as well as signing the response letter itself. In the latter stages, any input from the different management levels may be fed back to the complaints department and alterations made to suit their review. The entire process can take a few weeks, though it can many months, upto a year in some cases, before a formal response is provided to the complainant.

The resources to cover the running of the complaints department and the costs of the investigator are currently all paid for from within the annual budget of the Trust. This is different however, where negligence and legal proceedings are concerned. Negligence and legal proceedings are not covered directly by each Trust, instead each Trust are offered an option to buy an "insurance" style policy, from a separate NHS service, called NHS Resolutions. At the time of writing, ALL NHS Trusts utilised this facility and paid an annual premium, similar to having car or house insurance with legal cover, in order that NHS Resolution takes on the burden and costs of dealing with all legal proceedings. As such, NHS Resolutions provide services to each Trust as and when required, for an annual premium similar to the usual insurance underwriting principles by rating each Trust, with the aim that annual premiums from ALL Trusts combine to cover the annual running costs for NHS Resolutions.

Who benefits from the current system? (What are it's merits?)

The current system is heavily stacked in favour of the NHS Trust – as they effectively hold all the cards. Here's why. Once a complaint is made the Trust has access to all the records, notes, CCTV, sign-in sheets, prescriptions and internal systems for the patient, the department and all staff involved or in the locality of where the complaint originated.



Upon investigation, the assigned Investigator is an employed member of staff, tasked with investigating their own colleagues; all of whom ultimately answer to the same management team. The Investigator is likely to not have in-depth knowledge of the specialty area of care under investigation – as they are brought in from a different part of the trust, to provide a semblance of independence. The investigator is of medical / clinical background of sorts, hence being employed by the Trust, having chosen “medicine” as their career path. They have NOT chosen to join the police force or intelligence services, as that was not their vocation or career path. Couple this with the limited training, and being co-opted away from their day-to-day role, it isn't too difficult to imagine this role not being something that staff would enjoy or relish. Especially investigating your own colleagues – who knows, in the future these same colleagues could be investigating you! No-one naturally wants to find fault in their colleagues, their employer or the processes and systems they use themselves everyday. It is understandably a very difficult position to be put into, and unlikely to be relished or excelled at.

So, who benefits ultimately from this current system? Simply put, the NHS Trusts. They have complete influence over ALL records. They have influence over the investigator. The investigations take time, and those under investigation retain their access to any notes or records. When being “questioned” by an investigator, the staff are under no legal duty to tell the truth. They are perfectly at liberty to “forget”, “mis-remember” or incorrectly recall their actions or inactions from potentially weeks or months prior to being questioned about it. You may ask what the incentive is for an investigator to undertake this task with full vigour and integrity? What incentive is there for the investigator to ask telling questions, verify what they are being told or just take their colleagues at their word? Undertaking, by all accounts, a task that wasn't part of the career they signed up for, interrogating colleagues, procedures and their employer, instead of being able to go back to doing their “actual” job role.

Once the “investigation” has been complete, the report produced is handed back to the Complaints department. Here the clerical staff are tasked with compiling the formal letter / response to the complaint. They have to interpret the report, and produce a coherent and justified response to each point raised by the complainant. Is this the correct person to be doing this? Maybe. Perhaps someone with more or wider knowledge of “medicine” would be better placed. Someone familiar with what the procedures are, what actions are considered acceptable or reasonable, and what is not. Who in this role would question the actions of a Consultant who has stated they “did nothing wrong”?

The final stages provide the final opportunities for the Trust to influence the outcome. Each Trust, I am sure, will have different sign-off procedures. We do know that the final response does go through several management or director positions for their review and insight. I wonder how many of these reviews would give rise to questions over the validity of statements by staff? Or question the recommendations provided in the response? It is more likely, maybe, that these multiple reviews are to ensure that nothing is put in print that come cause the Trust further problems. Open them to questions or lawsuits, or commit them to tasks or actions they don't want to be held to. I wonder how many read the response, having just read the original complaint and critically analyse if the response is justified and answers the issues being raised? The last to look at the response is the CEO. They will provide a final check and sign off the response. Again, I wonder how many CEO's take the time to thoroughly read the initial complaint, and then the full response? I wonder if any have asked for further investigations? Or stood in the shoes of the complainant to consider what they would think upon reading the response?

How should the complaints process work? (Why an independent National Complaints Group is the answer)

Let's be totally honest here – when we complain about anything, we want our concerns investigated with honesty, integrity and accountability. Simply put, we want the truth. We want our complaints taken seriously, investigated thoroughly and with vigour. We want candour. From the staff, their colleagues and the Trust. The GMC provides instruction on a Duty of Candour, and as a complainant, that really is the foundation for any investigation. Not only



do we seek the truth, but in reality, we also need to see that process is also done in an honest and even handed way.

Given the choice, we would all choose an independent expert, trained in investigation and with no ties or vested interest to the person, department or Trust they are investigating. I don't think anyone would deny that utopia, an ideal scenario. Staff following their obligation to their Duty of Candour. All records faithfully provided unaltered as soon as they are requested, along with candid statements and records of all goings on, to the investigator without question or delay.

It would seem logical, reasonable and honest that complaints are given the importance and attention that reflects those of the complainant. That complaints are taken seriously, and investigated properly, without fail. It should be undertaken without undue influence at any level of the organisation or other outside influences, misplaced loyalty or for potential future favour or repayment in kind.

The complaints process should be undertaken to seek the truth. It should not be self-policy, self-investigating or able to be influenced, distorted or swayed by anyone. It should not be sold as story or painted as a rosy picture to hide the ugly truth.

Not all complaints will or should be upheld. The aim of a complaint investigation is not to seek evidence to prove the complaint; nor is it to seek a narrative to minimise the concerns or issues raised. It is, and should always be, about the truth. Upheld or not. In part or in full. The truth of the matter is a fundamental principal. We are dealing with the NHS. A national service dedicated to the health and well-being of the country's population. Patients seek help and treatment from the NHS when something is wrong. Sometimes very serious; sometimes minor. But whatever the reason, it is all about the health of our population. It can and often does mean life or death to people. It can be permanent, chronic or acute issues – but issues that may affect a patient for their entire life. As such, it is absolutely imperative that their health and health of others is the singular priority. The search for the truth, is the only way to treat each patient with due respect and dignity.

What benefits would such a change make? And to whom?

Implementing a independent National Complaints Group (NCG) would target resolving all the current flaws with the existing system. Simply put, NHS Trusts can not be trusted with policing themselves and not falling foul of the natural instincts to paint a story in their favour – with their cultural instinct at senior management level to protect their reputation, and their jobs.

The proposed changes would fundamentally change the landscape and turn it into a patient / complaint focused exercise, from its current Trust focused process. The undue and unmonitored influence at every stage of the complaint process would simply be removed from every Trust, and passed in their entirety to an outside, ringfenced, firewalled NCG, who would act independently from the Trust and its staff. Gone are the issues of investigating colleagues. Gone are the issues of doing a task thrust upon medical staff, instead undertaken by staff who have applied for the role, with better and intensive training and expertise in investigating medical issues. Gone are the opportunities to hide, destroy or alter notes – as records could be commandeered and copied at the first opportunity by the NCG, removing opportunity for improper access. Gone is the tampering with the narrative by senior management. Gone is the ability to simply not answer or claim ignorance, with those being questioned reminded of their Duty of Candour.

It will be the catalyst for a cultural shift. It will shine a light of poor practice, and remove undue influence from management to stay quiet, but to cooperate and be open about the reality of the situation. It won't be an overnight change. And will undoubtedly be met with resistance. However, I would envisage less resistance from those on the front line.



There has been a significant rise in the press of later, highlighting the plight of NHS whistleblowers. It has been reported on the behaviour, actions and tax-payers money being spent by unscrupulous management teams to try to intimidate and silence staff from whistleblowing. That is simply unacceptable. It must be changed, and a new culture inserted into the ranks of the NHS. What better way, than to have a dedicated department within the NCG, purely to deal with reports from whistleblowers. It is clear that current Whistleblowing Policies are not working. So, why not address this with the sweep of the same brush? Who are the best people to identify problems within the NHS? I would suggest there are 2 types. Patients. Staff. Eyes with perspectives from both sides. Between them, you can form a true and honest vision of the reality. Currently, it would appear according to recent press reports that BOTH sets of eyes are being blinded by the Trusts. Voices silenced. Patients dismissed or even blamed for the Trusts own problems.

The clarity of an independent complaints process to the patient seeking answers is clear and obvious. Even the potential for a cultural change within the NHS can be seen as a strong possibility. There is one further, and potentially even greater, benefit. Under the current system complaints, and concerns from whistleblowers are widely documented as being downplayed, hidden and dismissed. By brushing problems under the carpet, the NHS is doing itself and more importantly patients a huge disservice. They are failing to learn. Failing to improve. The insight from patients and staff are an absolutely vital source of data and information which could and should be used to analyse patterns, issues and identify key areas for improvement. By dismissing or downplaying or simply bullying complainants into silence, the NHS Trusts are losing this key data source. By putting reputations above all else, including patients, staff and taxpayers money, they are destroying the opportunity being presented to them to improve. This is simply bad practice and poor management. No successful private company would allow such incredible information to slip through their fingers. Let alone actually spend money to destroy it.

Yes, there are organisations such as Healthwatch who claim to fulfil this function. But it is simply nowhere close to the level of harvesting all this vital data at source and using it to improve the services. Healthwatch could and should be made redundant, instead their function being fulfilled by analysis of the NCG national data. And, of course, by follow-up audits from the NCG, to ensure its recommendations from each and every complaint are being implemented in a timely fashion. Where issues are consistently raised, these should be elevated to the next level, the “Healthwatch function” to be analysed and where appropriate issued as an improvement scheme / bulletin across all Trusts. The potential depth and breadth of improvements within Trusts and nationally could be huge.

Remembering every improvement signifies a better outcome for all patients. Not just resolving the complaint of one individual, but the potential to impact the experiences of all future patients going down that same pathway. Improvements may bring better practice across the NHS, streamline practices, create efficiency savings, or swifter or smoother turn around. Imagine all these small improvements factoring across the NHS? The largest employer in the UK (if not Europe) with in the order of 1.2M staff. Imagine those little improvements reducing negligence claims. The NHS spends many billions via NHS Resolutions every year. One percent improvement means £10's of millions can be reinvested into the NHS. If the NHS was to improve in negligence cases (assuming an example of annual £10Billion), 1% improvement, would be £100Million. How many extra doctors, nurses could be employed? Or pay rises provided to prevent potential strike action that has been in reported in the press of late. It would certainly go a long way to cover any implementation costs, and future running costs of the new NCG.

Won't it cost lots of money, when the NHS is already in desperate need of more funding?

It would be naive to think that there would be zero costs in implementing such a change. It may be the first thought that it will cost huge sums of money, to create an entire new service under the NHS umbrella.



So, will it cost money? Yes. Simply changing anything in such a huge organisation, will inevitably come at a cost. However, just remember that this function is already being undertaken throughout the NHS. Every Trust has their own Complaints Department. Each Trust seconds clinical staff into an investigatory role as and when necessary. Fundamentally, the proposal would centralise this function, into probably regional offices out of which the NCG would cover each region, to maintain sensible travel requirements when face to face interviews or hospital visitors are necessary. It would be an ideal scenario that recruitment of special investigators came from the existing pool of staff within the NHS. Natural turnover, new role or career opportunities for those already looking for change. The administration costs are already factored into the running costs of each Trust. The cost of investigators, currently fall under the annual wage bill of the Trusts. Like the current administration costs being met by the Trusts, the investigators are also funded by the Trusts. Therefore, it wouldn't take a huge effort to utilise the existing funding strategy of NHS Resolutions, by means of an annual premium from each Trust, to utilise this for funding the NHS NCG. I am sure existing office space could be identified within each region to accommodate this central team, as a base for each administrative and investigative team; and for the dedicated department for whistleblowers to reach out to raise their concerns. It would provide a safe hotline, and a safe space, away from their daily workplace for whistleblowers to call or attend when raising their concerns.

Inevitably, it can't be dismissed that the current practice of investigators being staff seconded from clinical roles. Therefore, the opportunity arises for those roles to be returned full-time to their original duties / roles at cost to their Trusts; or their hours adapted to suit the redeployment of investigative duties to dedicated and specific staff employed solely for that role.

By having teams of investigators stationed together, it brings with it the opportunity to have collaborative MDT meetings for groups of investigators and their management, where cases and specialist knowledge can be shared and discussed. Management would have the opportunity to collate similar issues across their entire region, and aid the development of wider improvements. It would ensure a far more effective learning process from invaluable insights, and provide a mechanism for those improvements to be rolled out across the NHS, as well as locally.

What are we waiting for?

There is simply no time like the present. We have been engulfed in scandal and controversy across the media in recent times. The unthinkable actions coming to light in the Post Office scandal, and the horrific impact on the lives of Sub-Post Masters. We have the ongoing inquiry into the tainted blood scandal. There are inquiries abound into specific NHS Trusts and institutions; mental health care deemed unfit for purpose, as well as campaigns on going to bring in new law's, such as Martha's Law, Robbie's Law and Edna's Law. A recent online petition by a grieving father, Jay Patel, following the tragic death of his son, Balram, calling for independent complaints body garnered in excess of 40,000 signatures. There are countless campaigns across a whole range of ailments, conditions and specific areas of medicine all of which have huge merits for those suffering within that field. All valid, all worthy and all with justified and passionate support. They all need to be heard, understood and implemented. There needs to be wholesale improvements to our beloved NHS. It needs to start now. It needs publicity, and the vital overhaul could be started with the successful implementation of the independent National Complaints Group – bringing with it the necessary changes to culture and implementation of improvements and lessons learnt from the very people with the very best insight. Staff and patients.

It is simply time to ensure the NHS incorporates and embodies the key qualities of Fairness, Honest and Accountability when it comes to the concerns of staff and patients alike.