Putting Things Right
- Dealing with Concerns toolkit

How to deal with concerns raised about the NHS from 1 April 2011

www.puttingthingsright.wales.nhs.uk
Dealing With Concerns Toolkit

This toolkit has been developed to provide a clear overview of how concerns are managed by the NHS in Wales under the NHS (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011. The flowcharts are designed to provide a high level representation of how the arrangements should work.

For more comprehensive details about the management of concerns, please see the full Guidance issued to the NHS in Wales at the end of March 2011.

The Guidance which interprets the Regulations, and other useful resources such as patient leaflets, posters, and model letters, are available at:

www.puttingthingsright.wales.nhs.uk

Thank you.
Important phrases to note

The phrases used in the flowcharts have the following meanings:

“Responsible Body”
is defined as a Welsh NHS body, a primary care provider or an independent provider.

“Welsh NHS body”
is defined as a local health board or NHS trust managing a hospital or other establishment or a facility wholly or mainly in Wales.

“Primary care provider”
is defined fully in the Regulations and essentially covers general practitioners; dentists; persons providing ophthalmic services and pharmacists who provide services under arrangements with local health boards.

“Independent provider”
means a person or body who (a) provides health care in Wales under arrangements with a Welsh NHS body and (b) is not an NHS body or a primary care provider.

“Qualifying liability in tort”
is where a Welsh NHS body has BOTH (1) failed in its duty of care to a patient, and that the breach of duty of care has been (2) causative of the harm that the person has suffered. It is only when both these tests are satisfied that a payment of compensation under the Regulations should be considered.

“Limitation period”
is the time normally allowed to bring a claim in law - usually three years from the date of the treatment or three years from the date the person became aware of the matter.
Anyone can raise a concern with a member of staff who will, if possible, try to resolve the concern there and then.

Concerns raised “on the spot” and resolved within the timescale agreed with the patient/representative when the concern was raised (ideally within 24 hours) are not handled under the Regulations, but should be recorded in line with local arrangements.

Any other concerns should be raised under the Regulations.

Start with Chart A2 and follow the charts according to the concern.
Concern is raised with the LHB or Trust (either by patient/representative following a negative experience or by staff member if a patient safety incident).

Acknowledge concern within 2 working days of receipt, seek consent if appropriate and establish any needs or support requirements.

If harm has been alleged, consider whether there is, or may be, the possibility of a qualifying liability in tort, follow Chart C.

Investigate concern in accordance with Regulation 23.

Issue a final response under Regulation 24 within 30 working days of receipt of concern, if there is no qualifying liability in tort.

Advise person of their right to contact the Public Services Ombudsman for Wales after the above stages.
Chart A3: How the NHS deals with a concern raised and dealt with under the Regulations

1. Concern is raised with the primary care provider (either by patient/representative following a negative experience or by staff member if a patient safety incident).

2. Acknowledge concern within 2 working days of receipt, seek consent if appropriate and establish any needs or support requirements.

3. Investigate concern in accordance with Regulation 23.

4. Issue a final response under Regulation 24 within 30 working days of receipt of concern.

5. Advise person of their right to contact the Public Services Ombudsman for Wales after the above stages.

If a primary care provider asks a LHB to investigate a concern on their behalf, follow Chart B2.

By a Primary care provider

If concern is raised by a person with a Local Health Board about a primary care provider, follow Chart B1.
If primary care provider has already responded, LHB cannot investigate again.

If LHB decides it is more appropriate for the primary care provider to investigate then the person must be advised of this and advised that they should raise their concern with the practice directly, and the practice must then investigate.

LHB to inform person of their right to take concern to Public Services Ombudsman if LHB decides not to investigate.

If person goes on to raise the concern with the primary care provider they must investigate in accordance with the Regulations and still issue a response within 30 working days of receipt by the LHB. Primary care provider follows Chart A3.

If LHB decides to investigate it should continue to deal with the concern in accordance with the Regulations and LHB issues a response within 30 working days of receipt of the concern. LHB follows Chart A2.
1. Within 2 working days of being asked to investigate, LHB to check with primary care provider whether the person has given their consent to LHB investigating, and to see whether the primary care provider has already responded.

2. If consent given and primary care provider has not already responded, LHB to determine whether it will investigate within 5 working days of receiving the above information. If no consent given, LHB cannot investigate, the primary care provider must investigate.

3. If the primary care provider has already responded, LHB cannot investigate again.

4. If the LHB decides it is more appropriate for the primary care provider to investigate, then the primary care provider must be advised of this.

5A. The primary care provider must investigate in accordance with the Regulations and issue a response within 30 working days of first receipt. Primary care provider follows Chart A3.

5B. If LHB decides to investigate it should continue to deal with the concern in accordance with the Regulations and LHB issues a response within 30 working days of receipt of the concern. LHB follows Chart A2.
If ‘Yes’ then the Redress arrangements cannot be used (please refer to Guidance).

2 Is there a possibility of any qualifying liability in tort? (i.e. a breach of duty of care and that this has been causative of harm).

3 Do the facts of the case lead to the conclusion that the £25,000 limit would be exceeded?

4 If ‘No’ then Welsh NHS body to continue to determine whether there is, or may be, a qualifying liability in tort.

5 Draw up the questions which need to be addressed, in order to decide if there has been a breach of duty of care/causation - If necessary secure independent expert opinion to answer the questions.

6 If it is determined that there is no qualifying liability in tort, then Welsh NHS body to complete investigation and issue a final response under Regulation 24, within 30 working days of first receiving the concern.

7 If it is determined that there is or may be a qualifying liability in tort, then Welsh NHS body issues an interim response under Regulation 26 within 30 working days of first receiving the concern.

8 Then follow Chart D.
Chart D: Welsh NHS body undertaking an investigation under the NHS Redress arrangements

1. Welsh NHS body has determined that there is or may be a qualifying liability in tort and issued an interim response under Regulation 26.

2. Investigation commences under Part 6 of the Regulations (Redress), advise person they are entitled to free legal advice. The limitation period is suspended from the date the concern was first received by the Welsh NHS body. Redress might include an apology, report, explanation, financial compensation and/or remedial treatment - Remember £25,000 financial limit cannot be exceeded.

3. Obtain Compensation Recovery Certificate in respect of any state benefits claimed and obtain evidence of any monetary loss the person may be claiming (e.g. loss of earnings; costs of care and assistance).

4. Welsh NHS body to ascertain (if not already done so earlier) whether there has been a breach of duty of care and causation. Consider whether any further expert reports are required on any outstanding questions - if person has accepted offer of free legal advice, their legal adviser should be allowed input into the instruction of experts.

5A. If qualifying liability in tort is admitted, proceed to quantifying claim and drawing up an offer - use tariff and/or commission independent advice on quantum. Communicate decision to person, if they have accepted offer of free legal advice, send copies of offer and all evidence to their legal adviser.

5B. If qualifying liability in tort is not admitted, communicate decision to person, and if they have accepted offer of free legal advice, send copies of offer and all evidence to their legal adviser.

6. For both options 5A and 5B: Decision to be issued within twelve months of the first receipt of the concern. Person has six months to respond to the offer.