

European Commission
Health and Consumer Protection Directorate-General
Health services consultation
B232 8/102
B-1049 Brussels
Belgium

31 January 2007

Dear Sir or Madam

Consultation regarding Community action on health services

Thank you for the opportunity to comment on how the European Commission should ensure legal certainty about cross-border health services under Community Law and support co-operation between the health systems of Member States.

My role as Health Service Ombudsman for England (HSOE) is to consider complaints made by or on behalf of people who have suffered because of unsatisfactory treatment or service by the National Health Service. In 2005/06, we investigated almost 2,000 such cases.

I comment only on those questions where I have an evidence base from complaints to inform my response. In particular, therefore, I am focusing on three of your questions, questions 2, 3, and 4. Within those broad question areas I am commenting with specific reference to complaints and complaint handling.

In preparing these comments I have referred, predominantly, to two documents, my draft Principles of Good Administration, which are presently under consultation and my report to Parliament, *Making things better? a report on reform of the NHS complaints procedure in England (2005)*. My first principle of good administration is "getting it right". This requires public service organisations to act correctly in accordance with the law, statutory powers and obligations, organisational policy and guidance and any other rules and regulations. It will not therefore surprise you that I welcome the Commission's stated intention of providing legal certainty for both citizens and national and local health bodies. I will now deal with each of the three questions in turn.

Question 2: Legal clarification and practical information.

It is essential that accountability and responsibility for the delivery of cross-border healthcare and the arrangements for complaining if things go wrong, are clear to patients and users of the service and to those providing it. In our experience, complaints about the funding of treatments are not unusual. In England, there is also evidence that emerging, integrated structures designed to provide more joined-up health and social care are often unclear about governance, both for the user and provider of the service. There should be a consistent approach to the handling of complaints across all providers of NHS services in England, irrespective of where those services are delivered, including primary care trusts, NHS foundation trusts and independent providers of NHS services, as well as in social care. There also needs to be a clear commitment that these organisations will collaborate to address complaints in a joined-up way and arrangements must be built into the system to achieve this. It is very likely that care for individuals will be shared across EU boundaries and the more simple and similar the complaints approaches are, the clearer it will be for service users.

I also support the contention that services and complaint resolution should be accessible to all. I am clear that to make a reality of this commitment may require support and advocacy, to enable complainants to pursue their concerns in the best possible way. With the added complication of complex arrangements and potential language difficulties, it seems to me that such support should form an essential part of any framework which is designed to be accessible to all.

Question 3: Which issues should be the responsibility of the authorities of which country?

In this section you asked specifically whose complaints and compensation systems should apply for each type of cross-border health service. I am clear that a complaints system is an essential component of good customer service, which enables mistakes to be put right quickly, and the organisation to learn from those mistakes. I therefore suggest that the complaints system should be built in to the service specification and be the responsibility of the service deliverer. I recognise that where there are two agents, for example a commissioner of the service and a provider, you may need two complaints systems which, however, should “join-up”.

Question 4: Who should be responsible for ensuring safety in the case of cross-bordered healthcare? If patients suffer harm, how should redress for patients be ensured?

I am clear that all levels of a complaints system should include provision for a full range of remedies for justified complaints, including explanations, apologies, specific actions or treatment for the patient, changes to prevent recurrence and, where appropriate, financial compensation. For me, as Ombudsman, redress is designed to put the complainant back in the position they would have been in had

the service failure of maladministration not occurred or, if that is not possible, to compensate them appropriately. I therefore suggest that the responsibility for redress for justified complaints should rest with the provider of the service which is being complained about.

I also welcome the intention to ensure that reporting and learning systems are integrated into the framework. My fifth principle of good administration, “putting things right”, requires public bodies to put mistakes right quickly and take action to correct policies and procedures which are found to be ineffective, unworkable or unfair. Recommendations arising from complaints should lead to practical improvements in service and progress on implementation and effectiveness should be monitored. These principles should be built in to the system and to the governance frameworks of the bodies delivering that system.

I hope these comments are helpful. Copies of my draft Principles of Good Administration and my report on NHS complaints are both available on my website. I would be very happy to provide any further information which might be helpful to you as you seek to develop what will be a complex framework with a strong patient and user focus.

Yours faithfully

Ann Abraham
Parliamentary and Health Service Ombudsman

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