

**Subcommittee on Improvements to the
Medical Complaints Mechanism
LegCo Panel on Health Services
Subcommittee Meeting on 3 July 2001**

An Overview and Analysis of Overseas Patient Complaint Systems

Purpose

This paper describes and analyses the patient complaints systems of Australia, the United Kingdom, Ireland, Northern Ireland and Canada for members' discussion.

Background

2. Similar to the patient complaints system in Hong Kong, there are different channels for patient complaints in most overseas countries. It has generally been recognized that the most effective and efficient way to handle complaints is to resolve them at the service delivery level. Therefore, individual health services providers have put in place their own mechanism to handle complaints and patients or clients are encouraged to express their grievances first to the respective health care providers.

3. Complaints about health care workers can also be directed to professional regulatory bodies similar to the Medical Council of Hong Kong. Examples include the General Medical Council of the United Kingdom, the College of Physicians and Surgeons of Ontario, Canada, New South Wales Medical Board, Australia and Medical Board of California, United States. These professional regulatory bodies are statutory bodies responsible for licensing of doctors, ensuring standards of medical practice and investigating complaints about doctors. They also have the functions of adjudication and discipline.

4. Apart from the complaint channels of individual providers, and professional regulatory bodies, additional mechanisms for patient complaints have been set up in some countries. Their structure, function and remit are described in this paper.

Description of Overseas Complaint Systems

Health Care Complaints Commission (HCCC), New South Wales, Australia

5. The HCCC is a statutory body (Health Care Complaints Act 1993) established by Parliament in 1994 to provide people with means of making a complaint about health care practitioners and health care services. The Commissioner is appointed by the Governor. The executive arm of the HCCC is housed under the Department of Health. The work of the Commissioner is monitored and review by the Joint Committee, which consists of members appointed by the Legislative Council/Assembly. The Joint Committee reports to the Houses of Parliament and it also has the power to veto proposed appointment of the Commissioner.

Remit

6. Complaints may be made about anything to do with health care or a health care service, from both the public and private sector, in the state of NSW. Examples include:

- aspects of treatment such as inadequate care, inappropriate behaviour, inadequate diagnosis, lack of consent, communication;
- a hospital, a nursing home, a community health centre, a private clinic or any other place that provides health care;
- the care and treatment received from a doctor, nurse, dentist, chiropractor or any other health care practitioner including alternative and other non-registered health care practitioners, such as acupuncturists, masseurs, naturopaths;
- access to medical records, privacy, breaches of confidentiality, discrimination or other health rights; and
- the professional conducts of a health care practitioner.

Complaint handling process

7. Complaints are handled in consultation with various Professional Registration Boards. The HCCC would then decide whether to carry out investigation or conciliation, refer to other appropriate body for follow-up

actions. If investigation reveals that disciplinary actions or prosecution may be warranted, the case will be referred to the respective registration board for inquiry. HCCC would take the prosecution role at the inquiries. For cases that do not warrant investigation or conciliation, HCCC will hold informal resolution meeting to discuss the issues relevant to the complainants and work out ways to resolve depending on the complainants' concerns.

The Patient Support Offices

8. Seven Patient Support Offices are established by the Commission. They have been set up with a belief that many problems and concerns can be resolved at the service delivery level promptly without escalating to the Commission. The Offices assist complainants through:

- providing information about health right;
- resolving concern by providing information, facilitating self advocacy and assisting patients to negotiate and discuss;
- providing information on health, welfare and support groups; and
- helping in the resolution of problems through clarifying issues and identifying options for resolution.

Health Services Commission (HSC), Victoria, Australia

9. The HSC is an independent statutory authority established in 1988 under the Health Services (Conciliation & Review) Act 1987 to receive and resolve complaints about health service providers. The Commissioner is appointed by the Governor in Council. The executive arm of the Commission is housed under the Department of Health. The Health Services Review Council is an advisory body consists of members appointed by the Minister for Health to advise him on the health complaints system and the operation of the Commissioner.

Remit

10. Complaints may be made about anything to do with health care or a health care service, from both the public and private sector, in Victoria. Examples include:

- failure to provide satisfactory care;
- failure to provide enough information or denial of right to choose;

- denial of respect, dignity or privacy; and
- negligence or being unprofessional.

Complaint handling process

11. The role of the HSC in handling complaints received are:
- to help people make their concerns known to health services providers;
 - to assess and clarifies problems in health services provision;
 - to conciliate formally or informally, between consumers and providers of services;
 - to assist in the resolution of complaints;
 - to use information obtained and lessons learned to recommend improvement to services; and
 - to make referrals to the respective registration board if the investigation revealed that disciplinary actions may be warranted. In contrast to the NSW system, the respective registration board would take the prosecution role at the inquires.

The Health Services Ombudsman, United Kingdom

12. The Health Services Ombudsman investigates complaints about the National Health Service (NHS). The NHS is set up to provide publicly funded healthcare for all UK citizens and is managed by the Department of Health. The appointment, power and jurisdiction of the Health Services Ombudsman are governed by the Health Service Commissioners Act 1993 and extended by the Health Service Commissioners (Amendment) Act 1996. It is an agency independent of the NHS and the Government. The Ombudsman is appointed by the Crown, by Letters Patents and is accountable to the Parliament. He presents an annual report and special reports on specific investigations to both Houses of Parliament.

Remit

13. The Ombudsman can investigate complaints against hospitals or community health services which are about:
- a poor service;
 - failure to purchase or provide a service which one is entitled to receive;

- maladministration like avoidable delay, not following proper procedures, rudeness or discourtesy, not explaining decision, not answering ones complaint fully and promptly;
- complaints about care and treatment provided by a doctor, nurse or other trained professional (after 31 March 1996); or
- other complaints about family doctors, or dentists, pharmacists or opticians providing a NHS service locally (after 31 March 1996).

14. Services in a non-NHS hospital or nursing home are outside the scope of the Ombudsman. Moreover, complaints can be made to the Ombudsman only when they are still dissatisfied following the local resolution process. Complainants cannot complain to the Health Services Ombudsman directly without going through the local resolution procedures.

Complaint handling process

15. Complaints about the NHS should be directed first to local organisation where complaints will be resolved by the frontline staff (e.g. general practitioners, dentists, opticians, pharmacists providing NHS service). Patients can also send in written complaints to the complaints managers of the local health authorities who will also investigate into the complaint.

16. Patients who are still dissatisfied after going through the above local resolution procedures can complain to the Health Services Ombudsman. In the early stage, the Ombudsman will decide on whether or not an investigation will be carried out. If the complaint is not to be investigated, the complainant will be informed accordingly with explanations. For cases require investigation, detailed information on the complaint will be collected through interviews. Relevant documents such as medical records are also utilised. If the complaint is related to the treatment provided by doctors, nurses or other professionals, independent expert professional advisers will be invited to help the Ombudsman. At the end of investigation, an Ombudsman Report will be prepared and sent to the complainant, the NHS and any other body responsible for the complaint. The Ombudsman may also seek an apology for the complainant, get a decision changed or repayment of unnecessary costs, call for changes and monitor progress of implementing such changes.

Office of the Ombudsman, Northern Ireland

17. The Office was established in 1969 and the current powers and responsibilities are set out in the Ombudsman (Northern Ireland) Order 1996 and the Commissioner for Complaints (Northern Ireland) Order 1996. The Ombudsman is appointed by the Queen and is independent of the Assembly and of the Government.

Remit

18. The Ombudsman can investigate complaints from people who claim to have suffered from injustice because of maladministration of any bodies within the Ombudsman's jurisdiction. In December 1997, the powers of the Ombudsman are extended to include complaints about doctors, dentists, pharmacists and optometrists providing family health services in the National Health Service. He is also able to investigate complaints about the exercise of clinical judgement.

Complaint handling process

19. Complaints will be investigated. Following the investigation, the Ombudsman may conclude whether the complaints are justified. If yes, he can recommend that the body being complained about should provide a remedy. However, he has no power to enforce the recommendations made.

Office of the Ombudsman, Ireland

20. The Ombudsman Act, 1980 provides for the establishment of the Office of the Ombudsman and sets down the procedures and conditions governing the appointment. The Ombudsman is independent to the Government and his appointment is made by the President on the passing of a resolution of the Houses of the Oireachtas recommending the person concerned. Also, he has to submit annual reports on his activities to the Oireachtas.

Remit

21. The Ombudsman can only investigate the actions of central government departments and offices and their officers. Starting from 1985, the Government made an Order to bring the local authorities and health boards

within the Ombudsman's remit. However, with regard to the health boards, the Government Order excludes from the remit complaints related to clinical judgement in connection with the diagnosis of illness or the care or treatment of a patient. Moreover, private practitioners, dentists, opticians, pharmacists, etc. are also outside the remit of the Ombudsman.

Complaint handling process

22. There are 4 stages for handling each complaint:
- Complaint receipt – screening, registering and acknowledging complaints
 - Preliminary examination – requesting for report and files, conducting interviews, case analysis, making conclusion, notification of conclusion
 - Investigation – drawing up investigation plan, liaison with body related to the complaint, conducting interviews
 - Report writing and publication

The Ombudsman, Ontario, Canada

23. The Ombudsman is an officer of the provincial Legislature who is independent of the government and political parties. The Ombudsman has jurisdiction over all provincial government organisation including Ministries, boards or other administrative units of the Government of Ontario

Remit

24. In Ontario, patient complaints are mainly handled by the service providers and the respective regulatory body. The Ombudsman who investigates complaints against the provincial government organisations and makes recommendations for improvement also investigates complaints related to health insurance (OHIP) and patient care in psychiatric hospital. He can also help resolve complaints informally. However, he cannot investigate complaints against doctors, although referrals to the regulatory body may be provided.

Complaint handling process

25. The Ombudsman accepts both verbal and written complaints. He will first decide on whether the complaints fall under his jurisdiction. If yes, evidence will be collected. Based on the evidence the ombudsman will consider making conclusion and recommendation for improvement.

Analysis of the Overseas Systems

26. Among the systems described, four, namely that of United Kingdom, Ireland, Northern Ireland and Canada take the model of an ombudsman system. “Ombudsman” is an old Swedish word. The concept of the ombudsman evolved during the Swedish enlightenment of 1719-72 where democracy, humanitarianism and individual liberty were emphasised against state absolutism, injustice and abuse or misuse of public power. The role of the ombudsman, therefore, is to ensure that all government or public officials performed their duties with justice, honesty and public responsibility. Thus, the ombudsman is a unique instrument to represent the interests of the public to improve quality of public administration.

27. We note that while an ombudsman system possesses merits in terms of impartiality and independence, it has limitations and restrictions on its scope and function. For instance, the scope of the ombudsman of United Kingdom and Northern Ireland cover only the NHS services which are funded by the Government. Moreover, complaints can be made to the Health Services Ombudsman only after going through the local resolution process. Such a two-tier complaints mechanism for public-funded services is similar to the complaint mechanism of the Hospital Authority, where a second tier of complaint handling body (i.e. the Public Complaints Committee) with members who are independent of the service provider and the government has already been put in place. For the Ireland and Canadian systems, the scope limits further to exclude complaints related to clinical judgment and complaints against doctors.

28. Besides, since an ombudsman office is a body outside of the administrative structure and the relevant profession, there will be great resource implication to acquire the required expertise and knowledge to make a judgment involving professional standard and practice. Most ombudsmen also do not have the power to enforce their judgment.

29. In the Australian systems, patient complaints are essentially handled by the Department of Health in collaboration with the professional regulatory bodies. With the power conferred by the legislature, the scope of the Commissions is much wider compared to that of the Ombudsman systems. The Commission can investigate any complaints related to health care or health care services of both the public and private sector. The Commissioner is appointed by the Governor. To provide a mechanism of checks and balance, the work of the Commissions are monitored and reviewed by a committee or council consisted of members either appointed by the Legislative Council (in the case of New South Wales) or the Minister (in the case of Victoria).

30. Irrespective of which mode the complaint mechanism takes, it has been observed that the principle of professional autonomy is preserved. The power to deliver a verdict and to award discipline will remain with the professional regulatory body.

Conclusion

31. In view of the public demand, a redress mechanism based on the model of an ombudsman system may not be able to meet the public expectations due to the limited scope of such system.

32. There are good points in the Australian system that merit further consideration. This system also has the advantages of improved user-friendliness by providing a one-stop service to complainants, enhanced efficiency of the complaints system by utilisation of professional staff of the Government, and avoidance of duplication of function. This system however requires a separate piece of legislation for appointment of the Commissioner and monitoring or advisory committee, which is a statutory body.

Advice Sought

33. Members are invited to comment on the contents of this paper.

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