

The Review of NHS Complaints Handling

May 2013

Memorandum from



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Executive Summary

ISCAS believes that effective handling and resolution of complaints is a cornerstone of good healthcare delivery. It helps ensure that patient satisfaction with the overall service is not adversely impacted and, if intelligent corrective action is taken, allows for service learning and improvement.

The Independent Sector Complaints Adjudication Service (ISCAS) has for over twelve years operated by reference to a well-established Code of Practice for Handling Complaints across the independent healthcare sector, the management of which is undertaken by Independent Healthcare Advisory Services (IHAS). This includes the provision of a dedicated secretariat.

Key learning over the years;

1. A Code of Practice, owned by ISCAS members, summarises the importance of effective complaints handling, and sets out consistent clear standards to be achieved by all ISCAS members.
2. A three-stage complaints process has been running effectively. This was reviewed at the time the NHS changed to a 2 stage process however; ISCAS retained the three stages which reinforce local resolution. The stages are: Stage 1, *Local* Resolution; Stage 2, organisational/corporate *level* Resolution; Stage 3, Independent External Adjudication. ISCAS manages Stage 3.
3. A three-stage complaints process maximises the ability of healthcare service providers to take ownership of complaints (in Stages 1 and 2), and resolve them within the provider service. It minimises the number of complaints coming through to Stage 3 (adjudication).
4. External adjudication has a high success rate in resolving the more difficult or intractable complaints.

5. Adjudication is not focused on a 'win' or 'lose' approach and, ideally, does not seek to blame or to discredit any of the parties but rather to explain what has happened.
6. The main aim of adjudication is to leave all the parties with a better understanding and insight into the issues that have been raised, which leads to a greater focus on the lessons learnt.
7. The outcomes include a wide range of remedies for example, a sincere apology, a good will payment and recommendations being made to the ISACS member. Goodwill payments (with a maximum set at £5000) can be awarded by the Adjudicator and can help reduce litigation, and in fact becomes a viable alternative - especially for service complaints.
8. Medical Defence Organisations acknowledge the benefits that this system has brought forward.
9. **Private Patients treated within the NHS have no ability to complain to any external body about their treatment.** The Parliamentary and Health Service Ombudsman has no jurisdiction, and NHS Private Patient Units are not members of ISCAS. With the removal of the cap on private income, this will be a developing problem.

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1. Introduction

1.1 ISCAS membership comprises members and specialists across the health care industry in all four countries of the UK, to share a unique level of knowledge, experience and understanding on the effective management of complaints about any aspect of service provided within the healthcare units of its members.

1.2 Almost all members of ISCAS also subscribe to services from the Independent Healthcare Advisory Services (IHAS)¹, which provides advisory and support services in the areas of regulatory compliance and policy setting.

1.3 IHAS core objectives are to:

- facilitate effective communication between subscribers, the government and external organisations
- strive to develop and drive policy advancement through shared subscriber input and consultation
- deliver focused, practical information and guidance in all areas of regulation and policy, sharing and distributing knowledge

1.4 The terms of this review refer to NHS complaints. However it is important to consider complaints across the entirety of the sectors involved in the provision of healthcare (NHS and independent) as the patient pathway will cross both sectors. In addition the experience and achievements of managing complaints in the independent sector can provide a comparator for the NHS. This response sets out some of the key successes and achievements of the ISCAS Code of Practice.

2. ISCAS experience

2.1 For over 12 years, patients using the services of the independent sector have had the benefit of an effective complaints resolution procedure from organisations signed up to the Code of Practice and the independent adjudication service. The Code of Practice was commenced following the work of the Health Select Committee in 1999 in which the private sector was criticized for not having a complaints system that could be recognised by patients. That situation is dramatically different today. A previous chair of the Care Quality Commission described the ISCAS complaints

¹ IHAS is a division of the Association of Independent Healthcare Organisations

process as “.....*better than any system operating in the NHS*”. ISCAS has updated the Code periodically and is about to publish its latest version. Appendix I contains the final draft of the 2013 Code for publishing.

3. What is the ISCAS Code of Practice?

3.1 The original Code of Practice was agreed by the sector over 12 years ago and is now ‘hosted’ by IHAS. ISCAS has been set up as a member-owned co-operative, operated by its members who are independent healthcare providers. ISCAS operates the third stage of the complaints resolution procedures of the IHAS Code of Practice:

- Stage 1 - local resolution (hospital/clinic level)
- Stage 2 - Internal review (CEO/Board of Trustees)
- Stage 3 - Independent External Adjudication

3.2 The three stages are essential in managing complaints and achieving resolution for the vast majority without accessing the final adjudication stage. The second stage allows an organisation to review a complaint outcome at senior level and is one step removed from day to day management to make sure all options have been exhausted to resolve the complaint.

3.3 What sets the ISCAS Code apart from its NHS equivalent is the comprehensive and progressive three-stage process of complaints management, as opposed to the two-tier approach seen in the public sector. The Code of Practice emphasises a preference for Stage 1 (local) resolution but incorporates a ‘safety-net’ Stage 2 (internal review), which is still conducted under the local complaints procedure. Only once the internal processes of the first two stages have been exhausted does an independent external adjudication, overseen by the ISCAS whose secretariat is supplied by IHAS, become activated.

3.4 The purpose and outcome of adjudication is principally to offer answers and then, if possible, to put things right in the most appropriate way. The complainant benefits by not only being offered a deeper insight into the issues raised but may also receive a financial payment in recognition of any failings. Importantly, for complainants, there is no cost to them through participation and, therefore, no risk involved. Additionally, the decision to engage in the adjudication process does not preclude the complainant from pursuing litigation at a later stage if that is what they

wish to do although it is important to remember that the outcome of the adjudication process is likely to be taken into account by any subsequent judgment.

3.5 The Adjudicator reviews the case by reference to the case file of correspondence and clinical records. The Adjudicator produces a comprehensive report of the case in their decision letter for the complainant and copied to the healthcare provider. The adjudicator also writes directly to the ISCAS member highlighting any recommendations to practice.

3.6 The Code provides clear standards in managing a complaint and has retained timescales to meet the expectations of complainants. During the consultation about the 2013 Code ISCAS received feedback about the positive aspects of retaining timescales in the procedures. In addition complaint managers have best practice guidance based on shared learning from organisations.

4. Effective local resolution

4.1 By way of example, in one year an ISCAS member who is a major provider had 1,573² stage 1 complaints and, of these, 38 needed to be escalated to stage 2 internal review. From these 38 cases only 3 cases could not be resolved and therefore moved to independent adjudication with ISCAS.

4.2 The ISCAS Code includes complaints about cosmetic surgery which means its members afford these complainants the same 3 stages of complaint resolution. A proportionate procedure for complaints about cosmetic treatments such as cosmetic injectables is provided for the Treatments You Can Trust³ (TYCT) registration scheme, which ensures complaints about a TYCT registrant are responded to appropriately by the provider and can be monitored by the TYCT Governance Board.

4.3 The independent sector healthcare providers have a culture that actively captures patient's complaints and uses the information to improve services and patient satisfaction. A good complaints system is seen as a sign of a quality service.

² A rate of 1 complaint per 115 admissions.

³ <http://independenthealthcare.org.uk/>

4.4 Underpinning the Code is learning from complaints and a commitment to value complaints for the feedback they provide about independent healthcare services, and to bring about quality improvements.

5. Funding the Adjudication Process

5.1 The subscribers to ISCAS pay an annual fee for the secretariat services and support from IHAS. This base cost is shared across all members on a sliding scale according to company size. Compliance with the ISCAS Code and the Independent External Adjudication scheme is the basis of membership of the ISCAS.

5.2 Each case accessing adjudication incurs a cost, which is paid for by the individual organisation. The allocation of the costs of complaints to an organisation can help to facilitate an effective local resolution in the majority of cases and learning lessons from previous experiences. In addition the Code of Practice allows the Adjudicator to award a goodwill payment to a complaint in recognition of any inadequacies identified by the complaint which is paid by the individual organisation. The complainant does not contribute to the financial costs of adjudication.

6. ISCAS Annual Report Highlights

6.1 ISCAS publishes an annual report highlighting complaints activity for the year and setting out key learning and other messages from the Adjudicator and the secretariat (www.iscas.org.uk). ISCAS has seen a steady rise in the number of people contacting ISCAS about complaints some of which can be challenging and complex to handle, in particular about non-member services. ISCAS views all of the contacts as important and provides an opportunity to explain the complaints handling process and signpost people back into local resolution procedures where appropriate.

6.3 The secretariat continues to receive enquiries from complainants who have been treated privately within the NHS and experience real difficulty in accessing clear information about how to complain about the service provided by the NHS hospital. In particular, ISCAS has raised the issue of NHS Private Patient Units (PPUs) whose complainants have no access to any form of independent review.

This is because a complaint about private medical care and treatment cannot be referred to the Parliamentary and Health Service Ombudsman and NHS PPU's are not subscribers to ISCAS which leaves a significant gap in a complaints process for these complainants.

6.4 There has been a steady rise in the number of adjudication cases, with 22 cases. This may indicate a growing recognition by the sector of the benefits of the adjudication process. Since 2006, there has been a significant rise in the number of Heads⁴ of Complaint across the industry and a higher number of women accessing the service than men.

6.5 The benefits of the increase in the analysis of complaints, which provides a more specific identification in the Heads of Complaint, is that the response is more complete, and better targeted to the complainant and to the member organisation complained against.

6.6 As well as providing a resolution process for complainants, one benefit of the adjudication service is to resolve the complex burden placed on providers by particularly difficult or intractable cases.

6.7 Complex cases often demand a disproportionate amount of management time to resolve but the timely use of adjudication offers a solution both to complainants and to providers. One of the key benefits of the service is that the Adjudicator is able to offer a more distanced perspective of the issues which focuses on the broader picture while, simultaneously, scrutinising the case in detail. The service has a high success rate in resolving the more difficult complaints.

7. ISCAS Governance

7.1 The ISCAS Governance Board was established in 2012 to ensure the independence of the Code and appointed an independent Chair, Lady Fiona Hodgson CBE. The Board can hold members to account and ensure the effective implementation of the standards the Code requires. ISCAS is also supported by the Patients Association in seeking to increase public and patient engagement.

⁴ 'Heads of Complaint' are the number of issues raised within a complaint identified by the complainant or the adjudicator

ISCAS monitors Code compliance and reports any matters of non-compliance and subsequent ISCAS actions to the Board. Further details of the aims and Board members can be found in Appendix II.

7.2 The ISCAS adjudicators, importantly are independent of the healthcare providers that makeup the ISCAS membership. They have demonstrable integrity, and base judgements upon an unbiased and logical approach, maintaining flexibility and consideration of the wider context. Appendix III provides a short biography of two of the ISCAS adjudicators.

8. Sharing experiences and practice

8.1 ISCAS shares learning and best practice with organisations through the IHAS monthly update briefing paper issued widely to all subscribers. This contains relevant references to current complaint news and a monthly message from one of the three Adjudicators.

8.2 The annual report also contains a summary of recommendations for better complaints handling based on thematic outcomes of the adjudication cases for the year. These provide practical learning points for organisations to improve their practice in managing complaints and use learning points from individual organisations (although these do not identify the organisation).

8.3 The success of ISCAS is becoming increasingly known amongst a wider group of independent healthcare providers, with new organisations wishing to subscribe and adopt a well established Code of Practice. This includes stand-alone smaller organisations that need to offer an independent review process to complainants.

9. Recognition of the Code of Practice

9.1 The Code of Practice has just been reviewed and subject to external consultation following the previous review and launch in 2009. The then Care Quality Commission (CQC) Chair, Baroness Barbara Young, afforded the revised edition a ringing endorsement, telling delegates: *'I would encourage the independent sector, both providers and doctors, to embrace this Code as it is currently better than any system operating in the NHS.'*

It was the second stage of the procedures that Baroness Young singled out for praise, as a robust buffer between the ultimate Stage 3 procedure and a first line of management which is not always as dispassionate as it could be, at the Stage 1 phase. ISCAS also welcomes the positive support of the Code of Practice from the Medical Defence Organisations, the MDU, MPS and MDDUS who all contributed to the consultation process.

9.2 CQC continue to recognise ISCAS by signing up to an Operating Protocol with IHAS which means complainants are better signposted to the right procedures and which facilitates sharing of information with the secretariat. Health Inspectorate Wales (HIW) has also signed a similar Operating Protocol recognising the value of the Code. HIW have strongly recommended new applicants for registration as independent providers in Wales to join ISCAS to demonstrate compliance with the regulations governing complaints management. Health Improvement Scotland are in the processes of drafting a similar arrangement for Scotland.

10. Providing information for patients and the public

10.1 The ISCAS Guide for Patients, supported by the Patient's Association, about making a complaint continues to be very much appreciated by patients from feedback to the secretariat. The publication is due for revision this year. The ISCAS web page for members of the public is dedicated to complaints information and often receives comments of support and appreciation from patients for its clarity.

11. Adjudication versus Litigation in the handling of complaints

11.1 Before making a decision about whether to pursue litigation or adjudication, complainants are encouraged to consider which is the most appropriate route - based on the nature of the case and on their desired outcome. The different options deliver different benefits.

11.2 Time spent at this early stage in identifying the core objectives of the complainant and the most suitable resolution process can save time; reduce cost and deliver more meaningful benefits for all parties involved. The secretariat will always encourage a complainant to undertake this assessment.

11.4 The fundamental difference between litigation and adjudication is that litigation is an adversarial process where the parties engage in argument with each other in order to 'win' the case. The process is driven by, and focused upon, this central goal which aims to persuade those in judgement of the validity of the case being argued. The way in which information is disclosed is managed strategically in order to gain advantage, rather than to achieve openness and transparency and this impacts on the outcome of litigation which, essentially, is focused on financial compensation rather than on lessons learnt.

11.5 Litigation is a lengthy and costly process but it does not always deliver what the complainant most wants which might include an explanation, an apology; a financial remedy or more frequently with health complaints, positive action to ensure that the same mistake is not repeated. The over-emphasis on achieving compensation can eclipse the focus on these wider objectives.

11.6 **Adjudication** as an alternative method of complaint resolution offers a number of benefits which reflect the fact that it is a non-adversarial process designed to conduct a detailed investigation of the facts and sound evaluation of the evidence in an unbiased manner. All the facts are set out in a transparent way and the judgement should be linked closely to the evidence base, and be well reasoned and fair to all parties. Adjudication is not focused on a 'win' or 'lose' approach and, ideally, does not seek to blame or to discredit any of the parties but rather to explain what has happened. The main aim of adjudication is to leave all the parties with a better understanding and insight into the issues that have been raised, which leads to a greater focus on the lessons learnt. The emphasis on lessons learnt is a significant benefit of the adjudication process for those complained against because previously hidden systemic weaknesses may be identified which can lead to meaningful solutions being offered and implemented to introduce improvements.

11.7 As indicated earlier, the purpose and outcome of adjudication is principally to offer answers and then, if possible, to put things right in the most appropriate way. The complainant benefits by not only being offered a deeper insight into the issues raised but may also receive a financial award in recognition of any failings. Importantly, for complainants, there is no cost to them through participation and, therefore, no risk involved.

The adjudicator uses clinical and technical experts to where indicated and ISCAS requires a report from the expert of the same standing as required by a legal case.

11.8 The decision to engage in the adjudication process does not preclude the complainant from pursuing litigation at a later stage if that is what they wish to do although complainants are encouraged to treat the adjudication as final. It is important to remember that the outcome of the adjudication process, particularly an award of compensation, is likely to be taken into account by any subsequent judgment.

11.9 The clear distinction, therefore, between litigation and adjudication is that adjudication is focused on answers and explanations; on learning from the mistakes; on making recommendations to improve future service delivery as well as on compensating the complainant where appropriate.

11.10 Above all, adjudication is able to offer all these benefits at a significantly lower cost than litigation.

Appendix I



Complaints Code of Practice

May 2013

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About this Code

Independent healthcare organisations (hospitals, clinics and doctors working privately) want to give all patients an excellent service. However, there may be times when they get it wrong. When this happens, they want to respond to complaints swiftly and, where they can, try to put things right.

This Code sets out the necessary standards that all independent healthcare organisations which are members of the Independent Sector Complaints Adjudication Service (ISCAS), have agreed to meet when handling complaints about their services.

This document describes the minimum standards for complaints handling. It also includes an explanation of adjudication arrangements, an independent way of resolving disputes with those independent hospitals and clinics that are members of ISCAS.⁵ The costs associated with adjudication are met by the organisation and not by the complainant.

This Code applies to patients treated privately in an ISCAS member hospital or clinic, whether or not they paid for their care directly or through an insurance scheme. Complaints from NHS funded patients treated in an ISCAS member hospital or clinic should be handled according to the NHS Complaints Procedure. Sometimes this may mean ISCAS members handling complaints from NHS patients under this Code as part of the investigation under the NHS procedures (this does not include private patients in NHS Trusts).

The Code applies to complaints about doctors and other healthcare professionals working within member hospitals and clinics, even where they are not employed by the clinic and have practising privileges (this means they agree to provide certain services within the hospital or clinic as independent practitioners).

The Care Quality Commission (CQC) in England is the regulator for health and adult social care including independent healthcare services. It does not handle complaints⁶, nor does it provide an arbitration service. However, it collects information about how independent healthcare services meet the regulations and standards it sets, and will take action where any offences have been committed. The Healthcare Inspectorate Wales (HIW), Health Improvement Scotland (HIS) and the Regulation and Quality Improvement Authority (RQIA) (Northern Ireland) regulate independent healthcare services in their respective countries. The regulators of each country recognise and signpost complainants to ISCAS.

⁵ A full list of healthcare organisations that are members of ISCAS is available at www.iscas.org.uk

⁶ The only exceptions to this are complaints from people whose rights are restricted under the Mental Health Act, or their representatives, about the way staff have used their powers under the Act.

Learning from complaints

Underpinning this Code is a commitment to value complaints for the feedback they provide about independent healthcare services, and to bring about quality improvements. In addition to acknowledging mistakes and apologising where it is appropriate, ISCAS members will inform a complainant about how the complaint was investigated, the lessons learned from their complaint and the actions they have taken as a result. This might include changing guidance to staff, or a policy, or it might mean providing new or different services.

Sometimes finding a remedy for a complaint requires more than this. ISCAS members will consider a range of remedies, which may include a goodwill payment in recognition of any shortfall in complaint handling, inconvenience, distress, or any combination of these. This Code also provides for the Independent Adjudicator (the final stage of the complaints handling process) to review a goodwill payment to the complainant.

The Independent Adjudicator (the final stage of the complaints handling process) can review or award a goodwill payment of up to £5,000. This is not designed to be compensation. If a complaint potentially appears to have arisen as a result of clinical negligence and compensation is sought, and/or might be awarded if a clinical negligence claim is successfully pursued, it may be appropriate to seek legal advice.

Principles

This Code reflects the *Principles of Good Complaint Handling* identified by The Parliamentary and Health Service Ombudsman. Good complaint handling means:

- 1. Getting it right**
Quickly acknowledging and putting right cases of maladministration or poor service that led to injustice or hardship. Considering all the factors when deciding the remedy with fairness for the complainant and where appropriate others who also suffered
- 2. Being customer focused**
Apologising and explaining, managing expectations, dealing with people professionally and sensitively and remedies that take into account individual circumstances
- 3. Being open and accountable**
Clear about how decisions are made, proper accountability, delegation and keeping clear records
- 4. Acting fairly and proportionately**
Fair and proportionate remedies, without bias and discrimination
- 5. Putting things right**
Consider all forms of remedy such as apology, explanation, remedial action or financial offer

6. Seeking continuous improvement

Using lessons learned to avoid repeating poor service and recording outcomes to improve services.

ISCAS members are not public bodies, and ISCAS does not provide a public service⁷. However, these principles can be reasonably applied to independent healthcare hospitals and clinics. Therefore, ISCAS members are expected to have complaints handling procedures that are proportionate and reflect these principles.

Further details of these principles can be found at www.iscas.org.uk

The standards

The Code sets out a three stage process for handling complaints. All complaints should be raised directly with the hospital or clinic in the first instance (stage 1). Complaints should normally be made as soon as possible and within 6 months of the date of the event complained about, or as soon as the matter first came to the attention of the complainant. The time limit can sometimes be extended (so long as it is still possible to investigate the complaint). An extension might be possible, such as in situations where it would have been difficult to have complained earlier, for example, when someone was grieving or undergoing trauma.

In the event that the complainant is unhappy with the response to their complaint, they can escalate their complaint by asking the hospital or clinic to conduct a review of its handling (stage 2). Finally, if the complainant remains dissatisfied they can request independent external adjudication of their complaint (stage 3).

Stage 1: Local Resolution

ISCAS members will:

1. Have a written procedure on the handling of complaints. This should be concise, easy to understand and only contain relevant information about complaints handling. The procedure should be kept up-to-date and as a minimum include information about:
 - The process for handling complaints, including clinical governance arrangements within the hospital or clinic for investigating complaints, including where a clinical negligence matter may have arisen
 - The steps the ISCAS member will take to investigate the complaint which are thorough yet proportionate⁸

⁷ The Court of Administration confirmed that ISCAS provides a private service and not a public service, as a result of an application for a Judicial Review of ISCAS in 2011.

⁸ [CQC: Essential standards of quality and safety, outcome 17](#)

- The timeframes the ISCAS member will work to in trying to resolve the complaint (see standards 9 and 10)
 - How complaints can be made, including how complaints submitted by email or text or using other media will be handled.
2. Ensure that the procedure on complaints handling is well-publicised and easily available to complainants. For example, ISCAS member websites should include information on 'how to complain' and confirm their membership of ISCAS. Complainants should be provided with a copy of the complaints procedure when they first raise concerns about any aspect of the service they have received.
 3. Ensure that the ways in which complaints are accepted does not deter or disadvantage patients or their relatives from making complaints⁹. Reasonable assistance should be available to anyone needing help to make a complaint (for example, whose first language is not English or who may have a disability).
 4. Offer complainants a face to face meeting to talk through their concerns and try to resolve the complaint early on.
 5. Remind complainants of their right to seek independent or legal advice where any aspect of their complaint might give rise to a clinical negligence claim. Even if independent advice is being sought about possible clinical negligence the ISCAS Code recommends that the complaints procedure and ultimately stage 3 adjudication is continued.
 6. Agree with clinicians who hold practising privileges that co-operation with the complaints procedure is a condition of working within the hospital or clinic, described in the Independent Healthcare Advisory Services (IHAS) Practising Privileges Model Policy.
 7. Keep confidential all details relating to the complaint and its investigation, and seek appropriate consent from the complainant (or someone acting as their proxy) in circumstances where the investigation of their complaint requires the release of their medical records or sharing their information with other relevant parties.
 8. Respond in writing to written complaints, whether made by letter, email or text. Any face to face or telephone discussions with a patient about concerns with the service they have received should be recorded in writing and normally be followed up in writing to the complainant.
 9. Provide a written acknowledgement to complainants within 2 working days of receipt of their complaint (unless a full reply can be sent within 5 days).

⁹ A communication constitutes a complaint when the issue requires investigation and a formal response.

10. Provide a full response to the complaint within 20 working days or, where the investigation is still in progress, send a letter explaining the reason for the delay to the complainant, at a minimum, every 20 working days.
11. Consider a wide range of appropriate and proportionate responses, including:
 - Acknowledging when things have gone wrong
 - Giving the complainant an apology, where appropriate
 - Taking action to put things right
 - Sharing details of how the organisation has investigated and has learnt from the complaint including any changes made as a result
 - Making a gesture of goodwill offer, where appropriate.
12. Signpost complainants to the next stage of the complaints procedure, in the event that they are dissatisfied with the response to their complaint. This means an explanation to the complainant of the option to proceed to the stage 2 review of their complaint and what that entails. Complainants should also be informed that, should they wish to escalate their complaint to stage 2, they must do so in writing, within 6 months of the final response to their complaint at stage 1.

Stage 2: Complaint Review

ISCAS members will

13. Have arrangements in place by which to conduct a review of the complaint. Normally this will mean that a senior member of staff within the organisation, who has not been involved in handling the complaint at Stage 1 and is removed from the hospital or clinic that the complaint is about, will review all of the documentation and may interview staff involved, to form an independent view on the handling of the complaint.
14. In the case of smaller organisations there is a need to demonstrate processes that allow for an objective assessment of the complaint at stage 2.
15. Provide a written acknowledgement to complainants within 2 working days of receipt of their complaint at stage 2 (unless a full reply can be sent within 5 working days).
16. Provide a full response on the outcome of the review within 20 working days or, where the investigation is still in progress, send a letter explaining the reason for the delay to the complainant, at a minimum, every 20 working days.
17. Signpost complainants to the next stage of the complaints procedure, which means explaining their right to an independent external adjudication of their complaint, and the timescales for doing this. Requests for independent external adjudication should be made to ISCAS, in writing, within 6 months of receipt of the stage 2 decision letter. Requests for independent external

adjudication will be allowed outside this timeframe only in exceptional circumstances.

Stage 3: Independent External Adjudication

ISCAS will

- 18.** Have a written document that explains the Independent External Adjudication Process. This should be concise, easy to understand, and kept up-to-date. This document should be available on the ISCAS website and a hard copy sent to complainants on request.
- 19.** Provide a written acknowledgement to complainants of their request for independent external adjudication within 2 working days of receipt of the request.
- 20.** Check with the ISCAS member hospital or clinic that the processes for local resolution and stage 2 review have already been exhausted and obtain a response within 2 working days.
- 21.** Refer complainants to the ISCAS member that their complaint is about, where the complaint has not been through local resolution stages 1 and 2.
- 22.** Ask complainants to clarify in writing which aspects of their complaint they wish to refer for adjudication and consent to the ISCAS process and release of relevant case records from the ISCAS member.
- 23.** Assign an Independent Adjudicator to consider the complaint. The adjudicator will be entirely independent of the ISCAS member organisation, and will have the necessary skills and experience to perform this role.
- 24.** Ensure that complainants understand the binding nature of the independent external adjudication. In order for a complaint to proceed to Independent External Adjudication, the complainant must accept:
 - The finality of the decision by the Independent External Adjudicator;
 - That any decision and/or goodwill payment awarded by the Independent External Adjudicator brings the complaint process to a close;
 - That the Independent Adjudicator's decision is binding on the ISCAS member. However, for the avoidance of any doubt (subject to paragraph 24 below), any award of a goodwill payment recommended by the adjudicator does not preclude a complainant from seeking any additional legal remedy; monetary or otherwise.
- 25.** Remind complainants of their right to seek independent legal advice where any aspects of their complaint might give rise to a clinical negligence claim. Even if independent legal advice is being sought about clinical negligence or might be sought in the future pending the outcome of the adjudication process the ISCAS

Code recommends that the complaint can be considered under the complaints procedure and ultimately stage 3 adjudication.

The Independent Adjudicator will

26. Accept complaints for adjudication, unless:

- It is reasonable to consider that the complaint has been resolved, or
- The ISCAS member has genuine and reasonable grounds for considering that the complaint can be resolved locally and takes active steps to achieve this, or
- The complaint is outside the remit of the Code for complaints handling, or
- It is reasonable to consider that the complaint is vexatious, or
- In exceptional circumstances a reasonable and acceptable request has been made by the ISCAS member hospital or clinic that the case should be deemed closed at stage 2 and not proceed to stage 3.

27. Provide a written acknowledgement to complainants within 2 working days of receiving from ISCAS, documentation relating to their complaint.

28. Provide a full adjudication decision within 20 working days or send a letter explaining the reason for the delay to the complainant, at a minimum, every 20 working days.

29. Consider a wide range of remedies, including asking the ISCAS member:

- to provide an explanation and apology, where appropriate
- to take action to put things right
- to share details of how the organisation has learnt from the complaint and any changes made as a result
- to offer a goodwill payment in recognition of shortfalls in the complaint handling, inconvenience, distress, or any combination of these, up to a limit of £5,000. Any goodwill payment awarded by the Independent External Adjudicator should take account of any claim that the ISCAS member has against the complainant (e.g. for unpaid hospital fees). Acceptance of the goodwill payment by the complainant will bring all matters that are subject to the complaint to a close.

30. Consider using appropriate resources to assist the adjudicator in his/her determination. Such resources may include the commissioning of clinical and technical reports from external experts¹⁰, and or requests for further documentation or clarification from the complainant or the ISCAS member. In some cases, the Adjudicator may need to speak with the complainant or the ISCAS member, in order to decide how best to resolve the complaint.

¹⁰ ISCAS uses experts from a reputable and recognised source ensuring there is no conflict of interest

Breaches of the Code

ISCAS members will

31. Undertake an annual self assessment of compliance against the standards set out in the Code. They are required to declare the outcome of this assessment to ISCAS, together with an action plan that sets out how they will meet standards with which they have not been compliant.
32. Cooperate with ISCAS to address areas of non-compliance.

ISCAS will

33. Publish an annual report on how ISCAS members are performing against the standards set out in the Code. This will be based on the self-assessments conducted by ISCAS members, themes arising from Independent External Adjudication and other ISCAS activity in the reporting year.
34. Undertake a performance assessment of ISCAS members that repeatedly fail to meet the Code's standards.
35. Take steps to remove the membership of any ISCAS member that persistently fails to meet the Code's standards and does not engage with ISCAS to improve its complaints handling.

Complaints about ISCAS or the Independent Adjudicator

Complaints about the way ISCAS has handled a complaint at stage 3, or about the Independent Adjudicator, should be made in writing to the Director, ISCAS. A complaint can only be made if the complainant believes that ISCAS and or the Adjudicator have failed to carry out the process of adjudication properly.

THE ISCAS DIRECTOR will

- I. Acknowledge receipt of the complaint within 2 working days.
- II. Invite the complainant to meet to help resolve the complaint, where this may be helpful.
- III. Investigate and respond to the complaint in full within 20 working days.
- IV. Refer the complaint to the independent Chair of the ISCAS Governance Board if the complaint cannot be resolved after 20 days and notify the complainant accordingly. The Chair will consider the complaint about

ISCAS and may hold a small panel to consider a case. A response will be made within 20 working days.

- V. Report all complaints about ISCAS to the Governance Board and publish information about feedback from those who use the service.

Dealing with abusive or vexatious complaints

ISCAS members should have a policy in place to handle situations where people pursue their complaint in a way that can impede its investigation, can cause significant resource issues for the organisation, or which involves unacceptable behaviour (such as leaving multiple voicemails or emails, or using abusive language). The policy should set out how the organisation will decide which complainants will be considered vexatious or unreasonably persistent, and how the organisation will respond in those circumstances.

ISCAS has its own policy for handling vexatious complaints and provides guidance to members on its application.

Appendix II

ISCAS Governance Board

1 The objective of the ISCAS Governance Board is:

1.1 To ensure the independence of the implementation of the Code of Practice for the handling of Patient's Complaints in the independent healthcare services.

1.2 To meet the objective the Board will:

1.3 Ensure that the Code of Practice for the Handling of Patient Complaints about independent healthcare services provides a fair and effective route for remedy of complaints in accordance with current national best practice.

1.4 Hold ISCAS Members to account for their observance of the Code of Practice for the Handling of Patient Complaints in the independent healthcare sector.

1.5 Make recommendations concerning the annual delivery plan and budget including fees for subscribers (ISCAS Members).

1.6 Hold the management of ISCAS to account for the delivery of the ISCAS service, annual plan and budget.

1.7 Seek feedback from consumers' stakeholder and providers about the Code of Practice; derive lessons; and recommend appropriate changes to the Code of Practice as necessary.

1.8 Advocate the merits and benefits of the Code to patients, staff, regulators, and other stakeholders.

1.9 Approve the Annual Report to stakeholders.

2 Accountability

2.1 The Board is accountable to its stakeholders .

2.2. It will exercise its accountability by means of an Annual General Meeting of ISCAS Members and publication of an Annual Report.

2.3 The Chair of the ISCAS Board will adjudicate upon cases of misconduct in the use, or avoidance of, the Code of Practice by ISCAS Members that have been brought to their attention.

Board Membership

Adrian Roberts
Andrew Wilby (in attendance)

Spire Healthcare
ISCAS

Dave Parks
Annette Shannon
Christine Malcolmson
Christine Mozzamdar
Gail Webster
Lady Fiona Hodgson, CBE
Lindsay Mullins
Michael Watson

Priory Healthcare
Ramsay Health Care
Hospital of St John and St Elizabeth
The Hospital Group
BMI Healthcare
Chair
Transform Medical
Acting Director Advice and Information Services, Patients Association

<i>Charles Hutton</i>	<i>The New Victoria Hospital</i>
<i>Rosemary Hittinger</i>	<i>HCA International</i>
<i>Sally Taber</i>	<i>IHAS</i>
<i>Sally Williams (in attendance)</i>	<i>Independent Adjudicator</i>
<i>Dr Stuart Sanders</i>	<i>Independent Doctors Federation</i>
<i>To confirm additional patient representative</i>	

Appendix III

Adjudicator short biography

ISCAS Adjudicator, Fiona Freedland

Fiona Freedland is a solicitor who specialises in the field of medical law. She played an active role in the Shipman Inquiry and in policy work regarding the regulation of healthcare professionals. For many years, Fiona worked in the field of law and healthcare policy as Legal Director for AvMA, a national charity for patient justice.

In addition to her work for ISCAS, Fiona is an Adjudicator for the SRA (Solicitor's Regulation Authority) and sits as a Chair on the NMC (Nursing Midwifery Council) Fitness to Practice Panels. She is a professional lay assessor for the National Clinical Advisory Service (NCAS). Fiona has a masters in Medical Law and Ethics and she undertakes several public speaking roles on the subject of Medical Law and Ethics which is a particular interest of hers. She is an accredited mediator with CEDR (Centre for Effective Dispute Resolution).

ISCAS Adjudicator, Sally Williams

Sally has a strong commitment to public protection and to the provision of high quality healthcare. She undertakes a number of activities that assess performance in the healthcare setting. These include undertaking quality assurance visits of medical training for the General Medical Council; participating in reviews of individual surgeons or surgical services for the Royal College of Surgeons of England; reviewing the progression of GP trainees for the London Deanery; participating in fitness to practise hearings and reviewing arrangements for supervising midwives for the Nursing and Midwifery Council. Sally was previously a member of the Council for Healthcare Regulatory Excellence (CHRE) and gained a good understanding of the nine professional healthcare regulators.

Sally is a health policy consultant and health services researcher. Her clients include The King's Fund, the Nuffield Trust and the Health Foundation. She worked for a number of years as Principal Health Policy Researcher for the Consumers' Association (now Which?), where she led research into patients' experiences of complaining about health services, and campaigned for better regulation of independent healthcare. Sally contributed to the development of professional standards for cosmetic surgery as a member of the Cosmetic Surgery Interspecialty Committee. She has an MA in Health and Community Care from Durham University.

For further information contact:

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