



Mental Health Reform

Promoting Improved Mental Health Services

5 December 2012

Position Paper on Improving the Complaints System for the Mental Health Services

Introduction

Mental Health Reform's Manifesto guiding *A Vision for Change* calls for a statutory complaints mechanism which can be accessed directly and is independent of the service provider. Mental Health Reform's aim is for a complaints system that works to resolve concerns at the lowest level of the organisation possible. Part of building a recovery-oriented mental health service is fostering an organisational culture that is open to comment and criticism and learns from feedback.

In broad terms, Mental Health Reform seeks a complaints system that:

- is safe for the complainant
- is accessible to the complainant
- strives to ensure complainants feel listened to and respected
- provides access to independent advocacy for complainants
- investigates complaints in a transparent and impartial way
- provides a timely response to complaints
- provides real accountability for poor performance
- publicly reports on the level and nature of complaints about mental health services
- informs organisational learning

In making our recommendations, Mental Health Reform has been guided by the World Health Organisation's recommendations on how to protect the human rights of users of mental health services. The WHO advises that: "Patients as well as their family members, personal representatives and advocates should have the right to complain to the review body about any aspect of care and treatment provided by mental health services."¹ The key criteria set out above reflect the WHO's guiding principles for a mental health service complaints procedure (see Appendix I).

Mental Health Reform's recommendations are grounded in international good practice and informed by consultation with people who use mental health services, their family members/significant others and staff of mental health services. Evidence from other countries has been drawn from a set of country reports prepared for Mental Health Reform by the Public Interest Law Alliance (PILA) and we gratefully acknowledge their contribution to this submission.

Feedback on Ireland's complaints system

Reports of difficulties with the avenues for making complaints arose as an issue during Mental Health Reform's consultative meetings with service users, family members/carers and staff during 2011. The issue has continued to surface during consultative meetings held to date in 2012 and in discussion with Mental Health Reform's advisory committee of users of services and family members

¹ WHO (2005) *Resource Book on Mental Health, Human Rights and Legislation*, Geneva: WHO, p.70.

(the Grassroots Forum). In 2012, Mental Health Reform also carried out a small number of in-depth interviews with individuals about their experiences of trying to make a complaint.

In Mental Health Reform's consultations, people have described:

- Not knowing how to make a complaint
- Not knowing how to access an advocate for assistance in making a complaint
- Lack of clarity about the role of the Mental Health Commission and the Inspector in investigating a complaint
- Being afraid to make a complaint for fear of consequences to their future use of services
- Fear of returning to a service after having made a complaint
- Being discouraged by staff from making a complaint
- A lack of or dissatisfactory follow up when they have made a complaint
- Wanting accountability, enforcement of decisions, acknowledgement or apology

"You need a separate and independent complaints procedure; going to the person you have a problem with to make a complaint about them is ludicrous." (Mental Health Reform Consultation)

"When you're going through it though, you realise you are fighting a system and fighting a culture that doesn't listen to people and you get tired out... That's what has happened to a lot of people, they've got completely tired out by it so they leave it. They don't complain because they think that one voice is not going to make the difference." (Case Story from a family member 'Ann')²

"Over the course of the few years where I did lodge complaints, it was really tough... Emotionally it was really hard. It was characterised by the opposite to support... I felt like I was stone-walled... Having said that I think if it was a bit better organised it might make a difference. If someone ... [was] employed to support people to complain, to support them through the complaints process I think that would have the potential to make a huge change. [There should be] people who would be employed and independent and committed and had an idea of what they'd be up against to support people and then you could put that time and energy into it properly." (Case Story from a family member 'Ronan')

"If the information had been there in the waiting room and if I had seen it before going in, I would have felt stronger in the situation and I would have had a voice ... It's hard to complain about a person's manner. It's a private thing that happens as well but it definitely was unethical the way he dealt with me." (Case Story from a service user 'Christina')

Other sources corroborate these difficulties in making a complaint about mental health services. Amnesty International Ireland has reported that,

*"the overwhelming feedback from AI's consultation on the Act was that either people were ill-informed of the complaints mechanisms for mental health services users; they were aware but had little faith in the process; or their experience of the complaints mechanism was unsatisfactory."*³

² The names of all individuals providing case stories have been changed to protect their confidentiality.

³ Amnesty International Ireland (2011) *Submission to the Department of Health and Children on the need for a substantive review of the Mental Health Act 2011*, Dublin: Amnesty International Ireland, p.128.

The Mental Health Commission's report on user satisfaction with inpatient services, published in 2012, has highlighted significant difficulties with the current complaints system. The survey found that 53% of respondents were not aware of the hospital's complaints procedure. Almost a third of respondents wished to complain about the inpatient service. Of those that did complain, 52% were dissatisfied with the manner that their complaint was dealt with, while 54% were not satisfied with the outcome of their complaint.⁴

One of the key issues arising from Mental Health Reform's consultations is the risk that individuals who wish to raise concerns about quality find themselves involved in a formal complaints system quite quickly. The HSE's policy *Your Service, Your Say* reflects good practice in seeking that responses start with local resolution, followed by a tiered system of investigation only in complex cases. It also sets out that the Complaints Officer should seek resolution with the complainant and staff even when a formal process has been initiated (including allowing for mediation). However in practice it appears that too often issues that are essentially about poor communication between mental health professionals and users of services or family members are escalated into a formal complaints procedure. Also, it appears that the HSE is not regularly making use of mediation to seek to resolve mental health service complaints. Rather, Mental Health Reform has been told about experiences where individuals receive little or no contact from HSE staff in response to a complaint other than formal written replies. There is therefore a need to increase the use of local resolution methods including mediation to try to resolve complaints at the lowest level of complexity and the earliest opportunity.

The nature of complaints about the Irish mental health services

Neither the HSE nor the Mental Health Commission publishes information on the number or nature of complaints about the mental health services. An examination of the Ombudsman Annual Reports for 1997 to 2011 reveals that there have been a consistent number of complaints regarding mental health services provided in hospitals that have been brought to the Ombudsman. The complaints received by the Ombudsman ranged from issues regarding care and treatment, consent, appointments, out-patient treatment, admission/discharge and complaints about how services handled complaints.⁵ In the 2011 and 2010 Annual Reports the following breakdown of complaint types was provided:

Ombudsman's Annual Report 2011

	Brought forward from 2009	Received in 2010	On hand for 2010
Hospitals – Psychiatric Total	13	29	42
Care and Treatment	6	14	20
Out-Patient Treatment	1	1	2
Complaint Handling	3	7	10
Admission/Discharge	0	2	2
Not otherwise categorised	0	5	5

⁴ Mental Health Commission (2012) *Your Views of Mental Health Inpatient Services: Inpatient Survey 2011*, Dublin: MHC.

⁵ For a breakdown of complaints received about mental health services see: <http://www.ombudsman.gov.ie/en/Publications/Annual-Reports/2011-Annual-Report/>.

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Ombudman's Annual Report 2010

	Brought forward from 2009	Received in 2010	On hand for 2010
Hospitals – Psychiatric Total	6	22	28
Appointment	0	1	1
Care and Treatment	4	8	12
Out-Patient Treatment	0	1	1
Consent	0	1	1
Complaint Handling	2	6	8
Not otherwise categorised	0	5	5

Recommendations for improving the complaints system for the mental health services

Issue	Rationale and Recommendation
<i>Making the complaints process safe for the complainant: Addressing concerns about retribution</i>	<p>Many inpatients complain in the first instance to a nurse or psychiatrist, with the MHC survey finding that 18% of patients who made a complaint talked to a Consultant, 7% to a Junior Doctor, 9% to a Director of Nursing, 11% to a Ward Sister/Manager and upwards of 35% to nurse. Only 5.6% said they complained through <i>Your Service, Your Say</i> and only 3.1% contacted the Mental Health Commission.⁶</p> <p>On the other hand, people have expressed a fear of retribution. ‘Fear of reprisal’ was reported as a consistent theme in consultation carried out in Victoria, Australia about their mental health service complaints system.⁷ Concerns about retribution were also expressed by acute and long-stay service users in the consultation held in Ireland in preparation for <i>A Vision for Change</i>.⁸ While it is good practice to seek to resolve complaints at the local level whenever possible, there is a risk that individuals will be deterred from making a complaint if this is the only route.</p> <p>Currently, the Complaints Officer is often a member of staff of the relevant service, such as the Director of Nursing. This is partly due to the fact that the regulations governing approved centres require that every approved centre has a Complaints Officer. Individuals who complain to the Inspector of Mental Health Services are also likely to have their complaint referred back to the local service because this is the Inspectorate’s standard procedure unless complaints are of a very serious nature. For individuals who may need treatment and family members, both of whom do not have much choice in who provides treatment within public mental health services, this is a highly dissatisfactory situation. In practice, it means that a person may be required to submit their complaint to a staff member who could involuntarily detain and treat them or their family member.</p> <p>While it is good practice to seek to resolve complaints locally, this principle needs to be balanced with the risk that individuals who are highly dependent upon mental health services will be deterred from making a complaint to a staff member who could interfere with their future access to services. In Wales, if a person is not comfortable making a complaint locally, they can make a complaint to the central ‘Concerns Team’ of their Local Health Board or NHS Trust.⁹ In New Zealand, on foot of widespread concern that the law was inadequate to protect users of health and disability services, along with a perceived imbalance in power and knowledge between health care professionals and users of services, new legislation was brought in to strengthen the complaints system. Since then, individuals can complain in the first instance to an independent advocate or to the Health and Disability Commissioner.</p>

⁶ Ibid., p.52.

⁷ Victorian Government Department of Health (2009) *Mental Health Complaints Review Project: A Report on the management of complaints processes within selected mental health services in Victoria*, Victoria: Victorian Government Department of Health, p.19.

⁸ Kieran Crowe (2004) *What We Heard: Consultation Paper*, Dublin: Department of Health and Children, pp.19-20.

⁹ See *Putting Things Right: Raising a Concern about the NHS from 1 April 2011* available at http://www.wales.nhs.uk/sites3/Documents/932/F492_Putting%20Things%20Right_a5%20leaflet%20%28E%29%20FINAL.pdf

Issue **Rationale and Recommendation**

The HSE's *Your Service, Your Say* policy makes a clear statement that complainants should not be made to feel afraid of recrimination and that any such action on the part of a staff member will be subject to disciplinary procedures. However this statement is not contained in the HSE's published information on how to make a complaint.

Recommendation: Individuals should be able to make a complaint to someone outside of the immediate staff concerned in the service, e.g. to a Complaints Officer independent of the mental health service, to a staff member in the HSE's central Patient & Safety Directorate and/or to the Inspector for Mental Health Services. Complainants should be able to make a complaint to someone who is completely outside the scope of line management of the staff concerned. (See below for a recommendation about the Inspector's role in handling complaints).

Recommendation: The HSE's published complaints system information should include a statement affirming that complainants should not be made to feel afraid of recrimination and that any such action on the part of a staff member will be subject to disciplinary procedures.

Recommendation: The Mental Health Act Review Group should consider whether specific provision should be made in law to prohibit retribution towards or victimisation of a complainant.

Impartiality in the investigation of complaints

Consistent with the fear of retribution is an expressed lack of faith in local staff of the HSE to investigate a complaint impartially, a fundamental principle of a good complaints system.

Currently the Mental Health Commission is empowered to conduct inquiries into the "care and treatment" of an individual "patient", whether voluntary or involuntary. However, neither the Inspector nor the MHC is obliged to receive complaints, nor do they have published criteria for when they undertake such inquiries.

The WHO makes clear that individuals should have a right to complain to the independent review body (in Ireland's case this would be the MHC). In Victoria, Australia the Chief Psychiatrist can investigate complaints from recipients of treatment and their carers (see Mental Health Act 1986, Section 106). A 2009 Review of the Victoria complaints system found that "...the subcommittee notes the benefits of establishing an independent complaints body, such as a mental health ombudsman."¹⁰ The State of Victoria has published draft legislation that would provide for an Office of Mental Health Commissioner who would have explicit power to "receive, assess, manage and investigate complaints in relation to Mental Health Service Providers."¹¹

¹⁰ Victorian Government Department of Health (2009) *Mental Health Complaints Review Project: A report on the management of complaints processes within selected mental health services in Victoria*, Melbourne, Australia: Victorian Government Department of Health, p.1.

¹¹ See Mental Health Bill 2010.

Issue

Rationale and Recommendation

Also in Australia and New Zealand, individuals have the right to complain to an independent advocate who can seek to facilitate local resolution. In New Zealand, individuals have a right to make a complaint to an independent advocate provided under the Health and Disability Commissioner Act 1994, or to the Health and Disability Commissioner (similar to our Ombudsman). The advocate then has a statutory role in assisting in making a complaint and also in assisting with mediation, i.e. trying to get a complaint resolved.

Recommendation: A Complaints Officer independent of the mental health services should be available to investigate the complaint, upon the request of the complainant. The independent Complaints Officer could be a staff member of the HSE's central Patient & Safety Quality Directorate or a Complaints Officer from another department of the local health service. They should have a position completely outside of the line management of the staff concerned. The independent Complaints Officer should work with local staff to seek to resolve the complaint in the first instance, with the consent of the complainant. If not resolvable, the independent Complaints Officer should lead the investigation.

Recommendation: The Mental Health Act 2001 should be amended to include the right of individuals to make a complaint to the Inspector of Mental Health Services. At the same time, the Inspector of Mental Health Services should be empowered to investigate individual complaints (see the Victoria, Australia draft Mental Health Bill 2010 for example legislation). The Inspectorate must be resourced to be able to investigate individual complaints in cases where the HSE's complaints procedure is either not appropriate or where local resolution has been unsuccessful.

Who can complain

The current scope of persons who can complain under *Your Service, Your Say* is adequate and in keeping with other jurisdictions. This includes: the person themselves, or if unable to, a close relative/friend, guardian, or anyone else with the person's consent (see Health Act 2004, Part 9).

Advocacy

In Wales, Scotland, Quebec, New Zealand, England and Northern Ireland individuals have access to a statutory, independent advocacy service.

The WHO recommends that access to independent advocacy be a principle of any country's mental health service and should be underpinned by statute. The WHO also advises that "patients should have the right to choose and appoint a personal representative and/or a legal counsel to represent them in any appeals or complaints procedure. Patients should also have access to the services of an interpreter if necessary. The State should pay for the services of such counsel and/or interpreter for patients who do not have the financial means to pay for such services."¹²

Recommendation: There should be a statutory, independent advocacy service set up to which any individual receiving mental health services can seek assistance in making a complaint. The service should be free, confidential and independent of any health service provider.

¹² WHO Resourcebook on Mental Health, Human Rights and Legislation, p.71.
5/12/12

Issue	Rationale and Recommendation
<i>Information on how to complain</i>	<p>The Mental Health Commission’s report on user satisfaction with inpatient services found that 53% of respondents were not aware of the hospital’s complaints procedure. Mental Health Reform’s own consultation also heard from individuals who said they were not aware of how to make a complaint.</p> <p>The WHO advises that information on how to make a complaint should be ‘prominently displayed’¹³ and the Irish regulations on approved centres require that the proprietor “ensure that each resident is made aware of the complaints procedure as soon as is practicable after admission.”¹⁴ This requirement would appear to apply to all residents, whether voluntary or involuntary.</p> <p>It is also important that individuals who make a complaint are advised when they first make the complaint about the process that will occur.</p> <p>Recommendation: Information on how to complain and on how to access assistance in making a complaint should be more clearly available to inpatients and users of community mental health services. Information on how to make a complaint should be publicised in all HSE mental health residential and day services including day hospitals, day clinics, day centres and supervised hostels. The process for handling the complaint should also be explained to the complainant when they first make a complaint.</p> <p>Recommendation: The HSE’s website section on its complaints procedure should clearly state their duty to provide assistance.</p> <p>Recommendation: The HSE should develop a specific section of their website on mental health service complaints.</p> <p>Recommendation: The Mental Health Commission should provide a Freephone number that individuals can call for information and advice on how to make a complaint, as is provided by the Mental Welfare Commission in Scotland.</p> <p>Recommendation: The Mental Health Commission’s leaflet for individuals involuntarily detained under the Mental Health Act 2001 should explain how individuals can make a complaint about the mental health services and who can assist them in making a complaint.</p>
<i>Follow-up options if not satisfied</i>	<p>Currently individuals who are not satisfied with the outcomes of the HSE’s complaints procedure can appeal to the Ombudsman or Ombudsman for Children, as relevant. This is in keeping with practice in other jurisdictions.</p> <p>Recommendation: Maintain the current system where if not satisfied with an HSE decision, an individual can appeal to the Ombudsman. This is notwithstanding the recommendation that individuals should be able to complain directly to the Inspector of Mental Health Services, wherein complaints that could not be resolved at local level could be independently investigated by the Inspector.</p>

¹³ WHO Op. Cit., p.71.

¹⁴ Mental Health Act 2001 (Approved Centres) Regulations 2006 S.31(2)

Issue

Rationale and Recommendation

Ensuring private patients have an independent route for making a complaint

Currently, the available route to make a complaint about a private mental health service is through that service's own complaints procedure or to the relevant professional regulatory body, e.g. the Medical Council, An Bord Altranais, etc.

Concerns about a private approved centre for inpatient treatment can be brought to the attention of the Mental Health Commission though they have no statutory obligation to receive or investigate individual complaints.

Recommendation: The Mental Health Act 2001 should be amended to include the right of individuals to make a complaint to the Inspector of Mental Health Services about private mental health services. At the same time, the Inspector of Mental Health Services should be empowered to investigate individual complaints (see the Victoria, Australia draft Mental Health Bill 2010 for example legislation).

Note that for privately-run community-based mental health services, the gap in the complaints route could be resolved if the Inspection regime is extended to all community-based mental health services whether public or private.

Guidance, procedures and training

The HSE document *Complaints Policy & Procedures Manual: Your Service, Your Say* contains many positives that reflect good practice, including the principles of accessibility, confidentiality, fairness, responsiveness and accountability (including transparency). The policy reflects good practice in seeking that responses start with local resolution, followed by a tiered system of investigation only in complex cases; seeks resolution by a Complaints Officer with the complainant and staff even when a formal process has been initiated (including allowing for mediation) and includes risk assessment. The policy also commits to protecting the rights and dignity of service users and staff and states that complaints will be viewed as an opportunity for organisational learning.

Based on the experiences related to Mental Health Reform by service users and family members, there appears to be a gap between this policy and practice on the ground.

Recommendation: The HSE should improve the training of staff in complaints handling. Members of staff require the skills to resolve complaints as much as possible. Members of staff also need to develop an ethos that promotes a culture that welcomes complaints as a means of organisational learning and promotes respectful, supportive responses to individual complaints.

Recommendation: The principle of 'respect' should be added to the HSE's complaints procedure manual in order to reflect human rights and to emphasise the ethos that should underpin complaints handling.

Recommendation: While the current HSE policy sets out how data will be collected on complaints, it does not make clear how this data will be used to inform organisational improvement. The policy should commit to annual review of the issues raised in complaints and immediate review of serious incidents.

Issue

Rationale and Recommendation

Recommendation: The HSE's complaints policy should specify that users of services and family members will be involved in review of the complaints system.

Protection from abuse within the mental health services

MHR has previously recommended that the Mental Health Act be amended to include an offence for the ill treatment, neglect, exploitation or abuse of mental health service users.

Recommendation: There should be statutory protection of vulnerable adults against abuse as is the case in England, Wales and Northern Ireland. The recently enacted disclosure law on vulnerable adults in Ireland goes some way to establishing protection by requiring disclosure of physical assault or sexual abuse of a vulnerable adult to An Garda Síochána, however it does not establish a statutory protection scheme for vulnerable adults as is in place in other jurisdictions.

Monitoring of complaints

Currently there is no published data on the numbers or nature of complaints about Irish mental health services. The lack of published data makes it impossible to quantify the extent of dissatisfaction with the mental health services or the nature of issues that need to be addressed in order to improve the mental health services. Such information would also be a valuable indicator of the quality of mental health services over time.

Recommendation: The functions of the Mental Health Commission should be extended to include collecting data on all complaints made about mental health services delivered in Ireland and should report annually on the total number of complaints, the nature of complaints received and any decisions/follow-up actions.

Appendix I: World Health Organisation guidance on complaints procedures¹⁵

The WHO recommends the following guiding principles for a mental health service complaints procedure:

- consultation with increased openness and transparency
- quality enhancement
- impartiality
- accessibility
- speed and responsiveness
- courtesy
- accountability
- confidentiality
- independent advocacy
- humane care and treatment
- transparent process¹⁶

The WHO recommends that the complaints procedure be set out in legislation. The WHO also recommends that a procedure be put in place to prevent retribution against patients filing complaints.¹⁷ The WHO makes specific recommendations about the nature of the complaints procedure. The WHO recommends that users of services should have a right to appoint a personal representative or legal counsel to represent them during any appeals or complaints procedure, and that the State should pay for such assistance for those who cannot afford it.¹⁸

¹⁵ WHO (2005) *Resource Book on Mental Health, Human Rights and Legislation*, Geneva: WHO, p.72.

¹⁶ *Ibid.*

¹⁷ *Ibid.*, p.71

¹⁸ *Ibid.*, p.71.