



Making Experiences Count: A New Approach to Responding to Complaints

The Ann Craft Trust, VOICE UK and Respond are three separate learning disability charities which focus on abuse, crime and protection issues.

VOICE UK supports people with learning disabilities and other vulnerable groups who have experienced crime or abuse. We also support their families, carers and professional workers.

The Ann Craft Trust works with staff in the statutory, independent and voluntary sectors to protect people with learning disabilities who may be at risk from abuse. We also provide advice and information to parents and carers who may have concerns about someone they are supporting.

Respond offers a range of services which provide emotional and psychological support to victims and perpetrators of abuse who have learning disabilities. It also provides training and support to professionals and carers working with them.

Our organisations regularly train and advise professionals on protection issues and how to assist vulnerable groups who have been victims of poor practice or criminal conduct. For instance, we have recently been involved in the Council for Health Care Regulatory Excellence's Clear Boundaries Project on ensuring appropriate sexual boundaries between medical professionals and patients.

Our charities welcome the Government's efforts to reform the way that health and social care services respond to complaints. We also thank the Government for seeking the view of stakeholders on the principles which will underpin these reforms.

The focus of the work of our three charities is supporting people with learning disabilities who have experienced crime or abuse. It is an unfortunate and disturbing fact that some people with learning disabilities experience crime and abuse whilst receiving health or social care services. This can range from theft, assault and rape through to neglect leading to loss of dignity, pain and, in some cases, death. The effect on the victim and their family of such a traumatic betrayal of trust can be devastating. Such cases obviously represent the most serious incidents with which complaints processes will have to deal. These cases require complaints processes to respond with sensitivity, efficiency, timeliness, consideration and justice.

This submission focuses on such cases in relation to questions 2 and 5 of the consultation. In answering these questions, our concern is (i) that people with learning disabilities, their families and their carers are able to fully participate in complaints processes and (ii) that health and social care services are able to engage with these complainants. This is vital if individuals and organisations are

to be held to account, lessons are to be learned and services are to improve. In addition, both complainants and organisations gain from the increased efficiency of complaints processes which facilitate the involvement of complainants and so take less time to deal with complaints.

While our principle concerns are those serious cases that involve crime and abuse, ensuring people with learning disabilities, their families and their carers are able to participate in complaints processes will obviously have benefits for less serious and more commonly occurring complaints.

2. What features must the new arrangements have in order to be accessible and fair to everyone involved in resolving a complaint?

In answering this question we focus on a couple of features which are crucially important to ensuring that the new arrangements are accessible and fair to vulnerable groups, in particular people with learning disabilities. These groups may have particular communication needs and require assistance if there is to be effective communication between themselves and the organisations to which they are complaining. They are also likely to find giving evidence during complaints processes stressful and frightening. Accessibility involves recognising and addressing these needs.

We thank the Government for its recognition that the people who rely most on services are often the people least able to make their views known and for clearly stating that the new approach to complaints must be highly accessible for everyone, including those with complex needs. In addition, we thank the Government for its commitment to ensuring that the voice of vulnerable groups is supported through a right to advocacy.

Independent advocacy that can meet the individual needs of complainants is vital to ensuring the new arrangements will be accessible to vulnerable groups, their families and their carers. The Independent Complaints Advocacy Service (ICAS) is therefore an essential element in the success of the new complaints arrangements. Advocacy is particularly important for people with learning disabilities who may need assistance in understanding complaints' processes and support in putting forward their complaint. We heartily thank the Government for the creation of the ICAS, its commitment to ensuring it works in practice and for its commitment to make advocacy support a statutory right.

Maximising the effectiveness of this advocacy will depend upon sufficient resources to ensure it is available to all who need it, when they need it and for as long as they need it. It will also depend upon recognition amongst all health and social care professionals that the involvement of advocates is legitimate and is valued by all parties. We have heard of advocates being viewed with suspicion and treated with hostility by some health and social care professionals and we do not want the approach outlined in this consultation to be undermined by such behaviour. Clarity of role would assist in good working relations between professionals and advocates.

It is also important to note that many people with learning disabilities receive the support of advocates at differing times in their lives. As such, people with learning disabilities may wish to use professional advocates they know and trust rather than someone provided by the ICAS. We hope that the Government will allow people with learning disabilities to use such advocates.

The approach of Camden Council - as described in the consultation paper - incorporates advocates and focuses on ensuring complex needs are not a barrier to resolving complaints. We support this approach and are interested to see how it can be incorporated into complaints processes in other organisations.

While the ICAS will be able to do much to support people with learning disabilities, their families and their carers during the complaints process, we believe that accessibility should be integrated into the design of the complaints process itself to ensure that people with learning disabilities are able to fully

participate. In particular, when designing the processes for collecting evidence and holding complaints hearings, organisations can learn much from the Government's achievements in facilitating the involvement of vulnerable and intimidated witnesses (VIW) in the criminal justice system. The Youth Justice and Criminal Evidence Act 1999 provides for a range of special measures to support VIWs to give their best evidence in court. These special measures include allowing witnesses to give evidence via video link or in a video recording. A Home Office evaluation of special measures found them to have a very positive impact on those using them and on the administration of justice.

"Vulnerable and intimidated witnesses who used special measures were less likely than those not using such measures to feel anxious or distressed overall. A third of vulnerable and intimidated witnesses who used special measures said they would not have been willing and able to give evidence without the availability of these measures".¹

The study notes that:

"This suggests that an increased proportion of cases involving VIWs are now resulting in offenders being brought to justice which would not have occurred before the special measures."²

The intermediary scheme is one of the special measures tools available to assist VIWs, including people with learning disabilities. An intermediary is someone who can help a VIW understand questions they are asked and who can then communicate the VIW's responses. Intermediaries can help VIWs at each stage of the criminal justice process, from police investigations and interviews, through pre-trial preparations to court. They can carry out an initial assessment of a VIW's communication needs as well as provide advice on how to achieve more productive interviews. This can include information on how someone communicates, the types of questions to avoid, how long they will take to answer a question and their levels of understanding. This can then be used by criminal justice professionals when communicating with the VIW. An intermediary owes their duties to the court and to justice.

A Ministry of Justice study demonstrates the value of intermediaries in helping people with learning disabilities give evidence.

"Feedback from witnesses and carers in trial cases was uniformly enthusiastic. Carers felt that intermediaries not only facilitated communication but also helped witnesses cope with the stress of giving evidence. Appreciation of the role was also almost unanimous across the judiciary and other criminal justice personnel ..."³

We accept that health and social care complaints procedures are quite different from criminal courts, but special measures are and can be applied in other situations. The General Medical Council (Fitness to Practice) Rules Order of Council 2004 provides for special measures in GMC fitness to practice hearings which are identical to those provided in criminal courts. The same intermediaries who assist in criminal cases are even available to assist in fitness to practice hearings under this Order. This stems from a common recognition that providing additional assistance to witnesses to enable them to give their best evidence (be it in court, a fitness to practice panel or elsewhere) is in the interests of witnesses, those hearing their evidence and justice. We are confident that adapted special measures can be of great value in social and health care complaints processes. Our organisations ask the Government to integrate such special measures into social and health care complaints processes. In particular, we ask that either the existing intermediaries scheme, or an identical scheme, be provided. In making this request, we emphasise that an advocate and an

¹ Hamlyn, Becky, Phelps, Andrew, Sattar, Ghazala, *Key Findings from the Surveys of Vulnerable and Intimidated Witnesses 2000/01 and 2003*, Findings 240, Home Office, 2004, pg. 1.

² *Ibid.*, pg. 3.

³ Plotnikoff, Joyce, Woolfson, Richard, Marshall, Emma (ed.), *The 'Go-Between': Evaluation of Intermediary Pathfinder Projects*, Research Summary 1, Ministry of Justice, 2007, pg. 4.

intermediary do not provide the same functions, have different duties and different expertise – we are not asking the Government to repeat something that is already being done.

5. What arrangements need to be put in place to ensure vulnerable people know about and use the new arrangements?

If vulnerable people are assisted to participate in complaints processes, then they will be encouraged to use the new arrangements. Our answer to question 2 is therefore applicable in answering this question – the arrangements which need to be in place include independent advocacy and special measures.

In relation to people with learning disabilities, it is important that publicity materials and information on complaints procedures are available in easy read format or in a pictures-only format such as the Books Beyond Words series. The Books Beyond Words series is produced by the Royal College of Psychiatrists and explains traumatic or important life events in pictures for people who have difficulty understanding written words. These formats can enable people with learning disabilities to understand that complaints procedures exist and know how to use them. They can also reassure people uncertain or uneasy about making a complaint by demystifying the complaints process.

A suggested principle on police involvement

As we have mentioned, some of the complaints dealt with by social and health care organisations will involve alleged or proven criminal offences. It is vitally important that social or health care organisations contact the police immediately when they receive a complaint about a potential criminal offence. It is equally vital that the police are at the forefront of any investigation into a potential criminal offence and that how a complaint is dealt with by a social or health care organisation should have regard to the consequences on any police investigation.

By way of example, a woman complains to a practice manager that a General Practitioner unnecessarily performed an intimate examination and sexually assaulted her during this examination. In such a case, the practice manager should immediately report the matter to police. The complaint should be deferred until the conclusion of the police investigation and any prosecution. If there is a delay in reporting the matter to the police or the complaint is considered whilst the police investigation is ongoing, evidence may be contaminated and the success of any prosecution jeopardised.

We urge the Government to make a key principle of its approach to health and social care complaints that police investigation has priority in any matter where there is a possibility that a crime has been committed.

In conclusion, the Government's commitment to ensure that the voice of everyone making a complaint is heard is very welcome. The emphasis on advocacy is particularly important and valuable. The provision of special measures and accessible information would build upon this good foundation and we urge the Government to incorporate the provision of these things into their approach.

We hope that our comments and suggestions help the Government in making health and social care complaints more accessible and efficient.

If we can be of further assistance, please contact our Policy and Campaigns Officer, Robin Van den Hende at:

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