

D/2-11



DEPARTMENT OF HEALTH

To: Regional General Managers)
 District General Managers) for action
 Regional Chairmen)
 Secretaries of Community Health Councils) for information

31 January 1990

Dear General Manager

I am enclosing with this letter guidelines prepared following a recent decision of the Health Service Commissioner for Wales. They deal with the role of Districts when complaints are made against a voluntary organisation performing services on behalf of an Authority in pursuance of Section 23(1) of the NHS Act 1977. (Guidance on patients being treated in independent hospitals and nursing homes, also under Section 23 arrangements, is given in circulars HC(81) 1 and HC(81) 8. Any complaints in these circumstances should be dealt with under the existing hospital complaints procedures, which are explained in HC(88) 37).

The guidelines describe:

- a. the legal basis on which DHAs may fund voluntary organisations.
- b. recommended procedures for dealing with complaints against such organisations.

HA officers dealing with voluntary organisations may find it helpful to have the guidance, and should apply it when complaints are received about the conduct of outside bodies. I should be grateful if you would ensure that this material is seen by the staff concerned.

Yours sincerely

C H Wilson

C H WILSON
 Under Secretary

Chairman	DGM	All DMG	DMO	Pers	DFM	Dir Plan	UGM Acuts	UGM Comm	UGM Psych	Works	Intor. mation	FPC	MEC	
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Mr 1 Davies
 Mr 1 Arthur

CMJ/TA

This Executive Letter, but not the guidance in it, will be automatically cancelled in January 1993.

From:

PHS4 Division
Room 503
Eileen House
80-94 Newington Causeway
Elephant and Castle
LONDON SE1 6EF

Telephone: 01-972-200 Ext. 2729

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GUIDELINES FOR COMPLAINTS AGAINST VOLUNTARY ORGANISATIONS FUNDED UNDER SECTION 23(1) OF THE NHS ACT 1977

The legal position

1. Section 23(1) of the National Health Service Act 1977 provides that:-

"The Secretary of State may, where he considers it appropriate, arrange with any person or body (including a voluntary organisation) for that person or body to provide, or assist in providing, any service under this Act."

Sub-Section (3) of Section 23 provides further for the exercise of the powers conferred by this Section on such terms as may be agreed including, amongst other things, terms as to the making of payments by or to the Secretary of State. These powers are included in the functions which District Health Authorities are directed to exercise on behalf of the Secretary of State by the National Health Service (Directions to Authorities and Administration Arrangements) Regulations 1989 (SI 1989/51).

Responsibilities of District Health Authorities for the activities of voluntary organisations

2. Arrangements which may be made with voluntary organisations under Section 23(1) could involve the expenditure of public monies on services under the 1977 Act. Consequently of that, DHAs have a broad administrative and managerial responsibility to monitor the work of voluntary organisations receiving such monies and to evaluate their performance - not least to establish for themselves (and where necessary for the Department) that public money is being spent effectively, and with due regard to economy and efficiency and that the service provided continues to meet the needs of the District population in conformity with the purposes for which the grant is made.

Complaints against voluntary organisations funded under Section 23(1)

N B Complaints made by, or on behalf of, patients being treated in independent hospitals and nursing homes, also under section 23 arrangements, should be dealt with under the existing hospital complaints procedures as explained in HC(88)37.

3. If and when a Health Authority receives a complaint about the actions of an outside body funded under Section 23(1), and the complaint relates to services provided under the National Health Service Act 1977 then the DHA does have responsibilities for dealing with it. These responsibilities apply both to the substance of the complaint, and for seeing that the complaint is properly handled. But the action that the DHA may take on the complaint will inevitably be different from the action taken when

the Authority receives a complaint about their own actions, or about the actions of their own staff. The role of the DHA will not extend to disciplining the employees of the relevant outside body, or to directly imposing new procedures. The manner in which a complaint will be dealt with may also vary depending on the terms laid down by the Authority in its agreement with the relevant voluntary organisation. The terms themselves should include conditions as to the appropriate form of complaints procedures.

4. When an Authority is not the sole or major user of a service provided by a voluntary organisation, then the approach to dealing with the complaint may vary also: but an Authority cannot avoid its ultimate responsibility. In using Section 23(1) an Authority is fulfilling distinct service purposes. It cannot divest itself of all responsibility for seeing that the substance of a complaint is properly dealt with (by itself if that seems necessary) where the complaint bears on the service which is being performed on behalf of the Authority. That is the case whether the outside body has a complaints procedure or not. Naturally where such a procedure exists it should be used in the first instance. But if the complaints procedure of an outside organisation has operated and the complainant remains dissatisfied then the relevant Authority must itself take appropriate action. Thus, as occasion demands and on receipt of a complaint against a body performing services in pursuance of Section 23(1) a DHA should:

- a. inquire into the complaint to the extent that it is in a position to do so. This should be done by such means as are available - for example, by calling for a report from the outside body, or by inviting the Authority's representatives on the outside body to raise the matter at a meeting of the appropriate governing board, recommending that it be examined. It will be important to act with particular care where an outside body has no formal complaints procedure of its own;
- b. assess the merit of the complaint in so far as it bears upon the service which has been provided under Section 23(1) and the standards of management and service that may reasonably be expected of the outside body (or which are expressly defined in terms by the DHA).
- c. seek an appropriate remedy where the outside body is judged to have been at fault. The Authority may wish to offer advice. In the last resort it may issue warnings as to the non-renewal of the contract.
- d. inform the complainant that the matter has been investigated and, where applicable, that appropriate action has been taken.