

TITLE Handling complaints about prison healthcare

PROCESS Guidance on handling complaints about prison healthcare where services are commissioned by the NHS

IMPLEMENTATION DATE 1 June 2005

EXPIRY DATE 31 May 2006

CONTAINS MANDATORY INSTRUCTIONS

For Action

Governing Governors, Health Care Managers

Monitored by

Prison Health

For information

All prison staff, Directors and Controllers of contracted prisons

On authority of

Prison Service Management Board.

Contact point
Prison Health
020 7972 2000

Other processes affected

None

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NOTES

None

Introduction

- 1.1 This guidance concerns prisoners' access to the NHS complaints procedure for primary care services commissioned by the NHS. This does not currently apply to private prisons or prisons in Wales.
- 1.2 All prisoners, in all prisons, continue to have the right to use the NHS complaints process to complain about NHS secondary and tertiary services, such as ambulance and acute services.
- 1.3 In April 2004, the responsibility for healthcare for 34 prisons transferred from the Prison Service to 18 Primary Care Trusts (PCTs). By April 2006, the responsibility for healthcare in all except private prisons will transfer to Primary Care Trusts.
- 1.4 When healthcare is commissioned or provided by the NHS, the National Health Service (Complaints) Regulations 2004 SI 1768 must be met. The transfer of responsibility for primary healthcare to the NHS, therefore, means that prisoners have the right to access the NHS complaints procedure when they are unhappy with the service. How the NHS complaints procedure is implemented at the local resolution stage (the first stage in the NHS complaints procedure) will depend on how healthcare is commissioned and provided at each prison. Prison healthcare complaints unresolved at local resolution stage will then follow the same procedure regardless of how healthcare is commissioned or provided. That is, prisoners may take unresolved healthcare complaints to the Healthcare Commission and the Health Service Ombudsman. Complaints about prison service services (non-healthcare) will continue to be dealt with via the Prison Service request and complaints procedures.
- 1.5 This guidance does not affect application of staff disciplinary procedures, or investigations of staff misconduct. Disciplinary procedures will continue to be dealt with outside of the complaints processes by the appropriate employer.
- 1.6 Even where aspects of a single complaint are dealt with by separate processes, the overall aim should be to provide a seamless complaints process for the prisoner and not to create additional burden to them when making a complaint.
- 1.7 Summaries of the NHS complaints and the prison request and complaints procedures are provided in Appendices 1 and 2 of this document. Appendix 3 illustrates how prisoners might access the NHS complaints procedure.

Models of healthcare provision in prisons

- 2.1 The following models of prison healthcare services currently apply:
 - i) Healthcare is commissioned by a Primary Care Trust (PCT) and provided by the Prison Service
 - ii) Healthcare is commissioned and provided by a Primary Care Trust
 - iii) Healthcare is commissioned by a Primary Care Trust and provided by an independent provider
 - iv) Healthcare is commissioned by a Primary Care Trust and provided by more than one provider
 - v) Healthcare is commissioned and provided by the Prison Service

- 2.2 The way in which complaints about healthcare should be handled in each model is outlined below.
- i) Healthcare is commissioned by a Primary Care Trust (PCT) and provided by the Prison Service
Complaints from prisoners about healthcare are dealt with locally in accordance with the Service Level Agreement between the PCT and the prison. This agreement establishes arrangements for handling NHS healthcare complaints as if the NHS complaints regulations applied to the healthcare services provided by the prison. Prisoners who are not satisfied following local resolution may take complaints about healthcare to the Healthcare Commission and the Health Service Ombudsman.
 - ii) Healthcare is commissioned and provided by a Primary Care Trust
Complaints from prisoners about healthcare are dealt with locally in accordance with the NHS complaints procedure. Prisoners who are not satisfied following local resolution may take complaints about NHS healthcare to the Healthcare Commission and the Health Service Ombudsman.
 - iii) Healthcare is commissioned by a Primary Care Trust and provided by an independent provider
Where an NHS trust or a PCT makes arrangements for the provision of services with an independent provider, it must ensure that the independent provider has in place arrangements for the handling and consideration of complaints about any matter connected to its provision of services as if the (complaints) regulations applied to it. Complaints from prisoners about healthcare are therefore dealt with locally in accordance with the contract between the PCT and the independent provider. Prisoners who are not satisfied following local resolution may take complaints about healthcare to the Healthcare Commission and the Health Service Ombudsman.
 - iv) Healthcare is commissioned by a Primary Care Trust and provided by more than one provider
(see iii above) Complaints from prisoners about healthcare are dealt with locally in accordance with the contracts or Service Level Agreements between the PCT and the healthcare providers. These agreements establish arrangements for handling NHS healthcare complaints as if the NHS complaints regulations applied to the healthcare providers. Prisoners who are not satisfied following local resolution may take complaints about healthcare to the Healthcare Commission and the Health Service Ombudsman.
 - v) Healthcare is commissioned and provided by the Prison Service
Complaints from prisoners about healthcare are dealt with in accordance with the Prisoner's Requests and Complaints Procedure (PSO 2510).

Complaints combining Prison Service and healthcare issues

- 3.1 Complaints will arise that constitute both Prison Service and healthcare issues. The PCT complaints manager and the prison manager with responsibility for the prison complaints procedure must agree a protocol that enables the Prison Service and the PCT to work closely together to resolve these complaints so that prisoners receive a seamless response. Individual issues within each complaint must be dealt with via either NHS or Prison Service process. Referrals of issues from one process to another must be undertaken with the prisoner's consent.
- 3.2 Prisoners who are not satisfied following local resolution may take the healthcare elements of their complaints to the Healthcare Commission and the Health Service Ombudsman. Under these circumstances, the Healthcare Commission may, if appropriate, fast-track the

complaint to the Health Service Ombudsman who will work with the Prisons and Probation Ombudsman to provide a joint approach to resolving the complaint.

Healthcare complaints about commissioning issues

- 4.1 Where prisoners are receiving NHS-commissioned services, they are entitled to make complaints about commissioning issues directly to the Primary Care Trust responsible. These complaints are dealt with in accordance with the NHS complaints procedure and prisoners dissatisfied following local resolution may take their complaints to the Healthcare Commission and the Health Service Ombudsman. For example, a healthcare commissioning complaint could be about the level of healthcare provided rather than the actual care and treatment given by healthcare staff.

Role of Independent Monitoring Boards

- 5.1 The introduction of the NHS complaints procedure for prisoners does not in any way affect the prisoner's right to complain, at any stage, to the IMB. The IMB continues to have a statutory duty to hear any complaint or request which a prisoner wishes to make. On receipt of a complaint with a clinical element, the IMB would advise the prisoner how to progress the complaint, either through the Prison Service or NHS complaints procedure and will continue to monitor progress of that complaint.
- 5.2 Further work is being undertaken to look at how the role of the IMB will interface with other initiatives that support the NHS complaints procedure, i.e. PALS and ICAS (see 7.1).

Information for prisoners about the NHS complaints procedure

- 6.1 Local information on how to make a complaint about NHS healthcare must be provided for prisoners. This information must be freely available not only in healthcare, but throughout the establishment.

Initiatives relating to the NHS complaints procedure

- 7.1 Where receiving NHS services, prisoners should also have access to Patient Advice and Liaison Services (PALS) and Independent Complaints Advocacy Services (ICAS). Further information on these initiatives can be accessed on the Department of Health website (www.dh.gov.uk). Advice on providing these services for prisoners will be included in further guidance to be issued shortly.

Access to Prisons for Complaints Investigations

- 8.1 Although the vast majority of complaints are resolved at local level, where complainants remain dissatisfied, both the Healthcare Commission and the Health Service Ombudsman have statutory responsibilities to review their complaints. Where the Healthcare Commission or the Health Service Ombudsman decide to investigate, they will require the same level of access to prisoners, prison staff and information as is currently afforded to the Prisons and Probation Ombudsman in the course of their investigations. In order to undertake their investigations, both organisations will need support from Prison Governors in the following ways:

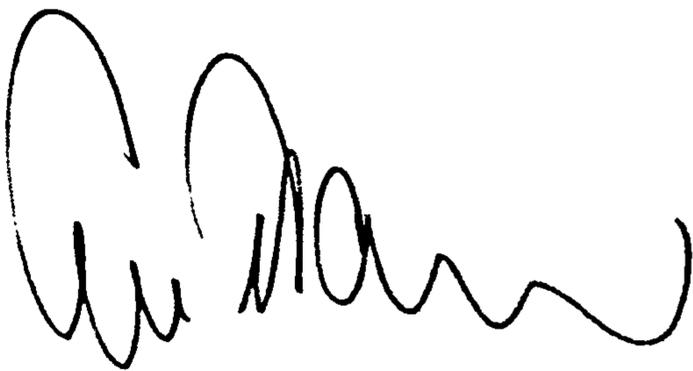
- i) Access to prison premises for:
- Healthcare Commission Investigation staff
 - Health Service Ombudsman staff
 - Lay Panel Members for Independent Reviews of complaints
 - Expert clinical advisers

- ii) Access to prisoners and prison staff for interviewing purposes
- iii) Access to clinical records, prison records, local operational protocols and processes

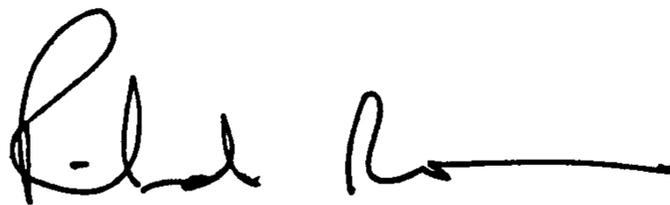
- 8.2 The expectation is that Healthcare Commission and Health Service Ombudsman staff, lay panel members and expert clinical advisers would be treated as Official and Professional visitors, as set out in Prison Service Official & Professional Visitors section of the new Security Vetting Website:
http://home.ps.gov.uk/national/organisation/national/personnel%20management%20group/Security_vetting_website/official-and-professional-visitors.htm
- 8.3 Access to medical records and other prisoner-sensitive information can be dealt with in accordance with the Data Protection Act and would only be accessed with the appropriate consents. Both the Healthcare Commission and the Health Service Ombudsman have agreed that they will keep Prison Governors fully informed of complaints made concerning services being provided in their establishments.

Further information

- 9.1 Further information about the NHS complaints procedure can be found on the Department of Health website:
<http://www.dh.gov.uk/policyandguidance/complaintspolicy/fs/en>
- 9.2 NHS complaints leaflets and information are also available from the Healthcare Commission at:
complaints@healthcarecommission.org.uk
- 9.3 The Healthcare Commission has a telephone helpline which can assist prisoners with healthcare complaints. The telephone number is 0845 6013012. The Healthcare Commission freepost address is:
Healthcare Commission, Freepost NAT 18958, Complaints Investigation Team, Manchester M1 9XZ
- 9.4 Further information on the role of the IMB can be found at
www.homeoffice.gov.uk/justice/prisons/imb/



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Summary of the NHS complaints procedure¹

These appendices are intended to briefly summarise the complaints procedures – please access the full documentation for full details of the process.

Each NHS body and primary care provider has a designated person responsible for complaints and a complaints manager. NHS bodies include hospital trusts and Primary Care Trusts. Primary care providers include general medical practitioners (GPs), dentists, ophthalmic opticians, ophthalmic medical practitioners and pharmacists.

The NHS complaints procedure has three stages, local resolution, independent review and the Health Service Ombudsman. At the local resolution stage, a patient who wants to make a complaint or someone acting on their behalf, contacts a member of staff or the complaints manager of the organisation concerned. This is done orally or in writing.

After acknowledging receipt of the complaint in writing, the complaints manager investigates the complaint and prepares a written response to the complainant. The response must be signed by the chief executive or primary care provider except in cases where for good reason they are not able to sign it, in which case it may be signed by a person acting on their behalf.

If the complainant is not satisfied with the outcome of an investigation or the NHS body or primary care provider has decided not to investigate a complaint because, for example, it was not made within the specified time limit, the complainant can request that the Healthcare Commission reviews their complaint. This is the independent review stage. Requests for independent review are made on a form supplied by the Healthcare Commission or in writing.

On receipt of a complaint, the Healthcare Commission decides how to manage it. If the Healthcare Commission decides to investigate the complaint, it will send a full written response to the complainant and the relevant NHS body or primary care provider. Should the Healthcare Commission appoint a panel to conduct an investigation into a complaint, participants must be given the opportunity of being heard in person.

If the complainant remains dissatisfied, they can take their complaint to the Health Service Ombudsman who is at the top of the NHS complaints procedure but independent from it.

At any stage the complainant can contact the Independent Complaints Advocacy Service (ICAS) for advice and support in making a NHS complaint.

ICAS provides a range of support for complainants from advising on the wording of letters to attending complaints meetings with them.

¹ The complaints procedure for NHS bodies is set out in the National Health Service (Complaints) Regulations 2004 S/ 1768. The complaints procedures which apply to primary care providers are contained either in regulations made under the appropriate provisions in the National Health Service Act 1977 or in directions made under section 17 of the 1977 Act. For further information see the NHS Complaints pages of the Department of Health's website (www.dh.gov.uk).

APPENDIX 2**Summary of the complaints procedure for prisons²**

These appendices are intended to briefly summarise the complaints procedures – please access the full documentation for full details of the process.

Within the prison complaints system, prisoners can initiate a complaint by speaking to a member of staff or completing the appropriate form. There are specific forms designated for this purpose, for example, for ordinary complaints, appeals and confidential access complaints. Confidential access complaints are complaints about serious or sensitive issues which the prisoner might not want to discuss with prison wing staff. They are made to the governor, the Area Manager or the Chair of the Independent Monitoring Board (IMB) in a sealed envelope that can be opened only by the addressee. Confidential access complaints can include complaints about healthcare.

If a prisoner's complaint concerns a reserved subject, for example, an allegation against the governor, it is handled by the Area Manager or Prison Service Headquarters.

Like the NHS complaints procedure, the prison system encourages early resolution of issues through discussions between the complainant and front-line staff. This is a relatively informal process, which involves prisoners speaking initially to wing staff, then using the applications system if they remain dissatisfied. Applications are held daily out of the hearing of other prisoners and provide an opportunity for staff to listen to a prisoner's problems in a more private environment.

Prisoners can make formal complaints on the appropriate form at any time. They are not required to use the informal procedure described above. Complaints forms must be freely available to prisoners on the wing and kept at or near the complaints box used for the receipt of completed forms on each wing.

To handle formal complaints, prisons have a manager with responsibility for the complaints system and at least one complaints clerk. In addition, they have one or more designated officers responsible for emptying the complaints boxes. This is done daily, except on weekends and public holidays. Designated officers either pass the complaints forms to the complaints clerk or directly to staff for reply.

Before allocating complaints, the complaints clerk or designated officer must log them and add a serial number to the form. The serial number for confidential access complaints is written on the outside of the unopened envelope.

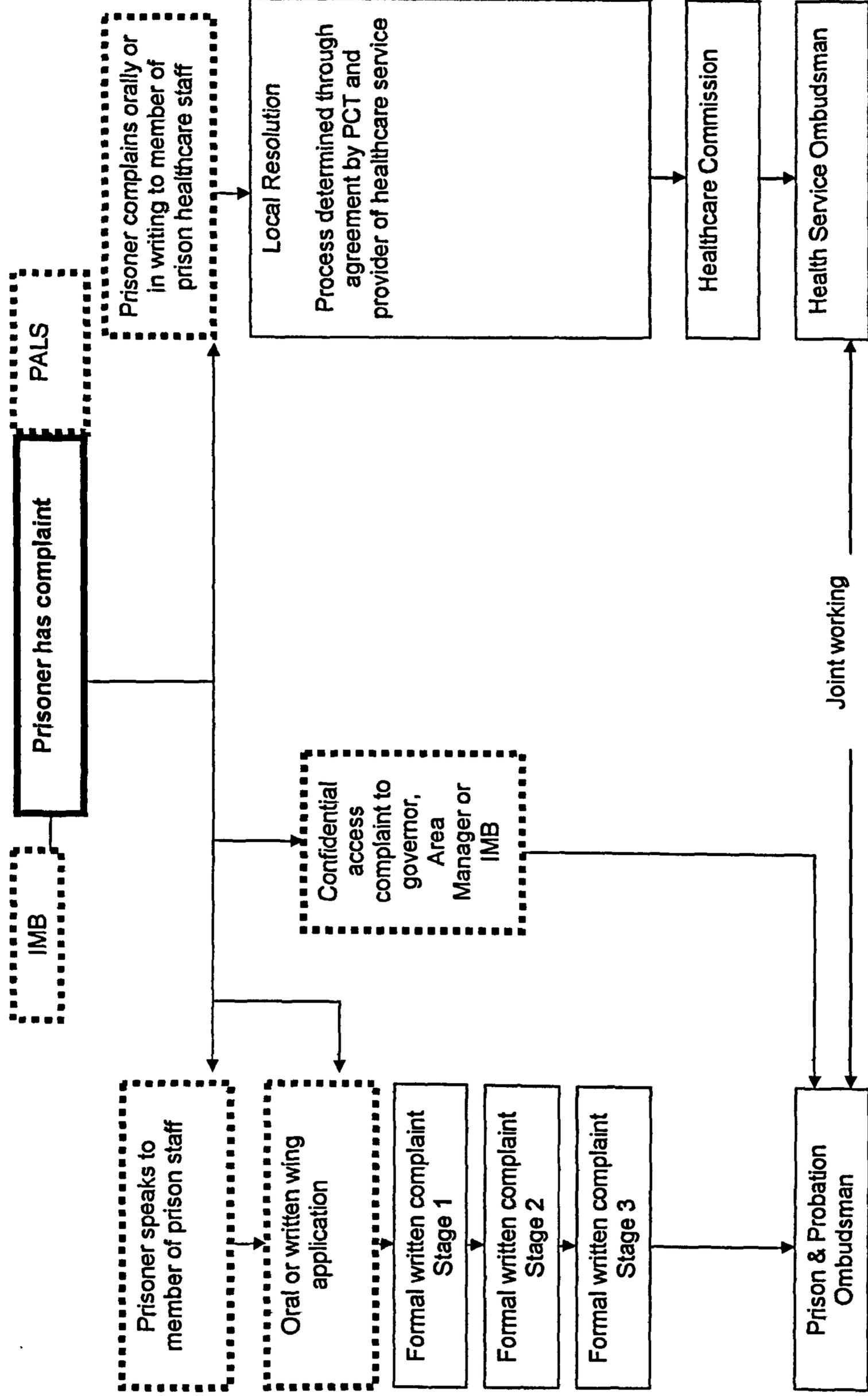
The response to a complaint can go through three stages. Stage 1 is handled by the wing officer or appropriate person. Most formal complaints should be resolved at this stage. If the prisoner is dissatisfied with the Stage 1 response, they can take their complaint to Stage 2 where it is handled at management level. If they remain dissatisfied, they can make a final appeal to the governor at Stage 3.

The response to a complaint is entered on the complaints form and returned to the prisoner directly or through the complaints clerk. A copy of the completed form is placed on the prisoner's file (F2050) and the complaints clerk retains a copy. The Prison Service retains copies of centrally held complaints for at least three years.

The recipient of a confidential access complaint decides how to handle it. There is no formal appeal mechanism for a confidential access complaint. However a prisoner may take it to the Prisons and Probation Ombudsman. The response to a confidential access complaint is returned through the complaints clerk to the prisoner in a sealed envelope.

² Taken from Prison Service Order 2510, Prisoner's Request and Complaints Procedure, issued 21 February 2002.

Prisoners are entitled to ask the Independent Monitoring Board to look at a complaint or review a response at any point in the prison complaints system. Independent Monitoring Boards have a statutory duty to hear prisoners' complaints and one of their roles is to monitor the complaints system



Point of entry to complaints process. Complaints to then be referred to appropriate process

Complaints/elements of complaints about NHS services

Complaints/elements of complaints about Prison Service services

KEY:

Annex 1: Acceptable forms of official identification

The following is a list of examples of acceptable forms of identification for occasional official or professional visitors. These visitors are subject to the restrictions laid out in para 6 of the main note (points a. to e.). The list below is drawn from Annex 23F of the Prison Service Security Manual. However, the procedures here are different in that professional or official visitors to High Security prisons must now produce both photographic ID and proof of the organisation they work for.

As an example, Annex 23F would in theory allow a visitor to enter with just an old style driving licence. The procedures covered here would require the professional or official visitor to produce a new style photographic driving licence and some other form of identity to show that the person worked for the organisation they were named as representing on the pre-booked visit.

Note that Annex 23F states that if forms of ID suitable for professional or official visitors are not available then those for social visitors are also acceptable. However, it should be made clear that one of the social visitor paragraphs referred to in Annex 23F - "*visitors to Category A prisoners must be on the approved visitors list*" - clearly does not apply to official or professional visitors. This may have been the source of confusion in the past.

Official or Professional visitors

1. The forms of identification set out below are acceptable. If the visitor does not possess such identification then the forms of identification for social visitors (see below) are also acceptable.
2. If in doubt, staff may telephone the visitor's employer to check the visitor is bona fide. Get the telephone number from the phone book or directory enquiries, not from the visitor.
 - a. Members of either House of Parliament; House of Parliament ID card;
 - b. Police, immigration and customs officers: warrant card;
 - c. Probation officers: probation department ID card;
 - d. Staff from other prisons, HQ or Home Office: Prison Service security pass or Home Office pass;
 - e. Consular officials: consular ID card;
 - f. Other public officials (e.g. dept of Health Staff): government department or local authority pass or ID card (only if it shows name of visitor and name of the department or local authority - If the pass does not include a photograph then another form of acceptable photographic identification is also required);
 - g. Introductory letter on headed letter paper of firm/organisation (in combination within some other acceptable form of photographic identification).

Relevant ID from social/domestic visitor list

- a. Passport, including foreign passports, and time expired passports where the photograph is still recognisable;
- b. EC Identity card
- c. Photo driving licence
- d. Employer's identification card or pass where this clearly shows the name of the visitor and has a photograph of the visitor and the employer/institute named on the card is known to exist. If in doubt phone the employer (see 2 above)

Note: items such as bus passes and library cards (named in Annex 23F of the Security Manual) are not robust enough as proof of ID for High Security prisons even if they do bear a photograph of the visitor.

Prisons retain discretion to accept other forms of identification, singly or in combination, that clearly and satisfactorily identify the visitor in the way described at the beginning of this annex.