

## **National Assembly for Wales**

### **Finance Committee**

### **Consideration of Powers**

## **Public Services Ombudsman (PSO) for Wales**

**January 2015**

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### **Submission from**



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## 1. Executive Summary

2. The Independent Sector Complaints Adjudication Service (ISCAS) has operated the well-established Complaints Code of Practice across the UK independent healthcare sector for over 13 years.
3. The ISCAS three-stage complaints process has been running effectively throughout the 13 years and has been periodically reviewed. ISCAS operates a three stage process which reinforces local resolution. The stages are: Stage 1, *Local* Resolution; Stage 2, *Organisational/corporate* Level Resolution; Stage 3, Independent Adjudication. ISCAS manages Stage 3 on behalf of its membership.
4. ISCAS does not support the Ombudsman's proposal to extend his jurisdiction to include private healthcare services on the basis that a mechanism for independent review of independent sector complaints already exists at no cost to the taxpayer. ISCAS would request a full discussion of any proposed levy for independent sector providers to come under the Ombudsman's scheme and would highlight a quote in the Ombudsman's own submission that "*The suggestion of a levy would ... be very challenging to put into practice*" [2.4(e)].
5. Furthermore, ISCAS would welcome the opportunity to enter into an information sharing agreement with the Ombudsman to jointly address the type of complaint that crosses between the NHS and independent sector, as referred to by the Ombudsman in his submission [2.4 (b)].
6. ISCAS has an Operating Protocol with Health Inspectorate Wales (HIW) and the Care Quality Commission (CQC) in England. Since April 2014 ISCAS has shared the outcomes of adjudications with the CQC in the same way the Parliamentary and Health Service Ombudsman shares its information. HIW has indicated its desire for ISCAS to similarly share the outcomes of any adjudication cases relating to independent healthcare providers in Wales.
7. ISCAS is aware of the proposals from the Department of Health Review of the Regulation of Cosmetic Interventions that the Parliamentary and Health Services Ombudsman covers all independent healthcare complaints **in England**. Unfortunately ISCAS believes that this is likely to have a detrimental impact in terms of delivering a timely outcome and ensuring all **English** complainants can access independent review and submitted a representation to the UK Parliament Health Committee to put forward this view.
8. By way of context, the independent healthcare sector in Wales is small and represents a tiny proportion of total healthcare provision across Wales. ISCAS represents all the six acute general hospitals and the two large specialist cosmetic providers in Wales. (ISCAS is aware that the six mental health providers that are members of the Welsh Independent Healthcare Association [WIHA] are entirely NHS-funded, meaning that all their patients already have access to the Public Services Ombudsman.) There are two further independent mental health providers that are not members of WIHA: Mental Health UK and Pastoral Healthcare.

9. The latest WIHA Credentials document<sup>1</sup> shows that the number of complaints made in WIHA acute hospitals represented less than 0.1 percent of all attendances – the actual figure being 159 complaints received at Stage 1.
10. ISCAS notes that the Ombudsman has put forward £180k-£270k as the total costs per annum for his proposals (*“dependent on the policy choice re the levy”* [3.4]). ISCAS would question that accepting oral complaints would have no associated costs for the Ombudsman as detailed in his submission to the Committee on 21 January 2015. In addition, there would surely be an associated cost with the required legislation change to Schedule 3 of the PSOW (Wales) Act that has not been accounted for.
11. ISCAS would like to draw the Committee’s attention to the predicament of private patients treated within the NHS who have no ability to complain to any external body about their treatment. The Public Services Ombudsman does not include these complainants and NHS Private Patient Units (PPU)/private beds are not members of ISCAS and therefore have no access to an independent complaints adjudication process.

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<sup>1</sup> Download the [WIHA 2013/2014 Credentials](#) document.

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## 12. Introduction

13. The Public Services Ombudsman (PSO) for Wales has asked that his powers be reviewed and has submitted proposals to the Finance Committee around five key areas of change. Of particular relevance to ISCAS is the Ombudsman's proposal to extend and reform his jurisdiction to cover independent healthcare and our submission focuses on this proposal.
14. The ISCAS Complaints Code sets out clear standards for member healthcare organisations to abide by and improve the experience of complainants ensuring that all unresolved complaints have access to independent adjudication. In view of the recommendation to steer all complaints to the Ombudsman in future, the Finance Committee is asked to consider the experience and service of ISCAS.
15. It is questionable that public funds should be used for the independent healthcare sector when there is the voluntary ISCAS Complaints Code (Code) in operation with costs met by the independent healthcare sector that already covers all the significant independent healthcare providers in Wales.

## 16. Background of ISCAS

17. For over 13 years, patients using the services of the independent healthcare sector have had the benefit of an effective complaints resolution procedure from organisations signed up to the ISCAS Code and the independent adjudication service.
18. The Code was established following the work of the Health Select Committee (in England) in 1999 and has been revised a number of times, most recently in May 2013. The Code will be reviewed again in the first half of 2015. Overall the Code has a clear customer focus and is supported by the Medical Defence Organisations.

## 19. How ISCAS works

20. ISCAS is a not for profit company limited by guarantee, set up as a member-owned co-operative with a Governance Board and Management Team. ISCAS operates the Code including the third stage of the complaints resolution:

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

21. ISCAS membership<sup>2</sup> comprises of corporate members across the healthcare industry in all four countries of the United Kingdom. ISCAS members share knowledge, experience and understanding on the effective management of complaints. The Code means complainants can raise a complaint about any aspect of service provided within the healthcare facilities of an ISCAS member.

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<sup>2</sup> Membership listings can be found at [www.iscas.org.uk](http://www.iscas.org.uk) following links to the membership directory

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22. 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 ensure all options have been exhausted to resolve the complaint.

23. Below are examples from two different ISCAS members about the number of local complaints and the number escalating to Stage 3 Adjudication:

24. Corporate cosmetic surgery provider (UK wide):

Total complaints for year 2012/2013

Number of complaints at Stage 1	1288
Number of complaints at stage 2	45
Number of complaints escalated and to stage 3	4

Organisation information: turnover of £37.5m (July 2011)

25. Two large corporate providers of acute hospitals (UK wide):

Total complaints for year 2012/2013

	Provider A	Provider B
Number of complaints at stage 1	1943	1604
Number of complaints at stage 2	111	35
Number of complaints escalated to stage 3	9	3

Organisation information:

Provider A - Turnover of £821.5m (September 2012) with 2,761 beds

Provider B - Turnover of £739m (December 2012) with 1857 beds

26. In Wales, four of the six acute general hospitals and the two large specialist cosmetic providers are all part of a wider corporate structure, with their head offices registered and operating out of England. For these providers Stage 2 Corporate Level complaints resolution currently happens at the corporate head offices.

## 27. Adjudication

28. The purpose and outcome of adjudication is principally to offer answers and then, if possible, to put things right in the most appropriate way.

29. 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. The Adjudicator reviews the case by reference to the documentary evidence of all correspondence and clinical records. The Adjudicator produces a comprehensive report of the case in the decision letter to the complainant.

30. Independent adjudication has a high success rate in resolving the more difficult or intractable complaints. 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.

31. The outcomes include a wide range of remedies for example: a sincere apology, a goodwill payment and recommendations being made to the ISCAS member. Goodwill payments (with a maximum set at £5000) can be awarded by the Adjudicator and can help reduce litigation, and in fact become a viable alternative - especially for service complaints. Medical Defence Organisations acknowledge the benefits that this system has brought.
32. Further information about ISCAS can be found in the Annual Report at [www.iscas.org.uk](http://www.iscas.org.uk)
33. **Extending the Ombudsman’s jurisdiction to include private health services**
34. ISCAS does not support this proposal on the basis that a mechanism for independent review of complaints already exists at no cost to the taxpayer. Furthermore, ISCAS would welcome the opportunity to enter into an information sharing agreement with the PSO for complaints that cross between the NHS and independent sector.
35. ISCAS and adjudication costs:
36. 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.
37. ISCAS members pay an annual subscription to cover the management resource. This base cost is shared across all members on a sliding scale according to company size.
38. An individual ISCAS member meets the costs of the Adjudicator’s case fee, any goodwill payment awarded and any associated clinical expert witness costs. In 2014, ISCAS Adjudicators reported on 40 complaints from across the UK. The average cost of an ISCAS Stage 3 Adjudication in 2014 was £2,430.

	2014
Ex Gratia Awards	£16,300
Adjudication	£64,115
Clinical Expert	£16,096

39. Compliance built into the ISCAS system:
40. Compliance with the ISCAS Code and the Stage 3 Independent Adjudication scheme is a criterion of membership of ISCAS.
41. When producing the Stage 3 Independent Adjudication report, the adjudicator also writes personally to the Chief Executive Officer of the ISCAS member to highlight any recommendations to practice and to require a report back to ISCAS to monitor compliance with the Code. The ISCAS Management Team also undertakes regular compliance checks on members.
42. The ISCAS Governance Board ensures the overall effective implementation of the Code of Practice. The Board has an independent Chair, Baroness Fiona Hodgson CBE, as well

as representation from the Patients Association, the Action against Medical Accidents (AvMA), a patient representative and ISCAS member representation. Outcomes and themes of adjudications are reported, as well as ISCAS activity and member compliance.

43. ISCAS has an Operating Protocol with Health Inspectorate Wales (HIW) and the Care Quality Commission (CQC) in England. Since April 2014 ISCAS has shared the outcomes of adjudications with the CQC in the same way the Parliamentary and Health Service Ombudsman shares its information. HIW has indicated its desire for ISCAS to similarly share the outcomes of any adjudication cases relating to independent healthcare providers in Wales. Furthermore, ISCAS is working with the Regulation and Quality Improvement Authority in Northern Ireland and Healthcare Improvement Scotland on a similar approach. The Operating Protocol also means that complainants are signposted to ISCAS.
44. For information, the ISCAS Director, Sally Taber, is a board member on the newly formed HIW Advisory Board.
45. ISCAS membership covers 98% of the acute hospital sector and other independent healthcare providers across the United Kingdom. However there remain a proportion of smaller independent healthcare providers that have not yet subscribed to ISCAS in the independent sector. If Healthcare Inspectorate Wales had the authority to require organisations to participate in an independent complaint review stage this would change the complaints experience for a complainant significantly and ensure all independent sector providers subscribed to ISCAS or an equivalent process. Indeed, ISCAS is seeing a movement towards this in England, where the CQC has started asking new registrants exactly this question.

**46. The Ombudsman and NHS Private Patient Units/private beds**

47. ISCAS has a particular concern about private patients using services within an NHS Trust such as Private Patient Units (PPUs)/private beds. In these services patients have no access to an independent review as the Ombudsman does not include these complainants and NHS-run PPUs cannot subscribe to ISCAS. ISCAS has escalated this issue a number of times to the Department of Health (England). Last year Baroness Fiona Hodgson CBE, Chair of the ISCAS Governance Board, raised the issue with the Secretary of State for Health Jeremy Hunt MP. Dr Dan Poulter MP replied on behalf of Jeremy Hunt and ISCAS continues to raise the issue of NHS-run PPUs not offering any independent review stage for complainants as there has been no change in this position to afford a better experience for those complainants.

**48. The Ombudsman's proposals around four further areas of change**

49. **Own-initiative investigation powers** – ISCAS is broadly supportive of this proposal in line with developments in complaints management across the UK. However, ISCAS agrees that *“it would be important to frame any changes in such a way as to ensure that the power would be used only where appropriate and cases could be referred to regulators or commissioners where this was a more suitable alternative”* [Ombudsman submission to the Finance Committee, 21 January 2015].

50. **Oral complaints** – again ISCAS supports this proposal and agrees that requiring complainants to submit evidence in writing is a barrier to the service and is out of touch with the electronic age. The ISCAS Code requires that members have a policy on complaints that are made by email, text or on social media. This is particularly relevant in the area of cosmetic surgery where the typical patient is young and tends to make use of social media to complain about services.
51. ISCAS is currently reviewing its Code of Practice and will be reviewing the Stage 3 Adjudication requirement for “*complainants to clarify [their complaint] in writing*” and its current practice is already to accept complaints via email through the ISCAS website or following a telephone call with a member of the Management Team.
52. Patient confidentiality, data protection and good information governance practices are important considerations when dealing with oral and electronic complaints.
53. ISCAS would question the Ombudsman’s submission that accepting oral submissions would have no associated costs [Ombudsman submission to the Finance Committee, 3.2]. ISCAS believes that there would surely be an associated staff and time cost. Accepting telephonic complaints would require skilled staff to capture the complaint correctly, particularly as complaints referred to the Ombudsman tend to be of a complex nature. Furthermore, opening up the option of oral complaints will increase the number of complaints being self-referred to the Ombudsman.
54. **Complaints handling across public services** – while this proposal is not directly relevant to independent healthcare, ISCAS considers this to be an excellent proposal. ISCAS operates in a similar manner for ISCAS members by producing model complaints policies for members; sharing learning and best practice with members through a quarterly e-Newsletter; and hosting annual training seminars for members on complaints handling and learning from complaints. Data from the soon-to-be-published 2014 ISCAS Annual Report shows that complaints handling remains a key area of complaints against healthcare services.
55. **Links with the courts** – ISCAS supports the removal of the statutory bar to allow the Ombudsman to consider a case which has or had the possibility of recourse to a court, tribunal or other mechanism for review. ISCAS already offers such an option for complainants in the independent sector.
56. Under the ISCAS Code, ISCAS reminds complainants of their right to seek independent legal advice where any aspects of their claim 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 Code recommends that the complaint can be considered under the complaints procedure and ultimately Stage 3 Adjudication.
57. The outcomes of Stage 3 Adjudication include a wide range of remedies for example: a sincere apology, a goodwill payment and recommendations being made to the ISCAS 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. Medical Defence Organisations acknowledge the benefits that this system has brought.

58. ISCAS notes the Ombudsman's point at 2.5(a) that the *"bar should be set aside entirely, so that complainants can choose which is the more appropriate route for them."* It would seem that it is proposed that complainants would be forced to choose one particular route when ISCAS Adjudication allows complainants to pursue both avenues if they so choose. In addition, ISCAS would question whether all complainants are able to make an informed choice about which route is most appropriate for them, particularly vulnerable complainants.

## **59. Conclusion**

60. In conclusion, ISCAS does not support the Ombudsman's proposal to extend his jurisdiction to include private healthcare services in Wales on the basis that a mechanism for an independent review of independent sector complaints already exists at no cost to the taxpayer and no requirement for legislative change.

61. ISCAS would welcome the opportunity to enter into an information sharing agreement with the PSO for any complaints that cross between the NHS and independent sector.

62. ISCAS is working closely with Healthcare Inspectorate Wales to formalise the process of sharing the outcomes of ISCAS adjudication cases in the same way that it already does with the Care Quality Commission.

63. If Healthcare Inspectorate Wales had the authority to require that independent healthcare providers participate in an independent complaint review stage, this would ensure that all providers would subscribe to ISCAS or an equivalent process. As detailed above, ISCAS has already noted the Care Quality Commission requiring this of independent sector providers in England.

## 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.<sup>3</sup> 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 complaints<sup>4</sup>, 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.

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<sup>3</sup> A full list of healthcare organisations that are members of ISCAS is available at [www.iscas.org.uk](http://www.iscas.org.uk)

<sup>4</sup> 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 service<sup>5</sup>. 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](http://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 proportionate<sup>6</sup>
  - 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.

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<sup>5</sup> 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.

<sup>6</sup> [CQC: Essential standards of quality and safety, outcome 17](#)

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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 complaints<sup>7</sup>. 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).
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.

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<sup>7</sup> A communication constitutes a complaint when the issue requires investigation and a formal response.

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 experts<sup>8</sup>, 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.

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<sup>8</sup> ISCAS uses experts from a reputable and recognised source ensuring there is no conflict of interest

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## **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.