

Implementation of the right to choice and information set out in the NHS Constitution



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Important changes affecting primary care trusts

Choice is fundamental to the delivery of a truly patient-centred NHS as it empowers people to get the health and social care services they want and need. Giving the public and patients good information helps them to make effective choices that are right for them and their families.

The NHS Constitution sets out choice as a right and includes the right to information to support that choice. New, legally binding Directions from the Secretary of State to primary care trusts (PCTs) underpin this and take effect on 1 April 2009. Since April 2008, with the introduction of Free Choice, patients who require a referral for a first consultant led outpatient appointment have been able to choose from any clinically appropriate provider.¹ The Directions effectively legally require PCTs to ensure that patients get the choice set out in the Free Choice guidance. The right to choose will develop as choice is extended into other areas.

This guidance describes the duties placed on PCTs in the Directions² and sets out some of the mechanisms PCTs might want to adopt to fulfil their legal obligations.

There is a new right for patients outlined in the NHS Constitution

You have the right to make choices about your NHS care and to information to support these choices. The options available to you will develop over time and depend on your individual needs. Details are set out in the Handbook to the NHS Constitution.

The Directions place new duties on PCTs

The Secretary of State has issued Directions under the NHS Act 2006 that place new duties on PCTs. PCTs now have to:

- make arrangements to:
 - ensure that patients who need an elective referral are offered a choice of any clinically appropriate provider; and
 - ensure that where a patient has not been offered that choice, and notifies the PCT that they have not been offered that choice, that patient may choose any clinically appropriate secondary care provider.

1 Choice at referral, supporting information for 2008/09 published on 18 March 2008.

2 The Primary Care Trust Choice of Secondary Care Provider Directions 2009, published 21 January 2009.

- publicise, and promote awareness of, information about secondary care providers, and where that information may be found, to enable patients to make an informed choice of provider;
- publicise and promote patients' entitlement to choice;
- publicise procedures on how to complain if patients feel that the PCT has failed to ensure that choice is offered or fails to publicise or promote information about secondary care providers; and
- publish and report to the strategic health authority (SHA) the number of complaints about patients not being offered choice or about a failure to publicise and promote information, and what action it has taken.

Scope of the Directions

The right to choice of provider applies to all the referrals that are covered by the Free Choice policy. Patients have the right to choose their NHS care provider when they are referred for a first outpatient appointment with a service led by consultants. PCTs must now ensure that patients are offered this choice.

If there is an interim primary care service in place, such as a clinical assessment or referral management centre, the PCT should make arrangements to ensure that the patient still gets a choice of provider for their elective care.

If the patient hasn't been offered a choice and notifies the PCT, the trust must make arrangements to ensure that the person may choose any clinically appropriate secondary care provider.

The exclusions applicable to the policy of Free Choice apply to the right to choose elective care providers. So the right does not apply to:

- prisoners
- serving members of the armed forces
- persons detained under the Mental Health Act 1983.

Certain services are also excluded. These include:

- emergency services
- cancer services or services provided at rapid access chest pain clinics which are subject to the two-week waiting time or other services where it is necessary to provide urgent care

- maternity services
- mental health services.

Right to information

PCTs are required to publicise, and promote awareness of, information about secondary care providers, and where that information may be found, to enable a person to choose a clinically appropriate secondary care provider.

The right to information to support choice applies to all referrals where the patient has the right to choose their provider under these Directions.

Complaints

If a patient complains to the PCT that they have not been offered a choice, and the complaint is upheld, the PCT is required to make sure that the patient gets a choice.

Any complaint about choice or information should work within existing complaints procedures. A separate complaints procedure is not required. The flow diagram attached may help PCTs decide how they want to deal with complaints.

If a patient complains about a lack of information or a lack of choice, this should not affect their entitlement to start treatment within 18 weeks from the time of their initial referral, unless it is not clinically appropriate or they choose to wait longer.

If the PCT is unable to resolve the complaint to the complainant's satisfaction, the complainant has the right to refer the complaint to the independent Health Service Ombudsman.

Publicity and promotion

PCTs need to ensure that their population is aware of the right to a choice and to information to support that choice.

PCTs must make their population aware of how to complain.

Reporting requirement

PCTs are obliged to publish and report quarterly to their SHA the number of patient complaints received about choice or information. This report should detail remedial action taken.

Levers for implementing the new duties

There are a number of levers that PCTs may wish to use to fulfil the new duties. Some are suggested below.

Ensure patients who need an elective referral get a choice of provider

- PCTs could hold regular meetings with GP practices.
- Incentives to offer choice at referral could be provided through contractual and financial measures, for example a Locally Enhanced Service (LES) agreement.
- Choice at referral could be included in the Alternative Provider Medical Services (APMS) agreement with the new GP-led health centres as they are set up.
- The complaints process itself may help PCTs fulfil their legal obligations.
- The importance of the right to choice is reflected in the World Class Commissioning (WCC) competencies and the WCC assurance framework which holds PCTs to account for their commissioning capability.

Publicising and promoting information to inform choices

- Providers are required, as outlined in the Standard NHS Acute Services Contract, to provide accurate information about their services. PCTs can actively use this to ensure there is adequate information for patients to make choices.
- Information to help patients make choices can be found on the NHS Choices website (www.nhs.uk). PCTs are expected to promote this and make this information more accessible to patients.
- PCTs could actively promote and publicise the information on NHS Choices through:
 - ‘Your Guide’ to provide details of locally available services
 - making it available in libraries
 - working closely with local authorities to make information available
 - working closely with patients that do not have access to the internet to provide alternative formats and means of accessing information.
- PCTs could consider how they can use approaches relevant for their local population, for example:
 - working with hard to reach and vulnerable patients
 - those who do not have English as a first language
 - making alternative versions available.

Complaints

- The majority of legitimate complaints may well be resolved through discussions with the original referrer. This might include a discussion between the original referrer and the PCT Medical Director or the Professional Executive Committee chair.

Publishing and promoting the right to choice and the right to information

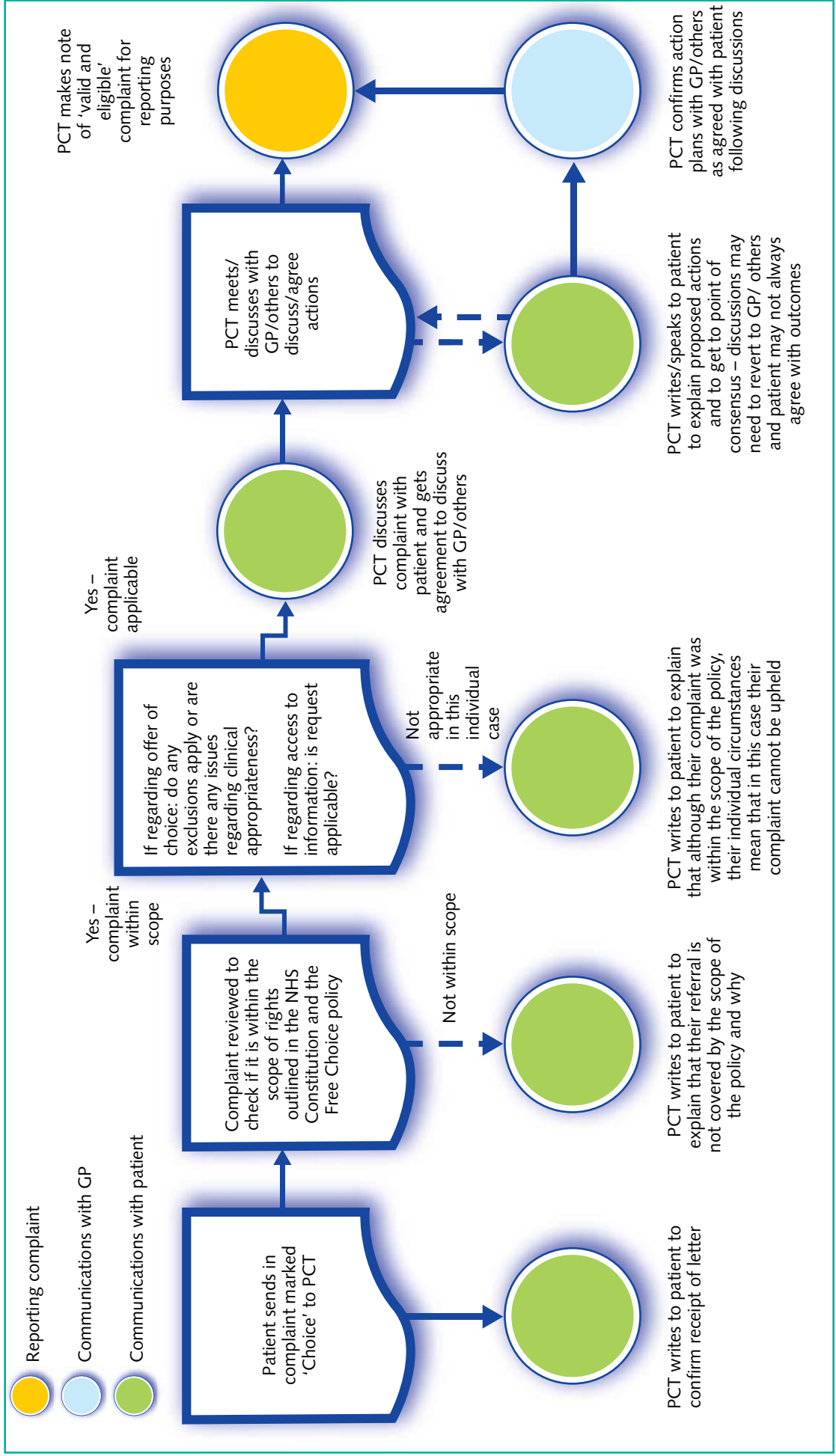
There are a number of levers that PCTs may wish to use to ensure this duty is fulfilled:

- PCTs could work closely with GP practices to encourage referrers to use NHS Choices and explain patients rights' to them.
- PCTs could use media in GP surgeries, such as the Life Channel.
- The Choice Communication toolkit³ provides material that PCTs might like to use:
 - Roadshows, local adverts and libraries
 - Promotion campaigns could emphasise how the right to choice and information will benefit patients.
- PCTs could work closely with local authorities to publicise and promote the new rights.
- PCTs could raise awareness of the rights to choice and information in 'Your Guide'.

3 This can be accessed on NHS Comms Link at: www.nhscommslink.nhs.uk/Login.aspx?ReturnUrl=%2fsecure%2fdefault.aspx%3fload%3dArticleViewer%26ArticleId%3d2329&load=ArticleViewer&ArticleId=2329

Choice – Patient complaints process

The directions underpinning the NHS Constitution place a duty on PCTs to ensure patients are offered a choice; to publicise and promote the right to choice; to provide information about services to support the offer of choice and subsequently to publicise their patient complaints procedures; and to prepare quarterly reports on complaints.





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