

# \* A Guide to NHS Complaints

## An essential guide to NHS complaints

Despite recent press reports of NHS failings, cover-ups and scandal, it remains fair to say that in the majority of cases patients have a positive experience of their NHS treatment. Where this is not the case, there are a number of options open to a patient, the first of which is to bring a complaint.

This leaflet is designed to provide you with a guide to bringing a complaint against an NHS Hospital or General Practitioner.

Every NHS-run organisation is obliged to have a comprehensive complaints procedure. The procedure will be broadly the same across most NHS hospitals but may vary in relation to GP practices. To find out more, contact the practice manager of your GP practice or the complaints department or patient liaison officer at your hospital.

## \* Do I have a right to bring a complaint?

If you have concerns regarding the care or treatment you have received, or if you have been refused treatment, you have the right to make a formal complaint. Your right to bring a complaint is enshrined within the NHS Constitution.

### You have the right to the following:

- Lodge an oral or written formal complaint
- Have your complaint dealt with efficiently, and for it to be properly investigated
- Know the outcome of any investigation into your complaint
- Take your complaint to the independent Parliamentary Health Service Ombudsman if you are not satisfied with the way that your GP or hospital has dealt with your complaint

### Where the complaints process has failed or does not satisfy your needs you additionally have a right to:

- Make a claim for judicial review if you think you have been directly affected by an unlawful act or decision of an NHS body, and
- Receive compensation if you have been harmed



This information relates to the law and procedures in England and Wales. Please contact us if you need advice about the law and procedures in other legal jurisdictions.

## \*What is the NHS Complaints procedure?

The complaints procedure allows patients and their families to raise concerns regarding treatment received. It gives the treatment provider an opportunity to address those concerns by providing an explanation of what happened and, if something went wrong, to apologise for what went wrong.

The complaints procedure is also an opportunity for treatment providers to identify problem areas in which things go wrong and to review working practices and implement changes in order to prevent the same thing happening again.

The NHS Complaints procedure does not provide for compensation to be paid and is not designed for patients seeking financial compensation.

## \*When should I complain?

As soon as possible following the treatment in question. There is a time limit of 12 months for bringing a complaint, which runs from the date treatment was provided.

Extensions to the time limit can be granted, particularly in situations where it would have been difficult for the patient to complain earlier (for example if grieving or in the case of ongoing illness/ trauma).

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## \*The Complaints Process

The NHS complaints process has two stages. You must go through the first stage before moving to the second. The first stage involves a direct complaint to the treating NHS hospital, treatment centre or GP. The second stage involves the Health Service Ombudsman.

**1. Local Resolution:** ask your GP surgery, hospital or NHS Trust for a copy of their complaints procedure which will explain how to proceed.

Your first step will normally be to write a letter of complaint but this will often follow a verbal complaint to a practice manager, GP, Doctor or hospital.

**2. The Parliamentary Health Service Ombudsman:** If you are unhappy with the response to your complaint at the local level, you can complain to the Parliamentary Health Service Ombudsman. The Ombudsman will not fully investigate every complaint they receive. See below for further information on the Ombudsman service and remit.

You can call the Ombudsman's helpline on: **0345 015 4033**, or see their website for more information: <http://www.ombudsman.org.uk>

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## \*How do I start my complaint?

You can bring a complaint either in writing or orally. If you are putting your complaint in writing, telephone the complaints department of your hospital or the practice manager of your GP practice first to find out who you should address your letter to. Although you can bring your complaint orally to the practice or complaints manager, where possible you should put your complaint in writing to make sure that all of your concerns are properly communicated and understood.

If you do not wish to complain direct to your hospital or GP practice, you can complain to the commissioner of the health service that you are complaining about. Until recently, this was always your local primary care trust (PCT). PCTs were abolished on April 1 2013. Now you will have to take your complaint either to NHS England or your local Clinical Commissioning Group (CCG)

## \*What information should I include?

You should include the following information in your complaint letter:

- Your full name, address, date of birth and telephone number
- Name and contact details of anyone assisting you with the complaint
- Name and contact details of the healthcare provider you wish to complain about
- The factual details of your complaint (listing the main events and when/ where they happened)
- Copies of any relevant documents

If you have a number of questions about the treatment you received it is a good idea to list each question numerically after setting out the background to your complaint. This will help the healthcare provider to deal with all of your concerns.

It is a good idea to keep a copy of everything you send and make a note of when you sent it.

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## \*What happens next?

Most NHS Trust complaints procedures require an acknowledgement within 14 days but many will acknowledge your letter within 3 days. If you do not get an acknowledgement within this time frame, you should write again or telephone to check that your complaint was received.

The timescale for providing a full written response to your complaint will vary depending on the nature of your concerns and the investigations which need to be carried out in order to provide a substantive response.

The letter acknowledging your complaint should provide an indication of how long it will take to investigate your complaint and when you can expect to receive a full response.

If you do not receive your response within the promised time frame, you should write or telephone to chase the response.

If you are not happy with the response you may wish to write again to the NHS involved, rather than proceed immediately to the Ombudsman. This may be sensible if the response has dealt with most but not all of your questions or concerns. You may be offered a meeting with the complaints manager and treating Doctors/ Nurses to try to resolve any outstanding issues.

## \*How will the NHS investigate my complaint?

This will depend upon the nature of your complaint and concerns but generally the complaints manager should:

- Liaise with the members of staff directly involved in your treatment. In hospital this will include Doctors and nurses.
- If relevant, obtain an opinion from the clinical head of the relevant department about what happened.
- Occasionally the opinion of other Doctors, not directly involved in your care, may be sought over what happened.

You may be offered a meeting between the complaints manager, the treating doctors/nurses and yourself, before a written response is provided. The purpose of a meeting is to address the issues raised in your complaint and to give the treatment provider an opportunity to provide explanations or apologies, and, if relevant, to advise what action they are proposing to take to change their working practices and prevent similar incidents occurring in future.

You do not have to attend a meeting if you do not want to and a written response will be provided even if you do not. Any meeting should be recorded or there will be someone present taking notes.

If you are offered a meeting and you decide to attend a meeting, it is sensible to bring a friend or family member with you to take notes as it is often difficult to take in and remember all that is discussed.

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## \* Is there anyone who can help me bring a complaint?

The prospect of complaining against the NHS can be daunting especially if there are a lot of emotions involved or if you have suffered harm. There are organisations who can provide assistance:

- **PALS (Patient Advice & Liaison Service)**

Officers from PALS are available in all hospitals. They offer confidential advice, support and information on health-related matters. You can find your local PALS office at the Office Directory at PALS Online: <http://www.pals.nhs.uk>

- **Independent Health Advocacy Service**

Each community NHS trust must commission the services of an independent health advocacy service. This replaced the old ICAS. Providers vary from area to area. You can find out who your local independent health advocacy service is, or in some areas get direct assistance, through [www.healthwatch.co.uk](http://www.healthwatch.co.uk)

- **Citizens Advice Bureau**

Your local Citizens Advice Bureau can also be a helpful source of advice and support. You can find your local Citizens Advice Bureau on their website: <http://www.citizensadvice.org.uk>

## \* Parliamentary Health Service Ombudsman

If you feel that the NHS Trust or GP surgery etc has failed to properly address your complaint, you have the right to refer the matter to the Parliamentary Health Service Ombudsman.

The Ombudsman is a free service and is independent of the NHS. Their powers are set down in law.

The Ombudsman will only consider complaints which relate to “administrative fault” or “service failure”. In the context of failings in hospital care, this could mean (for example) an unreasonable delay in diagnosing and treating a particular condition, leading to a worse outcome for a patient. They will also only investigate cases in which they conclude, following initial screening, that the NHS failed to fully respond to or deal with your complaint.

If the Ombudsman is able to assist you, they will review the issues surrounding your complaint and will liaise with you and the treatment provider concerned. The Ombudsman may well commission reports or seek opinion from Doctors not directly involved with your care or the local NHS. Once their investigations are complete, the Ombudsman will write to you, setting out their conclusions.

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## \* Parliamentary Health Service Ombudsman *continued*

If the Ombudsman concludes that the NHS have done something wrong, they will write to the hospital and tell them how to rectify the situation. This may involve making an apology, or providing a better explanation, or suggesting additional steps/ changes in order to put things right.

If the complaint can be resolved straightaway (without the need for a formal investigation), the Ombudsman aims to respond within 40 days of receiving your complaint.

If a full Ombudsman investigation is carried out, it can be a time consuming exercise, potentially taking up to 12 months. If you have suffered harm as a result of the treatment failure, you need to carefully consider these timeframes. If you are contemplating bringing a claim for compensation as well, it may be sensible to contact solicitors before the end of the Ombudsman investigation. This is because there is a 3 year time limit on compensation claims.

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## \* Judicial Review

It may be possible to challenge the Ombudsman's final decision by seeking a judicial review. This is a procedure which allows a Court of law to review decisions made by public bodies. You will need to consult a solicitor if you plan to seek a judicial review and be aware that there are tight time limits which apply from the time that you were notified of the Ombudsman's decision.

## \* General Medical Council

The GMC is the regulatory body for doctors practising in the UK. The GMC's website <http://www.gmc-uk.org/> contains helpful information on the process. You can submit a complaint in writing by post, or complete an online form.

The GMC investigate cases of serious or repeated mistakes by doctors carrying out medical procedures or diagnoses (for example prescribing drugs in a dangerous way); failure to examine a patient properly or respond reasonably to a patient's needs; serious breaches of patient confidentiality, and criminal offences.

The GMC will generally only investigate complaints about individual Doctors if the matter complained of brings in to question the Doctor's fitness to practise. It must be borne in mind that many Doctors make mistakes but only very serious mistakes, or repeated mistakes, are likely to indicate a lack of fitness to practise.

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## \*General Medical Council *continued*

If you complain in writing to the GMC, they will show your letter to the doctor concerned and obtain their comments. Once all of the information has been collated, the complaint will be reviewed by two case examiners: one medical, one non-medical. They will consider whether the concerns are sufficiently serious to warrant referral to the Medical Practitioners Tribunal Service.

If the matter is referred to the Tribunal Service, an impartial panel will decide at a hearing whether the doctor is fit to practise.

The GMC have the power to do the following:-

- Issue a warning to a doctor
- Agree and enforce undertakings with the Doctor (e.g. an agreement to re-train, or work under supervision)
- Refer a doctor to the tribunal for a Fitness to Practise panel hearing. The panel can decide to:
  - a) Put conditions on the doctor's registration so that he/she is only allowed to practise under supervision, or ensure they are restricted to certain areas of practice
  - b) Suspend the doctor's name from the register so that he/she cannot practise medicine during the suspension period
  - c) Remove the doctor's name from the register so that he/she cannot practise medicine at all

The GMC do not have the power to deal with complaints concerning nurses, pharmacists, dentists, opticians or treatment providers who are not qualified doctors. They also cannot order a doctor to provide the treatment you would like; cannot make a doctor apologise, and cannot assist with claiming compensation.

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## \*The Effect of Complaints - pursuing a Legal Claim

If an NHS Trust investigates a complaint and accepts that there were serious failings in care, this can narrow the issues under investigation in a legal claim for compensation.

For a claim to succeed, a patient must prove two legal tests: breach of duty and causation.

Breach of duty requires the patient to show that the care they received fell below an acceptable standard, which would not be supported by a responsible body of practitioners. If the hospital concedes in their response to a complaint that the care was not of an acceptable standard, this can make it much easier for your solicitor to assess the prospects of success of your claim. This may help with the consideration of your funding options as well as potentially speeding up the investigations of your claim.

Pursuing a complaint can therefore be a very useful exercise if you are contemplating making a claim.

Even if no apologies or admissions are forthcoming from the hospital, a detailed investigation and written explanation can assist your solicitor when looking into different aspects of a legal claim.

## \*How Complaints Affect Funding for Claims

If you are applying for Legal Aid Agency funding it is a prerequisite for you to firstly pursue a complaint against your treatment provider.

Information revealed through the complaints process can help your solicitor in deciding whether there are sufficient prospects of success to offer you a No Win No Fee agreement, under which the solicitor takes a risk on not getting paid.

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## \* Clarke Willmott LLP

Clarke Willmott LLP is a national law firm with an excellent reputation. We have a specialist team of dedicated medical negligence solicitors who are experts in pursuing medical claims. We only ever act for Claimants (injured patients) and are accredited by the Law Society and AvMA Medical Negligence Panels. We also have a number of offices across the UK which means we should always be able to come to you, if you cannot come to us.

We are able to represent all Claimants who have suffered medical accidents and have particular specialism in handling cases where patients have suffered severe, life-changing injuries such as spinal injuries, brain damage and neurological injury and fatal injuries.

### **Our recent successes include:**

- An award of £8.6 million for a child with cerebral palsy resulting from negligence during birth
- An award of £1.5 million for a man who suffered a stroke due to negligence following a heart bypass procedure
- An award of £500,000 for a child who suffered brain damage after a GP negligently failed to refer her to hospital with symptoms of dehydration
- An award of £750,000 for a man who suffered a stroke following negligence of his GP in failing to treat high blood pressure
- An award of £220,000 for a delay in diagnosing and treating malignant melanoma of our client's knee
- An award of £425,000 damages for the widow of a man whose GP failed to refer him to hospital with an abnormal ECG, which led to him suffering a heart attack and premature death

## \* Contact Us

If you require any advice or guidance in relation to pursuing an NHS complaint with a view to making a legal claim for damages, please contact our specialist clinical negligence team.

Telephone: **0800 316 8892 (freephone)**

Web: **[www.clarkewillmott.com/service/medical-negligence/29](http://www.clarkewillmott.com/service/medical-negligence/29)**

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This factsheet is for general guidance only and should not be treated as a definitive guide or be regarded as legal advice. If you need more details or information about the matters referred to in this factsheet please seek independent formal legal advice. This information was correct at the time of going to press in May 2015.

## Offices

### **Birmingham Office**

138 Edmund Street, Birmingham B3 2ES

### **Bristol Office**

1 Georges Square, Bath Street, Bristol BS1 6BA

### **Cardiff Office**

2nd Floor, Emperor House, Scott Harbour, Pierhead Street, Cardiff CF10 4PH

### **London Office**

1 Chancery Lane, London WC2A 1LF

### **Manchester Office**

2nd Floor, 19 Spring Gardens, Manchester M2 1FB

### **Southampton Office**

Burlington House, Botleigh Grange Business Park, Hedge End, Southampton SO30 2AF

### **Taunton Office**

Blackbrook Gate, Blackbrook Park Avenue, Taunton TA1 2PG