



# COMPLAINTS

# Introduction

## What is a complaint?

Put simply, a complaint is an expression of unhappiness or dissatisfaction when something hasn't gone right.

There are different reasons people make complaints: most of the time, people want to ask questions. They want to understand what happened and why and find out what action can be taken to put things right.

They might also want an apology - and an acknowledgment that what happened should not have happened.

Complaints can also help services to make changes so that what's happened doesn't happen to someone else. This desire to change the way things are done features frequently in complaints.

# Introduction

It can be difficult to speak up when a person is not happy with their NHS care and treatment or social care service. There are obvious barriers in complaining about the people who have responsibility for caring for you - or against services that control your support (and sometimes finances).

The complaints process can also be long and complicated which can put people off making a complaint in the first place - or cause them to 'give up' midway.

Everyone who wishes to make a complaint about the NHS is entitled to access an independent advocate.

The advocacy role is in statute and was introduced within *The Health and Social Care Act 2012 Part 5 Chapter 1 section 185*.

# NHS complaints

Complaints can be about any aspect of NHS care/services including:

- Treatment or care
- Attitudes of the staff
- Poor communication
- Waiting times
- Lack of information
- Failing to diagnose a condition

And the complaint can cover any service involving the NHS including:

- NHS hospitals
- private hospitals where the NHS funds treatment
- GP surgeries
- dental surgeries
- pharmacies
- opticians
- NHS funded care homes
- ambulances

# NHS complaints - timescales

Section 12 of The *Local Authority Social Services and National Health Service Complaints (England) Regulations 2009* tells us that complaints should be made within 12 months of the event or within 12 months of the realisation that there was something to complain about.

NHS organisations can waive this time limit at their discretion if there are good reasons why the complaint could not be made at the time.

This could include the person having good reasons for not making the complain within the time limit - for instance not knowing that an error had been made or being unable to make the complaint. If the responsible can still investigate the complaint effectively and fairly then they will.

# NHS complaints - who can complain?

Its really important that people find it easy to make a complaint. It is possible to submit the complaint in person, over the phone, by email or letter.

The regulations are pretty clear that a complaint may be made by:

- a person who receives or has received services
- a person who is affected, or likely to be affected, by the action, omission or decision of the responsible body which is the subject of the complaint. (
- a person (known as a representative) acting on behalf of a person who
  - has died;
  - is a child;
  - is unable to make the complaint themselves because of physical incapacity or lacks capacity (within the meaning of the Mental Capacity Act 2005)(a) or
  - has requested the representative to act on their behalf.

# NHS complaints - what happens?

When making a complaint the person can expect the following:

- To be treated with courtesy and respect
- To be offered support (including advocacy)
- A timely response to be given where possible

NHS policy says the person should receive a letter of acknowledgment within three working days from receipt of the letter of complaint.

The NHS should contact the person to discuss the complaint and arrange a plan to resolve the persons concerns and what resolution the person hopes to achieve.

# NHS complaints - what happens?

The NHS should also agree a timescale for resolving the issues and keep the person informed of progress. The length of time it will take will depend on:

- how many staff they need to speak to;
- how easy it is for them to access medical records;
- if other NHS organisations are involved



# Local resolution meeting

The NHS can invite the person to attend a Local Resolution Meeting (LRM). Sometimes it is easier to hear answers to what may seem to be a straightforward question but may have a complex medical explanation. A meeting should not be offered or take place instead of a written response.

A Local Resolution meeting can be held at different stages of the complaints process but more often takes place when the person is not happy with the written response. These meetings are often the last opportunity to resolve a complaint before it may progress to the Parliamentary and Health Services Ombudsman (PHSO).

# Local resolution meeting

The person can take a friend, relative or advocate to any meetings if the person wishes.

A key area of support from advocacy is to help the person prepare for the meeting, this could be in the form of preparing a list of questions that the person wants to ask at their meeting; enabling the person to try to keep their questions clear and concise. It is also helpful to take any relevant paperwork to the meeting.

If the person wants their advocate to attend, you should be allowed to attend to support them during the meeting.

# Local resolution meeting

A formal record of the meeting should be made by the organisation complained about. The person can make their own record of the meeting if they want to. This can be in writing, audio or video recording. Any information recorded is confidential to the person.

Sometimes the NHS uses Conciliation or Mediation services. A conciliator/mediator is a neutral and independent person who can arrange a meeting with the person and those involved (either separately or together) so the persons can all give their views and try to resolve their differences. A conciliator will only become involved if everyone agrees.

Conciliation and Mediation Services differ from Trust to Trust so if this is offered the person should ask the Complaints Manager to explain how it operates in their area.

# Following investigation

Once the investigation is finished and any meetings have been held the Complaints Manager should send a letter containing:

- A summary of the complaint
- What the investigation found and any actions to be taken as a result
- What to do if the person is still unhappy with the answers given

Depending on the investigation the letter may contain:

- An apology, if relevant
- What actions will be taken and when, as a result of the complaint
- Who is responsible for making this happen
- What steps have been taken to prevent the same thing happening to other people

# Following investigation

The letter should be balanced, factual, impartial, clear and easy to understand

If the person is not happy with the response, they can go back to the NHS in writing, telling them the part(s) that they are not happy with or don't understand.

It's important to note that at this point the person cannot ask any new questions unless the response has raised issues that they weren't previously aware of. Any further issues must only relate to the issues and questions in the original complaint.

A further response can be made in writing or, if there hasn't already been one, ask for a Local Resolution Meeting.

# Parliamentary and Health Service Ombudsman

If the person is still not happy with the response there is the option of taking the complaint to the Parliamentary and Health Service Ombudsman (PHSO).

The PHSO is independent of the NHS, local authorities and government. Their services are free and confidential. Although the timeframe is a year as with making a complaint the PHSO can extend this time, for example, if the Local Resolution process took longer than a year.

The PHSO will look at every complaint that comes to them but they do not (and are not required to) investigate all the complaints referred to them.

# Parliamentary and Health Service Ombudsman

They will not normally investigate a case unless the person has already tried to resolve the problem using Local Resolution.

The PHSO can refer the person back to the Local Resolution stage of the NHS Complaints Procedure if they think the complaint has come to the Ombudsman too soon, or if they feel that the NHS organisation involved has not done all it can to resolve the issues locally.

The PHSO will not usually investigate a complaint where the person does not agree with the outcome of the complaint and cannot offer any evidence as to why they think it's wrong or unsatisfactory.

# Parliamentary and Health Service Ombudsman

The PHSO will consider whether the persons complaint meets their criteria for investigation. They may ask to see clinical records and other papers involved in the complaint.

The PHSO may decide:

1. not to investigate the complaint and take no further action (for example, if they think that the NHS has done all it can to resolve your complaint locally).
2. not to investigate the case but may ask the NHS organisation to take action which they think would resolve your complaint more quickly without the need for a PHSO investigation. This is called an 'intervention'.
3. to carry out an in-depth investigation resulting in a detailed report about the case. This investigation will be very thorough and can take some time. They aim to complete 90% of investigations within 12 months.



# Parliamentary and Health Service Ombudsman

If the PHSO agree to investigate the complaint they will write a report detailing their findings and if the complaint is upheld ie support the complaint they can make recommendations to the NHS to put things right.

If after the PHSO investigation the person is not happy with their decision; they can raise their concerns about the decision with the person who assessed their complaint. If they remain unhappy, they can ask that the decision is reviewed by a different team (although just disagreeing with the decision is not enough for a review to be completed).

The PHSO's decision about the complaint is final. This includes their decision whether or not to investigate the complaint and their decision whether or not to uphold the complaint following an investigation.

# Adult Social Care Complaints

Adult social care services include all types of personal care and other practical help for people aged 18 and over. People can complain about any aspect of adult social care including services:

- provided by or bought (commissioned) by the local authority, or
- provided by private companies or voluntary organisations.

Examples of services that is commissioned or delivered by the local authority include:

- provision of equipment
- help in your home with daily living
- community support and activities
- day centres
- residential care
- home adaptations
- information and advice
- advocacy
- support for carers

# Adult Social Care Complaints

All these organisations will have their own complaints procedure and people can make a complaint as long as they:

- receive or have received services from the organisation concerned, or
- are someone who is affected, or likely to be affected, by the action or decision of the organisation you want to complain about.

# Adult Social Care Complaints

## Complaining on behalf of someone else

You can complain on behalf of someone else if they have grounds to complain and they have died, or can't make the complaint themselves because they aren't physically or mentally capable, or have asked you to act on their behalf.

Advocates do not usually make complaints on behalf of a person - we tend to support a person to do this for themselves. However there is nothing to prevent an advocate making a complaint on behalf of a person and this may be a very appropriate thing to do where the person is unable to do this for themselves and you believe that they would want to make a complaint if they could.

# Adult Social Care Complaints - what to do

In the first instance, the person is advised to contact the service provider. All health and social care service providers must have a complaints procedure that can be accessed. This will explain how to make a complaint to them.

As their advocate you can support them to access this process, understand what is likely to happen and to practically write and submit the complaint.

There are different steps a person may want to begin with:

- Informal resolution
- Formal complaint

# Adult Social Care Complaints - informal resolution

If the person wants to, they can begin by discussing their concern(s) with the member of staff concerned. This can be a quick way of sorting out a problem.

As the persons advocate you can help them to prepare for this discussion by:

- writing notes about the points they want to raise
- thinking about what outcome they want.

If this resolves the problem, great! If it doesn't sort out the problem, the person can ask for a meeting with their manager. Or if the care is being provided by a voluntary organisation or private company, they can ask for a meeting with the local authority that buys or commissions the care.

# Adult Social Care Complaints - formal complaint

If the person does not want to try the informal route - for instance the complaint is very serious - they can make a formal complaint.

The easiest way to do this is to ask the organisation they are unhappy with for a copy of their complaints process.

By law, each provider **MUST** have a complaints process that is accessible. This will inform the person who to submit their complaint to and what they can expect.

# Adult Social Care Complaints - formal complaint

There are some helpful things you can do as an advocate when supporting a person to make a formal complaint. Spend time supporting the person to:

- capture as much detail about the problem. This might include dates, names of any staff members involved.
- think about and communicate what they would like to happen, for example, an explanation or apology.
- capture the impact a decision is having on the person and if this has caused or is causing difficulties.

If the complaint is particularly complex or complicated, it can be helpful to write a timeline of the events that have taken place.



# Adult Social Care Complaints - formal complaint

Once the organisation has received the complaint, it is good practice for them to acknowledge the complaint within three working days from when it's received. This can be done face-to-face or in writing.

When acknowledging the complaint, the organisation should offer to discuss with you, at an agreed time. The person is under no obligation to take up the offer of a meeting but this is often a good opportunity to review the complaint and hear how the organisation intends to handle the complaint and how long they think it will take to look into the problem.

If the person doesn't want to meet, the organisation should still put in writing how long the investigation is likely to take and when they intend to supply their response.

# Adult Social Care Complaints - formal complaint

## Investigating the complaint

The organisation will investigate the complaint to try and establish what happened.

An important part of the investigation is talking to the person making the complaint. Most complaint managers will invite them for a meeting or, where this is agreed, arrange for conciliation, mediation or other help to resolve the complaint.

if the person wants you to, you as their advocate can attend and support them during this meeting.

The complaints manager will also need to speak to other people involved in the complaint and may need to access records.

# Adult Social Care Complaints - formal complaint

The investigation should be done within a reasonable time but there's no time limit for the organisation to finish their investigation.

This will depend on the complexity of the case. However, if they don't finish the investigation within 6 months of the date when they received the complaint, they must write to you explaining the reason for the delay and then send you their final response as soon as they can.

# Adult Social Care Complaints - formal complaint

## Responding to the complaint

At the end of the investigation, the complaints manager must prepare a written response to your complaint. This response should:

- give an explanation of how the complaint has been looked at
- set out the conclusions reached, including any action that is needed to sort out the problem
- give details of the persons right to take your complaint to the Local Government Ombudsman if you aren't satisfied with their response.

# Adult Social Care Complaints - formal complaint

## What to do if the person is not happy with the outcome

If the person is not satisfied with the response from the local authority or the organisation providing care, the person can complain to the Local Government Ombudsman (LGO) if:

- they aren't happy with the final answer from the local authority or the organisation providing care or
- the organisation didn't provide an answer within a reasonable time.

# Local Government and Social Care Ombudsman

The Local Government and Social Care Ombudsman (LGSCO) describe themselves as able “to sort out individual complaints” they will “look at complaints about councils and all types of care services for adults in England.”

They describe their role as investigating complaints in a fair way – they do not take sides. Their service is free and they make decisions independently of all government departments, councils and politicians.

They have the same powers as the High Court to obtain information and documents.

# Local Government and Social Care Ombudsman

The Local Government and Social Care Ombudsman does not have to investigate every complaint received. One example they provide of not investigating is: “we may decide not to investigate if we think the problem you mention would have affected you only slightly.”

# Local Government and Social Care Ombudsman

The LGSCO will only look at a complaint after the council or care provider has had a chance to deal with it. They suggest if a person is not happy with the response received from the council or the care provider, or if an answer is not received within a reasonable time, (12 weeks) the complaint can be taken to them.

As with NHS Complaints process the LGSCO ask that the complaint is made within 12 months of when you first knew about the problem.



# Local Government and Social Care Ombudsman

THE LGSCO deal with complaints by gathering the facts and they look at whether something has gone wrong that has caused problems. If they find the council or care provider has done something wrong, they will try to get the matter put right.

Some complaints can cover both health and social care. The LGSCO can set up a team jointly with the Parliamentary and Health Service Ombudsman to investigate them.

# Local Government and Social Care Ombudsman

Some decisions that the LGSCO can make include:

- Upholding the complaint and recommending how the council or care provider should put things right
- Upholding part of the complaint
- Upholding the complaint but not making any recommendations because the council or care provider has already put things right
- Upholding the complaint but not making any recommendations as the LGSCO doesn't think the fault had a significant effect on the person
- Not upholding the complaint

# Local Government and Social Care Ombudsman

To put things right, the LGSCO might ask the council or care provider to:

- apologise
- provide the service
- make a decision that it should have made before
- look again at a decision that it did not take properly first time
- improve its procedures so similar problems don't happen again
- make a payment.

# Local Government and Social Care Ombudsman

The LGSCO publish most of their decisions on their website three months after the date of the decision.

In some investigations they state that they find issues that other councils and care providers could learn from, or the public should know about.

In these cases they will publish a detailed report of the investigation on their website. We may also send the report to the media with a press release. [www.lgo.org.uk](http://www.lgo.org.uk).

# Care Quality Commission

The Care Quality Commission (CQC) regulates adult social care. They don't investigate individual adult social care complaints but you can report your experience to them and this could result in them taking action against the care provider.

This can be very important, particularly if you are aware as an advocacy organisation of multiple complaints against a provider or team.

# References and resources

**Parliamentary and Health Ombudsman:** <https://www.ombudsman.org.uk/>

**Local Government and Social Care Ombudsman:** [www.lgo.org.uk](http://www.lgo.org.uk).

## Citizens advice

<https://www.citizensadvice.org.uk/health/nhs-and-social-care-complaints/complaining-about-social-care-services/social-care-complaints-procedure/what-should-happen-when-you-make-a-complaint-about-adult-social-care-services/>

## Information packs for advocates including template letters:

<https://www.pohwer.net/Handlers/Download.ashx?IDMF=e3e809eb-5c96-4ec7-830d-29e54b602ae2>

<https://www.voiceability.org/support-and-help/making-a-complaint-about-your-care/how-to-complain-getting-started>

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