



# Alternatives to using complaints procedures

# Introduction

When someone is thinking about making a complaint about the support or services they have received under the NHS (or haven't received) an individual may wish to think about how they would like to raise their concerns.

There is a legal right to formally complain using the NHS complaints procedure but there are alternatives to this that you may wish to explore as their advocate, depending on what the person feels comfortable with and what their ultimate goal is.

# Option 1 - talk to staff

Speaking to a member of staff directly

Many complaints are caused by misunderstandings or poor communication that can often be put right once the problem is explained. If the person feels able to, they can speak to a member of staff who has been directly involved in their care and treatment or ask to speak to their manager.

This is often the quickest way to put things right and prevent issues from getting worse.

# Option 2 - speak to PALS

Speaking to the Patient Advice and Liaison Service (PALS)

If the person feels uncomfortable about contacting the NHS member of staff directly, or have tried and it has not resolved the issue(s), PALS may be able to help.

This service is free and available in all hospitals and is not a formal complaints process.

# Option 3 - complain to the GMC

The **General Medical Council (GMC)** works to protect patient safety and improve medical education and practice across the UK. Working with doctors, employers, educators and patients to achieve high standards of care. As part of their role they:

- decide which doctors are qualified to work in the UK
- oversee UK medical education and training
- set the standards doctors need to follow throughout their careers
- where necessary, take action to prevent a doctor from putting the safety of patients, or the public's confidence in doctors, at risk.

# Option 3 - complain to the GMC

A person can choose to raise concerns and make a complaint direct to the GMC if it concerns a doctor's behaviour, health, or performance. The GMC will investigate a doctor's practice suggests that their practice should be restricted or stopped. Examples of these types of concerns include, but are not limited to:

- serious or repeated mistakes in patient care
- failure to respond reasonably to patient needs (eg not referring for further investigations where necessary)
- violence, sexual assault or indecency
- fraud or dishonesty
- a serious criminal offence
- abuse of professional position (eg an improper sexual relationship with a patient)
- discrimination against patients, colleagues or others
- harassment or bullying of colleagues, patients or others
- serious breaches of patient confidentiality

# Option 3 - complain to the GMC

## Reason why the GMC may not investigate

If a concern doesn't suggest a doctor's practice should be restricted, the GMC won't investigate. It is generally recognised that doctors can make mistakes at work and the GMC state they are 'not here to punish them'.

Making a mistake doesn't necessarily mean a doctor shouldn't be able to work in the UK. When the GMC look at a concern they consider how serious it was, whether it was a one-off event, how much the doctor has reflected on what happened and what they've done since to learn from the mistake.

# Option 3 - complain to the GMC

## What resolutions are possible:

If the GMC thinks the allegations against a doctor mean they should be stopped from practising freely, they can ask the Medical Practitioners Tribunal Service (MPTS) to consider putting temporary measures in place while they investigate.

At the end of each investigation, the GMC decides what action to take. In three quarters of investigations, they take no action. This could be because:

- the doctor has made a great effort to ensure they will not repeat their mistakes and there are no current patient safety risks
- a lack of evidence means there is no real chance a tribunal would take action against a doctor.



# Option 3 - complain to the GMC

“In about 5% of investigations, we give a doctor a *warning*. This means that, although the doctor does not pose a risk to future patient safety, their behaviour or performance was below the standards we expect of doctors in the UK.

In about 8% of investigations, we ask the doctor to sign an agreement with us – called *undertakings*. The doctor commits to improving the way they work and we work with the doctor’s employer to make sure the doctor honours this agreement.

In about 11% of investigations, we decide to refer a doctor to a hearing at the MPTS. The MPTS runs hearings to decide whether to take action against doctors we refer to them.”

# Option 3 - complain to the GMC

**Why would someone want to complain to the GMC instead of use the NHS complaint process?**

If a person is unhappy with the treatment, care or support provided by a service - or they are unhappy with how an individual has behaved, it is better to raise the concern with the service directly and then follow NHS complaint procedures. However if the complaint is about something serious that an individual has done (for example a doctor has behaved in a way that means they pose a risk to patient safety) then the person should raise the concern with the GMC.

# Option 4 - complain to the NMC

The **Nursing and Midwifery Council (NMC)** is the professional regulator for nurses and midwives in the UK, and nursing associates in England. Their core role is:

1. To maintain the register of nurses and midwives who meet the requirements for registration in the UK, and nursing associates who meet the requirements for registration in England.
2. To set the requirements of the professional education that supports people to develop the knowledge, skills and behaviours required for entry to, or annotation on, the register.
3. To shape the practice of the professionals on the register by developing and promoting standards including the Code, and promote lifelong learning through revalidation.
4. Where serious concerns are raised about a nurse, midwife or nursing associate's fitness to practise, they can investigate and, if needed, take action.

# Option 4 - complain to the NMC

Examples of concerns the NMC want to know about immediately include:

- serious or repeated mistakes in patient care
- violence, sexual assault or indecency
- abuse of professional position, e.g. an improper sexual relationship with a patient

See <https://www.nmc.org.uk/concerns-nurses-midwives/>

# Option 5 - seek Judicial Review

A person can start legal action as well as making a complaint.

Taking legal action shouldn't normally prevent or delay the complaint being investigated through the NHS complaints procedure if the person wants it to be. However, in very exceptional circumstances this could happen, for example, if a judge rules that the investigation of a complaint would interfere with the legal case.

It is worth noting that legal actions can be expensive and time-consuming and advocacy does not negate the need for expert advice before considering taking legal action.

# Option 5 - seek Judicial Review

Judicial review can be used when a public authority has:

- acted in a certain way
- failed to act in a certain way
- made an unlawful decision.

When thinking about unlawful decisions it's worth considering if the person may be able to take legal action for a breach of one or more human rights under the **Human Rights Act 1998**, for example:the right to respect for private and family life.

Some examples:

- It's against human rights law if things are done which the person finds humiliating and doesn't want.
- It's against human rights law if the person is left in pain or suffering when something could be done to make it better.

# Option 5 - seek Judicial Review

**Discrimination** law can be used if:

- A person is refused a healthcare service because of the persons status, for example, refusing treatment for lung cancer just based on age
- The healthcare treatment is of a worse quality than would be normally offered
- Staff behave in a way which causes distress or offends or intimidates. This is called harassment.

Discrimination is only against the law if it's because of things like age, disability, sexual orientation or race. You can take action about discrimination.

# Option 6 - contact the MP

A person can contact their MP when they are affected by decisions made by the UK Parliament or by the Government. MPs represent all the people in their local area, whether they vote for them or not.

The UK Parliament website suggests the best method to contact a MP is in writing, as it provides a written record that can be referred to later. A person can:

- Write a letter to their MP at: House of Commons, London SW1A 0AA

Or

- Email them using the contact details in the directory of MP's on the UK Parliament website.



# Option 6 - contact the MP

Most MPs hold regular sessions called surgeries where they meet constituents to talk about issues of concern. Any person can go to a constituency surgery, it's advisable to contact the MP's office first, to find out whether an appointment is needed. Each MP has a website with details.

MPs can make confidential enquiries with officials or a government minister on a persons behalf. They can also refer individual cases to be investigated by the Parliamentary Ombudsman.

If they agree to support a cause a person has raised with them, they may also choose to raise it publicly in the House of Commons – through questions, debates, motions or amendments.

# Option 7 - Accessing records

Sometimes, people making a complaint, are making a complaint because they want answers or information. If this is the case, they may want to think about accessing their medical records.

Patient medical records include any records kept by a GP, hospital, clinic or other NHS service or staff member such as a dentist or physiotherapist. All NHS staff have a duty to keep all records safe and confidential.

# Option 7 - Accessing records

Records should show the dates of consultations (in person and over the phone) and the details of any care and treatment including:

- medication
- tests and test results
- diagnosis
- referrals made to other services
- letters, reports and emails.

# Option 7 - Accessing records

Under current law, including the General Data Protection Regulation (GDPR) [Regulation (EU) 2016/679], individuals have a right to see and have copies of records, except if:

- The doctor or other health care professional responsible for a person's care has decided that to do so would seriously cause harm to the person (or another person's) physical or mental health or condition. This decision can apply to part of the records and they do not have to let the person know.

The person may wish to ask if any part of their records has not been made available and, if so, the reason why and when this decision can be reviewed.

- Providing the records would give information relating to another person who has not consented to this information being shared.

# Option 7 - Accessing records

Records can also be withheld if an individual has made clear that they do not want their records to be disclosed to someone else, even if that person has a right to make the request on behalf of the individual (e.g. the parent of a child or someone appointed to manage the affairs of an individual who lacks capacity).

A person can apply to see their records by making a Subject Access Request (SAR). The SAR must be made in writing and most GP Practices and NHS Trusts have a form that will need to be completed.

# Option 7 - Accessing records

Records should be provided as soon as possible and no more than one month of receipt of the SAR.

Copies of the information must be free of charge. However, they can charge a 'reasonable fee' (cost of administration) or decide not to respond when a request is manifestly unfounded or excessive, for example, repeated requests for copies of the same information. If they decide this, they must explain why as soon as possible and within a month.

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