

# Section 1

## Enquiry, Feedback or Complaint?



The NHS provides good quality services to most people but sometimes things do go wrong. Very often a problem can be resolved, quickly, easily and informally but in some cases people may choose to make an official complaint.

### An enquiry

Sometimes you might feel like you just need some information or have a simple question which needs answering. In most NHS organisations there will be a PALS office which may be able to help with enquiries such as these. PALS is the Patient Advice and Liaison Service, and their role is to ensure that the NHS listens to patients, their relatives, carers and friends, and answers their questions and resolves their concerns as quickly as possible.

### Feedback

Sometimes you may not want to go through an official complaints process. We often get people who say things like 'I just want the NHS to learn from my experience'. On other occasions it might be that you want to tell other people that you are happy with the care you received.

If you want to give feedback this way, you are welcome to contact us at Healthwatch. Our contact details are at the bottom of the page.

### A complaint

An official complaint is a way to get your experience recorded and acted on using an official process. For an official complaint to be considered it normally needs to meet these criteria:

- Something must have happened in your NHS Care that you are unhappy with (this can apply to a close relative if you are complaining on their behalf)
- It must have happened recently enough to be covered by the national complaints regulations (usually 12 months ago or less)
- It must be possible to take some action to resolve the situation (a resolution could be something simple like someone saying 'sorry' or something more complex like an organisation changing the way it does something)

Making a complaint can be complicated – there is a process to follow and sometimes the language people use can be complex. It can also be a long process and so it is important to decide what you want to complain about, and what you are hoping to achieve before starting.

There is no distinction between a formal or informal complaint within the 2009 complaints regulations, and all complaints should be investigated and responded to in writing.

# What can you do if you're unhappy, but don't want to make a complaint?



## Issue

**I have a problem that needs sorting right now**

**I want a copy of my medical records**

**I don't want this to happen to anyone else**

**or**

**I want systems in the hospital (or other NHS service provider) to change**

## Options

If possible, speak to the people giving you your care. They may be able to resolve it quickly and without fuss. If you can't get an easy resolution that way, try PALS

You have a right to this under the Data Protection Act. You should make a 'data subject access request' to the head office of the organisation(s) giving you your care

Making a complaint is a way to make sure your experience comes to the attention of people who have the power to make changes

Alternatively you can contact Healthwatch Liverpool and tell us your story. Feedback from patients help us to raise concerns about serious problems and to spot patterns (e.g. if the same thing goes wrong for lots of patients)

**I need an appointment rearranging**

Speak to PALS – they may be able to rearrange it for you or they may be able to give you the direct contact details of the relevant person

**I want to know some more general information about my diagnosis**

There are many charities which have been set up to support people with specific medical conditions. Contact their helpline or browse the range of information on their websites. Call Healthwatch Liverpool and we'll try to help you find the information that you're looking for

**The problem can't be resolved by PALS**

Make an official complaint if you still want the issue to be resolved

# Section 2

## Making an NHS Complaint



If you are unhappy about any aspect of NHS care or treatment, or have a complaint about Public Health provision you or others have received, you can raise your concerns about it. This sheet will give you the information you need to know to get you started. Please get in touch if you need us to help with this.

Before you start this process, you may find it helpful to:

- Think about what you are unhappy about and make sure it is an NHS service
- Think about whether you have a complaint or an enquiry
- Check that your complaint is within the time limits
- Think about why you are making a complaint and what you would like to happen as a result of your complaint, and;
- Check that your complaint can be pursued through the NHS complaints process or as a Public Health complaint

### Raising concerns

If your concern is about something that can be resolved quickly, i.e. by the following day, you may find it helpful to speak directly to the member of staff involved, their manager or speak with PALS. For more information about this, please see the sheet on “Enquiry, Feedback or Complaint”

### Time Limits

The NHS Complaints Regulations state that a complaint must be made within 12 months of the incident happening, or within 12 months of you realising you have something to complain about. A complaint may be

accepted outside of this if the body you are complaining to is satisfied that you had a good reason for not making the complaint sooner, and they feel it is still possible to investigate the complaint effectively and fairly.

## **What cannot be pursued through the complaints process?**

- Compensation for clinical negligence
- Disciplinary action against an NHS Staff member
- Complaints about privately funded treatment
- Complaints about organisations which are not NHS funded.

For more information about these please see the sheet “Other Useful Agencies.”

Once you have considered the above, you may wish to make a note of your complaint and what you want to achieve as simply and clearly as you can. This will help you to keep focused during the complaints process, and will be something you can refer back to later to help you to decide if the actions taken have answered your complaint.

# Section 3

## Organising your complaint



There is often a lot to keep organised as part of the complaints process:

- You will send and receive letters
- You may make phone calls or send and receive e-mails
- You might go to meetings
- You could ask for information from your medical records
- You might want to research into a particular aspect of care

It can be helpful to keep everything together in a single file – so you can find that really important piece of information just when you need it.

### Your personal complaint file

Most stationery stores sell a number of different file holders. It doesn't matter whether you get a ring binder, a file with loads of see-through pockets which you can slide things into or just a plain old document wallet (cardboard folder). Get something that is easy for you to find and that you think will help you to keep everything together in a logical order.

### What to put in your file

We think there are several important things to keep in your file. If you do the things listed below, you will find it much easier to find things when you need them – and anyone working with you on your complaint will be able to see what's important.

## 1. Complaint management diary

This is simply a list of everything you do that's concerned with your complaint. It doesn't need to be anything more complicated than a simple 3 column list (we have put some examples in italics to give you an idea):

<b>Date</b>	<b>Time (if relevant)</b>	<b>Action</b>
<b>10/04/2018</b>	<b>10:30am</b>	<i>Phoned Healthwatch, made appointment to see them.</i>
<b>17/04/2018</b>	<b>2.30pm</b>	<i>Met Healthwatch for an hour. We discussed my complaint. They talked me through the self help pack.</i>
<b>19/04/2018</b>		<i>Sent Healthwatch my draft complaint letter.</i>
<b>21/04/2018</b>		<i>Received response from Healthwatch. Made a few changes to complaint letter.</i>
<b>22/04/2018</b>		<i>Sent complaint letter to hospital.</i>
<b>29/04/2018</b>		<i>Received acknowledgement from hospital. They are going to investigate and expect to get in touch in 5 weeks.</i>

It's probably easiest to keep your complaint management diary at the beginning of your file so it's handy if you need to refer to it any time.

## 2. Copy letters file

This is for you to keep every letter or e-mail you send and receive in the same place. It's probably easiest to file them in reverse order - so the most recent one is on top and the oldest at the bottom. It's usually the recent stuff you need to refer to so doing it this way makes it quicker to find.



If Healthwatch is helping you with your complaint we will also keep a copy letters file. Every time you send or receive something it's a good idea to check that we have a copy.

### **3. Phone conversation notes**

You may speak to people over the phone about your complaint. It's useful to keep a note of your phone conversations. You can file these notes with your copy letters or keep them in a separate section of your file - whatever makes most sense to you.

The main things to make a note of are:

- The name of the person you spoke to
- Their phone number
- The date & time you spoke
- What were the main things you talked about?
- What happens next:
  - Did you agree any actions?
  - Who will do them?
  - When do they expect them to be done by?

If your phone conversation is with Healthwatch, we will make our own notes and keep them in our copy of your file.

### **4. Meeting notes**

You may have face to face meetings about your complaint. It's useful to keep a note of these, even if the people you are meeting with are making notes.

You can file these notes with your copy letters or keep them in a separate section of your file - whatever makes most sense to you.

The main things to make a note of are:

- The name of the people at the meeting and what their role is (don't be afraid to ask and to check you have spelt things right)
- Don't forget to include yourself and anyone who is supporting you
- The date, time and place you met
- What were the main things you talked about?
- What happens next:
  - Did you agree any actions?
  - Who will do them?
  - When do they expect them to be done by?

If Healthwatch is involved in your meeting, we will make our own notes and keep them in our copy of your file. Our notes may only be very brief so you may still want to make your own. We do not offer a minute writing service for complaints meetings.

## **5. Other information**

If you have done any research or asked for information from your medical records you may find it helpful to keep this in a separate section of your file. This will make it easier to find, without having to go through all the information about every letter, e-mail, phone call and meeting.

You don't have to follow all our suggestions – they are just pointers to help you. Everyone thinks differently and organises their thoughts differently. Your complaint file is just a tool to help you remember things and to be able to access your information easily when you need it.

How you organise your complaint is very personal – you choose what you think will work best for you!

# Section 4

## The NHS

### Complaints Process



There are two stages to the NHS complaints process, these stages are detailed below.

#### **Stage One - Local Resolution**

Local resolution is the first stage of the NHS complaints process. Local resolution gives you the opportunity to explain what it is you are unhappy about and what you would like to happen and it gives the NHS organisation or Public Health provider the opportunity to investigate your concerns and where appropriate, use your experience to improve local services.

#### **How to make a complaint**

- 1) You can make a spoken complaint, either in person or over the telephone. The NHS Complaints regulations state that if a spoken complaint is made, the NHS organisation must make a written record of the complaint and provide you with a copy of this.
- 2) You can complain in writing, by letter or by email. This should be addressed to the person in charge, perhaps the Chief Executive Officer, Senior Partner or Practice Manager. Public Health complaints would initially be made to the commissioned Provider or using the Local Authority Complaints Procedure which would then escalate to the Local Government Ombudsman. For information on how to write your complaint please see the handout on “Writing a complaint letter.”

## **What happens next?**

### ***Acknowledgement***

The NHS body or Public Health provider should contact you, either by phone or in writing, to acknowledge your complaint within three working days of them receiving it. When they do so they should let you know who will be investigating it, how long this should take and how they will be replying to you.

### ***Investigation***

The NHS organisation should now carry out an investigation into your concerns. At this stage they may speak with the staff members involved and look into your medical records.

### ***Response***

Once the investigation is complete, the NHS body or service provider should send you a written response which includes:

- An explanation of how your complaint has been handled
- What conclusions have been reached
- What action, if needed, has been taken

During this first stage of the complaints procedure you may be offered (or you can request) a meeting to discuss your concerns in person. For more information, please see the sheet “Guidance on local resolution meetings.” In addition, if you do not feel all your concerns have been addressed you can go back to the NHS body and request either further written responses or further meetings. Each complaint should be looked at individually and responded to in a way the NHS Trust (or other relevant NHS care organisation/provider) feels meets your needs and resolves your concerns.

Local resolution ends when either you are happy with the response you have received, or the Trust feel there is nothing further they can do. At the end of local resolution, if you are unhappy with the outcome of your complaint or the way in which your complaint has been handled, you can make a submission to the Parliamentary and Health Service Ombudsman (PHSO), or in the case of a Public Health complaint the Local Government Ombudsman (LGO).

## **Stage two - The Parliamentary and Health Service Ombudsman (PHSO) or Local Government Ombudsman (LGO).**

You have the right to take your complaint to the Ombudsman if you are not happy with the way your complaint has been dealt with. The Ombudsman is Independent of the NHS and their primary function is to review the way your complaint has been handled.

This is the second and final stage. Normally the Ombudsman will not consider a complaint until stage one of the complaints process has finished.

If you want to make a submission to their offices, you will need to complete their form 'making a complaint'. You need to send this to them, with copies of all letters about your complaint. For more about the Ombudsman and how to make a complaint to them, please see "Ombudsman Information".

## **How we can help**

We can help you in the following ways at any stage of the complaints process:

- Helping you to write down your experience in a clear, logical way.
- Helping you to ask for access to your medical records.
- Giving you feedback on draft complaints letters, etc.
- Supporting you to prepare for resolution meetings.
- Helping you to find a formal representative if you need someone to speak on your behalf.

# Section 5

## Writing a complaint letter



If you have decided to make your complaint in writing, this guide may help you to put this together and plan the details you want to include.

### Who can complain?

The NHS Complaints Regulations state that anyone can complain, either about the treatment they have received personally, or about the care provided to a friend or family member. This is described as,

“A person who is affected, or is likely to be affected, by the action, omission or decision of the responsible body which is the subject of the complaint.”

Most organisations will ask for consent from you to investigate the concerns raised, but also to consult the medical records, as these are confidential. This is usually a form sent out through the post for you to sign.

Be aware that if you are complaining on behalf of someone else an NHS body can request their consent to investigate and release their details to you. This is because some of the information may be very personal and so is covered under the Data Protection Act. If it is not possible to get this consent, the organisation may not be able to provide a complete response to you, but should still be able to investigate issues, and provide a letter which answers things generally but which does not provide any private or specific details about the patient. If you already have this consent, or the patient has died, it might be a good idea to include this in your original letter.

A complaint can also be made about Public Health provision where an individual has been affected either personally, or again, if a friend or family member has.

### **Who to complain to:**

Complaints in writing should be ideally addressed to the person in charge of the organisation or the service provider. This might be the Chief Executive Officer if it is a large Hospital or Mental Health Trust, or could be a Senior Partner or Practice Manager if you are unhappy with the care provided by a GP, Dentist, Optician or Pharmacist. You can also complain to a Ward Manager, Matron, or to the Complaints Department if you would prefer.

If you are not sure who to complain to, information can usually be found by telephoning the organisation or on their website. You could also contact us at Healthwatch and we'll do our best to help you to find the right person.

### **Writing and sending the complaint letter**

You might have already thought about the issues you want to include in your letter. The letter should clearly outline your complaint and should ask for it to be investigated under the NHS Complaints Procedure.

Below are some tips for putting your letter together:

- Make it clear who the complaint is about – use the full name of the patient, and make sure you insert their date of birth, so they can be easily identified.
- Try to keep your letter concise and to the point – sometimes issues can get lost in a long account which describes what happened in great detail.
- If your complaint spans many months or needs a lot of detail,



perhaps use a time line, or diary of events to structure your letter, and list your questions and issues separately.

- Be factual and avoid aggressive language or comments which could be classed as offensive. Although you may have strong feelings it is important to recognise that the person receiving your letter often won't have been involved in the issue you are raising and they may be as anxious as you to resolve any problems.
- Try to avoid repeating yourself - make your point and then move on to the next issue.
- You could group issues together by theme to organise your letter - e.g. Medication, Cleanliness, Attitude, Discharge
- Ask definite questions and for the organisation to investigate specific issues or episodes.

It is important to say what has upset you and to explain what you would like to achieve as a result of your complaint. You can then use this as an opportunity to make suggestions about how services might be improved, to suggest changes to organisational policies and processes as well as to ask for explanations or an apology.

You could also include a contact telephone number in the letter so they can easily contact you if there is something that needs more explanation. It might also be an idea to say in the letter if you would like to have a meeting to discuss your complaint before receiving a written response.

## **Before you send it**

Read the letter again to make sure that everything you want to say is included. Make sure you sign it at the end of the letter; otherwise this may cause a delay in the organisation starting their investigation. Keep a copy for you to refer to later - this will be useful for you to compare their response to. It might also help to keep a copy of all letters sent and

received, in date order. You could use the log included in this guide to help with this. You may wish to send your letter by recorded delivery (or a similar service), so you can be sure that this has been received.

If Healthwatch is helping you with your complaint it's helpful if you could send us a copy of your letter when you send it to the NHS organisation. That helps us to keep up with your case and support you better if you need us as things progress.

## **Complaints about more than one NHS body**

If your complaint relates to more than one NHS organisation, you can either send separate complaints to the different organisations or, if you wish, you can send all your concerns in one letter.

If you decide to send one letter, send your letter to one NHS organisation and ask them to co-operate to provide a co-ordinated response with the others involved. They should then communicate with the other bodies concerned with your complaint, investigate and provide a combined response. It is also a good idea to state that you give your permission or consent for your complaint to be shared with the other organisations and health professionals. If you prefer, you can send a copy of your letter to each NHS organisation involved asking them to speak to each other and provide a response together.

## **How can we help with your letter?**

We can do two things to help with your letter:

1. If you are used to writing letters, you are welcome to send us a draft letter for our feedback. We will check:
  - a. Is it clear what has happened?
  - b. Is it clear why you are unhappy with this?

- c. If you are asking for more information, are you clear about what you're asking for?
  - d. Have you said how you think this can be resolved?
  - e. Have you put contact details on so they know how to get in touch if they need more information?
2. If you are less confident at writing letters, you are welcome to make an appointment to see us. We will:
- a. Help you to 'tell your story' by writing it down in a way that is logical and clear.
  - b. Help you to write down what you would like to happen as a result of making your complaint.

### **How can you help us to help you?**

If we are helping you with your NHS complaint it is really helpful if you can send us copies of any letters you send and receive that relate to your complaint. We can then keep an up to date file and if you come back for further help we can prepare more effectively.

# Section 6

## Example framework for a first letter of complaint



PRIVATE AND CONFIDENTIAL

Insert your address

The person in charge/ Chief Executive Officer (name if known)  
Followed by the name and address of their organisation  
(GP surgery, Dental Surgery, Hospital Trust, etc.)

Insert date

Dear Their name

### ***RE: NHS Complaint - Complainant name, Date of Birth***

I am writing to complain about the treatment I received at [place where treatment was received] on [date of incident/period of treatment]. If you are writing on behalf of the patient, add this in here, and explain the relationship between you and why they cannot complain.

Describe

- What happened
- When
- Where

If you have kept a diary, a log sheet or list of events, you can use this to make the body of your letter or you can attach this as a separate sheet and refer to this here. Explain what, if anything, you have already done to try to resolve matters.

I would like the following points addressed in the response to this complaint.

- Put the most important matters first
- Explain why you are not satisfied
- Be clear and brief
- Number or bullet your points
- Ask the questions you would like the answers to and list them in order of importance.

As a result of this complaint I would now like (say what you want to happen, for example:)

- an explanation of what happened and why it happened (from their point of view)
- a change in a process or policy
- an action to remedy the problem you experienced
- an apology

I look forward to receiving your acknowledgement of this letter. I would like you to carry out a full investigation into my concerns and provide a response in accordance with the NHS Complaints Procedure. Please do not hesitate to contact me if you need further information.

Yours sincerely (if you have named the Complaints Lead)

Or,

Yours faithfully (if you have started the letter 'Dear Sir')

Your signature

Print your name

c.c. If you are sending copies of your letter to other parties, print their names here [Don't forget to include Healthwatch Liverpool if we're helping you with your complaint]

# Section 7

## Local resolution meetings



A Local Resolution Meeting (LRM) is often offered as part of the complaint process. It provides an opportunity for the NHS organisation to answer any questions or provide further discussions or explanations face to face. If you are not used to going to this type of meeting it can be difficult to know where to start. The points below are intended to give you a short guide for what to expect from your meeting, and some thoughts about how you can prepare.

### **An Agenda - help to structure your meeting**

Most complaints teams will ask for an agenda or a list of points which you would like to discuss. This can seem like an enormous task, especially if your complaint is very complicated, or involves multiple clinicians or departments. However, your agenda doesn't need to be too big and there are some benefits to drafting an agenda:

- The complaints team can make sure the right people attend the meeting
- Detailed answers or explanations can be given, and medical records referred to as there has been time to prepare
- An agenda can be used to keep the meeting focused

We can help you to draft an agenda for any meetings which might be arranged. This help can include:

- Meeting with us in the weeks before an LRM to go through your file and the letters you have sent and received.
- Looking at the answers or explanations you already have, and identify the issues that you remain unhappy with.

If you can't produce a list of specific points or questions, you could simply list any topics or themes you want to discuss as well as any specific incidents.

Without an agenda or some idea of the issues you wish to discuss, any detailed questions or points may not be answered in the time available at the meeting. Quite some time may have passed since the care or treatment was provided, and as memories fade clinicians may need to consult the medical records. If you don't tell them in advance, they may not have all the information conveniently to hand when you meet.

## **Some agenda topics**

Not all of these topics are relevant for every meeting - you should think about which ones best suit your situation:

- Introductions
  - make sure that if you're taking someone with you, you have said who they are and why they are there
  - it gives you a chance to understand who is there from the NHS organisation and what their roles are.
- Your brief summary
  - Aim to keep this short but to set the context - what is important to you.
  - Try to have 3 main points (no more than 5) about what happened - this will help to keep things focused on what is MOST IMPORTANT to you.
  - If your summary takes more than 3 or 4 minutes it's probably too long and too complicated. Remember, you will already have communicated in writing before the meeting so you don't need to include everything you have written.
- Your questions
  - Again we'd suggest aiming for 3 key questions (preferably no more

than 5 if you can't reduce it to 3). This will help you to concentrate discussions on what you think are the most important issues.

- Try to think about how these will help to get the resolution or outcome you want.
- Useful words to start questions with are: Why? When? Who? What? Where? How?
- Before you start with your questions, tell them how many questions you have and ask if they want to respond one at a time or wait until you have asked them all.
- Your resolution ideas
  - You will probably have clear ideas about how this can be resolved (e.g. an apology, a change in policy, an explanation of what they have changed to make sure it doesn't happen again). This is your opportunity to say this.
  - We suggest thinking about what is practical, proportionate and realistic.
  - Again, try to keep the list of ideas to a manageable size so you can focus on the most important suggestions. If they want more detail they can always ask you for it.
- Their response
  - It is important to give the NHS organisation(s) a chance to respond. This will help you to understand what they are able to change more easily and what may take more time or be more difficult to change.
  - You may have made some suggestions that the NHS organisation hasn't thought of. They may need to go away and think about your ideas.
  - If they can't give you a full response straight away you can discuss with them when and how they will give you a more detailed response.
- Next steps
  - If everything is resolved at the end of the meeting, this gives you a chance to thank them for listening and taking your complaint seriously.



- If your complaint has not been fully resolved, this gives everyone a chance to talk about what happens next.
- They may want to do some more investigation or ask you for more information.
- It may be that you can't agree. If they say the complaint is closed and you are not happy, you can tell them that you're considering whether or not to take it to the Ombudsman.

## **What can I expect from the NHS body?**

In most Local Resolution Meetings, a member of the complaints department will attend. Their role will vary depending on the way their organisation deals with complaints meetings - you should check what they will be doing when the meeting starts. They may:

- Take detailed minutes - although this is very rare, and it can take time for these to be typed into a transcript
- Take a summary of the complaint - this is more common and simply provides brief details of what was discussed and any action points agreed on
- The meeting may be recorded (on audio) - in this instance you might be provided with a copy of this (e.g. an audio CD)
- Someone from the NHS body should chair the meeting and ensure that it runs smoothly

Points to remember:

- We can help you to prepare for your LRM.
- We can sit with you in your LRM but will not take any notes or minutes or speak on your behalf. Our role is to act as a support for you and to help you to say what is most important to you.
- Please give the individuals from the NHS organisation time to answer. You want them to listen to everything you have to say - it's reasonable for them to expect you to listen to everything they have to say too.

- Try not to recap too much of the information you sent the trust in your complaint letter(s). It might be useful to go over the most important points quickly (as a summary) so that everyone in the room is clear about the key issues for you.
- If it's useful, decide on a spokesperson in your family who will raise your issues. It can be confusing if different people keep saying different things - if you want a clear resolution you need to paint a clear picture to start with

# Section 8

## Medical Records



Under the Data Protection Act 1998, you have the right to see your medical records. Sometimes this is known as a Subject Access Request.

All NHS staff have a duty of confidentiality towards all patients and their records. Patient records are made by any NHS Service you use and include:

- GP Surgery
- Clinic Staff
- Dentist
- Mental Health Services
- Ambulance Service
- District Nurses
- Hospital Doctors
- Hospital Nurses

These should store details of any care or treatment which has been provided such as:

- Medication
- X-rays and scans
- Tests and results
- Referrals and letters
- Diagnosis Consultations
- Outpatient appointments
- In Patient stays

## **Applying for your records**

- You have to apply to see your records, and some organisations have a form specially designed for this that you are asked to complete. Some larger Hospital Trusts may also have a special department dealing with such requests.
- Records should be made available within 40 days of applying to see them, or 21 days if they have been added to within the last 40 days.
- You can ask for someone to view your records with you and explain anything in there which is not easy to read or uses technical, medical language.
- You can request copies of the records, but must be aware that NHS Bodies can charge you up to £50 for the copying of paper based records.
- You can also request copies of electronic records held about you. The Information Commissioners Office states that this should cost no more than £10.

These charges are sometimes waived if they are requested in connection with a complaint, but you will need to check this with the individual organisation. To help reduce the cost and time this might take, it might be a good idea to think about the specific section of records you would be interested in. For example, you could request notes only from a specific department, or for a particular length of time.

## **What to do if you feel there is information missing from your record or you think your record is incorrect**

You do not have the right to demand to have information removed or deleted from your medical records, unless of course these relate to another patient. Equally you don't have the right to have something changed that is already written on the record. However, you can ask to have information added or to have your own comments inserted as an 'Addendum'. This is something you will need to talk about with the NHS body who holds the record you are concerned about.

## **Obtaining records about someone else**

If you are obtaining records about someone else, the NHS Body will usually require the patient's permission in writing. This includes a parent or guardian applying to see the records of a child, if they are unable to understand these themselves. In this case, the NHS Body will decide if it is in the best interests of the child.

Where a patient is unable to give permission because of incapacity or illness, you may need to seek legal advice and a court authorisation. If you are a representative for them appointed by the court, you may be able to access their records, again, if it is considered to be in their best interests.

If you are seeking the records for a patient who has died, these can only be obtained by certain people. This is known as a Personal Representative and is usually an executor, or someone making a claim arising from the death.

If you do not fall into one of these categories, the NHS body will decide whether they will provide the records on a case by case basis. They will consider if you have a valid reason for requesting the notes, your relationship with the patient, as well as any wishes the patient may have expressed about other people viewing the notes.

***Be aware - A patient can at any time instruct an organisation that their records are not to be shared under any circumstances. This is the patient's choice, and can also apply when the records refer to someone who is deceased.***

The NHS Trust might decide that the notes cannot be shared as this could cause you distress, or damage the reputation of the person who has died. The organisation should consider the views of any surviving family, and make a decision using all the information available.

## **When can I be refused access to my records?**

Under the Data Protection Act 1998 you have a right to see you own records unless:

1. Your doctor thinks that to do so would seriously harm you or another person to see the information contained.

Be aware, this refusal can apply to part of your records and there is no obligation to inform you of such a partial refusal. It is worth asking if any part of your records has not been made available if you are worried about this.

2. Providing them would involve “disproportionate effort” on the part of a Trust or GP Practice.

Be aware, “disproportionate effort” is not defined, but the Data Protection Information Commissioner has warned against abusing this clause to block your access to your records.

## **How we can help**

We cannot apply for access to medical records on your behalf and we are not qualified to give you advice to help you to understand them. We can, however, help you to write any letters you might want to send to request access to your records.

We can help you to use details from your medical records in your letter of complaint, or when you are preparing for a meeting. Again, if you need further help or support you can contact us at any point.

## **Other guidance**

There is additional information about access to medical records on the NHS Choices website. You can find it by going to [www.nhs.uk](http://www.nhs.uk) then typing the words ‘access medical records’ in the search box.

# Section 9

## The Parliamentary and Health Service Ombudsman



The Parliamentary and Health Service Ombudsman, (PHSO) for NHS Complaints or the Local Government Ombudsman (LGO) for Public Health complaints, are the second and final stage of the complaints process. More information about the first stage Local Resolution can be found in the sheet “Making an NHS Complaint”.

### What does the Ombudsman do?

The Parliamentary and Health Service Ombudsman’s offices specifically undertake independent investigations into complaints that the NHS services in England has not acted properly or fairly, or has provided a poor service.

### When will they consider a complaint?

The Ombudsman’s office will, normally, only take on a complaint after efforts have been made to resolve the complaint locally, with the NHS, and a response has been received.

It is the Ombudsman’s view that a practice or trust should be given a chance to respond and, where appropriate, try to put things right, before they become involved.

### Are there any exceptions?

You can approach the Ombudsman before your case has finished local resolution if there are exceptional circumstances, for example if you have been diagnosed with a terminal condition. This does not mean that they will investigate the complaint rather than the service provider, but they could try to speed up the process by contacting them and explaining the situation, or maybe even suggesting a remedy to the complaint, depending on the complexity or urgency of the case.

## **What will the Ombudsman do?**

Once a submission has been made to the Ombudsman's offices, they will investigate the way your complaint has been handled, considering three things known as The Ombudsman's principles. These are

- Good administration
- Remedy
- Good complaint handling

These are explained briefly below. These are our short summaries and we can provide more detailed information if you need it.

### **Principles of Good Administration**

The Ombudsman describes good administration in terms of:

- 'Getting it Right' - have the law and the organisation's own policies and procedures been complied with?
- 'Being customer focused' - are services accessible; is there clear, accurate and up to date information about them; are consumers clear about their entitlements and has the organisation met the promises it made?
- 'Being open and accountable' - has information been handled as openly as the law allows; are records usable and reliable; has the organisation taken responsibility for the actions of their staff?
- 'Acting fairly and proportionately' - has the organisation treated you fairly and with respect and has it treated you equally and impartially?
- 'Putting things right' - have mistakes been acknowledged; has there been an explanation of what went wrong; have things been put right quickly and effectively?
- 'Seeking continuous improvement' - regularly reviewing services and using feedback (including complaints) to improve services.



## **Principles for Remedy**

The Ombudsman describes remedy in terms of:

- ‘Getting it right’ – quickly acknowledging and putting right cases of maladministration that have led to injustice or hardship, not just for the complainant but also for other people who may have been affected.
- ‘Being customer focused’ – apologising and explaining what went wrong; dealing with people sensitively and professionally; making sure people know what to expect and providing remedies that take account of people’s individual circumstances.
- ‘Being open and accountable’ – being open and clear about how and why the decision has been made to remedy the problem a certain way.
- ‘Acting fairly and proportionately’ – treating people without bias; offering remedies that are proportionate to the problem and offering a remedy to everyone who may have suffered as a result of the problem.
- ‘Putting things right’ – wherever possible putting people back in the position they would have been had the problem not occurred and where this is not possible, providing compensation in some other appropriate way.
- ‘Seeking continuous improvement’ – using lessons learned to improve services and to ensure that the same problem is not repeated.

## **Principles of good complaint handling**

The Ombudsman describes good complaint handling in terms of:

- ‘Getting it right’ – handling complaints in line with the law, regulations and guidance; having complaint management systems as an integral part of services and having clear leadership and accountability in terms of complaints.
- ‘Being customer focused’ – having clear and simple complaints

procedures; making complaints processes easy to access, responsive and sensitive; listening to what people say they want their outcomes to be and responding flexibly.

- ‘Being open and accountable’ – having clear information about how to complain; having clear service standards and giving honest, evidence-based explanations.
- ‘Acting fairly and proportionately’ – treating people impartially; investigating complaints thoroughly and fairly; making sure that someone (who wasn’t involved in events leading up to the complaint) reviews the complaint and acting fairly towards staff as well as the person bringing the complaint.
- ‘Putting things right’ – acknowledging mistakes and apologising where appropriate; providing prompt, appropriate and proportionate remedies; considering all relevant factors when offering a remedy and recognising that pursuing a complaint can add to the difficulties caused by the original complaint.
- ‘Seeking continuous improvement’ – using feedback from complaints to improve services and, where appropriate, telling the person who complained about any changes that result from their complaint.

## **Completing the form**

There is a form which should be completed for submissions to the Ombudsman’s office which asks you to give a brief summary of the complaint so far. You may find it useful to speak to Healthwatch about this, to decide the issues you wish to include. Sometimes, you might decide that you want to draft a covering letter for the Ombudsman which outlines your issues and the progress the complaint has made. It is quite acceptable to write ‘please see covering letter’ rather than complete the various boxes on the form.

A submission should include copies of all relevant correspondence about the complaint. This might be letters of complaint, trust responses,

meeting minutes, action plans or emails sent and received. These should be organised into date order and you can refer to the attached correspondence in Section 6 'What was your original complaint...'

## **The Ombudsman's (PHSO) process**

When a case is received at the PHSO it is assessed initially to see if it falls within their remit (e.g. is it a health complaint? Has it already been raised with the service provider?) They will then go on to assess it using the three principles mentioned above before accepting it for investigation.

## **What happens now?**

Once a complaint has been submitted, it should be acknowledged within 5 working days. This letter should also say who will be managing the response, and give a reference number to quote in future correspondence or on the phone. It might be a good idea to make a note of this for future reference. This will then be passed on to an assessor who may telephone you to discuss your complaint and should write to you to say if the case has been accepted for further investigation or not within 40 days of it being received at their offices.

## **If the case is accepted for investigation**

If the Ombudsman feels that the case has met the criteria, it will be allocated to a case manager for further investigation. For this, the PHSO will normally access the medical records for the patient, and may seek clinical advice or a second professional opinion. They may make recommendations for the trust, or they do have the capacity to make ex-gratia payments for inconvenience, hardship or to return the complainant to the position they were in before. They can also recommend that a service or trust compensate an individual and specify an amount. This is different to compensation for medical negligence, but the Ombudsman's helpline will be able to discuss this with you in more detail.

## **If the case is refused for investigation by the PHSO**

If a case is refused it may be for several reasons:

- It is Premature – Local resolution has not been exhausted
- The case falls outside of their remit e.g. It is about private treatment
- It is ‘out of time’ for approaching the PHSO – over 12 months since the incident you are complaining about
- The Ombudsman feels that the trusts have made every reasonable effort to resolve the complaint

## **So what happens if the Ombudsman decides not to investigate your case?**

You can complain about a decision which has been made by the Ombudsman by approaching the Ombudsman’s office review team. They will not consider a review of the complaint if you simply ‘disagree’ with their decision; a submission needs to be made to the review team detailing why you are unhappy or if there are things you think have not been considered fully. The Ombudsman’s office complaints policy states that they will aim to respond to these issues within 16 weeks, but once received; the decision of the review team is final.

## **The end of the process**

Once a case has reached this point, it has now completely exhausted the NHS Complaints Procedure, and can no longer be supported Healthwatch Liverpool. The only remaining option if you are unhappy would be to submit your case for Judicial Review. This is a legal process and is beyond our expertise. You would need to seek the advice of a solicitor for this. A complaint cannot progress to Judicial Review without first appealing the decision of the PHSO through the review team.

## **Who are the LGO?**

The Local Government Ombudsman's (LGO) office specifically undertakes independent investigations into complaints that there has been a failing in Public Health provision to individuals, or a poor service has been provided. The body complained about must have a chance to sort out the complaint before the LGO can consider it.

They can offer help and support via a helpline on 0300 061 0614. It is open from 8.30am to 5.00pm, Monday to Friday. (Calls to 03 numbers will cost no more than calls to national geographic numbers (starting 01 or 02) from both mobiles and landlines, and will be included as part of any inclusive call minutes or discount schemes in the same way as geographic calls.)

You can normally only go to one Ombudsman – whichever (PHSO or LGO) is appropriate for the service you are complaining about.

## Section 10

# Other useful organisations



Whilst making your complaint, you might find that you want to pursue other avenues or outcomes which lie outside the NHS Complaints process, such as disciplinary action. This short guide will act as an index of the agencies to approach and give you a brief outline of their role. Contacting these organisations or making a submission is not normally something we can help you with.

The contact details for all the organisations below (and some other useful organisations) can be found at the end of this leaflet.

### **The General Medical Council - GMC**

The primary role of the GMC is to protect, promote and maintain the health and safety of the public and ensuring standards of practise in medicine are met. They are the regulator of all doctors practising in England, and maintain a register with details about behaviour, health or performance that could prevent them from doing their job. They will deal with concerns raised by members of the public who have doubts over a doctor's fitness to practise, and you can approach them if you feel that a doctor requires disciplinary action. A report is produced each year which examines the number of complaints received and looks at how the complaints handling process is working. This can be found at <https://www.gmc-uk.org/publications/somep.asp>

They also work with medical schools to help devise the right curriculum and set the standards and values of doctors so they know how to behave with patients. All doctors must be familiar with and follow 'Good Medical Practice' and the explanatory guidance. This can be found at <https://www.gmc-uk.org/guidance/index.asp>

A guide about what you can expect from your doctor has also been produced, which you may find helpful - <https://www.gmc-uk.org/guidance/patients.asp>

If you feel you need to make a complaint and want to contact the GMC direct, in addition to the telephone number shown later, they have a web-page with relevant information. <https://www.gmc-uk.org/concerns/30413.asp>

Teaching materials relating to dealing with patients with learning disabilities are produced for doctors, however GMC are keen for patients with learning disabilities and their carers/families to know what to expect from their doctors, and to make their feelings known if they don't think their doctors are treating them appropriately. This can be found at <http://www.gmc-uk.org/learningdisabilities/>

An 'easy read' guide called 'What to do if you are not happy with your doctor' can be found at [https://www.gmc-uk.org/DC6041\\_Easy\\_read\\_version\\_of\\_the\\_hardcopy\\_form\\_53397984.pdf](https://www.gmc-uk.org/DC6041_Easy_read_version_of_the_hardcopy_form_53397984.pdf)

## **The Nursing and Midwifery Council - NMC**

The NMC provide a similar role to that of the GMC. They set the standards for nurses and midwives to meet in their work, and have formulated a code of conduct which states how they must behave. Like the GMC, they also keep a register of all nurses and midwives in the UK and it is illegal to work as such without being on the NMC register. All nurses must prove annually that they fulfil the requirements for keeping their skills and knowledge up to date, and all midwives are supervised throughout their careers to ensure this. Any concerns about a nurse's capabilities should be made to the NMC, they will investigate and if necessary remove a nurse from the register for a period of time, or permanently if required.

You can read more about raising a concern about a nurse or a midwife at <https://www.nmc.org.uk/concerns-nurses-midwives/concerns-complaints-and-referrals/>

## **The Health and Care Professionals Council - HCPC**

The HCPC is also a regulatory body set up to monitor a large number of other health care staff which you may come into contact with. They work to ensure a high standard of practise within the following professions:

Arts therapists, biomedical scientists, chiroprodists, podiatrists, clinical scientists, dieticians, hearing aid dispensers, occupational therapists, operating department practitioners, orthoptists, paramedics, physiotherapists, practitioner psychologists, prosthetists / orthotists, radiographers, speech and language therapists as well as social workers in England.

If you have concerns regarding the fitness to practise of any of these, you can raise a complaint to the HCPC. Action can be taken where necessary; including stopping someone from practising should there be sufficient concerns about their conduct.

You can read more about raising a concern about a health and care professional who is on the HCPC register at <http://www.hcpc-uk.org/audiences/membersofthepublic/concerns/>

## **General Dental Council - GDC**

The GDC register dental professionals throughout the UK, including dentists, technicians, hygienists, dental nurses and orthodontists. They set the professional standards for them to follow and maintain a register of practitioners similar to the other regulatory bodies. Should you have concerns regarding a dentist's fitness to practise, you can



approach them to raise your complaint about this, but they are unable to help with concerns about the costs of treatment.

You can read about raising a concern about a dental professional at <https://www.gdc-uk.org/patients/raising-a-concern>

## **General Optical Council - GOC**

The GOC is the regulator for optical professionals in the UK including optometrists, dispensing opticians, student opticians and optical businesses. Their role is also to protect the public by promoting high standards of education, performance and conduct amongst opticians. Any complaint about fitness to practise in this area should be directed to the GOC for investigation, and they will take any disciplinary action necessary.

You can read about raising a concern about an optical professional at [https://www.optical.org/en/Investigating\\_complaints/How\\_to\\_make\\_a\\_complaint/index.cfm](https://www.optical.org/en/Investigating_complaints/How_to_make_a_complaint/index.cfm)

## **Local Government and Social Care Ombudsman - LGO**

The Local Government and Social Care Ombudsman looks at Public Health provision and complaints about council services, such as education admissions, appeal panels and adult social care providers, such as care homes and home care providers. Their role is to investigate complaints in a fair and independent way, after this has been raised with the service provider. Should you have any queries about making a complaint to their offices, you can contact the LGO on 0300 061 0614.

You can read about raising a concern about a service covered by the LGO at <https://www.lgo.org.uk/make-a-complaint>

## **AvMA - Action against Medical Accidents**

AvMA is a charitable organisation who can provide legal and medical support and advice if you are considering taking your complaint down the legal route. They provide a free and confidential helpline service, can give information on your rights as a patient, or medical explanations, and provide you with information about compensation and clinical negligence. They can also make a referral to an appropriate solicitor for your individual case. You may find it useful to speak to them if this is something you are considering as there are time limits for making a legal claim as there are for making a complaint. They can also provide information about the Coroner and Inquests if you wish to speak to someone impartial about this.

It is possible to go through the official NHS complaints process and the legal route at the same time, although the NHS organisation may choose to put the NHS complaint on hold until the legal challenge has been completed.

You can read more information about the help provided by AvMA at <https://www.avma.org.uk/help-advice/>

## **Useful contacts and addresses**

### **The Parliamentary & Health Service Ombudsman**

Millbank Tower

30 Millbank

London

SW1P 4QP

Tel: 0345 015 4033

Website: [www.ombudsman.org.uk](http://www.ombudsman.org.uk)

## **General Medical Council**

Regent's Place  
350 Euston Road  
London  
NW1 3JN

Tel: 0161 923 6602

Website: [www.gmc-uk.org](http://www.gmc-uk.org)

## **Nursing & Midwifery Council**

1 Kemble Street  
London  
WC2B 4AN

Tel: 020 7637 7181

Email: [Fitness.to.practice@nmc-uk.org](mailto:Fitness.to.practice@nmc-uk.org)

Website: [www.nmc-uk.org](http://www.nmc-uk.org)

## **Health and Care Professional Council**

Park House  
184 Kennington Park Road  
London  
SE11 4BU

Tel: 0800 328 4218

Email: [ftp@hcpc-uk.org](mailto:ftp@hcpc-uk.org)

Website: [www.hcpc-uk.org](http://www.hcpc-uk.org)

## **General Dental Council**

37 Wimpole Street  
London  
W1G 8DQ

Tel: 020 7167 6000

Email: [information@gdc-uk.org](mailto:information@gdc-uk.org)

Website: [www.gdc-uk.org](http://www.gdc-uk.org)

## **General Optical Council**

10 Old Bailey  
London  
EC4M 7NG  
Tel: 020 7580 3898  
Email: [goc@optical.org](mailto:goc@optical.org)  
Website: [www.optical.org](http://www.optical.org)

## **General Pharmaceutical Council**

25 Canada Square  
London  
E14 5LQ  
Tel: 0203 713 8000  
Website: [www.pharmacyregulation.org](http://www.pharmacyregulation.org)

## **Optical Consumer Complaints Service**

6 Market Square,  
Bishop's Stortford,  
Hertfordshire,  
CM23 2UZ  
Tel: 0344 800 5071  
Email: [enquiries@opticalcomplaints.co.uk](mailto:enquiries@opticalcomplaints.co.uk)  
Website: [www.opticalcomplaints.co.uk](http://www.opticalcomplaints.co.uk)

## **The Law Society of England & Wales**

Tel: 020 7242 1222  
Website: [www.lawsociety.co.uk](http://www.lawsociety.co.uk)

## **Civil Legal Advice**

Tel: 0345 345 4 345  
Website: [www.gov.uk/civil-legal-advice](http://www.gov.uk/civil-legal-advice)

## **Action Against Medical Accidents (AvMA)**

Freedman House,  
Christopher Wren Yard  
117 High Street,  
Croydon,  
CR0 1QG  
Tel: 0845 123 2352  
Website: [www.avma.org.uk](http://www.avma.org.uk)

## **Information Commissioner's Office (ICO)**

Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF  
Tel: 0303 123 1113  
Website: [www.ico.org.uk](http://www.ico.org.uk)

## **Care Quality Commission (CQC)**

CQC National Customer Service Centre  
Citygate  
Gallowgate  
Newcastle upon Tyne  
NE1 4PA  
Tel: 03000 61 61 61  
Email: [enquiries@cqc.org.uk](mailto:enquiries@cqc.org.uk)  
Website: [www.cqc.org.uk](http://www.cqc.org.uk)

## **The Local Government and Social Care Ombudsman**

Tel: 0300 061 0614  
You can also text 'call back' to 0762 481 1595  
Website [www.lgo.org.uk](http://www.lgo.org.uk)

This sheet last updated: 03/04/2018