



counsel + care   
for older people, their families and carers

guide

## Guide 18:

# Complaints about community care and NHS services

Making a complaint can feel daunting. However, in certain circumstances, it is a necessary and essential step to take. If you receive care and/or support from the NHS, your local council social services or a private care agency, you may not feel satisfied with the level, quality or type of care provided to you. This guide provides information about when you can make a complaint, how to organise it, and also looks in some detail at the process for making a complaint to the local council social services or NHS.

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There are differences in the ways each country cares for and supports older people. The information in this guide applies essentially to England, although there may be similarities with countries in the rest of the UK.

If you live in Scotland and you want to make a complaint about the NHS or community care services, see our guide:

**Complaints about community care and NHS services in Scotland** (guide number 54).

If you live in Wales and you want to make a complaint about the NHS or community care services, see our guide:

**Complaints about community care and NHS services in Wales** (guide number 74).

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# **1 Making a complaint**

If you are concerned about the quality of care, support or treatment you are receiving or you have been refused help or appropriate funding, sometimes making a complaint is the best way to challenge a decision or to improve the standard of the services you are receiving. You may also want to complain on behalf of a friend or relative.

If you are considering making a complaint about a service you are receiving or a decision that affects you, it may be advisable to first talk it over first with an independent organisation. You could contact an organisation, such as Counsel and Care (tel.: 0845 300 7585; [www.counselandcare.org.uk](http://www.counselandcare.org.uk)), or your local Citizen's Advice Bureau (tel.: 08444 111 444; [www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)) to discuss making a complaint; what the process is, what your options are and to identify any organisations that may be able to help you.

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

If you want to raise a complaint about the care or treatment you have received, you can do this either over the telephone, in person, by writing a letter or sending an email to a named senior person, such as the chief executive or the complaints manager/officer, of the organisation you want to complain about. You should make it very clear at the start of the conversation or in the heading of the letter or email, that you are making a complaint. You should keep copies of any letters or emails you send or receive about your complaint for your own records. You may need to refer back to these at a later date.

The organisation you are complaining about must make a written record of your complaint and provide you with a copy of this. While you are entitled to make a complaint by telephone or in person, it is useful to consider that anything said in person or on the telephone may be difficult to verify afterwards. It is a good idea to keep a record of any telephone calls you make or receive about the complaint and to note down the name of the person you spoke with each time. It is also a good idea to request anything agreed in person or over the telephone is confirmed in writing.

All organisations must make information on their complaints procedure available to services users. The organisation's complaints leaflet should explain how to make a complaint and what to expect from the process. Sometimes, the leaflet will have a detachable form that you can use to make your complaint. You should ask about the organisation's response timescales when you make your complaint so you know when to expect a reply. Many organisations will have details of their complaints procedure on their website and initial complaints can sometimes be made online.

## **1.2 What to include in a complaint**

It is worth making sure that you provide the complaints manager with all the relevant information that they may need to consider your complaint. If you are not happy with a previous decision, not all of the circumstances may have been taken into account when the decision was made.

Your complaint should concentrate on the main facts of the issue you are complaining about, for example, if you are dissatisfied with the reliability of a service, you should state the dates and times it was unreliable.

If a situation has arisen or an issue has been unsatisfactory for some time, involving yourself or a vulnerable person you care for, you may feel very angry or emotional about the situation. Although it is important to voice your feelings, it is also helpful to keep focused on the facts so your complaint can be resolved successfully and the situation improved.

The professionals involved have a responsibility to treat you with respect and courtesy throughout and to respond in an appropriate and timely way to your concerns. Likewise, many organisations have procedures about the way service users should behave towards members of staff.

## **2 Making a complaint to a health service or your local council**

Complaints can be made to any member of staff by you, by a friend or by a relative so long as you give your permission. You may want support to make a complaint from an independent advocate (see section 10).

### **2.1 Making a complaint about a community care service**

If you are concerned about a home care service or a care home placement organised or funded by your local council, you can make a complaint. You may want to make a complaint if you have concerns about:

- an unwelcome or disputed decision;
- the application of eligibility and assessment criteria;
- delays in decision making or provision of services by the council;
- denial of services;
- the process of assessment, review and care management for services in your own home or a care home;
- financial assessment and level of charges for care;
- the standard, quality or appropriateness of a service;
- the quantity, frequency, change or cost of a service;
- poor communication;
- behaviour and attitude of staff;
- lack of information; or
- provision of incorrect information.

You should first try to resolve your complaint with the staff member or team who is providing the service. If this does not resolve the issue or it is not appropriate for the situation, you can make a formal complaint using the local council's complaints procedure. Councils have a duty to provide

information about their complaints process and the name and address of the person responsible for making sure your complaint is dealt with properly. This person is known as the complaints manager.

Private care providers often deliver services arranged and paid for by the council, and you can take up any concerns about their actions with the service provider directly or the council that commissioned the service. You can complain to the service provider and the council at the same time. Although most local councils would prefer for the provider to investigate first, there is no requirement for you to complain to the service provider first if you do not want to.

## **2.2 Making a complaint about a health service**

If you are dissatisfied with your treatment, a service provided to you by the NHS, or if you have been refused an NHS service, you should first try to resolve your complaint with the staff member or team who is providing the health care (an informal complaint).

If this is not appropriate or you are unhappy with the response from the staff member, you can raise a formal complaint using the NHS complaints procedure. To that end, it is important to identify who is responsible for the service. For example, whether the service is private, or whether it is provided by your GP, health centre, hospital or Primary Care Trust.

All primary and secondary care trusts must have a Patient Advice and Liaison Service (PALS). PALS should record your complaint, direct your complaint to the correct department and support you to resolve it. PALS can discuss the nature of your complaint, arrange for you to access independent advocacy (if you want this), ensure you receive copies of your care plan and

can liaise with professionals on your behalf. You can obtain details of your local PALS from your local library, GP surgery, local hospital, from NHS Direct (tel.: 0845 46 47; [www.nhsdirect.nhs.uk](http://www.nhsdirect.nhs.uk)) or on the PALS website ([www.pals.nhs.uk](http://www.pals.nhs.uk)).

You can make your complaint to the named complaints manager (usually found in the complaints form) at the Primary Care Trust. The complaints manager is responsible for dealing with complaints on behalf of the chief executive of the trust.

The NHS Constitution sets out your legal rights as an NHS patient and your right to make a complaint when things go wrong. It states:

'You have the right to:

- have your complaint dealt with efficiently, and have it properly investigated;
- know the outcome of any investigation into your complaint;
- take your complaint to the independent Parliamentary and Health Service Ombudsman if you are not satisfied with the way your complaint has been dealt with by the NHS;
- make a claim for judicial review if you think you have been directly affected by an unlawful act or decision of an NHS body;
- compensation where you have been harmed by negligent treatment.'

You can read the NHS Constitution on the Department of Health website: [www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_113613](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_113613)

### **2.3 Making a complaint about NHS Continuing Healthcare**

If you have been refused NHS Continuing Healthcare funding you can ask for a review of the NHS's decision. The review process is separate from the

NHS complaints procedure. It is only for people requesting a review of a decision by the NHS not to pay for the continuing long-term healthcare needs of a patient. For more details about how you can raise a complaint about eligibility for NHS Continuing Healthcare, see our guide:

**Continuing Healthcare: should the NHS be paying for your care?**

(guide number 27).

**2.4 Making a complaint about privately funded healthcare**

If your complaint is about a healthcare service you received which was paid for privately, and not by the NHS, you will need to make the complaint to the healthcare provider in the first instance. Each private healthcare provider should have their own formal complaints procedure. You can request a copy from the healthcare provider directly.

If you are not happy with their response or the issue has not been resolved to your satisfaction, you may have the option of going to the Independent Healthcare Advisory Service (IHAS) (tel.: 020 7379 8598; [www.independenthealthcare.org.uk](http://www.independenthealthcare.org.uk)) if your healthcare provider is a member. Members must abide by its 'Code of Practice for Handling Patients' Complaints' including the IHAS's time scales for responding to complaints. To check if your healthcare provider is a member you can search for them on the IHAS website.

For more information and support making a complaint about privately funded healthcare you may want to contact the Patients' Association (tel.: 0845 608 4455; [www.patients-association.com](http://www.patients-association.com)).

### **3 One complaints process for health and social care**

'The Local Authority Social Services and National Health Service Complaints (England) (Amendment) Regulations 2009' came into effect in April 2009.

The regulations created a single approach for dealing with complaints about health services and social care services. Before that there were two separate complaints systems: one for health care and one for social care. It also changed the three-tier complaints process to a two-tier process.

As a result of these changes, if you have a complaint about health and social care services, you should have a single coordinated response and a single point of contact. Depending on your circumstances and the nature of the complaint, a single organisation (either health or social care as appropriate) will take the lead in corresponding with you and resolving the complaint.

The new arrangements have been implemented to improve the way complaints about NHS and local council social care services are managed.

The Department of Health guide 'Listening, Responding, Improving – A Guide to Better Customer Care' describes what you can expect when making a complaint. It is available from:

[www.dh.gov.uk/prod\\_consum\\_dh/groups/dh\\_digitalassets/documents/digitalasset/dh\\_095439.pdf](http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_095439.pdf)

## **4 What you should expect when you make a complaint**

When you make a complaint, it should be resolved through focusing on you and your specific concerns in an efficient and timely way rather than focusing on getting you through a process.

### **4.1 Timescale for making a complaint**

If you wish to make a complaint, you must do so within 12 months of an incident happening or you becoming aware of the matter. A complaint made outside of these time limits may be accepted if you can demonstrate that there is a good reason for not complaining before this. An example of this may be ill health.

### **4.2 When should you expect a response?**

Once you have made a complaint to the local council or NHS trust, they must acknowledge receipt of your complaint and offer to discuss your concerns within three working days.

### **4.3 What response should you expect?**

There must be a designated manager for complaints in every organisation. This is the person ultimately responsible for ensuring that your complaint is resolved in an efficient and timely way.

Once the investigation is completed you should receive a written response from the complaints manager. You should also be offered the opportunity of a face-to-face meeting to discuss your complaint. At the meeting you should be asked what you would like to happen as a result of the complaint, such as an explanation, apology, reimbursement for costs, and so on, depending on

your particular situation. You should be able to agree a plan of action with the complaints manager, including deciding timescales for when you will hear back about your complaint and the name of the person/people who will investigate your complaint.

You should be asked how you wish to be kept informed about the progress of your complaint– by phone, letter or email and whether through a third party or an independent advocate.

You should also expect to be told what your rights are (including your legal rights) and how the complaint has been categorised; whether the complaint highlights a situation or individual presenting a low, moderate or serious risk, as this can affect the speed of the response. What is considered a reasonable timescale for resolving the complaint can be decided locally based on the nature of the concerns and the risk involved.

Once the investigation is completed you should be told of the outcome and what action has been taken to resolve the complaint. You should also be told of your right to take the matter to the Ombudsman if you are still unhappy with the response (see section 11).

## **5 Complaints about a social care or health professional**

### **5.1 Complaints about the conduct of a social worker**

If you have a complaint about the conduct of a social worker, you can make a complaint to the General Social Care Council (GSCC) (tel.: 0845 070 0630; [www.gsccl.org.uk](http://www.gsccl.org.uk)). You may wish to make reference to the Code of Practice for social workers. All social workers must abide by this Code as part of their professional registration with the GSCC. The Code is available on the GSCC website or they can post you a copy.

### **5.2 Complaints about a doctor, nurse or health professional**

If you have a complaint about your GP, you should first contact your GP surgery as all GP practices must have a complaints procedure. You can also contact the PALS at your local hospital, or write to the complaints officer at your local Primary Care Trust (contact details for local will be available in the telephone directory or at local libraries). The Patients Association (tel.: 0845 608 4455; [www.patients-association.org.uk](http://www.patients-association.org.uk)) may also be able to provide advice and support.

If you have a serious complaint about a doctor, you can also complain to their professional organisation, the General Medical Council (GMC). The GMC has the legal power to investigate doctors working in the UK and can take a range of actions. To make a complaint to the GMC contact their complaints department (tel.: 0845 357 0022; [www.gmc-uk.org](http://www.gmc-uk.org)).

If you have a serious complaint about a nurse, you can complain to their professional organisation, the Nursing and Midwifery Council

(tel.: 020 7333 9333; [www.nmc-uk.org](http://www.nmc-uk.org)). It has the power to remove a nurse's professional registration permanently or for a set period of time if necessary.

If you have a serious complaint about another health professional, such as an occupational therapist, speech and language therapist, or physiotherapist, you should contact the Health Professionals Council (tel.: 0800 328 4218; [www.hpc-uk.org](http://www.hpc-uk.org)). They maintain a register of certain health professionals and can investigate complaints if it is about a profession they regulate.

## 6 Complaining about care in your own home

If you are dissatisfied about the standard of care you receive in your own home from a health service, social services or a home care agency, you should first, if it is appropriate, speak to someone in charge of the service. This may be the manager or supervisor of the home care agency, the manager of the district nurse team, or the manager responsible for the social worker involved in organising your care.

If you are dissatisfied with the response you receive or if you feel it is inappropriate for your situation, you can make a formal complaint using the organisation's complaints procedure. If the service is arranged by you and provided by a private agency or a voluntary organisation, they should have their own complaints procedure in line with the Health and Social Care Act 2008. They must ensure that all service users have access to this procedure.

If you are complaining about care provided by home care agency, you can also report your concerns to the Care Quality Commission (CQC) (tel.: 03000 616161; [www.cqc.org.uk](http://www.cqc.org.uk)). The CQC is an independent body which registers and regulates all home care agencies in England. They do not investigate individual complaints but use feedback to make sure that agencies are meeting important standards of quality and safety.

If you have complained to the home care agency (if you are self funding or receiving a personal budget) or have complained to the local council social services department (if your care is arranged or funded by the council) and you are still not happy with their response, you can complain to the Local Government Ombudsman (tel.: 0300 061 0614; [www.lgo.org.uk](http://www.lgo.org.uk)) (see section 11).

## **7 Complaining about care in a care home**

All care homes are required to have a complaints procedure in place, in accordance with the 'Health and Social Care Act 2008'. They must ensure that all residents have access to this procedure.

If you are a resident in a care home, or a relative or friend of a resident, you can begin by making your concerns known to the care home manager or matron, if you feel that this is appropriate. You could also ask another member of staff to speak to them on your behalf.

If you are not satisfied with the response you receive or you do not want to discuss the complaint with the staff at the care home, you can raise your concerns with an inspection officer at the Care Quality Commission (CQC) (tel.: 03000 616161; [www.cqc.org.uk](http://www.cqc.org.uk)). They cannot investigate individual complaints but can pursue the complaint if your concerns relate to the care provider failing to comply with the CQC registration requirements. You can write or speak to the inspectors in confidence, but confidentiality may be difficult to maintain if they are to investigate particular events or circumstances to a full resolution. You do not have to tell the care home that you have made a complaint to the CQC, but you may wish to do so, so that the care home is aware that you are treating your concerns seriously and that you are aware of your right to do so.

If the council contributes towards your care home fees and you feel that your complaint has not been resolved through the care home's complaints procedure, you can use the council's complaints procedure to investigate your complaint (see section 3).

If the council contributes towards your care home fees, the council is required to carry out an annual review of your care. You could discuss any difficulties or complaints you have about your care or the care home with the social worker who reviews your needs. However, if you have serious concerns that need resolving immediately, do not wait for the review meeting; contact the social services department to request an urgent review of your care needs.

If you fund your own placement in the care home and feel that the care home's complaints procedure has not resolved your concerns, you can make a complaint to the Local Government Ombudsman (tel.: 0300 061 0614; [www.lgo.org.uk](http://www.lgo.org.uk)) (see section 11).

If you and the manager of the care home cannot agree on a way to resolve the complaint, it may be that your only recourse is to move to another care home. The Elderly Accommodation Counsel is able to provide details of care homes in local areas (tel.: 020 7820 1343; [www.housingcare.org](http://www.housingcare.org)).

### **7.1 Care home contracts**

If you are making a complaint about a care home, you may wish to check your contract with the care home to establish whether the terms you agreed to are being breached. If you have think any of the terms of the contract are being breached or you think the terms are unfair, you should take the contract (or arrange for someone to take it for you) to a Citizen's Advice Bureau (tel.: 08444 111 444; [www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)) or your local trading standards office ([www.tradingstandards.gov.uk](http://www.tradingstandards.gov.uk)) for advice. You may also get general advice about unfair terms in contracts from Consumer Direct (tel. 08454 04 05 06). For more information on unfair contracts, see our guide:

**Care homes: what to look for** (guide number 19).

## **8 If the complaint relates to abuse**

Abuse can occur in any setting: in a care home, at home, in hospital, or at a day centre. If the concerns you have relate to a form of abuse, for example, financial, physical, sexual, psychological or neglect, it can be reported to social services and/or the police.

If you contact social services with your concerns, you should be referred to the social services adult protection coordinator. The adult protection team have a responsibility to investigate any alleged abuse.

If you wish to speak to someone independent, in confidence about your concerns, you can contact Action on Elder Abuse (tel.: 0808 808 8141; [www.elderabuse.org.uk](http://www.elderabuse.org.uk)) or an independent advice service, such as Counsel and Care (tel.: 0845 300 7585; [www.counselandcare.org.uk](http://www.counselandcare.org.uk)).

You may also want to seek the support of an independent advocate (see section 10).

## 9 Independent advocacy

In some situations, an independent advocate can help to resolve issues and clarify or facilitate communication between you and the professionals. If the advocate is independent they will not be employed by the organisation you are complaining about.

An independent advocate will represent your views and rights if you are unhappy about a situation or decision. They can discuss with you in private and in confidence to establish what outcome you would like to achieve. With your permission, the independent advocate can attend meetings with you and speak on your behalf to represent your views and rights to the professionals involved or support you to speak for yourself.

The support of an independent advocate can be important for people with communication difficulties, people with dementia, people with learning difficulties or for people who feel unable to speak out for themselves.

The independent advocate will not make decisions for you but will ensure that you have all the information you need to be able to make an informed decision. This includes making sure that you understand any complicated or detailed information provided by organisations.

You can find a local independent advocacy organisation by contacting the Older People's Advocacy Alliance (OPAAL) (tel.: 01782 844 036; [www.opaal.org.uk](http://www.opaal.org.uk)).

For more information about advocacy, see our guide:

**Independent Advocacy** (guide number 25).

## **10 Contacting the Ombudsman**

If a complaint cannot be resolved by the provider's complaints procedure you can contact the Parliamentary and Health Services Ombudsman for complaints about NHS services or the Local Government Ombudsman for complaints about social care services.

### **10.1 The Local Government Ombudsman**

The Local Government Ombudsman (LGO) (tel.: 0300 061 0614; [www.lgo.org.uk](http://www.lgo.org.uk)) can investigate complaints about failures in the administration systems and processes of local councils. This includes the work of social services departments, for example, their failure to carry out a proper assessment of a person's care needs or their failure to provide a care plan. Also, the LGO can investigate complaints from people who arrange or self fund their care, whether in a care home or in their own home.

The LGO can intervene at any time but will normally only investigate your complaint after you have first been through the organisation's complaints procedure.

A complaint to the LGO must usually be made within 12 months of the problem arising unless there are special reasons. The LGO will try to help you and the provider resolve matters satisfactorily, as well as learn from the problem that has arisen. Outcomes are generally limited to recommendations but the Ombudsman can suggest compensation.

### **10.2 The Parliamentary and Health Service Ombudsman**

If you have made a complaint about an NHS service and you disagree with the decision or outcome, you can refer your complaint to the Parliamentary

and Health Service Ombudsman (PHSO) (tel.: 0345 015 4033; [www.ombudsman.org.uk](http://www.ombudsman.org.uk)). The PHSO is completely independent of the NHS and the government.

The PHSO is able to investigate complaints about NHS services but cannot deal with complaints about healthcare funded privately (see section 3.4). The PHSO can investigate when there has been:

- maladministration - poor administration or the wrong application of rules; or
- poor clinical judgment - an inappropriate action/decision made by a member of staff.

The PHSO will not investigate your complaint until you have exhausted the organisation's complaints procedure first. If you are having difficulty getting a response to your complaint, the PHSO may be able to put some pressure on them to administer the complaints process correctly.

### **10.3 Joint investigations and reports**

The Parliamentary and Health Service Ombudsman and the Local Government Ombudsman can produce joint reports on their investigations using statutory powers under the Regulatory Reform Order 2007. This has enabled the two offices to work together more effectively in investigating and reporting on complaints.

## **11 Beyond complaints procedures**

If you have made a complaint to a local council, a care provider, or Primary Care Trust, but you remain dissatisfied with the outcome, there are further steps you can take.

### **11.1 Getting others interested**

You may consider, particularly if you are having problems getting a response or a resolution to your complaint, trying to obtain support from a voluntary organisation, pressure group or from a political representative. Local councillors and MPs hold regular surgeries in your area where you can raise your concerns. You can also contact them by email or letter. You can find the contact details for your local MP on the They Work For You website ([www.theyworkforyou.com](http://www.theyworkforyou.com))

You can also write to the government minister responsible for the public service you are concerned about. The Department of Health website ([www.dh.gov.uk](http://www.dh.gov.uk)) provides details of which ministers are responsible for NHS care or social care.

You could try to get publicity through contacting newspapers, magazines or local radio stations. You should consider that there is a possibility that by involving other agencies, or the media, your personal control over the situation may be difficult to maintain.

### **11.2 Judicial Review**

It may be possible in some cases, to challenge decisions made by a public authority, such as a council or the NHS, in the High Court. This is called a Judicial Review. Not all complaints or circumstances fall under the

jurisdiction of a Judicial Review and you may need to take legal advice about this. The High Court hearing will look at the public authority's decision and decide whether it has followed the law correctly. The court hearing cannot change the law itself and a Judicial Review would usually only be agreed if all other avenues for resolving the complaint have been exhausted, and the issue was felt to be related to an incorrect interpretation of the law.

Each side is usually represented by a barrister and the case is heard by a judge. Legal Aid may be available to cover the costs of proceedings, subject to your financial situation and the merits of your case. However, it is important to be aware that if you are not eligible for legal aid, a Judicial Review may be extremely expensive.

The judge will decide on the case and can make a public authority act according to its decision. There is also a right to go back to court if a public authority fails to follow the court's decision.

### **11.3 Private legal action**

It is possible to sue a public authority in the courts. The process is slow and can be very expensive. Consider asking how much you will have to pay before you engage a solicitor. Even things that may seem as though they would be low-cost (such as a solicitor writing a letter for you) may be very expensive. If you lose, you may have to pay your opponent's legal costs, as well as your own. To find a solicitor, contact the one of the following organisations:

- Solicitors for the Elderly (tel.: 0870 067 0282; [www.solicitorsfortheelderly.com](http://www.solicitorsfortheelderly.com)) has a database with the details of

solicitors that have experience and/or specialise in legal issues affecting older people.

- Community Legal Advice (tel.: 0845 345 4 345) can provide free and confidential legal advice for people eligible for legal aid. They also have an online directory of organisations and solicitors that have the Community Legal Service Quality Mark. They can also advise you of solicitors in your area that cover the following areas of law: family, clinical negligence, community care, mental health, personal injury, consumer and general contract, and welfare benefits law, amongst others.
- The Law Society (tel.: 0870 606 2555; [www.lawsociety.org.uk](http://www.lawsociety.org.uk)) regulates and represents solicitors in England and Wales. They have a searchable online database and helpline to help you find a solicitor in your local area. They can provide advice on what to expect, guides to common legal problems and what to do if things go wrong.

This factsheet is not a full explanation of the law and is aimed at people aged over 60

The Counsel and Care service is now part of Independent Age. Independent Age is the operating name of the Royal United Kingdom Beneficent Association.

Registered address: 6 Avonmore Road, London W14 8RL

Registered charity number 210729

Tel.: **0845 300 7585**

Email: **[advice@counselandcare.org.uk](mailto:advice@counselandcare.org.uk)**

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

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