



counsel + care   
for older people, their families and carers

guide

## Guide 54:

# Complaints about Community Care and NHS Services in Scotland

If you receive care or support from your local council social work department or your local Health Board, you may not be satisfied with the level, quality or type of care provided to you. This guide details how to make informal and formal complaints. It also looks in some detail at the processes involved in the local council social work and Health Board complaints procedures.

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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 Scotland, although there may be similarities with countries in the rest of the UK.

If you live in England, please see our guide

**Complaints about community care and NHS services in England** (guide number 18).

Or, if you live in Wales, please see our guide:

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

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# 1 Why you may want to make a complaint

If you are concerned about the quality of a service you are receiving or you have been refused a service, sometimes making a complaint is the best way to challenge a decision or to improve the service you are receiving. A friend or relative can also complain on your behalf if you are not able to.

If you are considering making a complaint, it may be a good idea to talk it over first with an independent organisation who can advise you on your options, the process for making a complaint and where you can obtain further support. For example, you could contact an advice service, such as Counsel and Care (tel.: 0845 300 7585; [www.counselandcare.org.uk](http://www.counselandcare.org.uk)), the Age Scotland Helpline (tel.: 0845 125 9732) or Care Information Scotland (tel.: 0845 6001 001; [www.careinfoscotland.co.uk](http://www.careinfoscotland.co.uk)).

Depending on the issue, you will need to direct your complaint or concern to the correct person, department or organisation within the set time frame. This guide explains the processes and options for making a complaint about home care, residential care, a council service, or an NHS service.

## **2 Informal complaints**

Although all health and social care organisations have formal complaints procedures, in many circumstances, complaints can be resolved by making an 'informal complaint'. You can do this by initially raising your concerns with the manager of the relevant department or the particular member of staff. This will give the organisation an opportunity to provide you with an explanation about what has happened and/or to reconsider their decision.

If you want to raise an informal complaint, you can do this either in person, by telephone, by email or by letter.

Make sure that you provide the organisation with all the relevant information that they may need to reconsider their decision. The organisation you are complaining to may not have taken all your circumstances into account when they made the decision that you are not satisfied with.

If progress is made or if your concerns are resolved, it may be that a formal complaint is not necessary. However if you remain dissatisfied with the way that your concerns have been dealt with, you may want make a formal complaint using the organisation's complaints procedure (see section 3).

If you feel you would benefit from an impartial third party supporting you to make an informal complaint you may want to enlist the support of an independent advocate (see section 4).

### **3 Formal complaints**

If you are not satisfied with the way your concerns have been dealt with informally, you can make a formal complaint using the organisation's official complaints procedure. All local councils and Health Boards (these may be merged in your area and may be known as Health and Social Care Partnerships) must have a complaints procedure in place and they must publish details of this to their service 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 which you can use to make your complaint. You should ask about their response timescales when you make your complaint so you know when to expect a reply.

You should write a letter or email that is clear and concise and which details the aspects of the service that you have a complaint about. For example, if you are dissatisfied with the reliability of a service, you should state the dates and times it was unreliable. You may want to state what outcome you would like to achieve from making a complaint but be realistic in your demands.

You should keep copies of all letters or emails you send or receive about your complaint for your own records. You may need to refer back to them. If you make a complaint in person or by telephone you should note down the name of the person you speak to, the date and time of any appointments/telephone calls and ask that they send you a letter confirming that your complaint has been received and who is investigating it.

If a situation has arisen or an issue has been unsatisfactory for some time, involving yourself or a vulnerable person you care for, many emotions can be generated. To resolve a complaint successfully, it is important to remain focused on the facts and to stay polite throughout the process. The professionals involved have a responsibility to treat you with respect, and likewise, many organisations have guidance about the way service users are expected to behave towards their staff.

If you feel that it would be beneficial for someone to take the matter forward on your behalf by representing you and your rights and concerns to the professionals involved, you may want to seek support from an independent advocate (see section 4).

## 4 Independent advocacy

If you are making a complaint it can be helpful to have the support of an independent advocate. An independent advocate can help to resolve issues, and help clarify and facilitate communication between you and the involved professionals if you are unhappy about a situation or decision. An advocate can discuss with you in private and in confidence to establish what outcomes you would like to achieve. With your permission, the advocate can speak on your behalf to represent your views and rights to the professional involved or can support you to speak for yourself.

Independent advocacy can be useful, especially for people with communication difficulties, people with dementia, people with learning difficulties, and anyone who feels unable to speak out for themselves for whatever reason.

An independent advocate can act as a buffer between you and the professionals when emotions run high or working relationships are 'strained' although they are not there to mediate, they are there to support you to get the outcomes you want or have a right to.

If the advocate is independent they will not be employed by the organisation you are complaining about. 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.

You can find details of local advocacy organisations by contacting the Scottish Independent Advocacy Alliance (tel.: 0131 260 5380; [www.siaa.org.uk](http://www.siaa.org.uk)). For more information about independent advocacy, see our guide:

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

## **5 Complaining about care in your own home**

If you are not happy with the standard of care you are receiving in your own home from a health service, the local council social work department or a home care agency, you may first want to speak to the person involved or someone in charge of the service. This may be the manager or supervisor of the home care agency, the manager of the district nurses, or the manager responsible for the social worker involved in organising your care.

If you are dissatisfied with the response you receive from the manager, you can make a complaint using the organisation's formal complaints procedure.

If the service you receive is provided by the Health Board you will need to use the Health Board complaints procedure (see section 8).

If the service is provided by your local council social work department you will need to use the local council's complaints procedure (see section 7).

If the service is provided by a private or charity, but was arranged by the social work department following a needs assessment, you can complain about the service using the home care agency's formal complaints procedure and/or the local council's complaints procedure (see section 7).

If the service is arranged by you and provided by a private home care agency or a charity, they should have their own internal complaints procedure. This may be available on their website or you can obtain a copy by telephoning them directly.

If you are complaining about home care provided by the social work department or a private agency, you can also contact the Social Care and Social Work Improvement Scotland – the 'Care Inspectorate' (SCSWIS) (tel.: 0845 600 9527; [www.scswis.com](http://www.scswis.com)). The SCSWIS registers and regulates home care providers in Scotland. It can investigate complaints where the service you have been provided does not meet the National Care Standards. You can view the National Care Standards at: [www.nationalcarestandards.org/](http://www.nationalcarestandards.org/)

## 6 Complaining about care in a care home

All care homes are required to have a complaints procedure in place in accordance with the 'National Care Standards for Care Homes'. The National Care Standards can be viewed at: [www.nationalcarestandards.org/74.html](http://www.nationalcarestandards.org/74.html).

You, or your relative or friend, can begin the complaints process by making your concerns known to the care worker, nurse or care home manager (an informal complaint; see section 2). Alternatively you can raise a formal complaint in line with the care home's formal complaints procedure. You should be given a copy of the care home's complaints procedure when you first became resident in the care home.

If you are not satisfied with the response from the care home, or if you do not want to discuss the complaint with the staff at the care home, you can contact the inspection officer for your care home at SCSWIS (tel.: 0845 600 9527; [www.scswis.com](http://www.scswis.com)). The SCSWIS can investigate your complaint if it relates to the National Care Standards for care homes. Whilst they cannot investigate the circumstances of individuals' complaints, they can look at the care provided to everyone in that care home around the area of concern that you have identified. You can speak to the inspectors in confidence, and whilst the complaint will be kept confidential by SCSWIS, it may be difficult for you to maintain complete confidentiality 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 SCSWIS, 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 your care home fees are being paid partially or fully by your local council, 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 with the social worker who reviews your needs or with the adult services manager at the local council social work department. If you have serious concerns that need resolving immediately, you do not have to wait for the review meeting. You can contact the social work department to request an urgent review of your care needs and/or access the council's complaints procedure.

If you are self-funding your place in the care home and the complaint does not relate to abuse (see section 10) or the assessment process, the local social work department may not be prepared to become involved unless they have a contract for personal and nursing care on your behalf with the care home and the complaint relates to that care. You may want to look over your contract with the care home to see what should be provided. You could ask your local trading standards office or Consumer Direct (tel.: 08454 040 506) to look at the contract to see if the terms are fair.

If you and the manager of the care home cannot agree on how to resolve the complaint, depending on the nature of the complaint and the ethos of the care home in accepting and resolving complaints, it may be as a last resort that your only recourse is to move to another care home. The Elderly Accommodation Counsel (tel.: 020 7820 1343; [www.housingcare.org](http://www.housingcare.org)) and SCSWIS (tel.: 0845 600 9527; [www.scswis.com](http://www.scswis.com)) can provide you with details of care homes in your local area that may be able to meet your care needs.

## 7 Complaints about the local council

In many circumstances complaints about local councils and local councils' services can be resolved by making an informal complaint (a stage 1 complaint) by initially raising your concerns with the relevant department or member of staff (see section 2).

If it is not possible to resolve your complaint by making an informal complaint you can use the social work department's formal complaints procedure. The social work complaints procedure covers concerns about:

- The assessment process for services in your own home or a care home.
- Inappropriate denial of services.
- The financial assessment process and level of charges for care.
- The standard and quality of the services the council are providing.
- Poor communication.
- Lack of information.
- Provision of incorrect information.

The 'Social Work (Representations Procedure) (Scotland) Directions 1996' sets out how to make a complaint about social work. It also covers issues such as:

- Eligibility of access to the council complaints procedure
- Information to be provided to people who make a complaint
- Dealing professionally with informal complaints
- Procedural requirements of the complaints process
- The membership and conduct of Complaints Review Committees (CRC)
- Representation and support for the complainer at the CRC
- Confidentiality
- Compensation where the decision is in favour of the 'complainer'
- How the council can deal with 'persistent and vexatious complainers'

- Complaints about third parties providing services on behalf of the council
- Monitoring and publication of complaints outcomes

Social work has a duty to provide information on their complaints process to service users including the name and address of the person responsible for making sure your complaint is dealt with properly. This person is known as the Complaints Officer. If you have a formal complaint, you should contact the Complaints Officer and ask for a copy of the Complaints Procedure. A social worker may also be able to provide you with a copy of the complaints procedure.

The formal complaints stage is sometimes called the 'local resolution stage' or 'stage 2' of the complaints process. You should have your request for a formal complaint acknowledged within 5 working days of it being received. You may be contacted by someone at the local council to clarify any areas which need further explanation. The local council social work department should write to you within 28 working days with a response to your concerns and should also inform you if they will need more time to investigate your complaint.

If you are unhappy with the council's response, you can make an appeal, asking for the complaint to be reconsidered. You have 28 days in which to appeal. Details of how to do this should be outlined in the response letter you receive from the council.

If you are still unhappy with the council's response to the local resolution stage of your complaint, you can request that your complaint is heard at a Complaints Review Committees (CRC). The CRC will make recommendations to the complaint on how the complaint should be resolved within 56 days of it being received. The council should inform you of any actions they intend to take in line with the CRC recommendations within 42 days of the CRC

recommendations. If more time is needed to investigate the complaint, any extensions to any of the timescales should be negotiated between you and the council.

If you are still not satisfied with the decision after stage 2, you can make a complaint to the Scottish Public Services Ombudsman (SPSO) (tel.: 0800 377 7330; [www.spsso.org.uk](http://www.spsso.org.uk)). The Ombudsman can investigate complaints about failures in the administration systems and processes of local councils, NHS Boards and Housing Associations in Scotland. A complaint to the Ombudsman must usually be made within 12 months of the problem originally arising unless there are special reasons. The Ombudsman will make recommendations on how the complaint should be resolved. This may include compensation. There are strict rules about the type of complaint the Ombudsman can investigate. The Ombudsman will not generally investigate your complaint unless you have been through the council or Health Board complaints procedure first. The Ombudsman may not investigate your complaint if you are privately funding your care although there may be exceptions, for example, if you receive free personal and nursing care from the council. The Ombudsman's role in investigating complaints from self-funders is still unclear in Scotland.

If your complaint is about an individual social worker and it is not resolved informally or through the council complaints process, you can contact the Scottish Social Services Council (SSSC) (tel.: 0845 60 30 891; [www.sssc.uk.com](http://www.sssc.uk.com)) whose Code of Practice provides information on how to

The current situation covering council complaints may change in the future (see section 9). We will publish any changes in future editions of this guide.

## 8. Complaints about the NHS/ Health Board

All health services have formal complaints procedures but in many circumstances complaints can be resolved by making an 'informal complaint' (a stage 1 complaint) to the relevant department or member of staff (see section 2).

'Can I Help You' is guidance which sets out health staff should handle certain concerns and complaints in such a way as to resolve issues without the need for a formal complaint to be made. If you are raising a concern rather than an actual complaint you should receive a verbal response/explanation 'on the spot' or within an agreed timescale. The guidance is available from:

[www.show.scot.nhs.uk/App\\_Download/pdf/1guidance010405.pdf](http://www.show.scot.nhs.uk/App_Download/pdf/1guidance010405.pdf),

The guidance states that NHS Boards should ensure that anyone wishing to make a complaint is provided with a copy of the Health Rights Information Scotland's leaflet 'Making a complaint about the NHS'. The leaflet is available from <http://www.hris.org.uk/index.aspx?o=1025> or by calling 0141 226 526.

Formal complaints about services or treatment provided by the NHS using the NHS Scotland complaints procedure must be made within certain time limits:

- Within 6 months of the event you wish to complain about ;or
- Within 6 months of finding out about the right to complain providing it is within 12 months of the event.

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.

Complaints can be made to any member of NHS staff by you, or by a friend or

relative, as long as you have given your permission for them to complain on your behalf.

If possible, you should put your complaint in writing to the manager of the service you are dissatisfied with. You should receive a reply within 3 working days acknowledging your complaint. After 20 working days you should receive a more thorough response which outlines the investigation which should have taken place as a result of your complaint. If more time is needed to investigate the complaint you should be informed of this.

If you are dissatisfied with the response to your complaint, you can request an independent review, but this is not an automatic right and must be requested within 28 days of receiving your response from the Health Board. The Complaints Officer at the Health Board will give you further information about this process and how to arrange for a review to take place. Please also see the information in section 7 regarding the SPSO who may also be able to consider the complaint if it is not resolved by the Health Board.

The current process for making a complaint about a health service may change in the future (see section 9). We will publish any changes in future editions of this guide.

### **8.1 Serious complaints about a health professional**

If you have a complaint that is of a 'serious' nature about a nurse, midwife or health visitor, you can make a complaint to the NHS using their formal complaints procedure. You can also make a complaint to the Nursing and Midwifery Council (tel.: 020 7333 9333; [www.nmc-uk.org](http://www.nmc-uk.org)). This is the regulatory body for nursing, midwifery and health visiting. They can

investigate complaints about nurses, midwives and health visitors and have the power to remove individuals' professional registration if necessary.

If you have a complaint about your GP, you can contact your GP surgery as the GP practice will have their own complaints procedure. You can also write to the Complaints Officer at your local Health Board. Contact details for GP surgeries and Health Boards are available from NHS 24 (tel.: 08454 24 24 24; [www.nhs24.com](http://www.nhs24.com)).

If you have a serious complaint about a doctor you can make a complaint to the NHS using their formal complaints procedure. You can also complain to their professional membership organisation, the General Medical Council (GMC) (tel.: 0161 923 6602; [www.gmc-uk.org](http://www.gmc-uk.org)). The GMC has the power to investigate doctors working in the UK and can take a range of actions. To make a complaint to the GMC you must put your complaint in writing using their complaints form available on their website.

## **8.2 Complaints about NHS Continuing Healthcare**

If you have been refused NHS Continuing Healthcare funding you can ask for a review of the Health Board's decision. The review process is separate to the NHS complaints procedure. For more information, see our guide:

**Continuing Healthcare: should the NHS be paying for your care?** (guide number 27).

Please note, the 'National Framework' for NHS Continuing Healthcare mentioned in guide 27 is relevant only to England. In Scotland, Health Boards can set local eligibility criteria but this must be based on national guidance. The multi-disciplinary assessment and decisions about eligibility are based on each individual's healthcare needs.

### **8.3 What if I need support to make a complaint**

Health Boards and councils (which may now be called Health and Social Care Partnerships) should provide information about independent advocacy organisations that may be able to support you to make a complaint about the NHS (see section 4). There should be a Patient Advice and Support Service (PASS) within each local Health Board that can help you with complaints about the NHS, similar to the Patient Advice and Liaison Service (PALS) service in England. There may also be an Independent Advice and Support Service (IASS) at your local Citizens Advice Scotland Bureau who can help with health care complaints. To locate your nearest IASS contact Citizens Advice Scotland ([www.cas.org.uk](http://www.cas.org.uk)) to find out if this is offered locally or contact Citizens Advice Direct (tel.: 0844 848 9600; [www.citizensadvisedirect.org.uk](http://www.citizensadvisedirect.org.uk)).

## 9 A model complaints process for the public sector

The process for making a complaint about a public body, such as the council or an NHS service may change in the future as the Scottish Executive is currently consulting on new draft guidance for making a complaint.

This follows the publication of a 'Statement of Complaints Handling Principles' and 'Guidance on a Model Complaints Handling Procedure' by Scottish Public Services Ombudsman (SPSO). The Scottish Executive intends to use these publications to develop new guidance on making a complaint in partnership with public service providers. The guidance states: "the guidance is designed to be followed by all service providers. The SPSO expects senior management of public service providers to visibly support good complaints handling and develop a culture within their organisation that values complaints".

You can view the guidance at: [www.valuingcomplaints.org.uk/wp-content/uploads/2011/03/Guidance-on-a-Model-Complaints-Handling-Procedure.pdf](http://www.valuingcomplaints.org.uk/wp-content/uploads/2011/03/Guidance-on-a-Model-Complaints-Handling-Procedure.pdf)

To assist with improving complaints handling procedures, the Ombudsman has set up the Complaints Standards Authority (CSA) ([CSA@spsso.org.uk](mailto:CSA@spsso.org.uk); [www.valuingcomplaints.org.uk](http://www.valuingcomplaints.org.uk)). The CSA will work with public sector providers to develop a model complaints handling procedure in line with the Principles and the guidance.

In addition, the joining up of health and social care that is currently underway in Scotland, for example the creation of Health and Social Care Partnerships will also change the way complaints are made in the future. Any changes to the complaints procedure will be explained in future editions of this guide when that information becomes available.

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

If your concerns relate to a form of abuse, for example, theft, neglect, physical abuse, sexual abuse or emotional abuse, do not wait to make an informal or formal complaint. You can report your concerns to the Adult Protection Team based in the local social work department or to the police.

You may also want to discuss the issue with another organisation such as Action on Elder Abuse (tel.: 0808 808 8141; [www.elderabuse.org.uk](http://www.elderabuse.org.uk)) or the Age Scotland Helpline (tel.: 0845 125 9732).

### **10.1 Adult Protection Committees**

Under the Adult Support and Protection (Scotland) Act 2007, councils have a duty to set up Adult Protection Committees. These committees are responsible for ensuring that the local council, police, NHS and other key agencies such as the SCSWIS, work together in an effective and co-ordinated way to protect at-risk people from harm. For more information, visit the Act Against Harm website: [www.infoscotland.com/actagainstharm](http://www.infoscotland.com/actagainstharm) which also provides contact details for each adult protection unit in Scotland.

### **10.2 The Protecting Vulnerable Groups (PVG) Scheme**

The Protection of Vulnerable Adults (Scotland) Act 2007 established the Protecting Vulnerable Groups Scheme (PVG). The scheme helps to ensure that those who have regular contact with vulnerable people through paid and unpaid work do not have a known history of harmful behaviour. Employers can check with Disclosure Scotland (tel.: 0870 609 6006; [www.disclosurescotland.co.uk](http://www.disclosurescotland.co.uk)) who administer the PVG scheme before offering employment to people who will be working with vulnerable adults. Further information on the PVG scheme can be viewed at: [www.scotland.gov.uk/Resource/Doc/304621/0095592.pdf](http://www.scotland.gov.uk/Resource/Doc/304621/0095592.pdf)

## **11 Going beyond the complaints procedure**

If you have made a formal complaint to the council, Health Board, SPSO etc but you remain dissatisfied with the outcome, there are other steps you may want to consider.

### **11.1 Getting others interested**

You may consider trying to obtain support from a voluntary organisation, pressure group or from a political representative. Local councillors and MPs will hold surgeries in your local area and can also be contacted by email or post. You can also write to the Scottish Executive Minister responsible for the public service you are concerned about. You could try to get publicity through writing to newspapers or magazines. You should consider that by involving other agencies, or the media, your personal control over the situation may be difficult to maintain.

### **11.2 Judicial review**

It is possible to challenge decisions made by a public authority, such as the council or the NHS, in the Court of Session, through carrying out a Judicial Review. The Court of Session hearing will look at the public authority's decision and decide whether it has followed the law correctly. Each side is usually represented by a solicitor 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, if you are not eligible for legal aid, a Judicial Review can be extremely expensive. The judge will decide 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. 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.

If you are considering applying for a Judicial Review you will need legal advice to see if you have sufficient grounds for a case. You may want to contact the Legal Services Agency (tel.: 0141 353 3354; [www.lsa.org.uk](http://www.lsa.org.uk)) or Citizens Advice Scotland ([www.cas.org.uk](http://www.cas.org.uk)).

### **11.3 Private legal action**

It is possible to sue a public authority in court however the process is slow, time consuming and can be expensive. Consider asking how much you will have to pay before you engage a solicitor, as even things that may seem as though they might be inexpensive (such as a solicitor writing a letter for you) may be costly. If you lose, you may have to pay your opponent's legal costs, as well as your own.

You may, in certain situations, be able to find a solicitor who is willing to take action on a pro bono or voluntary basis or on a 'no win, no fee' basis, but again you should ensure that you are clear about any financial liability that you may be responsible for, prior to instructing a solicitor.

To find a suitably trained and experienced solicitor, contact Solicitors for the Elderly (tel.: 0870 067 0282; [www.solicitorsfortheelderly.com](http://www.solicitorsfortheelderly.com)) who has a database of solicitors that have experience and/or specialise in legal issues affecting older people. You may also want to contact the Legal Services Agency (tel.: 0131 228 9993; 0141 353 3354; [www.lsa.org.uk](http://www.lsa.org.uk)).

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.

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