



NHS Complaints in England

Regulations and Principles

This booklet is published as a resource for MPS members in the UK. It is intended as general guidance only. MPS members are always welcome to telephone our medicolegal advice line – 0845 605 4000 – for more specific practical advice and support with medicolegal issues that may arise.

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The Medical Protection Society is the leading provider of comprehensive professional indemnity and expert advice to doctors, dentists and health professionals around the world.

We are a mutual, not-for-profit organisation offering more than 270,000 members help with legal and ethical problems that arise from their professional practice. This includes clinical negligence claims, complaints, medical council inquiries, legal and ethical dilemmas, disciplinary procedures, inquests and fatal accident inquiries.

Fairness is at the heart of how we conduct our business. We actively protect and promote the interests of members and the wider profession. Equally, we believe that patients who have suffered harm from negligent treatment should receive fair compensation. We promote safer practice by running risk management and education programmes to reduce avoidable harm.

MPS is not an insurance company. The benefits of membership are discretionary – this allows us the flexibility to provide help and support even in unusual circumstances.





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Introduction

The Regulations governing NHS complaint handling that came into effect in April 2009 followed extensive public consultation and research by the Department of Health and were intended to bring about a fundamental shift in the approach to complaints handling within the NHS. With this aim in mind, the Regulations were drafted to allow healthcare providers the flexibility to adopt a truly “patient-focused” approach to complaints handling. They form a statutory foundation on which to rest the principles of good complaint handling promoted by various bodies, such as the Parliamentary and Health Service Ombudsman and previously by the Healthcare Commission.

All healthcare providers within the NHS have legal, contractual and professional obligations to provide an accessible and suitably responsive complaints procedure for service users.

Legal obligations

The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009 oblige NHS organisations to have arrangements in place to deal with patient complaints. These arrangements must comply with the Regulations (see page 6).

The NHS Constitution sets out the following rights for patients:

- You have the right to have any complaint you make about NHS services dealt with efficiently and to have it properly investigated.
- You have the right to know the outcome of any investigation into your complaint.
- You have the right to take your complaint to the independent Health Service Ombudsman, if you are not satisfied with the way your complaint has been dealt with by the NHS.

The Health Act 2009 places a duty on NHS organisations (including contractors) to “have regard to the NHS Constitution”.

Contractual obligations

From April 2009, all PCTs have to be registered with the Care Quality Commission, under the provisions of the Health and Social Care Act 2008. As a condition of registration, your PCT is required to ensure that “there are systems in place to ensure that patients, their relatives and carers:

- have suitable and accessible information about, and clear access to, procedures to register formal complaints and feedback on the quality of services
- are not discriminated against when complaints are made
- are assured that organisations act appropriately on any concerns and, where appropriate, make changes to ensure improvements in service delivery.”
(Core standard C14, Standards for Better Health)

Ombudsman

In England, the Parliamentary and Health Service Ombudsman is now responsible for investigating second-stage complaints. Her office has published a series of Principles – of good administration, of remedy and of good complaint handling. These “set out the approach [the Ombudsman’s] Office will take when considering standards of complaint handling” at local level, so they are a key resource when designing and operating a practice complaints system. (See Appendix 1 for a summary of *Principles of Good Complaint Handling*)

GMC

In *Good Medical Practice*,¹ the GMC says, “Patients who complain about the care or treatment they have received have a right to expect a prompt, open, constructive and honest response including an explanation and, if appropriate, an apology. You must not allow a patient’s complaint to affect adversely the care or treatment you provide or arrange.”

Doctors who fail to comply with this guidance could face sanctions affecting their registration.

1 2006, para 31.

The consequences of handling a complaint poorly

At MPS, we are often called on to assist members when a complaint has been referred for independent review. We have found that many of these cases could have been resolved at local level if more care had been taken in investigating the complaint and in drafting the letter of response. Although it can be tempting to deal brusquely with complaints that you feel have no foundation, or to respond defensively, this is likely to inflame rather than resolve the problem. There are significant costs associated with failure to deal adequately with a complaint, such as:

- More work
- Damage to reputation
- Escalation
- GMC referral
- Litigation
- Damaged relations with the PCT.

What's current

The biggest change ushered in by the current system is the shift from a process-driven to an outcomes-driven procedure. The aim is to provide accessible, flexible and responsive patient-centred complaints handling, integrally linked to continuous service improvements and patient safety.

Apart from a few minor alterations to the legal framework in which the complaints procedure will sit (see page 7), the main statutory changes are:

- 1) The introduction of new, unified, Regulations that apply to primary and secondary care in the NHS as well as voluntary and independent sector organisations contracted to the NHS and to adult social care. This should make it much easier to provide a “one-stop-shop” for cross-boundary complaints by co-ordinating complaint handling. Provisions regarding joint working across boundaries have been strengthened, and providers now have a duty to co-operate in the handling of complaints.

- 2) The time constraint on bringing a complaint has been lengthened. Complainants will now have 12 months from the occurrence giving rise to the complaint or from the time that they become aware of the matter. The complaints manager will retain the discretion to investigate complaints brought later than this if there are good reasons for the delay and it is still possible to carry out an investigation.
- 3) The possible involvement of the PCT in a practice complaint.
- 4) The need to negotiate a complaints plan with the complainant including agreement on timescales for investigation.

Key elements of the Regulations

The current Regulations governing NHS complaints are not prescriptive in the sense that they impose rigid timescales to meet or stipulate how you should investigate a complaint, but they do provide a legal framework within which you must apply certain principles (see Appendix 2 for a visual representation of the system).

The framework sets out the following fundamental requirements:

- 1) The practice must have arrangements in place to handle complaints efficiently, investigating them properly and delivering a timely and appropriate response. It must make information about these arrangements available to the public.
- 2) The practice has a duty to give complainants the support that they need to follow the complaints procedure or to inform them of advice available (such as PALS or ICAS).
- 3) Complainants must be treated with respect and courtesy and must be told the outcome of the investigation.
- 4) The complaints-handling arrangements must include procedures for ensuring that necessary actions are taken in light of the outcome of a complaint.
- 5) One of the practice's partners must be designated the "Responsible Person" who ensures that complaints are handled in compliance with the Regulations and that lessons learned from complaints are implemented.

- 6) The practice must also have a designated “complaints manager” to manage the complaints procedures. This person must be readily identifiable to service users, but does not necessarily have to be one of the practice team. It can be someone employed to carry out the role across a number of health and social care organisations if you decide to set up a joint complaints function.
- 7) The “Responsible Person” and the “complaints manager” can be the same person.
- 8) Complaints can be made by patients or anyone affected by the actions, omissions or decisions of the practice, either on their own behalf or by a representative. In the case of a representative, the practice must be satisfied that he/she is acting in the best interests of the person on whose behalf he/she is complaining. If it decides that this is not the case, it must notify the complainant in writing, giving reasons for its decision.
- 9) Complainants can direct their complaints to the PCT rather than the practice and the PCT may undertake the complaint handling itself or, if it deems it appropriate and has the complainant’s consent, refer the complaint to the practice concerned. The PCT is obliged to notify the practice of the details of a complaint, provided it has the complainant’s consent to do so.
- 10) Oral complaints that are satisfactorily resolved no later than the next working day are not subject to the Regulations. (This does not prevent the practice from dealing informally with concerns raised by patients.)
- 11) All other complaints – whether made orally, in writing or electronically – must be acknowledged, either orally or in writing, within three working days of receipt. If the complaint is made orally, it must be recorded in writing and a copy given to the complainant.
- 12) The acknowledgement must include the offer of a discussion (which might be by telephone or a meeting) to agree a plan of how the complaint will be handled and agree reasonable timescales for investigating and concluding the complaint.
- 13) If the complainant declines the offer to discuss the issue, the practice should decide how the complaint will be handled, based on the available information. A letter should be sent to the complainant setting out how the complaint will be investigated and the expected timescales.

- 14) The complaint must be investigated appropriately and speedily and the complainant should be kept informed of progress.
- 15) The handling of cross-boundary complaints must be co-ordinated between the organisations involved and the complainant should be given a co-ordinated response. The responsible bodies concerned have a duty to co-operate with each other.
- 16) Once the investigation has been concluded, a letter (or, with the complainant's consent, an email) must be sent to the complainant, setting out how the complaint has been investigated, the evidence considered and the conclusion reached. This letter should also include details of actions the practice has and will be taking as a result of its findings. Explanations of clinical matters should be written in accessible language
- 17) The letter should be signed by the "Responsible Person" (or someone delegated by the practice to carry out this function on his/her behalf). It should confirm that the practice is satisfied with the way it has dealt with the complaint, making it clear that nothing more can be done at local level and that the complainant can take the complaint to the Ombudsman if he/she wishes.
- 18) The practice's complaints handling arrangements must be monitored to ensure that they are working effectively and that no discrimination against complainants has ensued.
- 19) A record must be kept of each complaint received, detailing the subject and outcome of the complaint and whether it was resolved within the agreed timescale.
- 20) The practice must supply the PCT with an annual report containing the following information:
 - The number of complaints received
 - The number of complaints that were upheld
 - The number of complaints that are known to have been referred to the Health Service Ombudsman
 - A summary of the reasons for the complaints
 - A narrative about significant issues relating to the practice's experience of complaints during the year, including lessons learned and actions taken.

The report must also be made available to any person on request.

Within this framework, each organisation is free to develop its own procedures to suit the local situation and to apply them flexibly to accommodate the circumstances pertaining to individual complaints. Because this is a fairly loose framework, it is important to understand the principles that should apply in order to ensure that you are complying with both the spirit and letter of the Regulations.

The principles

The thrust of the Regulations is to encourage a culture in which feedback from patients is actively invited and facilitates service improvements. Frontline staff should be trained and empowered to deal with verbal complaints on the spot if possible.

1 – Accessible

To be accessible, your complaints procedure must be visible, but it is not enough merely to display notices and leaflets pointing to one avenue for complaining. To be truly accessible, potential complainants need multiple access points and, more importantly, a perception that they will be heard, that their views will be respected and they will not be discriminated against for raising their concerns. They must also trust that it is worth doing – ie, they must be satisfied that their complaint will be investigated thoroughly and impartially and that there will be a result.

Here is an example of a notice that reflects the spirit of the legislation.

Compliments, Comments, Concerns and Complaints

We aim to provide patients with the best care we can, but we will sometimes fall short of the mark. If you have any compliments, comments, concerns or complaints about our service, we want to hear about it.

We would encourage you to speak to whoever you feel most comfortable with – your doctor, a nurse, a receptionist or manager – but if you would prefer to give your feedback in writing, please send it to the Practice Manager, Peter Brown, at the address below. You can also send us a message via the practice website or by filling in one of the forms in the waiting room and putting it in the box marked “**Feedback**”.

If you have a complaint to make, please don't be afraid to say how you feel. We welcome feedback to help us improve our standards and you will not be treated any differently because you have complained. We will just do our best to put right anything that has gone wrong.

Alternatively, you have the right to approach the Primary Care Trust and raise your complaint directly with them.

Access should be simple, whether it be by talking to a member of staff directly, sending an email or letter, or by filling in an online or paper form. It helps if your leaflets and website contain some guidance about information to include in a complaint – what happened, when, where, who was involved, what was the outcome, what the complainant would like you to do, etc. You should also outline what they can expect to happen next, including issues of confidentiality and consent to share information.

Thought must also be given to accessibility for people with language or learning difficulties. Written material should be in the main languages used by your local population and you should also have easy read and larger print versions for patients who have difficulty reading. On a more subtle level, an atmosphere of openness and courtesy, with staff who are trained to respond to signs of annoyance or dissatisfaction and who convey a willingness to listen, are important aspects of accessibility.

2 – Flexible and responsive

Tailor your complaint handling to suit the particular circumstances. The amount of time and effort you spend on investigating and resolving the complaint should be **proportionate** to its seriousness. Conducting a risk assessment using the matrix in Appendix 3 will help you evaluate the seriousness of a complaint. Some complaints will take longer to resolve than others and the timescale should be discussed and agreed with the complainant at the outset if possible.

The sign-off letter should cover all the issues raised and contain a full explanation written in a clear, jargon-free style. An apology should be given, along with an explanation of what you are doing to put things right. Even if the investigation shows that the complaint was groundless, the complainant should still be thanked for giving you the opportunity to look into the matter and to clear up any misunderstandings. The letter should also provide details about the Ombudsman and advocacy (eg ICAS).

3 – Lessons learned

Compliments, comments, concerns or complaints – whether they are minor issues dealt with on the spot or more serious complaints requiring investigation and a formal response – should be recorded and used to inform service improvements. It is good practice to review your complaints log periodically to see if trends and themes have emerged over time that indicate a recurring or persistent problem that should be addressed. All feedback should be discussed in practice meetings.

Some issues can stimulate immediate changes, but others might require analysis to identify the underlying causes of a problem. There are two methods for doing this – a significant events audit (SEA) or a root cause analysis (RCA). Detailed guidance on conducting an SEA or RCA can be found on the National Patient Safety Agency's website, along with templates and online tutorials, at www.npsa.nhs.uk. Much of this guidance can also be usefully applied in the investigation of a complaint.

4 – Co-ordinated handling

Now that all NHS organisations (including voluntary and independent sector organisations under contract) and social services in **England** are all governed by the same legislation, co-ordinated complaint handling should be easier to achieve than it was in the past.

When you receive a complaint that involves other organisations, you should (with the patient's consent) copy the complaint and your acknowledgement letter to the organisations concerned. They will institute their own investigations, but you might need to share records between you to facilitate a co-ordinated approach. If so, you must operate within the bounds of the legal and professional framework governing the use of personal information. Your PCT is likely to have an inter-agency information-sharing protocol that you should follow. If not, you should ask your Caldicott Guardian for guidance.

The most effective way of co-ordinating the complaint handling is for the agencies concerned to agree which of them will take on the lead role, and be responsible for making sure that the complaint handling stays on track and for keeping the complainant informed about progress.

An effective way of achieving this co-ordination would be to share a complaints manager in partnership with other agencies in your locality. Alternatively you could approach your PCT to ask if they would co-ordinate on your behalf.

Removing patients from the practice list

A small but significant number of complaints are referred to the second stage every year because practices have removed patients from their lists after they made a complaint. In many of these cases the complaint is upheld because the practice concerned had not adhered to its policy for removal from the list (or did not have a policy in place).

Although GPs do have a right to remove patients from their lists, they cannot do so arbitrarily. GMC guidance is very clear on this matter. Moreover, current legislation governing NHS complaints – The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009, The Health Act 2009 and the Health and Social Care Act 2008 – specifically prohibit NHS bodies from discriminating against patients because they have complained about the service they received.

For more detailed information on this topic, see the MPS factsheet “Removing Patients from the Practice List”. Download it from the MPS website at www.medicalprotection.org/uk/factsheets/removing-patients or call Publications on **0113 241 0530** to order a hard copy.

Appendices

Appendix 1: A summary of Principles of Good Complaint Handling

The Parliamentary and Health Service Ombudsman, Principles of Good Complaint Handling (2008), p. 1

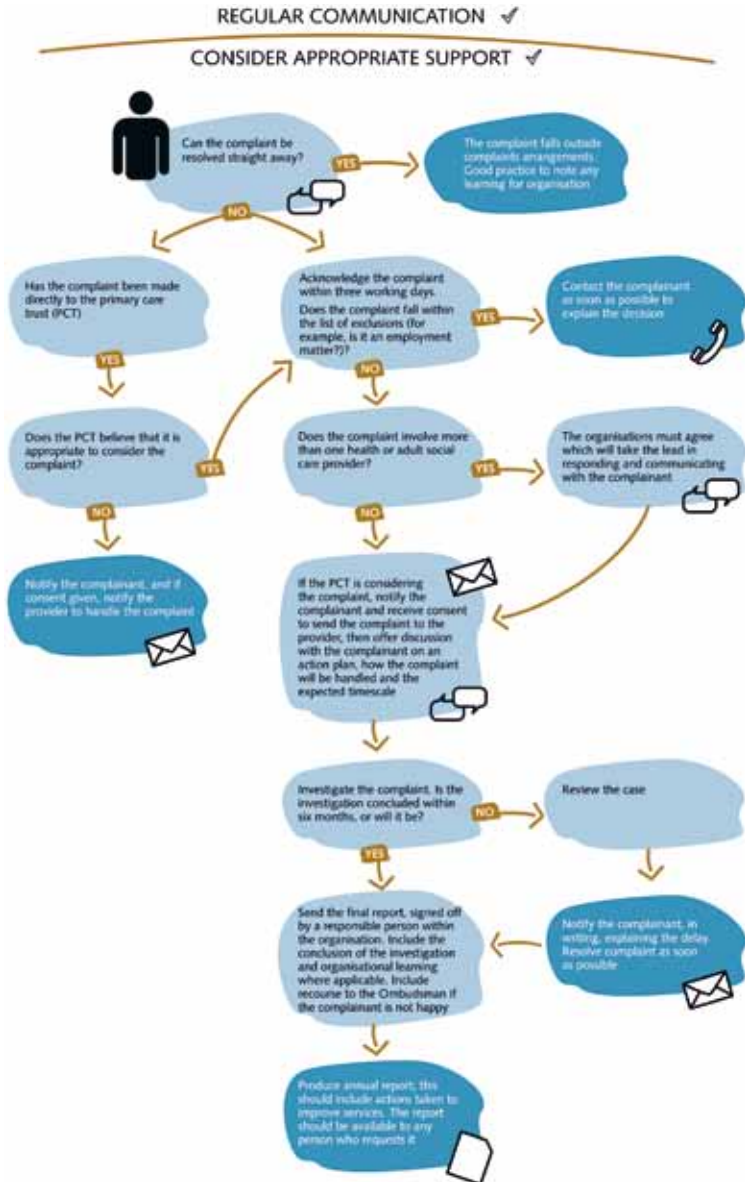
- 1) Getting it right
- 2) Being customer focused
- 3) Being open and accountable
- 4) Acting fairly and proportionately
- 5) Putting things right
- 6) Seeking continuous improvement.

These Principles are not a checklist to be applied mechanically. Public bodies should use their judgment in applying them to produce reasonable, fair and proportionate results in all the circumstances of the case. The Ombudsman will adopt a similar approach when considering the standard of complaint handling by public bodies in her jurisdiction.

Parliamentary and Health Service Ombudsman (the Principles series of booklets are essential reading for anyone involved in complaints handling)

www.ombudsman.org.uk

Appendix 2: How the complaints system works



Source: DH, Listening, Responding, Improving: A Guide to Better Customer Care (26 February 2009) p. 23

Appendix 3: The Risk Assessment Matrix

Step 1: Decide how serious the issue is

Seriousness	Description
Low	<p>Unsatisfactory service or experience not directly related to care. No impact or risk to provision of care.</p> <p>OR</p> <p>Unsatisfactory service or experience related to care, usually a single resolvable issue. Minimal impact and relative minimal risk to the provision of care or the service. No real risk of litigation.</p>
Medium	<p>Service or experience below reasonable expectations in several ways, but not causing lasting problems. Has potential to impact on service provision. Some potential for litigation.</p>
High	<p>Significant issues regarding standards, quality of care and safeguarding or denial of rights. Complaints with clear quality assurance or risk management issues that may cause lasting problems for the organisation, and so require investigation. Possibility of litigation and adverse local publicity.</p> <p>OR</p> <p>Serious issues that may cause long-term damage, such as grossly substandard care, professional misconduct or death. Will require immediate and in-depth investigation. May involve serious safety issues. A high probability of litigation and strong possibility of adverse national publicity.</p>

Step 2: Decide how likely the issue is to recur

Likelihood	Description
Rare	Isolated or 'one off' – slight or vague connection to service provision.
Unlikely	Rare – unusual but may have happened before.
Possible	Happens from time to time – not frequently or regularly.
Likely	Will probably occur several times a year.
Almost certain	Recurring and frequent, predictable.

Step 3: Categorise the risk

Source: Department of Health, Listening, Responding, Improving – A Guide to Better Customer Care (26 February 2009), pp. 17–18.

Seriousness	Likelihood of recurrence				
	Rare	Unlikely	Possible	Likely	Almost certain
Low	Low				
		Moderate			
Medium					
			High		
High				Extreme	

Resources

Making Experiences Count (Department of Health webpage devoted to the new NHS complaints procedure. Contains a copy of the Regulations for England plus an excellent guidance booklet and advice sheets) www.dh.gov.uk/mec

Parliamentary and Health Service Ombudsman (The Principles series of booklets are essential reading for anyone involved in complaints handling) www.ombudsman.org.uk

MPS Guide to Resolving Complaints (advice on implementing the *Principles of Good Complaint Handling*) www.mps.org.uk/publications

Medical Protection Society helpline: **0845 605 4000**

Independent Complaints Advocacy Service. Details can be found at NHS Choices at www.nhs.uk/choiceintheNHS/Rightsandpledges/complaints/Pages/NHScomplaints.aspx

Patient Advice and Liaison Services (PALS' national website contains a resources library) www.pals.nhs.uk

National Patient Safety Agency (A good source of guidance, tutorials and toolkits for conducting investigations) www.npsa.nhs.uk

Local Medical Committees. Advice and assistance are available from your LMC. Contact details for all LMCs in England are available on the BMA website at www.bma.org.uk/representation/local_representation/local_med_committees/lmcengland.jsp

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