

THE NHS COMPLAINTS PROCEDURE (WALES/NORTHERN IRELAND)

If you are not happy with the medical treatment that you or a family member has received under the National Health Service it is your right to have your concerns investigated and to be given a full and prompt response by the treating body. This is known as the NHS Complaints Procedure.

What are the potential stages of the NHS Complaints Procedure?

Stage 1 Local Resolution

Stage 2 The Independent Review (The Ombudsman)

Helpful Hints

- Keep a record of all telephone calls including dates and contacts.
- Keep copies of all correspondence sent and received.
- Keep copies of meetings attended and reports on the content and outcome of the meeting.

Which services are covered by the NHS Complaints Procedures?

- All NHS Trusts and NHS Bodies including NHS Foundation Trusts
- Family Health Services provided for the NHS by GPs, Dentists, Opticians or Pharmacists.
- Primary Care Trusts.
- Private Health Care establishments if the treatment has been paid for by the NHS.

What do I want to achieve?

It is important to think about what you want to achieve before putting in your complaint and what the NHS can do to satisfy this. You may not need to make a formal complaint. If you are more concerned about having something put right or registering a concern informally, you are normally better off raising this directly with staff concerned or their managers.

Under the NHS Complaints Procedure at present the following can be obtained:

- An explanation for what happened.
- An apology or other statement of regret.
- Steps to review procedures to avoid such incidents in future.

In general the NHS cannot:

- Offer financial compensation (although in some circumstances NHS bodies will agree to an ex-gratia payment for relatively small sums)
- Address issues of staff discipline for instance sacking staff or striking off a practitioner (although disciplinary action may result as a consequence of information obtained through complaints investigations).
- Address private treatment unless financed by the NHS.

Is there a time limit for making a complaint?

Your complaint should be made no later than 12 months after the event(s) in question or from the date that you were first made aware of the issues in question. However it is advisable to make your complaint as soon as possible so that your and other people's recollection of events is fresh. NHS organisations do have discretion to consider complaints outside these time limits and can consider aspects such as the duration of your illness.

Where do I start?

Stage 1 : Local Resolution

If you would like your complaint to be dealt with more formally (for example if you would like to receive a written response to your complaint) you should use the NHS Complaints Procedure. The first stage of this is called Local Resolution, where the NHS body or family health service practice is required to investigate and respond to your complaint.

A complaint can be made orally, in writing or electronically. Where a complaint is made orally the healthcare provider to whom the complaint is being made must make a written copy of the complaint and provide a copy of the written record to you. Ideally, we would advise that your complaint is made in writing and addressed to the Chief Executive or, in the case of family health services, the Complaints Manager at the practice concerned. (However, you can now complain directly to the Primary Care Trust for your area). In summary, you should include:

- Who or what you are complaining about.
- Where and when the events happened.
- What you have done already about the complaint.
- What result you want - this can include any issues about clinical matters, which the hospital may be able to offer you help with. For instance, if your fertility has been affected by treatment can the hospital guarantee the provision of fertility treatment or pay for the treatment to be carried out?

What happens next?

The healthcare provider to whom the complaint is directed must provide you with an acknowledgement of your complaint no later than 3 working days after it has been received. At the same time you should also be:

- Offered the opportunity to discuss your complaint
- Advised of the way in which your complaint is going to be investigated
- Be advised of the time period within which the investigation of your complaint is likely to be completed

- When you are likely to receive the response and conclusion to your complaint – if there is likely to be a delay in concluding the investigation and providing you with a response, then you should be notified in writing and given an explanation as to the reason for this.

At the end of the investigation you should receive a formal written response. Sometimes as part of the investigation you may be invited to meetings. Meetings can be very helpful particularly where there are complex medical issues. However you should be well briefed and prepared for such meetings.

After any meeting if the NHS organisation considers that the matter has been adequately addressed, then they should send you a full written response concluding the Local Resolution stage of the complaints procedure. This should also tell you what to do next if you are not satisfied.

At the conclusion of any meeting it is a good idea to remind the Complaints Manager that you wish to have a full written response.

It is open to you to talk over the meeting with the Complaints Manager beforehand and you may wish to consider:-

- What form will the meeting take?
- Who will attend - sometimes complainants do not want to see staff members who have been involved in the incident in question. In other cases you may be disappointed to find that the staff involved, are not available.
- Ask where the meeting will be held and how long it will take. This is important if you are still recovering from an illness as you may not feel able to attend the whole meeting and can tell the Complaints Manager in advance if you have any difficulties with this.
- It is always a good idea to make a succinct list of your questions for any meeting and to give a copy of this to the complaints manager before the meeting – keep a copy to take with you.
- Think about taking a friend, relative or advocate to the meeting for support and to take notes.
- Do not agree with anything at the meeting that you have reservations about.

Helpful Hints

If you make an informal complaint, take the name of the staff member with whom you have lodged the complaint. The date when you complained and what you were told they would be doing to address your complaint.

If you commence legal action or say that this is your definite intention the NHS complaints procedure can be brought to a close. However you are perfectly entitled to take advice from AvMA or a solicitor without affecting your rights.

What happens if I am not happy with the response to my complaint?

If you are not satisfied with the response to your complaint, you have the right to request an **Independent Review** by the Health Service Ombudsman of your complaint. However, an Independent Review is unlikely to be granted if it is considered that more should be done to resolve the complaint at Local Resolution stage.

Obviously the NHS organisation cannot solve all medical problems that you have or turn the clock back to how things were before the events complained of, but they should try and answer all your concerns and try to provide as comprehensive an explanation as possible. If you think that they have not done this, you can ask them to take further steps such as asking for further investigation or examination of the medical records. One option is to ask the hospital to consider obtaining or funding an independent

report from a medical expert which can be very helpful in resolving any dispute about the medical issues relating to your complaint.

You may like to consider:-

- Does the response explain things in a way that you understand? If the reply contains too much medical jargon you can ask for this to be put into layman's language.
- Does it tell you how the investigation was carried out, for instance were the staff involved in the care complained of interviewed?
- Are there any other matters you are still concerned about?

Often the formal response to your complaint will offer a further meeting to clarify any outstanding issues. This can be useful, and may help clarify issues without the formality and delay involved in an Independent Review. However you are not obliged to take this option. It is your right to request an Independent Review at this stage. You and the body also have the option of continuing to try to resolve the complaint locally in writing. If you agree to a meeting, the same principles apply as with earlier meetings during Local Resolution – you will need to clarify what you remain dissatisfied with and why (usually in writing). Following any such meeting, or further correspondence under local resolution, you should be provided with a further formal written response dealing with these issues, **and you still have the right to ask the Ombudsman to investigate.**

Stage 2: Independent Review

Note:

This leaflet applies to the procedure in Wales and Northern Ireland. Please refer to separate leaflets for Independent Review in England and Public Service Ombudsman in Scotland.

You should make a request for an Independent Review either orally but preferably in writing within 28 calendar days of the care provider's written response to your complaint. You should try to abide by this time limit but if it is not possible it is always a good idea to ask the convenor/reviewer to consider your request, particularly if you have a good reason such as trying to obtain other advice.

In Northern Ireland the complaints convenor at your local Health and Social Services Board considers the request for Independent Review. The Convenor has the power to decide what happens to your complaint at this stage. In Wales, requests for an independent review are considered by an independent lay reviewer appointed by the independent review secretariat to your area (see 'contacts').

Important notes:

You will not automatically be granted an Independent Review. You will need to demonstrate why any responses are unsatisfactory and why further local resolution attempts are not appropriate.

You may not be allowed an independent review if you have already started to take legal action, but this should not prevent you taking legal advice and keeping this as an option. However, bear in mind the time limit of three years for commencing legal action.

To consider your complaint a signed statement will be required from you about the aspects of the original complaint that you feel have not been adequately addressed. This should be sent as soon as possible after your request for an Independent Review.

Your statement should include:

- A summary of the events in question.

- Details of the main issues of concern.
- Details of what action has been taken so far.
- Details of the aspects that you remain unhappy with.
- Why you feel that further action under the Local Resolution stage of the complaints procedure is not appropriate.
- Why you think an Independent Review would be helpful.

The convenor/reviewer will try and make a decision about convening a panel within 20 days for NHS trusts or 10 days for Family Health Service Complaints.

Helpful Hints

- It can take some persuasion before the Convener or reviewer agrees to set up an Independent Review, therefore you should not take an initial refusal as absolute.

The options open to the Convenor/reviewer are:

- Refer the complaint back for further investigation under the local Resolution stage.
- Recommend no further action if they feel that the complaint has been fully considered- they must give you full reasons for this and inform you about your right to complain to the Ombudsman.
- Agree to set up an Independent Review panel. The Convenor/reviewer may not consider all the points you raise and they should contact you with what are known as 'the terms of reference' for the panel. These should be sent to you. If you do not agree with the terms of reference, this is the point at which to voice your concerns because once the panel investigation has started you will not be able to ask them to consider matters outside these terms of reference.

In reaching their decision, advice is taken from an independent lay person. If the matter involves clinical matters then advice should be taken from a clinical assessor.

What if my request for an Independent Review is turned down, or I disagree with the decision to refer back for further local resolution?

You have the right to complain to the health service ombudsman (see separate leaflet).

If granted, how will the Independent Review work?

- In Northern Ireland, the panel will comprise of:
 - An independent lay chairman
 - The Convenor who dealt with your request for independent review
- In the case of NHS trusts, a representative of the purchasing body (usually a non executive member of the relevant Primary Care Trust) or an independent lay person

In Wales, the panel will consist of three independent lay people.

The panel is usually advised by at least two independent clinical assessors who are not members of the panel itself. These are appointed from a list approved by the Department of Health. Usually you do not have a right to object to these assessors or suggest an expert yourself. The assessors will not usually have any connection with the treating NHS body and should therefore not know the doctors or staff involved.

With your permission they will have access to your health records as well as information from the complaint. They may also wish to see you or clinically examine you.

Helpful Hints

- You may wish to take someone with you for moral support or to take notes of any questions asked and answers given, or your adviser/advocate if you have one.

Will the Panel wish to see me?

The Lay Chairperson will decide how the panel conducts its review and this may include seeing you and the staff involved in the complaint. This is usually done separately although on occasion a joint meeting may be held: If you think this would be helpful, you should suggest it. This is however, not a formal hearing and although you may bring someone to the meeting with you, you should make sure before the meeting that agreement is sought, if for instance you would like them to speak on your behalf.

Before any meeting ask for any relevant papers that are going to the panel. They may include the Clinical Assessors report: however, the NHS body is not obliged to give you this.

To help you prepare, you may wish to ask the convenor:-

- Who are the members and assessors and how will the panel meet?
- Which staff will be questioned by the panel and whether you will be able to be present?
- Whether anyone else will be asked to give evidence.
- How long the meeting will take?
- Whether or not you or an appointed representative will be allowed to ask questions.
- Who will be responsible for notes and whether you can use a tape recorder.
- What happens when the panel have completed their investigations?

The panel must make a report, setting out the results of its investigations and conclusions. They can also make non binding recommendations on changes in service provision. They cannot however suggest disciplinary proceedings

They may show you a draft report or you can ask for this to check its accuracy.

When the report is finalised you will be sent a full report which may include the full assessor report or extracts. If the panel disagree with the clinical assessor's opinion they must explain in full why this is.

If you are asked to comment on the draft report- respond quickly!

What happens next?

The report will be sent to the Chief Executive of the body involved and also interested parties such as the staff involved. The Chief Executive should then write to you within 20 working days to tell you what action is being taken in relation to the report.

How long will this take?

The review should be completed within **six months** of your request but sometimes they can take longer. As there is a **three year limitation** period for legal action, you should be aware that a delayed report from the Independent Review would not be an admissible reason to go over the legal time limits particularly if you were aware of the limitation period for pursuing legal action before embarking on your complaint.

How do I assess the Independent Review Report?

This may be an appropriate stage in the complaints procedure to seek AvMA's advice – although we would be more than willing to provide guidance at an earlier stage if you feel this would be helpful. Please send copies of all the correspondence relating to your complaint and we will provide you with assistance.

At this stage it can also be very helpful if you have not already done so to ask for copies of your medical records. AvMA would be more than willing to review these for you if you feel it would be helpful in identifying and clarifying relevant medical issues.

Were you allowed to see papers before meetings?

- Some of the questions you may like to consider about the Report are:-
- Were the proceedings open and clear?
- Were you allowed to hear what the other side had to say? If not who told you who was being questioned by the panel and what was said?
- Were you given a chance to ask questions and were these answered clearly?
- Did you feel that the matter has been conducted fairly and impartially?
- Have the terms of reference been adhered to?
- Is the report factually correct?
- Have your views been taken into account?
- Are reasons given?
- Is the Assessors report included, do you know the speciality and qualifications of the assessors?.
- Were they the correct experts for your complaint?
- Is the report clear?
- Are there suggestions for putting things right?

What if I am not happy with the report of the independent review?

If you are unhappy with the Independent Review report, you can complain to the Ombudsman (see separate fact sheet on the health service ombudsman).

CONTACTS:

Wales: Address your request for an independent review to the Independent Review Secretariat. Their details should be given in the formal response to your complaint. For independent help and advice contact your local Community Health Council or AvMA.

Northern Ireland: Address your request for independent review to the 'complaints convenor' of your local Health & Social Services Board. Details are available from the office who dealt with your complaint. For independent help and advice contact your local Health & Social Services Council or AvMA.

AvMA Helpline: 0845 123 23 52 (Mon–Fri 10 am to 5 pm)

AvMA website: www.avma.org.uk (Here you can download or submit a new client form electronically or download other information sheets)

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