

Making a complaint to the NHS in Wales

This self-help guide contains all the information you should need to make a complaint to the NHS in Wales if you are not happy with the treatment that you or a loved one has received.

If you have any further questions, please visit our website where you will find more advice and a range of specialised self-help guides, or call our helpline.

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The **charity** for **patient safety** and **justice**

AvMA is the charity for patient safety and justice. We provide specialist advice and support to people when things go wrong in healthcare and campaign to improve patient safety and justice.

For advice and information visit **www.avma.org.uk**

Or call our helpline
(10am-3.30pm Monday-Friday
Calls cost 0-7p per minute plus your
phone company's access charge)

0845 123 2352



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Putting Things Right

Since April 2011 the NHS Complaints Procedure in Wales has been replaced by a new system called Putting Things Right. A complaint under this new system is defined as a 'concern'. This is when you feel unhappy about any service provided and funded by the NHS which includes treatment funded by the NHS in Wales even if this is provided in England. This may result in you having your concerns investigated, the offer of an apology or improvement of services.

However this process cannot address the following:

- Private healthcare or treatment (including private dental treatment)
- A complaint which was made and investigated under the arrangements that were in place before April 2011

Raising a concern

Where should I start?

If you feel able to do so, in the first instance it is advisable to speak to the staff who were involved in providing your care. This may enable your concerns to be resolved immediately. If this does not resolve your concerns or you do not feel able to speak to the staff, then you can contact a member of the concerns team at the NHS trust or your local health board.

If you need assistance with raising your concern, you may find it helpful to contact your local community health council (CHC). CHC's provide an independent advocacy service which is free of charge.

What is the timescale for raising a concern?

A concern should be raised within 12 months of the incident in question, but ideally as soon after the event as possible, in order that the details are still fresh in your mind. Even if more than 12 months have elapsed, if there are valid reasons for the delay, such as coping with a bereavement or illness, they may still agree to investigate your concerns.

Can I raise a complaint on behalf of someone else?

Yes, but their written permission will normally be required.

What should happen once I have raised my concern?

You should receive an acknowledgement that your concern has been received within 2 working days. You will also be asked whether you have any particular needs and how much involvement you would like. If it is appropriate to access your medical records as part of the investigation process, your consent will be sought. The investigation of your concern will be the responsibility of a senior investigations manager who can also delegate to an authorised person acting on their behalf.

Also as part of the investigation process, it will be decided whether or not additional specialist advice is needed. For example: obtaining an independent medical opinion.

You may be asked if you wish to have a meeting to discuss your concerns.

What should I do if my concern is about a primary care provider?

A primary care provider refers to GP's, dentists, persons providing ophthalmic services and pharmacists who provide services under arrangements with local health boards.

You can either raise your concern with a primary health care provider directly or contact your local health board to investigate your concerns in accordance with the regulations already described. The local health board should contact you within 2 days of receiving your concern, to obtain your consent for them to contact the primary care provider and to find out whether the primary health provider has already responded to your concern.

If you have given your consent and the primary care provider has not already responded, the local health board will decide within 5 working days as to whether it will investigate or if it feels it would be more appropriate for the primary care provider to investigate. If the primary care provider has already responded to your concern, the LHB cannot investigate again.

How long should the investigation take?

In most cases for both concerns relating to NHS trusts and primary care providers, you should receive a final response within 30 days of the date when you first submitted your concern. If they are unable to complete the process within 30 days, then they should keep you informed and advise you as to when you can expect a response.

What if I am not happy with the outcome of the investigation into my concern?

If you are dissatisfied with the outcome to the investigation, you have the right to take your concern to the Public Services Ombudsman.

The Public Services Ombudsman for Wales has legal powers to look into complaints about public services in Wales where you feel you have been treated unfairly or have received an unsatisfactory service due to a failure on the part of that particular service provider. This includes health boards, NHS trusts and GP services. You will normally be expected to make a complaint within 12 months of becoming aware of the problem. However the Ombudsman will take into account time spent on your complaint being initially investigated by the health care provider in question.

Contact details

*You can contact the complaints advice team at the Ombudsman's office on:
Tel: 0845 601 0987*

www.ombudsman-wales.org.uk

What if my concern includes an allegation of medical harm?

If you feel that you have experienced medical harm, further investigations may need to be undertaken as part of the NHS Redress arrangements. If it is determined that there is or may be a qualifying liability (i.e. that there are, or may be grounds for redress) the NHS body should provide you with an interim response within 30 days of first receiving your concern.

Redress and compensation

What is redress?

Redress relates to situations where you may have experienced harm as a result of your treatment. Redress comprises of either one or a combination of all of the following:

- An explanation
- A written apology
- A report on the action which has or will be taken to prevent similar incidents arising in future
- An offer of financial compensation and/or remedial treatment

(Remedial treatment refers to medical treatment which is offered to you in order to try and restore you as near as possible to the position you would have been in had the medical harm not occurred.)

As is the case for pursuing a civil claim for negligence, financial redress can only be considered if it is proven that the NHS body has failed in its duty of care and that that breach in the duty of care has caused the harm. It is only when both these tests are satisfied that payment of compensation will be considered. Financial compensation is conditional that you will not seek to pursue the same redress through further civil proceedings.

Can I seek legal advice?

In accordance with the redress regulations, legal advice without charge will be available, but can only be sought from solicitors with known expertise in clinical negligence and are accredited by the Law Society or AvMA.

What is the maximum amount of compensation that can be claimed?

Under the redress arrangements, the maximum amount of compensation that can be claimed is £25,000. This will be made up of general damages (for pain suffering and loss of amenity) and special damages (monetary loss such as loss of earnings and cost of care and assistance).

What happens next if I decide to accept an offer of compensation?

You should receive a decision about what type of redress will be offered, within 12 months of you first raising your concern. If you have accepted the free legal advice, copies of the offer and all evidence supporting the decision, including an independent medical expert opinion, will also be sent to your legal adviser. If an offer of compensation is made, you have 6 months from the date of the offer to either accept or reject it. If you decide to accept the offer, then you will be prohibited from pursuing a claim through the civil litigation route at a later stage.

Can I still pursue a claim through the civil proceedings route if I decide to reject an offer of compensation under redress or an offer is not made?

You are not bound to accept an offer and an offer does not prohibit you from pursuing a claim through the civil litigation route. However, it is advisable to give serious consideration to this, particularly if your legal adviser considers this to be a reasonable offer. It is important to bear in mind that there are likely to be cost implications if you decide to pursue a claim through the civil proceedings route instead.

If an offer is not made, it is your prerogative to seek alternative legal advice from a solicitor with regards to the viability of pursuing a legal claim through the civil litigation process. This may be helpful to ascertain whether or not the decision of the NHS body was a reasonable one. However, it may be difficult to obtain funding on the basis of the unsupportive evidence which determined the NHS' decision not to make an offer of compensation.

How does this affect the 3 year limitation time limit for pursuing a claim through the civil litigation process?

It is important to note that whilst investigations are being undertaken within the redress process, the three year limitation period for pursuing a claim for compensation through the civil litigation route is frozen. The limitation clock is stopped from the date when you first raised your concern and begins to run again 9 months after you received the decision and if applicable, offer of redress from the NHS provider. This is to enable you time to have the opportunity to seek alternative legal advice with regard to pursuing a claim through the civil litigation route should you decide not to accept an offer under the Redress Arrangements or if an offer is not made.

What should happen if my claim is higher than £25,000?

An offer of compensation under the redress arrangements should not be made if it is considered at the investigation stage that the value of the claim is likely to be more than £25,000. In circumstances where an admission of liability has been made and the financial compensation will exceed £25,000, the NHS trust must write to you advising you that an offer will not be made and the concern will not be investigated under the redress arrangements.

If you do wish to continue to pursue a claim for compensation then you would need to do this via the civil litigation route. If you have taken up the offer of legal advice, the solicitor who is advising you may be able to take on your case. Alternatively, you could contact AvMA or the Law Society for details of specialist clinical negligence solicitors.

Please refer to our information sheet 'Taking Legal Action' for further information on pursuing a claim through the civil litigation route.

Contact details

For further information about *Putting Things Right in Wales* please refer to the Welsh Assembly Government Website at www.wales.nhs.uk

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action *against* medical accidents

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