

Making a complaint to the NHS in Scotland

This self-help guide contains all the information you should need to make a complaint to the NHS in Scotland 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
(03 calls cost no more than calls to geographic numbers (01 or 02) and must be included in inclusive minutes or there can be a cost per minute)*

0345 123 2352

 Freedman House,
Christopher Wren Yard,
117 High Street,
Croydon CR0 1QG

 www.facebook.com/AvMAuk

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 bit.ly/AvMAYouTube

Registered charity in England & Wales
(299123) and Scotland (SCO39683)

Your right to complain

In Scotland, your right to complain is covered by the Charter of Patient Rights and Responsibilities.

The Charter explains your rights to:

- Give feedback, make comments, or raise concerns or complaints about the healthcare you receive
- Be told the outcome of any investigation into your concerns or complaints
- Have independent advice and support when providing feedback
- Take your complaint to the Scottish Public Services Ombudsman (SPSO)

Further information

The *Charter of Patient Rights and Responsibilities* is available on the NHS Inform website:

www.gov.scot/publications/charter-patient-rights-responsibilities-revised-june-2022/documents/

When to complain

You should normally complain as soon as possible. This way, everyone's recollection of events is fresh.

Usually complaints should be made within six months either from when the events you are complaining about happened or from when you found out that there was something to complain about (as long as this is not more than one year after the incident).

It can sometimes be possible to complain after this if the feedback and complaints officer of your local health board agrees. This would usually be if grief or trauma led to the delay in the complaint.

Who can complain?

- A patient or former patient
- Any appropriate person on behalf of a patient who has died or lacks capacity
This could be, for example, their next of kin or their agent. The provider will have to agree that this is a suitable representative

- An appropriate person on behalf of an existing or former patient
This could be the patient's parent, carer, guardian, an MP, MSP or local counsellor, advocate or an independent advice and support organisation

When a person other than the patient or authorised agent is intending to make the complaint it is important to note that they must be able to demonstrate that they have obtained consent from the patient, which would normally need to be in writing.

What can be complained about

Matters which can or cannot usually be pursued by the NHS complaints procedure in Scotland

Issues that can be complained about

- NHS care provided by:
 - Hospitals and care centres
 - Family health services
This can include GPs, dentists, opticians and community pharmacists
 - Community services that provide healthcare
This can include community nurses, community dentists, physiotherapists, dieticians and health visitors
 - Private hospitals or care homes where the patient is funded by the NHS
- NHS funded catering, domestic and environmental matters
- Public health issues
This may include the management of major incidents or outbreaks where the individual has been adversely affected
- Any NHS-funded care

Cases where AvMA could offer assistance

- Complaints about care and treatment where there has been a lapse in patient safety and harm may have been caused.

Issues that can't usually be complained about

- Requests for compensation alone
- Events where legal action for a clinical negligence claim is already being pursued
- First requests for treatment
- Private healthcare not funded by the NHS

- Allegations of current wrongful detention under the Mental Health (Scotland) Act 1984 and Criminal Procedure (Scotland) Act 1995

This is a matter for the Mental Welfare Commission. However, complaints about past detentions which are now over can be investigated by the Scottish Public Services Ombudsman ([see page 7](#)).

Further information

*Mental Welfare Commission for Scotland
Thistle House, 91 Haymarket Terrace, Edinburgh, EH12 5HE
0800 389 6809*

enquiries@mwscot.org.uk

www.mwscot.org.uk

- Requests for disciplinary proceedings against individual members of staff

Further information

Please see our self-help guides [Health professionals fitness to practise](#) and [Raising concerns about doctors](#):

www.avma.org.uk/guides

Stage 1: Frontline resolution

Since April 2017, the NHS in Scotland aims to deal with more straightforward complaints within five days. This is known as frontline resolution.

Areas covered include:

- Delays being seen in A&E or at your GP
- Staff rudeness and poor attitude
- Not being listened to
- Not receiving full information about treatment or medication in a way that you can understand

Who can I complain to?

- Directly to the provider
This may be a GP practice, NHS dentist or hospital

- To the NHS board
If you do not wish to deal directly with the provider: if your complaint involves more than one NHS provider (such as a GP and a hospital or more than one hospital) the NHS board can enable a co-ordinated investigation and response

If you have a concern about health or social care issues, you can complain to any member of staff or ask to speak to the the Feedback and Complaints Officer for the NHS organisation involved. If you are still at the premises you can raise your concerns to the GP, nurse or other health professional you are dealing with, such as a physiotherapist. They may be able to resolve the complaint immediately and offer an apology. If the health professional is not available, you can ask to speak to a senior member of staff or the GP practice manager.

If you have left the premises you can telephone, write or email details of your complaint. You can also contact the feedback and complaints team at the relevant NHS board. Complaints about Scottish Ambulance Service, NHS 24, Golden Jubilee National Hospital and the State Hospital should be made direct.

Complaints about social care

If your complaint involves social care as well as NHS care, your complaint may be dealt with under the social care complaints system. This is very similar to the NHS complaints system and your rights are the same.

Under the Public Bodies (Joint Working) Act 2014, in Scotland there are moves to integrate social and healthcare services. You should be able to find out if the service you want to complain about is integrated by contacting the complaints department of the NHS board. If the service is integrated the NHS complaints team should accept the complaint and work with the health and social care partnership to resolve the complaint.

Further information

You can find your local NHS Board at:

www.scot.nhs.uk/organisations

Specific contact details for complaints can be found at:

www.nhsinform.scot/care-support-and-rights/health-rights/feedback-and-complaints/feedback-complaints-and-your-rights/

What to include in a complaint letter

- Who or what you are complaining about
- Where and when the events happened
- What you have done already about the complaint
- Any particular outcomes or actions you are looking for from your complaint such as an explanation and apology or for some specific outcome such as an appointment date

You can see a sample complaint letter on our website at

www.avma.org.uk/guides.

Always keep a copy of your complaint.

NOTE ON LEGAL ACTION: The NHS complaints procedure can be brought to a halt if you indicate that you intend to take legal action. Even if you think you will take legal action, it may be in your interests not to disclose this. There is nothing to prevent you taking legal advice.

What happens next?

The provider will consider if the matter is a complaint and if the issues are relatively straightforward and can be resolved with little or no investigation. If so, your case will be dealt with under frontline resolution. The provider then has five days to review the complaint.

In exceptional circumstances this can be extended by senior staff to 10 days. You should be asked to agree to such an extension, but if you do not agree to an extension that is unavoidable and reasonable, a senior manager can still decide upon an extension. In those circumstances, they will tell you about the delay and explain the reason for the decision to grant the extension.

The provider should tell you the outcome of their investigation and offer an appropriate apology and explanation. They should also explain what is to be done to prevent recurrence of the incident. This can be done face to face, by telephone or email. The provider does not have to write to you formally but may choose to do so.

Stage 2: Investigation

This is the complaints handling process for cases which have not been resolved at the frontline stage or where the complaint is complex, serious or 'high risk'.

When will stage 2 be triggered?

- If frontline resolution has been attempted but you remain dissatisfied and request an investigation; this may happen immediately after the frontline stage decision or sometime later
- If you refuse to take part in frontline resolution
- If the issues raised are complex and require detailed investigation
- If the complaint relates to serious, high-risk or high-profile issues

High-risk or high-profile issues

A high-risk or high-profile issue is likely to be one which:

- involves a death or terminal illness
- involves serious service failure; for example, major delays in providing, or repeated failures to provide, a service
- generates significant and ongoing press interest
- poses a serious risk to an organisation's operations
- presents issues of a highly sensitive nature; for example, concerning:
 - a particularly vulnerable person
 - child protection

Your complaint can be made in writing, by email, by telephone or face to face. If it involves complex medical issues, it is probably best to write a letter setting out your complaint and the resolution you are seeking.

You can see a sample complaint letter on our website at www.avma.org.uk/guides.

Always keep a copy of your complaint.

What happens next?

Once the provider receives your complaint, they should acknowledge this within three working days.

The investigating officer may wish to contact you to discuss the scope of their investigation and to see whether the resolution you are seeking is achievable and realistic. They may ask you for additional information needed to investigate the complaint and should explain if they are going to seek such additional information.

At this point they may offer you a meeting or telephone call to discuss the complaint. **You do not have to agree to this.**

If you do agree to a meeting, you can be accompanied by a friend, family member or a representative from an organisation such as the Patient Advice and Support Service (PASS – [see page 7](#)).

It can be a good idea to have someone to take notes on your behalf. If the NHS provider records the meeting, you can ask for a copy.

Mediation

Mediation is a service where independent mediators help the relevant parties to reach an agreement.

You can request, or health boards may offer, to provide this service. Both parties must agree to take part before this can go ahead.

You can get help finding mediation services in your area by asking the Feedback and Complaints Officer at your local health board.

Outcomes to your complaint

You should receive a full response to your complaint, by your preferred method of communication, within 20 working days.

The response should:

- Give the result of the investigation
- Confirm that all relevant issues have been addressed and a thorough and fair investigation has been carried out
- Respond to all points that have been raised in the investigation

- Offer an apology where something has gone wrong
- Explain any action that has or will be taken to prevent similar situations in the future
- Explain why no further action can or will be taken, if relevant
- Offer you the opportunity to discuss any issues you do not understand or wish to seek further clarification on with a named member of staff
- Explain to you who you need to contact if you are not satisfied with the outcome of the complaints procedure
- Give you details of the Scottish Public Services Ombudsman and time limits for taking further action

What if I am not satisfied with the outcome of my complaint?

If you are not satisfied with the outcome but think that the provider could still put things right, you should respond setting out what you are unhappy with and how you think it could be resolved.

If you do not think your concerns can be settled by the provider you can contact the Scottish Public Services Ombudsman.

Patient Advice and Support Service (PASS)

The Patient Advice and Support Service (PASS) can help you with your complaint. The service is delivered by the Scottish Citizens Advice Bureau and provides free, accessible and confidential information, advice and support to patients, their carers and families about NHS healthcare.

PASS can:

- Help you understand your rights and responsibilities as a patient
- Help you to give feedback or comments, raise concerns or make complaints about the treatment you have received from the NHS
- Support you if you are going to a meeting
- Help you write letters and make phonecalls
- Help you access your medical records
- Help you access the treatment, care and support you need
- Work with the NHS in Scotland to improve healthcare provision – work that can be done because of the feedback you provide

Further information

0800 917 2127

www.cas.org.uk/pass

Stage 3: Scottish Public Services Ombudsman

If you are dissatisfied with the response that you have received at the local resolution stage of the NHS complaints procedure, then you can contact the Scottish Public Services Ombudsman.

Before you approach the Ombudsman you must have completed the local resolution complaints process.

You will need to put your complaint in writing and include copies of all correspondence from the local resolution stage of your complaint. If you have difficulty in putting your complaint in writing, you can ring the Ombudsman's office to talk about your complaint and they may be able to recommend someone who can help you put your complaint in writing.

Your complaint should be made to the Ombudsman within 12 months of the events/incident in question occurring or within 12 months of you becoming aware that there were grounds for complaint.

What the Ombudsman can investigate

Complaints about the NHS where injustice or hardship has been caused by:

- Administrative failure
- Failure to provide a service
- Failure in a service provided
- Unwillingness to treat the complainant as a person with rights
- Faulty procedures or failing to follow correct procedures
- Ignoring guidance

What happens next?

Once the Ombudsman's office has received your complaint you should receive an acknowledgement within three working days.

Within 20 days you should receive one of three possible responses:

- Confirmation that further action **will not** be taken and an explanation of how this decision was reached
- Confirmation that further action **will** be taken and an explanation of how the Ombudsman intends to proceed
- A request for further information from you so that the Ombudsman can reach a decision (e.g. copies of relevant medical records)

If a final decision has not been reached within a further 20 days, you should receive an explanation of the delay and details of what further action is being taken.

The time taken to reach a decision can vary widely from case to case, particularly if the Ombudsman needs to obtain further information or seek professional advice. You should be informed regularly about progress in the case.

Possible outcomes

Following the investigation of a complaint by the Ombudsman, where considered appropriate the following outcomes may be achieved:

- An apology and/or an explanation
- Changes to procedure
- Changes to policy
- Staff guidance/training
- Feedback about any changes made

Scottish Public Services Ombudsman

4 Melville Street, Edinburgh, EH3 7NS

Post: Freepost SPSO

(this is all you need to write on the envelope, and you don't need to use a stamp)

0800 377 7330 or 0131 225 5300

www.spsso.org.uk/complain/form/start

Other possible redress

Judicial review

In some cases it may be appropriate to use the judicial review procedure, particularly if you urgently need to challenge the way in which the NHS has made a decision which affects you (e.g. not to provide certain treatment).

The Court of Session in Edinburgh can:

- Look at how the decision was made on a procedural basis – it is not, however, an appeals process and cannot change or reverse the actual decision
- Check that the NHS did not abuse its powers
- Check that the NHS acted properly and lawfully

Judicial review is a remedy of last resort and is only very rarely applicable to NHS complaints.

You will need specialised advice from a solicitor on whether there are grounds to apply for judicial review. You will also need to decide whether it is worthwhile becoming involved in what can be an expensive and complex legal procedure.

An application must be made to the court within three months of the decision or action being taken or three months from the impact of the decision.

Compensation

A legal claim for clinical negligence can only result in compensation. If you are looking for other remedies, such as changes in how things are done at the hospital, you need to look at other redress such as a complaint. To be successful in a legal claim there are two strands of the case; negligence and causation. You must succeed in both:

- **Negligence:**
Whether the clinician has been proved guilty of such failure as no doctor of ordinary skill would be guilty of if acting with ordinary care.
- **Causation:**
The breach of duty or negligence of the clinician resulted in an injury to you.

Limitation (time limits)

You must start your legal claim within three years from when the incident occurred or when you first realised you had suffered an injury.

As a solicitor will need to obtain medical reports and assess any claim, you should seek legal advice well before this three years period expires. We recommend that if you are not happy with the outcome of an NHS complaint, you should seek legal advice as soon as possible.

Further information

If you are considering a possible claim for compensation (clinical negligence) you can find advice and information on how to proceed in our self-help guide:

Legal action/claiming compensation in Scotland

www.avma.org.uk/guides

To find solicitors in Scotland for advice about clinical negligence claims or judicial review, please visit our **Find a Solicitor** resource:

www.avma.org.uk/find-a-solicitor

Be part of the movement for
better patient safety and justice

Become a
Friend of AvMA
today



You can help make healthcare safer and fairer for all

AvMA wants to build on the support we enjoy from people all round the country who share our passion for making healthcare safer and fairer for those who do suffer harm.

By signing up to be a Friend of AvMA you will belong to a growing movement for change. Join injured patients and their families, healthcare professionals, lawyers and many more who share our goals.

Becoming a Friend of AvMA costs from as little as £5 a month.

£5/month could provide vital advice to patients and families via our helpline

£10/month could help train a volunteer helpline advisor

£50/month could help support a family through an inquest hearing

Benefits of membership

- Regular newsletter keeping you up-to-date with our work
- Invitations to special events
- Share your thoughts on our work and policy issues

Your help could make a real difference to patient safety in the UK

Please sign up today at www.avma.org.uk/friends

avma
action *against* medical accidents

The **charity** for
patient safety and justice

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