

Independent review by the Parliamentary and Health Service Ombudsman (PHSO)

If you have tried local resolution and are not happy with the result, or if the investigation has taken over six months, you can ask for an independent review by the Ombudsman. Please note that throughout this leaflet we use the term Ombudsman which also refers to the PHSO.

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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



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(299123) and Scotland (SCO39683)

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You must go through the NHS Complaint (local resolution) stage first, the Ombudsman will not consider your complaint until you do.

If you have been through the NHS complaints process (local resolution stage) are not satisfied with the final response to your NHS complaint, you have the right to request an independent review of your complaint by the Parliamentary and Health Service Ombudsman (Ombudsman). However, an independent review is unlikely to be granted if the Ombudsman considers that more should be done to resolve the complaint at local resolution stage.

You should try to request a review within 12 months of the incident occurring or when you first became aware that something had gone wrong. If this isn't possible, you can ask the Ombudsman to consider your request, particularly if you have a good reason for the delay such as trying to obtain other advice.

When you contact the Ombudsman you should include:

- A summary of what happened
- Details of the main issues, action taken so far and why you are not satisfied
- Why you feel that further action under local resolution would not resolve things
- Why you think an independent review would be helpful

You can use the Ombudsman's own forms to submit your complaint if you wish. The Ombudsman can be contacted at:

Parliamentary and Health Service Ombudsman

Millbank Tower, Millbank, London SW1P 4Q

Helpline: 0345 015 4033 (Choose option 3)

Email: feedbackaboutus@ombudsman.org.uk

www.ombudsman.org.uk

How will my complaint be dealt with?

Each case will be looked at individually. The Ombudsman will examine the issues that have been raised and how the complaint has been handled at local level. Where appropriate the Ombudsman will take clinical advice and then decide.

Around 80% of cases are dealt with within 40 working days. However, some cases will take longer depending upon the circumstances and complexity of the complaint.

PHSO time limits to review complaints

Usually, once your case has been received by the Ombudsman, they aim to contact you within five days. However, because of pressures on public services brought about by the Coronavirus pandemic the Ombudsman has experienced considerable delay in reviewing complaints. As of April 2021, they had over 3,000 complaints waiting to be looked at. To manage this caseload, the Ombudsman has focused on the more serious complaints about health services, including cases where people have faced a significant impact and where the Ombudsman can make the biggest difference.

For other complaints where someone has faced less of an impact, the Ombudsman will consider whether there is anything they can do to help resolve things quickly, if not, they will close the complaint. The Ombudsman remains committed to examining all complaints brought to them.

If a complaint can be resolved quickly, the Ombudsman will resolve it, but if it cannot and the impact is relatively limited, they will not consider that complaint any further. The Ombudsman will contact complainants by phone or letter to explain their decision.

The Ombudsman continues to log all complaints they receive about NHS funded services so that if they receive a similar complaint about the same organisation or see a pattern from a number of complaints, they may be able to raise this with the organisation in future.

Does the Ombudsman accept all cases?

The Ombudsman does not accept all cases for review. They are more likely to consider cases where there was:

- A potentially avoidable death where serious service failures may have affected survival
- Wider public interest issues raised by the complaint
- Serious service failure
- Since the coronavirus pandemic the Ombudsman is focused at looking at more serious complaints about health services, including cases where people have faced a significant impact and where the Ombudsman can make the biggest difference.

The Ombudsman is more likely to review your case if you can show that a mistake or poor service which has had a negative effect on you has not yet been put right; for example, if the NHS has not taken any action to prevent the same problem happening again.

If the Ombudsman does not accept the case for review, you can make a complaint or ask for further information to be considered.

Can litigation and the PHSO investigation run along side each other?

The short answer is yes. However, the issue under investigation by PHSO must not be covered by the litigation. The Ombudsman will not duplicate an existing investigation. For example, the PHSO may undertake an investigation into how the original complaint was handled while litigation is running as the court will not look at complaint handling. The PHSO will not explore the issue of whether treatment provided was negligent while litigation is running as this will be a core consideration for the court. If the PHSO investigated this as well as the court, it would simply be duplicating the investigation.

Historically there has been some confusion over this. On **20th March 2014** DH published a clarification note in their Clinical Commissioning Group bulletin which says: *“Where the complainant is taking, or plans to take legal proceedings, a complaint may only be put on hold where there are exceptional reasons to justify it, or the complainant has requested that investigation be delayed”*. The link to this bulletin can be found here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/314769/Complaints_litigation_clarification_note_March_2014.pdf

There is no definition of what amounts to an “exceptional reason” but it is understood that formal requests by the coroner, police or judge to halt the complaint investigation would likely count as an exceptional reason

Your case may be turned down if you are taking or considering legal action for compensation and the Ombudsman feels the legal action could provide the answers you are after. However, you do not have to tell the Ombudsman whether you are considering legal action.

Even if you are pursuing legal action this should not delay or prevent the investigation if you are looking for something other than compensation from the Ombudsman.

You should emphasise any issues which would not be resolved by legal means. This could include ensuring that similar incidents do not happen again or improving policies and procedures.

What can the Ombudsman do?

If the Ombudsman finds your complaint to be justified, it will seek an apology or other remedy for you. This may include calling for changes to prevent such an incident happening again or reviewing procedures.

The Ombudsman can recommend compensation for inconvenience, distress and expenses incurred. However, this is not designed to replace the legal process for claiming compensation for clinical negligence. If you are seeking a large amount of compensation it may be necessary to take legal action.

What happens if I am unhappy with the Ombudsman’s response to my complaint?

If you have a problem with how the Ombudsman is handling your complaint you should first raise your concerns with the person handling the investigation or by calling their helpline.

If you are unhappy about the Ombudsman’s decision you can ask for a review by a special team who consider complaints about the Ombudsman. You will need to provide reasons for this, such as:

- **Incorrect information**
The Ombudsman’s decision was based on inaccurate facts and the correct facts could change their decision
- **New information**
You have new and relevant information that was not previously available, and which might change their decision
- **Overlooked or misunderstood information**
The Ombudsman overlooked or misunderstood parts of your complaint or did not take account of relevant information which, if properly considered, could change their decision.

You should contact the Ombudsman with your complaint within three months of when you were sent their decision on your original complaint.

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Once the Ombudsman has confirmed its decision, it is the end of the NHS complaints procedure. If you still strongly disagree with its decision the only way to challenge it is via judicial review proceedings. For more information on bringing judicial review please see our leaflet: www.avma.org.uk/wp-content/uploads/Judicial-review.pdf.

Can the Ombudsman award compensation?

The Ombudsman can award compensation for inconvenience, distress, and expenses incurred. However, this is not designed to replace the legal process for claiming compensation for clinical negligence. If you are seeking a large amount of compensation, it may be necessary to take legal action.

In deciding what to recommend, the Ombudsman looks to put the person affected back into a position they would have been had there not been a negative impact on them. If this is not possible, for example where the injustice is distress or unnecessary pain, the Ombudsman may suggest a financial payment to the complainant instead.

When suggesting financial payments, the Ombudsman relies on previous payments recommended as part of their casework, they also refer to their severity of injustice scale to help them identify how much ought to be paid. The Injustice Scale has been created by the Ombudsman for this purpose, it does not necessarily reflect the level of awards which would be made by the court, although the Ombudsman will consider financial awards made by the court.

The Injustice scale contains six different levels of injustice that a complaint could fall into, which increase in severity. Each level is then linked to a range of the financial amounts they usually recommend in those circumstances. For further information see the Ombudsman's guidance on financial remedy www.ombudsman.org.uk/sites/default/files/Our-guidance-on-financial-remedy-1.pdf look for the subheading entitled "*Our scale*".

Further information

Please see our self-help guides:

Legal action:

www.avma.org.uk/wp-content/uploads/Legal-action-England.pdf

and claiming compensation:

www.avma.org.uk/wp-content/uploads/Compensation.pdf.

You can contact AvMA if you need support dealing with the Ombudsman: www.avma.org.uk/help-advice or call our helpline.

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

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patient safety and justice

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