

The Ombudsman's Clinical Standard

Foreword from the Ombudsman

At the Parliamentary & Health Service Ombudsman (PHSO), we make final decisions on unresolved complaints about the NHS in England, UK government departments and other UK public organisations.

When we consider complaints about NHS clinical care and treatment, we aim to establish what would have been good clinical care and treatment in the situation complained about and whether what actually happened fell short of that.

Setting the Clinical Standard

As the Ombudsman, I have been given the power by Parliament to set my own standard to support decisions on whether there has been service failure in the exercise of clinical judgement or practice in the NHS. By publishing this Clinical Standard, my aim is to give clarity and predictability to all parties about how we consider the appropriateness of the clinical care and treatment in the complaints we investigate.

There are many factors in combination that can contribute to service failure, putting patients at risk of harm or poor care outcomes. Some of these factors may relate to the decisions and actions of individual health professionals, and others to how the local service is designed and delivered.

When we look at a case, we begin our scrutiny of the health service that has been complained about with the expectation that good clinical care and treatment can be demonstrated by reference to standards or guidance. Good care and treatment will incorporate professional and health service standards and guidance and may incorporate the most up-to-date scientific evidence, for example, regarding the effectiveness of treatments. Where there are no established standards or guidance, we will expect to see a rationale or justification for the care or treatment provided.

A unique place in the constitutional landscape

The Ombudsman service has a unique place in the constitutional landscape and we play an important role in administrative justice. We do not provide a substitute for the legal remedies available in the courts – we bring something different.

People come to us seeking outcomes that go beyond the financial remedies available through the courts. They want to find out what happened, why it happened and to be reassured that a similar adverse event could not happen to anyone else. Parliament recognises this and has given us wide powers to decide how we investigate each case. This context means that we use inquisitorial processes rather than the adversarial approach the courts take.

The Ombudsman's Clinical Standard that I have adopted is different from the legal standard used by the courts in clinical negligence. I considered adopting the standard used by the courts and decided against this. Not only is our constitutional place in the legal landscape different, but I also believe that having an approach that focuses on standards and guidance will support my aim to drive improvements in public services. In some cases, applying my Clinical Standard to the circumstances of the complaint will produce a similar outcome to the courts' clinical negligence standard. In some cases, it will be more rigorous.

Driving improvements in public services

I am keen that our approach to considering good clinical care and treatment can be readily understood by those who engage with PHSO. It is for this reason that we built our new Clinical Standard around the standards and guidance used by NHS staff and clinicians themselves.

In turn, I believe that the Clinical Standard will support my aspiration to help improve how the public sector responds when things go wrong, and therefore lead to a reduction in the numbers of complaints that come to PHSO.

Rob Behrens, CBE
Parliamentary & Health Service Ombudsman

The Ombudsman's Clinical Standard

1. When we are considering complaints about clinical care and treatment we consider whether there has been “good clinical care and treatment”. We aim to establish what would have been good clinical care and treatment in the situation complained about and to decide whether the care and treatment complained about fell short of that.
2. We will seek to establish what constituted good clinical care and treatment on the facts of the case by reference to a range of material, including relevant standards or guidance, the accounts of the complainant and the clinician or organisation complained about and any other relevant records and information.
3. Relevant standards or guidance we may consider include National Institute for Health and Care Excellence guidance, clinical pathways, professional regulators’ Codes of Practice and guidance, guidance from Royal Colleges, local protocols or policies, and published research including clinical text books or research reported in peer review journal articles.
4. In deciding whether a standard or guidance was relevant in the situation complained about we will consider factors such as whether it was in place at the time of the events complained about and whether it was applicable to the care and treatment the person received and to the setting in which the care and treatment took place.
5. We will ask the clinician or organisation complained about to tell us what if any standards or guidance they based their practice on, whether they followed them or departed from them in the situation complained about and why. If there is a relevant standard or guidance and the clinical decisions, actions and judgements do not appear to have been in line with it, we will consider what evidence there may be to explain this. We will reach a decision about whether there has been good clinical care and treatment. In doing so we will consider the explanations of those complained about and balance them against the relevant standards or guidance.
6. We will also consider the ‘Principles of Good Administration’ insofar as they apply to the clinical context.

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