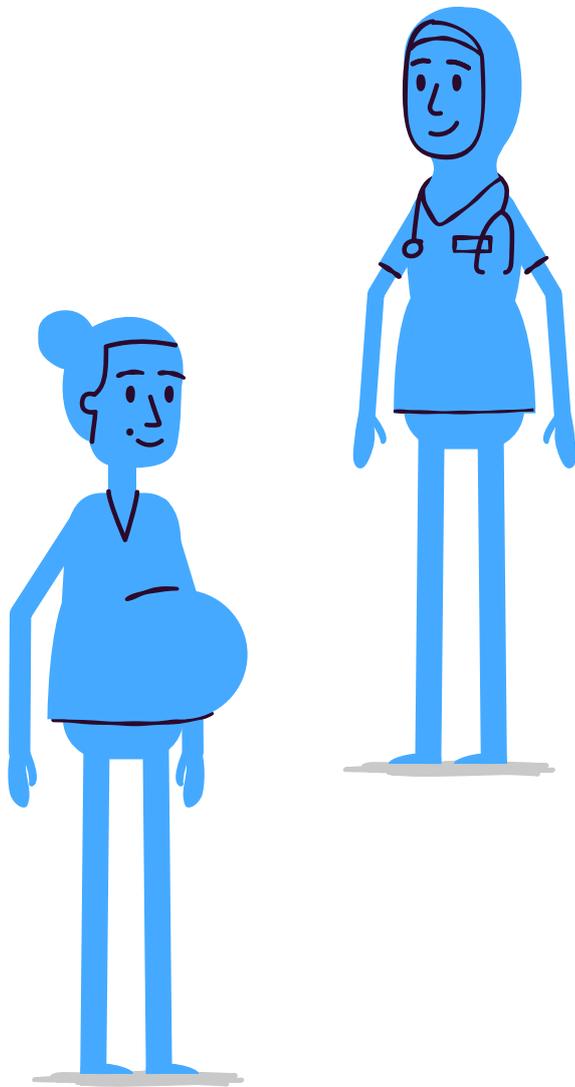


# Complaints and other procedures



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# Welcome to this guide

This guide is one of the Good complaint handling series. These are designed to help you implement and deliver the expectations in the [NHS Complaint Standards](#).

This guide will help you decide what to do when you're considering a complaint where:

- you identify that another procedure or review, such as a patient safety investigation is taking place, or should be
- you identify that a legal claim is planned or ongoing, or an inquest will take place
- you think that local disciplinary procedures might be needed
- the person making the complaint raises issues about an individual healthcare professional that suggests there are concerns about their fitness to practise
- you think your organisation should consider referring someone to their regulator.

## What this guide is not

The guide does not cover, or replace, guidance on how regulators of health professionals carry out their work (such as a fitness to practise investigation or regulatory inspection). Nor does it cover how to take forward serious patient safety issues (which may need an early intervention by an individual practitioner's regulator. For advice on these issues, speak to the relevant regulator.

Read this guide alongside the [Model Complaint Handling Procedure](#). You can find guides on related topics on our [website](#).

# What standards and regulations are relevant to this guide?

- The **Complaints Standards** set out expectations to help you deliver good complaint handling in your organisation.
- Other relevant guidance includes **Care Quality Commission guidance of duty of candour** and NHS England's **Serious Incident Framework**.

## What the Complaint Standards say

### Welcoming complaints in a positive way

Organisations make sure staff are able to identify when issues raised in a complaint are likely to be addressed (or are being addressed) via another route, so a co-ordinated approach can be taken. Other possible routes include inquest processes, a local disciplinary process, legal claims or referrals to regulators. Staff know when and how to seek guidance and support from colleagues and are able to provide people with information on where they can get support.

In March 2014 the Department of Health and Social Care issued a clarification note for complaints cases subject to litigation, inquests and other serious investigations. This says that where there is to be an inquest, or if a complainant expresses an intention to take legal proceedings or has started legal proceedings, an NHS body should continue to try to resolve the complaint quickly unless there are compelling legal reasons not to do so.

### What other guidance says

#### Duty of candour

The Care Quality Commission's [guidance](#) on the duty of candour says that organisations should give people going through the procedure information about 'available impartial advocacy and support services, their local Healthwatch and other relevant support groups, for example Cruse Bereavement Services ([www.cruse.org.uk](http://www.cruse.org.uk)) and Action against Medical Accidents ([www.avma.org.uk](http://www.avma.org.uk))'.

#### Serious incident investigations

NHS Improvement's Serious Incident Framework recommends that patients and families involved in investigations are made aware of independent advice and advocacy services, including the national charity Action against Medical Accidents.

#### Health and social care professional regulators

Each regulator has its own specific legislation and fitness to practise rules. They will apply these, and the appropriate thresholds, in deciding whether to instigate a fitness to practise investigation.

## DHSC clarification

In March 2014 the Department of Health and Social Care issued a clarification note for complaints cases subject to litigation, inquests and other serious investigations. The note refers to cases where an inquest is due to take place or where a complainant intends to start, or has started, legal proceedings. In these cases, it says that an NHS body should continue to try to resolve the complaint quickly unless there are compelling legal reasons not to do so.

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### Find out more

To find out more, go to the relevant website or contact the regulator for further information.

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# What you need to do

This section sets out how to address complaints in several different circumstances.

## Complaints that overlap with other investigations or reviews

Everyone has the right to make a complaint and to have it investigated and responded to in a full and timely manner. This is true regardless of any other reviews or investigations that are taking place into an incident or death.

When you are considering a complaint, sometimes new information will emerge that you need to act on. For example:

### If you identify that another process should take place, such as a patient safety investigation



In this case, you need to discuss the matter with relevant colleagues and agree how best to work together.

### If you discover that the issues you are considering overlap with issues already being investigated or reviewed elsewhere



In this case, you need to ask the person making the complaint what concerns and questions they have. If possible, work with colleagues to incorporate these into their investigation or review, to provide a comprehensive response that meets the needs of both processes.



Make sure the person making the complaint has a single point of contact who can keep them updated and informed about both processes. Always signpost them to independent advocacy and advice, to support them through the process.



**Find out more**

[Advocacy guide](#)

## Complaints where a legal claim or inquest is planned or ongoing

Anyone handling a complaint must follow the NHS Complaints Regulations 2009. If the person making the complaint is also taking or considering taking legal action, it's important not to treat them differently or make them feel uncomfortable. Normal good practice and requirements such as the duty of candour still apply.

If a legal claim is planned or ongoing, or if there will be an inquest and the person wants to make a complaint too, this should not affect the way you investigate and respond to the complaint.

There are just two exceptions to this:

- if the individual requests – or agrees to – a delay
- if the police, a coroner or a judge formally request a pause in the complaint process.

In these cases, you need to put the complaint investigation on hold until those processes conclude.

If your organisation decides to put a complaint on hold against the wishes of the person making the complaint, you need to do the following:

-  Make sure your organisation's 'responsible person' has been involved in the decision to pause the complaint in these circumstances.
-  Inform the person making the complaint as soon as possible.
-  Set out fully (in writing, unless requested not to) the reasons why.
-  Explain that they can appeal to the Parliamentary and Health Service Ombudsman if they feel this is unreasonable.



#### **Find out more**

See guidance on referring to the Ombudsman.

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### **Complaints where you identify a potential legal claim**

During the course of considering the complaint, you may identify a potentially serious failing or impact. If this happens, you need to consider whether the person could have a legal claim.

The complaints process is not designed to determine legal liability, nor to provide compensation that might be awarded by a court. However, when your organisation is resolving a complaint, you can make a payment that acknowledges someone's pain, distress or inconvenience.

Even if you identify a potential legal claim during the course of your investigation, you should still be able to offer a financial remedy as part of your response to the complaint without the need for legal action.

-  If this happens, discuss the matter with your legal team or defence organisation and NHS Resolution.



### Find out more

See [the joint NHS Resolution/Ombudsman guidance](#) on resolving NHS complaints and claims.

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If the person making the complaint says they are seeking compensation or would like to do so, signpost them to independent advice from an organisation such as [Action against Medical Accidents \(AvMA\)](#) or from solicitors specialising in the relevant field.

### Complaints where local disciplinary procedures might be needed

The complaints procedure itself is not a disciplinary procedure. However, as you consider or investigate the complaint you may identify issues that require a member of staff to be subject to remedial or disciplinary procedures.



If this happens, discuss the situation with relevant colleagues.



If the complaint includes those issues, advise the person making the complaint, in broad terms, that this is happening.



Take legal advice about how much information you are allowed to disclose.

If a case is serious, an employer may decide to take its own disciplinary action against a health or social care professional, regardless of whether they are referring the issue to a regulator.



If your organisation is considering doing this, talk to NHS Resolution's [Practitioner Performance Advice Service](#) first.

## Complaints that may involve referring to a regulator

### What regulators do

Regulators of health and social care professionals look into serious concerns about individual practitioners who are required, by law, to be registered with them (registrants).

Regulators do not aim to punish registrants for past mistakes or provide an avenue for financial redress. Their main goals are:

- to ensure patient safety
- to protect patients
- to maintain the public's confidence in the professions and healthcare system.

### Examples of serious concerns

- Serious or repeated mistakes in patient care
- Failure to respond reasonably to patient needs (such as not referring someone for further investigations where necessary)
- Violence, sexual assault or indecency
- Fraud or dishonesty
- A serious criminal offence
- Abuse of professional position (for example, having an improper sexual relationship with a patient)
- Discriminating against patients, colleagues or others
- Bullying or harassment of colleagues, patients or others
- Serious breaches of patient confidentiality
- Knowledge of English that is so poor as to impair the person's work
- Physical or mental health problems that may impair the person's work

### When should I refer a case to a regulator?

Like anyone, healthcare professionals can make mistakes at work and their regulator is not there to punish them. However, if there are concerns about a health professional's fitness to practise and an immediate or serious potential risk to patient safety or public confidence in the profession, you should make a referral to their regulator.



If there are serious concerns about an individual healthcare professional, consider referring the case to their regulator.

Anyone using health and care services who has a complaint is encouraged initially to seek local resolution. This is because individual complaints are best resolved by the practitioner or service in question. It is in no one's interest to refer a complaint to a regulator if it does not meet their threshold for an investigation.

An isolated incident may not, in itself, amount to a fitness to practise issue that would require a regulator to get involved. Nevertheless, an occasional or one-off mistake, or an incident of poor care, may be very concerning and upsetting for a member of the public.



Your organisation should immediately and thoroughly investigate these mistakes and, where possible, take steps to put things right.

A regulator will be interested in a complaint that is:

- serious
- indicates a persistent failure to adhere to principles of good practice
- may raise a question as to the individual registrant's fitness to practise.

The decision to refer to a regulator must be made on a case-by-case basis. It should only happen when there are serious concerns that may pose a risk to patients or the public's confidence in any of the health and social care professions. Referrals can be made either by employers or organisations, or the person who raised the complaint.



If you believe that it may be necessary to refer a case to a regulator, or if you are at all unsure, discuss it with relevant colleagues.



### **Find out more**

You can seek further advice from the relevant regulator by calling the contact number indicated on the relevant website (see chart in practical tools section below [Insert link](#)).

If the case concerns a doctor, dentist or pharmacist, contact [NHS Resolution's Practitioner Performance Advice Service](#) for free advice.

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## Making the referral

-  If your organisation decides to refer the individual health professional to their regulator, you do not need to get consent from the person who raised the complaint. But you must let them know this has happened and why.
-  You must also let them know where to get independent advice (see guidance on Independent Advice and Advocacy), or how to contact the regulator themselves if they want to.
-  It's a good idea to give the person information about the regulator's role, their remit and what they can and cannot do, to help manage expectations.
-  When you refer an individual health professional to their regulator, provide as much information as possible. This will help the regulator decide whether the matter meets its threshold for investigation.
-  If the person making a complaint has already referred the matter to the relevant regulator, or chooses to later, this should not affect the way your organisation investigates and responds to their complaint.

## The regulatory process: step-by-step guide



### Did you know?

Not all cases referred to regulators will result in action being taken against the healthcare professional.

The process is as follows:

1

### Step 1:

A regulator considers concerns raised by:

- members of the public
- other healthcare professionals
- the registrant's employer (in the form of formal referrals).

2

### Step 2

If a concern does not meet a regulator's threshold for an investigation, it is closed at the initial assessment stage.

3

### Step 3

If a case does meet a regulator's threshold, the regulator opens an investigation and lets the registrant know. If there is a serious, immediate threat to patient safety, the regulator may make an interim order to restrict or stop the registrant working while it carries out its investigations.

4

### Step 4

After the regulator considers all the information and evidence gathered through its investigation, it takes one of three options for action:

### Option 1: Closing the case with no further action

To make this decision, the regulator will consider whether the individual practitioner would be a continued risk to patients if they were allowed to keep practising without any restrictions. The regulator is most likely to do this where a registrant has:

- shown insight
- reflected on the incident that prompted the concern
- provided evidence to show the same thing is unlikely to happen again.

### Option 2: Giving the registrant advice or a formal warning

In some cases, if the registrant's actions differed significantly from the professional guidance or code, a regulator may give the registrant a formal warning.

### Option 3: Referring the case to a fitness to practise hearing

Only the most serious cases are referred to a tribunal for a hearing. If the hearing finds that the registrant's fitness to practise is impaired and that they are a risk to patients and the public, the regulator may:

- restrict how they practise
- suspend their right to practise for a period of time
- strike them off their register.



#### Did you know?

- Cases that result in fitness to practise hearings range from sexual assault or indecency to knowingly practising without an active licence or registration.
- Each regulator will apply its own specific rules and thresholds in deciding whether to carry out a fitness to practise investigation. But a regulator will only investigate if a concern suggests that a registrant's ongoing fitness to practise may be impaired.



#### Find out more

Go to the relevant regulator's website for more information about how they investigate concerns, and what actions they can take. Find details [here](#). [LINK TO RESOURCE OVERLEAF]

**NHS Resolution** has some useful resources on its website, including a guide on conducting local investigations. Its Practitioner Performance Advice Service (PPAS) also provides free advice to healthcare organisations, in cases relating to doctors, dentists or pharmacists.

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## **Guide to the healthcare professional regulators**

### **Doctors:**

General Medical Council [www.gmc-uk.org](http://www.gmc-uk.org)

### **Nurses and midwives:**

Nursing and Midwifery Council [www.nmc-uk.org](http://www.nmc-uk.org)

### **Dentists and dental practitioners:**

General Dental Council [www.gdc-uk.org](http://www.gdc-uk.org)

### **Pharmacists and Pharmacy Technicians:**

General Pharmaceutical Council [www.pharmacyregulation.org](http://www.pharmacyregulation.org)

### **Opticians and optical professionals:**

General Optical Council [www.optical.org](http://www.optical.org)

### **Osteopaths:**

General Osteopathic Council [www.osteopathy.org.uk](http://www.osteopathy.org.uk)

### **Chiropractors:**

General Chiropractic Council [www.gcc-uk.org](http://www.gcc-uk.org)

### **Registered healthcare professionals\*:**

Health and Care Professions Council [www.hcpc-uk.org](http://www.hcpc-uk.org)

### **Social workers:**

Social Work England [www.socialworkengland.org](http://www.socialworkengland.org)

**Art therapists, biomedical scientists, chiropodists, clinical scientists, dieticians, hearing aid dispensers, occupational therapists, operating department practitioners, orthoptists, paramedics, physiotherapists, practitioner psychologists, prosthetists, radiographers, speech and language therapists:** [Health and Care Professions Council www.hcpc-uk.org](http://www.hcpc-uk.org)

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**Let's make  
complaints  
count!**

