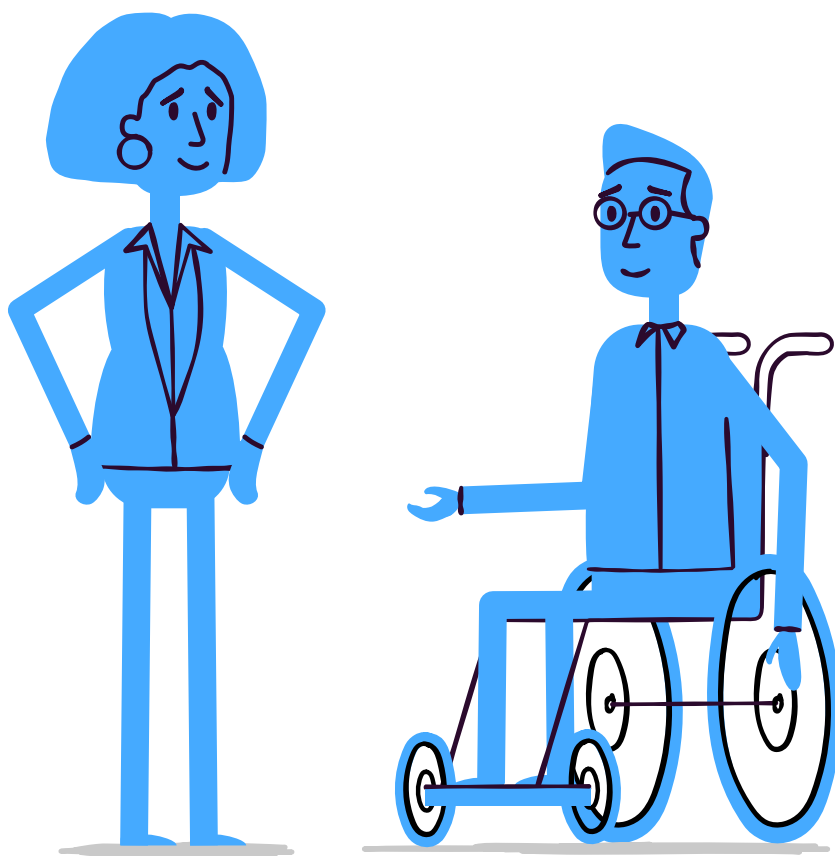
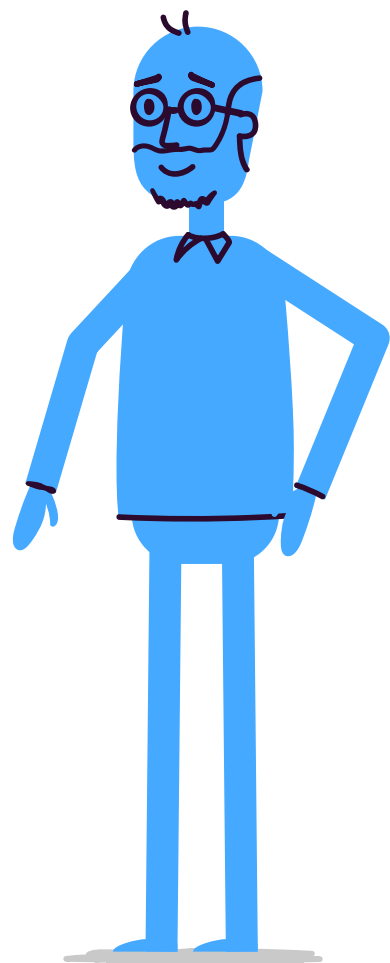
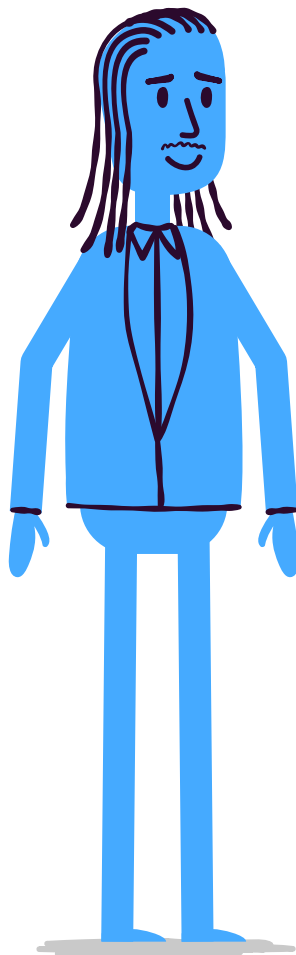


Identifying a complaint



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Welcome to this guide

This guide is one of the Good Complaint Handling series. These are designed to help you meet the [NHS Complaint Standards](#).

This module will help you identify what a complaint is. It explains the difference between an 'everyday conversation' and a complaint.

It also explains how to handle complaints in the following:

- complaints that are not covered by the NHS complaints regulations
- complaints where the person plans to take, or is taking, legal action
- complaints where another procedure, such as a coroner's inquest or patient safety investigation, is taking place
- complaints about events that took place more than 12 months ago
- complaints that are anonymous or general.

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.
- The [Local Authority Social Services and National Health Service Complaints \(England\) Regulations 2009](#) and the [Health and Social Care Act 2008 \(Regulated Activities\) Regulations 2014](#) set out what the law says you must do.
- The Department of Health and Social Care has provided specific advice in this area.

What the Complaint Standards say

Promoting a learning culture

- Staff are trained to identify those complaints where mistakes have been made that may have resulted in significant impact. Staff ensure these mistakes are reviewed through the organisation's duty of candour processes.
- Organisations routinely share learning from complaints with other organisations (both locally and nationally) to build on insight and best practice.

What the law says

[The Local Authority Social Services and National Health Service Complaints \(England\) Regulations 2009](#) set out the duty to handle complaints at section 6. The regulations allow a wide definition and a complaint can be made about any matter reasonably connected with the exercise of an organisation's NHS services.

The following complaints are not required to be dealt with under the Local Authority Social Services and National Health Service Complaints (England) Regulations (2009), Regulation 8(1):

- A complaint made by any NHS organisation or private or independent provider or responsible body.
- A complaint made by an employee about any matter relating to their employment.
- A complaint, the subject matter of which has previously been investigated under these or previous NHS Regulations.
- A complaint that is made orally and resolved to the complainant's satisfaction no later than the next working day.
- A complaint arising out of an NHS body's alleged failure to comply with a request for information under the Freedom of Information Act 2000.
- A complaint that relates to any scheme established under section 10 (superannuation of persons engaged in health services) or section 24 (compensation for loss of office) of the Superannuation Act 1972 or to the administration of those schemes.

If a complaint (or any part of it) does not fall under this procedure, you should, in accordance with regulation 8(2)(b), explain the reasons for this, in writing, to the person who has raised the complaint and provide any relevant signposting information, for example to organisations that are better placed to assist.

Regulation 12 states that a complaint must be made within 12 months of the date the matter complained about occurred or the date the person who has raised the complaint found out about it, whichever is the later.

Regulation 13 states that 'a complaint may be made orally, in writing or electronically'. This includes in person, on the telephone, email, and on- line. Where a complaint is made orally, you 'must— make a written record of the complaint; and provide a copy ... to the complainant'.

[The Health and Social Care Act 2008 \(Regulated Activities\) Regulations 2014](#) (Regulation 20) says there is a duty of candour and that organisations 'must act in an open and transparent way with relevant persons in relation to care and treatment provided to service users in carrying on a regulated activity'.

What the Department of Health and Social Care says

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 a complainant expresses an intention to take legal proceedings, an NHS body should continue to try to resolve the complaint quickly unless there are compelling legal reasons not to do so.



Find out more

Read the DHSS guidance in full here [Complaints litigation clarification note March 2014.pdf](#)

How to do it

This section sets out the difference between a complaint and a conversation and looks at how to manage different types of complaints that do not fall into the normal categories.

Everyday conversations with patients and service users

Every day, frontline staff interact with people who use (or are affected by) their care and service. The people they encounter often raise issues that they can help with and resolve there and then, without the need for a complaint. This can include things like:

- a request for advice or an action
- a need for an explanation to resolve confusion
- concern about an error that may have been made.

Addressing matters through everyday conversations is the best, most cost-effective and time-efficient way to address the issue, before the person becomes dissatisfied and raises a complaint.

However, if the staff member does not follow up within the timescale promised, the issue can quite quickly become a complaint. For this reason, they should always deliver on what they say.

What is a complaint?

The NHS Complaint Standards define a complaint as:



‘an expression of dissatisfaction, either spoken or written, that requires a response. It can be about: an act, omission or decision you have made, and/or the standard of service you have provided.’

The person complaining does not have to use the word ‘complaint’ themselves for something to count as a complaint. They may talk about ‘feedback’, ‘an issue’, or ‘a concern’, or they may say they want to ‘tell you about’ something. In this guide, the term ‘complaint’ covers all the variations people might use.



Use and reflect the language that the person chooses to use.

To identify whether something is a complaint, ask yourself: [DECISION TOOL?]

Is the person asking for something or do they just need an explanation?

If the answer is 'yes', this is not a complaint.

- is the person clearly dissatisfied with something that has or has not happened to them?
- does the matter need to be looked into?
- do they require a response?

If the answer is 'yes' to these questions, this is a complaint.

Use the decision tool to decide if something is a complaint.

Decision tool: Is something is a complaint or not? [INTERACTIVE?]

Everyday conversation	<ul style="list-style-type: none">• The service user is asking for something.• The service user needs an explanation.
Complaint	<ul style="list-style-type: none">• The service user is clearly dissatisfied with something that has, or has not, happened.• The matter needs looking into.• The person wants a response.



Tip: If you're not sure whether something is a complaint or not, try these ideas:







Talk to your colleagues to seek their advice.



Ask the person if they are unhappy and if they would like you to look into the matter and provide a response.

If someone complains verbally, the 2009 regulations say you must do the following:

-  Make a written record is made of the complaint.
-  Share it with the person who raised it.
-  Acknowledge all complaints within three working days.
-  Offer to discuss how a complaint will be handled and how long it is likely to take.





Find out more


There is more information on how to do this in the [Early resolution](#) and [A closer look – clarifying the complaint](#) guidance modules.

Managing complaints that are not covered by the 2009 regulations

The 2009 regulations set out certain types of complaint that do not fall under the complaints process. These include complaints made by staff or by other NHS organisations, unless the person is complaining as a patient or user of an NHS service.

-  If you decide that a complaint (or any part of it) does not need to be dealt with under the 2009 regulations, write to the person who raised it and explain why.
-  If there are other procedures, or other organisations that could help them, signpost the person to them.

Managing complaints involving other procedures, such as patient safety investigations, a coroner's inquests or legal issues

-  If you establish that it may not be possible to achieve an appropriate outcome using only the complaints process, tell the person who has complained.

Give them information about any other process that may provide the outcomes they are seeking.

This can happen at any stage in the complaint-handling process – for example, if the process identifies issues that could:

- trigger a patient safety investigation
- trigger your organisation’s safeguarding procedures
- involve a coroner’s investigation or inquest
- trigger a regulatory process, such as fitness to practice investigations or referrals
- involve a legal issue that requires specialist advice or guidance.



Find out more

See the Complaints and other procedures guidance.



If this happens, give the person who has complained clear information to make sure they understand:

- the purpose of another procedure
- how they will be involved
- the options available.



Signpost them to sources of specialist independent advice to help them make an informed decision and support them with the relevant processes.



Talk with staff or other organisations that can provide advice and support. Together, you can agree the best way to provide a full and comprehensive response to all the issues raised in the complaint.



The person making the complaint may already be taking part in another process, or may decide to do so later. If they still want to continue with their complaint, this should not affect the investigation nor the response to the complaint. The only exceptions to this are:

- if the individual requests or agrees to a delay
- if there is a formal request for a pause in the complaint process from the police, a coroner or a judge.

In these cases, your organisation needs to put the complaint investigation on hold until the processes conclude.

If the events complained about took place more than 12 months ago

Under the 2009 regulations, complaints must be made within 12 months of:

- the date of the matter complained about, or
- the date the person raising the complaint found out about it.



If someone raises a complaint outside this time limit, consider the reasons for the delay in making the complaint. If these are not clear from the complaint, ask the person who complained the reasons for the delay.



If you decide the reasons given are reasonable, consider whether it is still possible to properly consider the complaint effectively and fairly, given the delay. For example, if someone has been ill or has had caring responsibilities that have led to the delay, and the relevant records and staff are still available, you may decide to continue with your consideration of the complaint.



You may decide that there is not a good reason for the delay or that it is not possible to properly consider the complaint (or any part of it). If so:

- explain this to the person in writing.
- explain that if they are dissatisfied with that decision, they can approach the Parliamentary and Health Service Ombudsman.

Sample letter 1: Events more than 12 months old, no good reason

Use this sample letter if you need to decline to look at a complaint where:

- the events took place more than 12 months ago
- you decide there is no good reason for the delay.

Dear [insert name]

Thank you for your complaint about [insert details of complaint].

As I explained when we spoke, there is a time limit for bringing complaints to us and unfortunately your complaint fell outside that time limit.

When we spoke, you explained that [include explanation (and any evidence) given by the person for the reason for the delay in complaining]. While I understand this [say how you have considered this explanation/evidence and have decided that it is not a good reason for the delay, and why you think they could have complained earlier].

I hope you can see that we have considered this carefully. If you are unhappy with our decision not to look into your complaint and would like to take the matter further, you can contact the Parliamentary and Health Service Ombudsman.

The Ombudsman makes final decisions on complaints that have not been resolved by the NHS, government departments and some other public organisations. Their service is free for everyone.

There is also a time limit for making your complaint to the Ombudsman, so you should do this as soon as possible. To take a complaint to the Ombudsman, or to find out more about the service, go to www.ombudsman.org.uk or call 0345 015 4033.

Yours sincerely

Sample letter 2: Events more than 12 months old, impractical to investigate

Use this sample letter if you need to decline to look at a complaint where:

- the events took place more than 12 months ago
- you decide there is a good reason for the delay
- you have decided that it would not now be practical to investigate the complaint because of the time elapsed.

Dear [insert name]

Thank you for your complaint about [insert details of complaint].

As I explained when we spoke, there is a time limit for bringing complaints to us and unfortunately your complaint fell outside that time limit.

When we spoke, you explained that [include explanation (and any evidence) given by service user for the delay in complaining]. I understand and accept this explanation and believe this is a very good reason that you did not complain to us sooner.

I have carefully considered whether it would be possible [X months/years] later to investigate your complaint and provide you with the answers and outcome you seek [include details of the outcome sought if applicable].

Unfortunately, I have decided that this would not be possible, and we would be very unlikely to deliver the outcome you are seeking. This is because [give explanation of how you have considered what would be involved in investigating the complaint and why you feel that it would not be practical to investigate and reach a satisfactory conclusion].

I hope you can see that we have considered this carefully. If you are unhappy with our decision not to look into your complaint and would like to take the matter further, you can contact the Parliamentary and Health Service Ombudsman.

The Ombudsman makes final decisions on complaints that have not been resolved by the NHS, government departments and some other public organisations. Their service is free for everyone.

There is also a time limit for making your complaint to the Ombudsman, so you should do this as soon as possible. To take a complaint to the Ombudsman, or to find out more about the service, go to www.ombudsman.org.uk or call 0345 015 4033.

Yours sincerely

Verbal complaints that can be answered by the next working day [DUPLICATED FROM GUIDE 4]

Under the 2009 regulations, when someone makes a complaint in person (by phone or face to face) and it is resolved to their satisfaction by the next working day, this does not need to go through the organisation's complaints process. Resolving a complaint in this way is considered good practice.

Anonymous and general complaints

All complaints can be a valuable source of insight and learning even if they do not meet the standard criteria. These include:

- anonymous complaints
- general complaints that would not meet the criteria for who can complain.

If you receive a complaint like this, consider the issues raised and, if appropriate, look into the matter to identify whether it highlights any learning for the organisation.

The decision tool below is designed to help decide if a complaint may be suitable for early resolution

or not. You can amend the details to reflect the types of complaint your organisation might receive.
[Will need reworking after design]

Decision tool: categories of complaints [INTERACTIVE?]

NB: REWORD QUESTIONS EG Has a service not been provided that should have been?]

Early resolution may be suitable if:

- a service has not been provided that should have been
- a service has not been provided to an appropriate standard
- a request for a service has not been answered or actioned
- a service being provided is having an immediate negative impact
- an error has been made that can be corrected quickly
- a member of staff was perceived as rude or unhelpful
- a staff member or contractor did not attend a scheduled appointment.

A closer look may be suitable if:

- the issues raised are complex and will require detailed investigation
- the complaint is about more than one area of care or service, or multiple organisations
- the complaint is about both health and social care
- the complaint raises issues that might affect other service users
- the complaint relates to issues that have been identified as serious, high risk or high profile.



Tip: A complaint may be serious or high risk or high profile if it:

- involves a death or terminal illness
 - involves patient safety issues
 - involves safeguarding issues
 - involves a vulnerable person
 - involves child protection issues
 - involves major delays in service provision or repeated failure to provide a service
 - has attracted media interest
 - may present a risk to the organisation.
-

If you would like this document in a different format, such as Daisy or large print, please contact us.

**Let's make
complaints
count!**

