

Guidance for Balancing Evidence

The Clinical Advice Review Final Report was published on 21 March 2019. It highlighted a number of key themes about how we balance evidence. Complainants said they felt their evidence was given less weight than that of the organisation complained about. Caseworkers said it was often difficult to weigh evidence from both sides of the complaint, due to organisations often having more written evidence than complainants.

In response to the Clinical Advice Review, we have produced new caseworker guidance on assessing the balance of evidence.

This guidance sets out the approach we will take when considering and assessing evidence. Evidence is information we look at when we consider a complaint. This may include, but is not limited to, complainants' accounts (verbal or written), an organisation's policies and guidance, clinical records, and advice from our advisers.

Our approach to balancing evidence:

1. We will balance evidence fairly and independently.	2. We will consider all relevant information to ensure our decisions are impartial and evidence based.	3. We will explain the evidence we have considered and why.
1.1 We will take full account of both the complainant's and organisation's evidence.	2.1 We will evaluate all evidence to reach an impartial decision.	3.1 We will explain what evidence we have considered.
1.2 We will give all parties a fair opportunity to comment on our provisional findings.	2.2 We will apply the appropriate standard when deciding if something went wrong.	3.2 We will explain how the advice we have sought has been applied to the complaint.
1.3 We will consider all evidence without bias.	2.3 We will gather evidence to establish what has happened and what should have happened.	3.3 We will explain what evidence we expect to be available from organisations and why we would expect that evidence.
1.4 We gather all relevant evidence, to assist with our consideration of the complaint.	2.4 If there are gaps in the evidence, we will explain what action we have taken to fill the gap.	3.4 We will ensure our advisers (e.g. legal, clinical) are provided with the information they need to provide advice.
1.5 Our decisions are made using the civil standard of the 'Balance of Probabilities' (i.e. 'more likely than not').	2.5 If we are unable to fill evidence gaps, we will explain clearly how we have considered these gaps.	3.5 If we use judgement to place greater weight on one piece of evidence, we will explain our reasons for this.
1.6 If we apply the Balance of Probabilities test to a complaint, or to parts of a complaint, we will explain how and why this test has been applied.	2.6 When considering evidence we will take into account how and when the evidence has been given.	3.6 We will share (on request) the evidence we have considered.