

Clarifying the complaint and explaining the process

This is draft material and is not live guidance. It is shared for information and will be tested with organisations who have agreed to pilot the new Complaint Standards.

1. Introduction

1.1 This guidance is part of a range of guidance modules produced to help you implement and deliver the expectations set out in the Complaint Standards. [Insert link](#)

1.2 This module sets out how to clarify and understand a complaint and how to explain the complaints procedure. This module covers:

- acknowledging the complaint
- clarifying the issues to be considered
- understanding the impact and the outcome sought
- explaining the process and timescales for investigation.

1.3 This guidance should be read in conjunction with the following modules:

- Independent NHS complaints advocacy, and other specialist advice and support for people raising complaints [Insert link](#)
- Identifying a complaint [Insert link](#)
- Who can make a complaint, consent and confidentiality [Insert link](#)
- Early Resolution [Insert link](#)
- A closer look - the investigation [Insert link](#)

2. Standards and relevant legislation

2.1 The relevant Complaint Standards expectations are:

Welcoming complaints in a positive way

- Staff make sure they respond to complaints at the earliest opportunity. Staff consistently meet expected timescales for acknowledging a complaint. They give clear timeframes for how long it will take to look into the issues, taking into account the complexity of the matter.

Being thorough and fair

- Staff actively listen and demonstrate a clear understanding of what the key issues are for the individual, and what outcomes they seek.
 - Staff make sure everyone involved in a complaint (including staff) know how they will look into the issues. This includes what information complaints staff will need, who they will speak to, who will be responsible for providing the final response and how they will communicate their findings.
 - Staff will agree timescales with everyone involved and will agree how people will be kept informed and involved. Staff provide regular updates throughout.
- 2.2 The relevant Regulations that apply are The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009 and the Health & Social Care Act 2008 (Regulated Activities) Regulations 2014 (the 2009 and 2014 Regulations).
- 2.3 [The Local Authority Social Services and National Health Service Complaints \(England\) Regulations 2009](#) At section 13, paragraphs (3), (4) and (5), the 2009 Regulations say: ... the responsible body must acknowledge the complaint not later than 3 working days after the day on which it receives the complaint. The acknowledgement may be made orally or in writing.
- 2.4 The 2009 Regulations at section 13 paragraph (7) says ‘At the time it acknowledges the complaint, the responsible body must offer to discuss with the complainant, at a time to be agreed with the complainant-
- (a) the manner in which the complaint is to be handled; and
 - (b) the period (‘the response period’) within which -
 - (i) the investigation of the complaint is likely to be completed; and
 - (ii) the response required by regulation 14(2) is likely to be sent to the complainant.
- (8) If the complainant does not accept the offer of a discussion under paragraph (7), the responsible body must -
- (a) determine the response period specified in paragraph (7)(b) and
 - (b) notify the complainant in writing of that period.

3. What you should do

Acknowledging the complaint

- 3.1 All complaints must be acknowledged no later than three working days after the day the complaint is received. The acknowledgement may be made verbally or in writing.
- 3.2 If the complaint was made verbally, you must write it down and share a copy of it with the person making the complaint. This will enable them to check that you have captured the matters to be investigated correctly.
- 3.3 The person making the complaint, or the person they are representing, should be asked for appropriate consent to handle the complaint, especially if it requires input or investigation from parties or organisations outside your own. See guidance [[insert link](#)]
- 3.4 The person making the complaint should be given the name of someone who will be their point of contact throughout the complaints process.
- 3.5 It is good practice to make your complaint procedure available in accessible formats. You should also consider whether to make reasonable adjustments to procedures on a case-by-case basis to accommodate the individual needs of the person making the complaint. Make sure you keep a record of any adjustments you have been made, or, if you refuse a requested adjustment, the reasons why.

Clarifying the issues to be considered and explaining the process

- 3.6 If you are the Complaint Handler (or designated Complaint Lead/Investigator) you should always offer to talk to the person making the complaint, preferably face to face or by phone (taking into account the contact preferences of the person making the complaint). To help you prepare for that conversation, see the initial call checklist in the practical tools section [Insert Link](#) and guidance on early resolution [Insert Link](#).
- 3.7 The purpose of the initial discussion is to:

- fully understand and agree the key issues to be considered, what impact it has had and what outcomes are being sought before carrying out your investigation.
- make sure that you signpost the person to local and national support and advice services, including independent advocacy services.
- understand the preferred method of communication of the person making the complaint and any reasonable adjustments that might need to be made.
- depending on the complexity of the complaint and the work that is likely to be involved in carrying out the investigation, discuss with

the person a realistic timeframe for how long it will take, how you will keep them regularly informed and engaged throughout and when they can expect to receive a response. If these timescales cannot be met you will make sure this is communicated to the person, and any other parties involved, at the earliest opportunity.

- explain how you intend to carry out the investigation into the complaint. This should include how and when you will obtain their evidence, what other evidence you will seek out and consider, who you will speak to and how you will determine whether something has gone wrong. You should also make it clear upfront who will be responsible for the final response and how the response will be communicated.

- 3.8 If the person does not accept the offer of a discussion, you should write to them, covering the points above and setting out a suitable and realistic timescale for completing the investigation and providing a response. For more information on timescales see the guide to carrying out the investigation [Insert link](#).
- 3.9 During your conversation, you should listen carefully to the person making the complaint and avoid trying to provide immediate answers before you have had a chance to look into the matter properly. You should focus first on making sure you understand what the problem is. If it is not clear, ask questions.
- 3.10 Next, it is important to ask about and acknowledge the impact the problem or issue is having on the person complaining, or the person they are representing. Avoid making assumptions; people react differently to different situations so you need to ask. A good way to acknowledge impact effectively is to reflect the language the person uses, focusing particularly on any emotive words. For example, they may say that delays in being seen by a specialist has been 'a nightmare' and you can reflect this language back saying something like 'I've heard you say this has been a 'nightmare' for you - could you tell me a little more about that. Acknowledging impact and how someone is feeling doesn't mean you are accepting that you have failed or made a mistake. All you are doing is showing someone that you are listening and understanding how this situation has made them feel - regardless of whether your organisation is at fault or not.
- 3.11 Next, ask what would put things right. Often, when someone first makes a complaint, they have not even thought about the outcome they are looking for. Making sure they do think about it at this point is very important. It helps people focus on what a good end to the process might look like for them. If they are not sure what they are looking for, give them time to think about it. You can even arrange another call if they need more time, or an

opportunity to discuss with friends and family. If they ask, you can explain the sort of outcomes that usually come from investigations, such as an acknowledgement that something has gone wrong, an explanation to help them understand what has happened, a meaningful apology, training and support for staff, changes to policies and procedures, and, perhaps the most sought-after outcome, improvements to a service so that what happened to them (or the person they are complaining on behalf of) does not happen to somebody else. It can also help if you ask the person how they will feel if you provide what they are asking for. For example, someone who says initially that all they are looking for is an apology may say that actually what they are really looking for is your organisation to learn from what has happened.

- 3.12 Talking about possible outcomes at the start also gives you an opportunity to manage any unreasonable expectations. For example, someone may say initially that they want a member of staff sacked because they did not give them pain relief when they asked for it. You can explain that this is not something that is likely to be achieved through the complaints process, but that if you find that the correct process wasn't followed, you may recommend an apology, training in pain management or improvements to procedures to put things right. This gives the person an opportunity to reflect and hopefully agree that this is a more realistic outcome for them.
- 3.13 Once you are clear on the matters you are going to be investigating, explain the steps you will take. These are likely to include, for example, how and when you will obtain their evidence, what other evidence you will seek out and consider, who you will speak to, how you will look into the matter to see whether something has gone wrong, who will be responsible for the final response and how that response will be communicated. By sharing as much information as you can at this stage, you can show that you will carry out your investigation fairly and transparently. It also helps someone picture what your final response may look like. For more information see carrying out the investigation [Insert link](#).

Keeping the person updated

- 3.14 In your initial discussion you must provide a realistic indication of how long the investigation is likely to take and when they are likely to receive a written response. This should be decided on a case by cases basis, taking account of the complexity of the case and the amount of work involved. It is important to be realistic, because key measures of performance will be whether you meet this target for completion and whether you send the final response on time. See investigation guidance for further detail [Insert Link](#).
- 3.15 Finally, you should agree how and when the person will hear from you next and how you will keep them updated throughout the process. You should explain how you will involve them fully in the complaints process so that they always know what is happening and feel in control of their complaint.

People can get frustrated and angry if they do not know what is going on and what is going to happen next. Always be open and honest and always deliver on your promises.

- 3.15 Where someone has given consent for a representative or advocate to act on their behalf, make sure all parties understand the communication arrangements. For example, whether you will communicate with the representative only, or whether communications are copied to both the person and their representative.

Confidentiality

- 3.16 Confidentiality is essential in handling complaints. This includes maintaining the confidentiality of the person making the complaint and anyone they represent. You should explain this during your initial conversation, as well as the importance of confidentiality generally. Complaint records should always be kept separate from medical and other patient records. Confidentiality does not mean secrecy, and you should always tell a staff member when a complaint which relates to them has been received unless there is an overriding reason not to do so. In doing this, you should bear in mind any requirements, such as data protection rights and Duty of Candour.

4. Examples and case studies

- 4.1 **add example acknowledgement letter**
- 4.2 **add example of good conversation**

5. Practical Tools

5.1 Good communication tool kit

Good communication tool kit

- All your verbal and written communication should be polite, sensitive and empathetic, building rapport with the person making the complaint. You can do this by:
 - referring to them formally, unless they tell you otherwise
 - writing or speaking in a natural and friendly but professional way
 - giving them the opportunity to talk and demonstrating effective active listening
 - asking questions and recapping conversations, giving parties the opportunity to correct or amend what you have said to come to an agreed understanding
 - speaking in a respectful tone

- addressing difficult conversations through good call handling techniques and in line with your local unreasonable and disproportionate behaviour policy.
- You can show empathy by:
 - acknowledging how the person has said they have been affected, how they feel and any injustice they have said they have experienced
 - repeating words and phrases the person has used in their communication to show you have listened carefully and understand what you have been told
 - thanking them for taking the time to share their concerns, for sharing what might have been upsetting events, and acknowledging that this must have been difficult for them.
- You should manage communication by:
 - planning communication in advance where possible
 - making sure you follow any agreed reasonable adjustments and communication preferences
 - providing the dates of any planned leave in advance
 - keeping a record of conversations on your case management system/complaint file
 - providing regular updates in a way and at a time that suits the person making the complaint and any other parties involved to make sure they all understand what is happening.
 - explaining that you will return their calls, where requested, within a reasonable timeframe (usually 48 hours).

5.2 Checklist for initial call

Checklist for initial call

- Introduce yourself and explain your role.
- Check whether it is a convenient time to talk about the complaint and if it is not, agree an alternative date and time.
- Acknowledge the individual circumstances of the complaint and how the person has said they have been affected by it.
- Explain where the case has reached in the process and that the purpose of the call is to check your understanding of the complaint and to tell them what happens next.
- Agree and record the person's preferred method of contact and, if they request a reasonable adjustment, explain how you will consider this if you cannot agree straight away.

- If needed, ask for any other information that you need to understand the circumstances of the complaint (such as reasons for any delay in making the complaint).
- Check if the person is happy to talk about their complaint there and then, or if they would like you to set up another call. You want to do this so that you can make sure you have fully understood everything.
- If they are happy to talk, discuss the complaint in more detail to make sure you have a good understanding of their concerns. If anything isn't clear, ask questions.
- It is really important to ask about (and record) the impact of the events on the person, how they feel about what happened and what the key issues are they want looked at.
- Ask what they want to happen as a result of the complaint and what would put things right for them. If they have not thought about this, give them time to do so. You can even set up a call the next day to give them time to reflect. If they are still uncertain, give some examples of the sort of thing that could happen as a result of your investigation. For example:
 - an explanation of what happened and acknowledgement of any failings
 - an apology and recognition of the impact of any failings
 - training for staff
 - changes to policies or procedures
 - an explanation of actions you will take to improve services to prevent what happened happening to anyone else.
- Based on what they are seeking, consider whether the complaint can be resolved quickly - for example, through an apology or further action.
- Manage the complainant's expectations. If the outcome they are seeking is one you are unlikely to achieve, such as the dismissal of a staff member or an unrealistic financial remedy, be honest about that, and explain what could be a possible outcome (see above). Try and reach agreement on what might be a good outcome.
- Once you are clear on the matters you are going to be investigating, explain the steps you will take, such as what evidence you will look at, who you will speak to, how you will decide whether something has gone wrong. Say that you will keep them involved and share what you have found before you send a final response.

- If needed, agree a time to talk to the person again about their complaint to make sure you captured their account of the events and any additional evidence fully.
- Set out the expected timescales for completing your investigation, explaining that this is your best estimate at this point and if anything changes you will let them know.
- If needed, confirm any actions you will take to resolve a problem they have mentioned, such as passing on a message to a colleague or making an appointment.
- Agree how and when you will next contact them to provide an update, and make sure they have your contact details so they can contact you with any questions.
- Make sure they are aware that they can access help and support if they need it from your local NHS advocacy service (provide contact details) and national support and advice services.
- If they already have a representative or advocate, agree how they want to be communicated with and how often during the investigation.

6. Version control

6.1 Pilot draft - March 2021