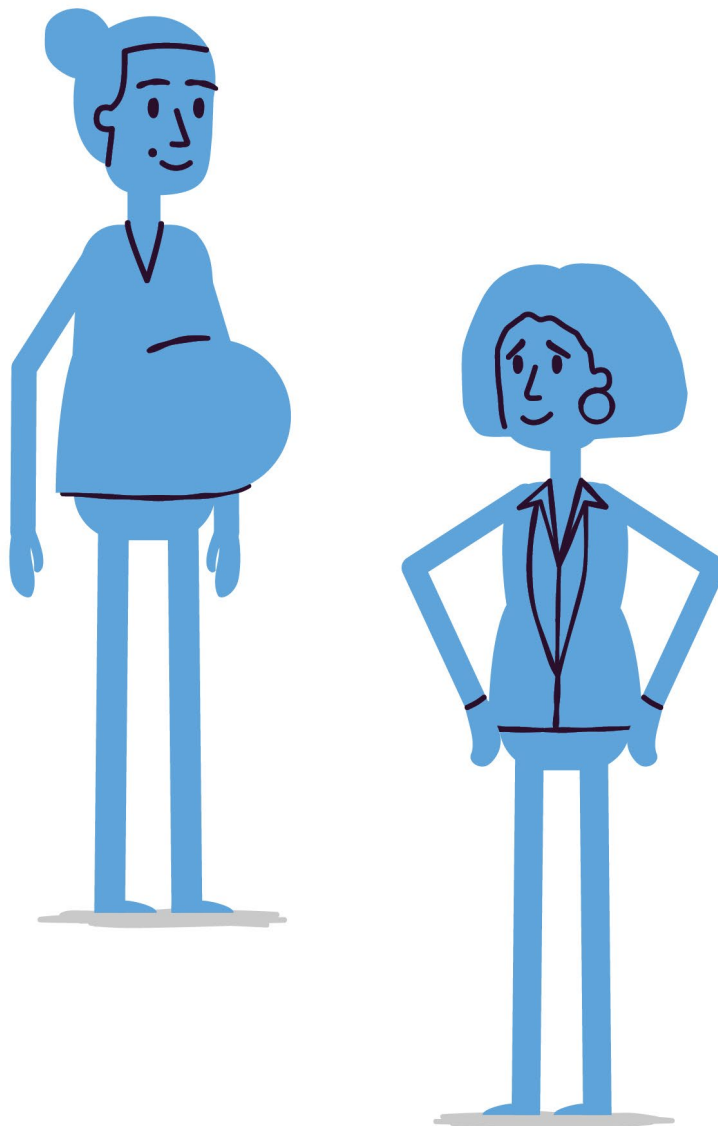


A closer look - clarifying the complaint and explaining the process



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1. Introduction

- 1.1 This guidance is part of a series of guidance modules that will help you implement and deliver the expectations set out in the [NHS Complaint Standards](#).
- 1.2 This module explains 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 You should read this module alongside the [Model Complaint Handling Procedure](#) and the following modules:
 - Independent NHS complaints advocacy and other specialist advice
 - Identifying a complaint
 - Who can make a complaint, consent and confidentiality
 - Early resolution
 - A closer look - carrying out the investigation

The guidance modules are available on the Ombudsman's [website](#)

2. The Complaint Standards and relevant legislation

- 2.1 The relevant Complaint Standards expectations are:
Welcoming complaints in a positive way
 - Staff respond to complaints at the earliest opportunity and 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 main issues are for the person who has made the complaint, and the outcomes they seek.
 - Staff make sure everyone involved in a complaint (including those specifically complained about) knows 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 discuss timescales with everyone involved in the complaint and agree how people will be kept informed and involved. They provide regular updates as agreed with the parties, 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) say ‘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 The 2009 Regulations state that all complaints must be acknowledged no later than three working days after the day the complaint is received. You can do this verbally, electronically or in writing.
- 3.2 If you receive a verbal complaint, the 2009 Regulations state that you must write it down and share a copy of it with the person who has made the complaint. This will enable them to check that you have captured the matters to be investigated correctly.
- 3.3 You should ask the person making the complaint, or the person they are representing, for appropriate consent to handle the complaint, especially if it needs input or investigation from parties or organisations outside your own. See the guidance on [Who can make a complaint, consent and confidentiality](#).
- 3.4 You should give the person who has made the complaint the name of someone who will be their point of contact throughout the complaints process.
- 3.5 It is good practice to make your complaints procedure available in accessible formats. You should also consider whether to make reasonable adjustments to procedures on a case-by-case basis to meet the individual needs of the person making the complaint. Make sure you keep a record of any adjustments you have made. If you refuse a requested adjustment, keep a record of the reasons for this.

Clarifying the issues to be considered and explaining the process

- 3.6 If you are the person who will carry out the investigation, you should always offer to talk to the person who has complained. Where possible, you should do this face to face or by phone (taking into account the contact preferences and any agreed reasonable adjustments of the person making the complaint). To help you prepare for that conversation, see the initial call checklist in the practical tools section below and in the guidance on early resolution.
- 3.7 The purpose of the initial discussion is to:
 - fully understand and agree the main issues to be considered, what impact the issue has had and the outcomes the person wants before you carry out your investigation
 - 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 you might need to make
 - 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 is likely to take
 - how you will keep them regularly informed and engaged throughout
 - when they can expect to receive a response.
 - explain that if you cannot meet these timescales, you will inform them, and any other parties involved, as soon as possible.
 - explain how you intend to carry out the investigation, including:
 - how and when you will get their evidence
 - what other evidence you will search for and consider
 - who you will speak to
 - how you will determine whether something has gone wrong or not
 - who will be responsible for the final response and how they will communicate that response.
- 3.8 If the person does not accept the offer of a discussion, you should write to them. You should cover the points above and set out a suitable and realistic timescale for completing the investigation and providing a response. For more information on timescales see the guidance [A closer look - carrying out the investigation](#).
- 3.9 During your conversation, you should listen carefully to the person making the complaint. Avoid giving immediate answers before you have had a chance to look into the matter properly. You should first focus 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.
- 3.11 A good way to acknowledge the impact effectively is to reflect the language the person uses, focusing on any emotive words. For example, they may say that delays in being seen by a specialist have been ‘a nightmare’. 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 how that made you feel?’ Acknowledging impact and how someone is feeling does not mean you accept that you or your organisation

have failed or made a mistake. All you are doing is showing someone that you are listening and you understand how this situation has made them feel - regardless of whether your organisation is at fault or not.

- 3.12 Next, ask what would put things right. Often, when someone first makes a complaint, they have not thought about the outcome they are looking for. It is very important to make sure they think about this at this point. 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 arrange another call if they need more time or an opportunity to talk to 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 happened
- a meaningful apology
- revisiting a decision that has already been made
- training and support for staff
- changes to policies and procedures
- 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 they just want an apology may decide that what they really want is that your organisation learns from what has happened.

- 3.13 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 likely to be achieved through the complaints process, but if you find that the correct process wasn't followed, you may recommend:

- an apology
- training in pain management
- improvements to procedures to put things right.

This gives the person an opportunity to reflect and agree that this is a more realistic outcome for them.

- 3.14 Once you are clear about the matters you are going to investigate, explain the steps you will take. These are likely to include, for example:

- how and when you will get their evidence

- what other evidence you will search for and consider
- who you will speak to
- how you will look into the matter to see whether something has gone wrong or not
- who will be responsible for the final response and how that response will be communicated.

You should share as much information as you can at this stage, to show that you will carry out your investigation fairly and transparently. It also helps someone picture what your final response may look like and what it will include. For more information see the guidance on [A closer look - carrying out the investigation](#).

Keeping the person updated

- 3.15 The 2009 Regulations say that in your initial discussion, you must give a realistic idea of how long the investigation is likely to take and when the person who has complained is likely to receive a written response. You should decide this on a case-by-case basis, considering the complexity of the case and the amount of work involved.
- 3.16 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.
- 3.17 If 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, or whether you will send communications to both the person and their representative.

Confidentiality

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

4. Practical tools

4.1 Good communication tool kit

Good communication toolkit

All your verbal and written communication should be polite, sensitive and empathetic and build rapport with the person who has made 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 showing effective active listening
- asking questions and recapping conversations, giving parties the opportunity to correct or amend what you have said and coming to an agreed understanding
- speaking in a respectful tone
- managing difficult conversations through good call handling techniques and in line with any organisational policy.

You can show empathy by:

- acknowledging how the service user has said they have been affected, how they feel and any injustice they have said they experienced
- repeating words and phrases they have used in their communication to show you have listened carefully and have understood what they have told you
- thanking them for taking the time to share their concerns and for sharing what might have been upsetting events
- 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 or complaint file
- providing regular updates, in a way and at a time that suits the service user 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).

4.2 Checklist for the initial call

Checklist for the initial call

- Introduce yourself and explain your role.
- Check whether it is a convenient time to talk about the complaint. If it is not, agree an alternative date and time.
- Acknowledge the individual circumstances of the complaint and how the service user has said they have been affected by it.
- Explain where the case is in the process. Explain 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 service user's preferred method of contact. If they request a reasonable adjustment, explain how you will consider this if you cannot agree straightaway.
- If necessary, ask for any other information you need to understand the circumstances of the complaint (such as reasons for any delay in making the complaint).
- Check if the service user is happy to talk about their complaint there and then, or if they would like you to arrange another call. You may want to do this to 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 is not clear, ask questions.
- It is really important to ask about (and record) the impact of the events on the service user, how they feel about what happened and what the main issues are that they want you to look 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 offer a call the next day to give them time to reflect. If they are still uncertain, give some examples of what could happen as a result of the investigation. For example:
 - an explanation of what happened and an acknowledgement of any failings
 - an apology for and recognition of the impact of any failings
 - revisiting a decision that has already been made
 - training for colleagues
 - changes to policies or procedures
 - an explanation of actions you will take to improve services to prevent the situation happening to anyone else.
- Based on what they are looking for, consider whether the complaint can be resolved quickly - for example, through an apology or further action.

- Manage the service user's expectations. If the outcome they are looking for is one you are unlikely to achieve, such as the dismissal of a colleague or an unrealistic financial remedy, be honest about that and explain what a possible outcome could be. Try to reach an agreement on what might be a good outcome.
- Once you are clear about the matters you are going to investigate, explain the steps you will take, such as:
 - the evidence you will look at
 - who you will speak to
 - how you will decide whether something has gone wrong or not.
- 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 to make sure you captured their account of the events and any additional evidence fully.
- Set out the expected timescales for completing your investigation. Explain that this is your best estimate at this point and you will let them know if anything changes.
- If needed, confirm any actions you will take to resolve a problem they have mentioned, such as passing on a message to a colleague.
- Agree how and when you will next contact them to provide an update. Make sure they have your details so they can contact you with any questions.
- Make sure they know they can access help, advice and support if they need it from your local NHS advocacy provider.
- If they already have a representative, agree how you will communicate with them and how often during the investigation.

5. Version control

5.1 Final - December 2022