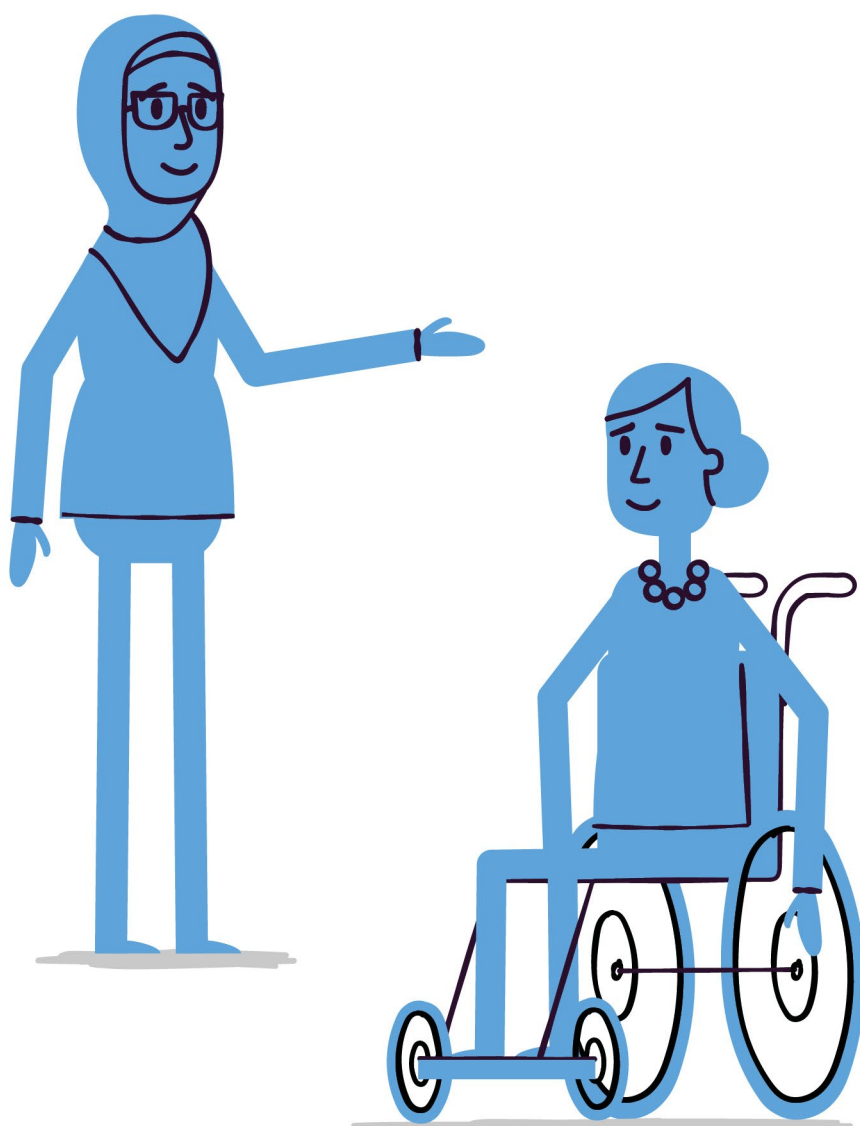


# Complaints and other procedures



## 1. Introduction

- 1.1 This 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 It will help you decide what to do when you are considering a complaint where:
  - you identify that another procedure or review, such as a patient safety investigation, is or should be taking place
  - you identify that a legal claim is planned or ongoing, or an inquest is to take place
  - you think that local disciplinary procedures might be necessary
  - the person making the complaint raises issues about an individual healthcare professional that suggests there are concerns about their fitness to practise
  - you think that your organisation should consider referring someone to their regulator.
- 1.3 This module does not cover or replace how regulators of health professionals carry out their work, for example, a fitness to practise investigation or regulatory inspection. Nor does it cover how **serious** patient safety issues that may need an early intervention by an individual practitioner's regulator should be taken forward. For advice on these matters, you should speak to the relevant regulator.
- 1.4 This is good practice guidance and should not predetermine the outcome of individual complaints.
- 1.5 You should read this module alongside the [Model complaint handling procedure](#) and the following modules:
  - Identifying a complaint
  - Who can make a complaint- consent and confidentiality
  - Early resolution
  - A closer look - clarifying the complaint and explaining the process
  - A closer look - providing a remedy
  - A closer look - writing and communicating your final response
  - Complaints involving multiple organisations
  - Independent NHS complaints advocacy, and other specialist advice

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

## **2. Standards and relevant legislation**

### **2.1 The relevant Complaint Standards expectations are:**

#### **Welcoming complaints in a positive way**

- Organisations clearly publicise how people can raise complaints in a range of ways that suits them and meets their specific needs. They make it easy for everybody to understand how the process works. This includes being clear about who can make a complaint and what will happen next.
- Organisations make sure people know how to get advice and support when they make a complaint. This includes giving details of appropriate independent complaints advocacy and advice providers, any Patient Advice and Liaison service (PALs), and other support networks.
- Organisations regularly promote their wish to hear from their service users and show how they use learning from all feedback (including complaints) to improve services.

### **2.2 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.**

#### **Duty of candour procedure**

### **2.3 The Care Quality Commission's [guidance](#) on the duty of candour says that people going through the procedure should be given 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**

### **2.4 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**

### **2.5 Each regulator has its own specific legislation and fitness to practise rules. It will apply these and the appropriate thresholds when it decides whether to instigate a fitness to practise investigation. For further information, see the relevant website or contact the regulator for guidance.**

### 3. What you should do

#### **Complaints that overlap with other investigations or reviews, such as patient safety investigations**

- 3.1 Everyone has a right to make a complaint and have it investigated and responded to in a full and timely manner. This is true regardless of what other reviews or investigations are taking place into an incident or death. During your consideration of a complaint, you may identify that another process should take place, such as a patient safety investigation. In these cases, it is good practice to discuss the matter with relevant colleagues and agree how best to work together. This is also true if the issues you are considering overlap with issues already being investigated or reviewed elsewhere. In addition, you should talk to the person making the complaint about the concerns and questions they want answered. If possible, you should work with colleagues to incorporate these into their investigation/review to provide a comprehensive response that meets the needs of both processes.
- 3.2 The person making the complaint should have a single point of contact who can keep them updated and informed about both processes. They should always be told about independent advocacy and advice to support them through the process.

#### **Complaints where a legal claim is planned or ongoing or an inquest is to take place**

- 3.3 The underlying requirement is that the NHS Complaints Regulations 2009 must be followed when you handle any complaint. A person who is making a complaint should not be treated differently or made to feel uncomfortable because they are taking or considering taking legal action. Normal good practice and requirements such as the duty of candour still apply.
- 3.4 If a legal claim is planned or ongoing, or an inquest is to take place and the person wishes to make a complaint as well, this should not affect the investigation and response to the complaint. The only exceptions to this are if:
- the individual requests or agrees to a delay
  - there is a formal request for a pause in the complaint process from the police, a coroner or a judge.

In such cases, the complaint investigation will be put on hold until those processes conclude.

- 3.5 If your organisation decides to put a complaint on hold against the wishes of the person who has made the complaint, you should inform the complainant as soon as possible. You should give a full explanation (in writing, unless requested not to) of the reasons why and advise the person who has made the complaint that they can appeal to the Parliamentary and Health Service

Ombudsman if they feel this is unreasonable. (See [Complaint handling guidance](#) on referring to the Ombudsman). Any decision to put the complaint on hold in these circumstances should be made with the involvement of the organisation's responsible person.

**Complaints where you identify, during your consideration, that there may also be a potential legal claim**

- 3.6 If you identify a potentially serious failing or impact, you will need to consider if the person may have a legal claim. The complaints process is not designed to determine legal liability or to provide compensation that might be awarded by a court. When resolving a complaint, you can make a payment that acknowledges pain, distress and inconvenience as part of the complaints procedure. Even if you identify a possible 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. In these cases, you should discuss the matter with your legal team or defence organisation and NHS Resolution. You should also refer to [the joint NHS Resolution/PHSO guidance](#) on resolving NHS complaints and claims.
- 3.7 If the person making the complaint indicates that they are seeking compensation or would like to make a legal claim for compensation, they should be informed and advised about the availability of independent advice from organisations such as the charity [Action against Medical Accidents \(AvMA\)](#) or from solicitors specialising in the relevant field.

**Complaints where you think that local disciplinary procedures might be necessary**

- 3.8 The complaints procedure itself is not a disciplinary procedure. However, while considering or investigating a complaint, you may identify issues that require a member of staff to be subject to remedial or disciplinary procedures. If that happens, you will need to discuss this with relevant colleagues. If the complaint includes those issues, you should advise the person making the complaint in broad terms that such action is being taken. You should take legal advice about how much information you are allowed to disclose.
- 3.9 An employer may decide in serious cases to take its own disciplinary action against a health or social care professional, regardless of whether it is making a referral to a regulator (see below). Healthcare organisations should consider contacting NHS Resolution's [Practitioner Performance Advice Service](#) before they take action.

**Complaints involving referral or potential referral to a regulator**

**What regulators do**

- 3.10 Regulators of health and social care professionals look into serious concerns about individual practitioners who are required by law to be registered with them.
- 3.11 Regulators do not aim to punish registrants for past mistakes or provide an avenue for financial redress. Their overriding objective is to ensure patient safety, to protect patients and maintain the public's confidence in the professions and healthcare system.

### **When should I make a referral to a regulator?**

- 3.12 Anyone using health and care services who has a complaint is encouraged to seek local resolution, as the practitioner or service is best placed to resolve individual complaints. It is in no one's interest to refer a complaint to a regulator that does not meet its threshold for an investigation.
- 3.13 Like everyone else, healthcare professionals can make mistakes at work; their regulator is not there to punish them. An occasional or a one-off mistake or incident of poor care can be very concerning and upsetting for a member of the public. It is right that such mistakes should be immediately and thoroughly investigated by your organisation and, where possible, steps taken to put the matter right. Isolated incidents may not in themselves amount to a fitness to practise issue that would require a regulator to get involved.
- 3.14 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.
- 3.15 Regulators will be interested in complaints that:
- are serious
  - indicate persistent failure to adhere to principles of good practice
  - may raise a question about the individual registrant's fitness to practise.
- 3.16 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 there may be a risk to patients, or to the public's confidence in any of the health and social care professions. Referrals can be made by employers or organisations, or by the person who raised the complaint.
- 3.17 If you believe, as part of your consideration of a complaint, that a referral may be necessary or if you are at all unsure, you should discuss this with relevant colleagues. 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). In the case of doctors, dentists and pharmacists, free advice is available to healthcare organisations from [NHS Resolution's Practitioner Performance Advice Service](#).

### **Making the referral**

- 3.18 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 to do so. However, you should always let them know that this has happened and why. It would also be wise to give them information about the regulator's role and remit and what it can and can't do, to help manage expectations. The person who made the complaint may wish to contact the regulator themselves. You should let them know where they can get independent advice (see guidance on independent advice and advocacy).
- 3.19 When it refers an individual health professional to their regulator, your organisation should provide as much information as possible. This will help the regulator assess whether the matter meets its threshold for investigation.
- 3.20 The person making a complaint may have already referred the matter to the relevant regulator themselves or may subsequently choose to. This should not affect the way that their complaint is investigated and responded to locally.

#### **Actions a regulator may take**

- 3.21 Regulators consider concerns raised with them by members of the public, other healthcare professionals and from formal referrals by the registrant's employer.
- 3.22 Concerns that do not meet the threshold for an investigation will be closed at the initial assessment stage. In cases that meet its threshold, a regulator will open an investigation and inform the individual practitioner. If there is a serious immediate threat to patient safety, it may make an interim order to restrict or stop the registrant working while investigations are carried out.
- 3.23 After considering the information and evidence gathered during an investigation, a regulator will close some cases with no further action. In other cases, the regulator may give the registrant advice or a formal warning. More serious concerns will be referred for further consideration at a fitness to practise hearing.
- 3.24 Not all cases will result in action being taken against the healthcare professional. Given its specific role and remit described above, 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. If the registrant has shown insight, reflected on the incident that prompted the concern and provided evidence to show the same thing is unlikely to happen again, the regulator is likely to close the matter with no further action.

- 3.25 In some cases, a regulator may give a formal warning to a registrant if their actions were a significant departure from the standards expected in their professional guidance or code.
- 3.26 Only the most serious cases may be referred to a tribunal for a hearing. If the registrant's fitness to practise is found to be impaired and they are a risk to patients and the public, a regulator may restrict how they practise, suspend their right to practise for a period of time or strike them off their register. Examples of the sorts of cases regulators will take action on range from sexual assault or indecency to knowingly practising without an active licence/registration. See below for more examples.
- 3.27 The regulator will apply its own specific rules and thresholds when it decides whether to carry out a fitness to practise investigation. If a concern doesn't suggest a registrant's ongoing fitness to practise is impaired, the regulator will not investigate.
- 3.28 You can out find more about how regulators investigate concerns and what actions they can take for the following healthcare professionals:
- [doctors](#)
  - [dentists](#)
  - [nurses and midwives](#)
  - healthcare professionals regulated by the [HCPC](#).

You can find similar information about other regulated healthcare professions on the relevant regulator's website.

## 4. Examples

### 4.1 Examples of serious concerns:

Examples of serious concerns include, but are not limited to:

- serious or repeated mistakes in patient care
- failure to respond reasonably to patient needs (such as not referring for further investigations where necessary)
- violence, sexual assault or indecency
- fraud or dishonesty
- a serious criminal offence
- abuse of professional position (for example, an improper sexual relationship with a patient)
- discrimination against patients, colleagues or others
- harassment or bullying of colleagues, patients or others
- serious breaches of patient confidentiality
- serious concerns about knowledge of English
- serious concerns about adverse physical or mental health.



## **5. Practical tools**

- 5.1 One page guide to health care regulators - see below.
- 5.2 If there are serious concerns about an individual healthcare professional, you should consider a referral to their regulator. More information on when that may be appropriate can be found in relation to [nurses and midwives](#), doctors, [dentists](#) or other healthcare professionals regulated by the [HCPC](#). If the concern relates to a doctor, dentist or pharmacist, employers can seek advice from NHS Resolution's [Practitioner Performance Advice Service](#) (PPAS). Helpful information about other regulated healthcare providers can be accessed on the relevant regulator's website.
- 5.3 [NHS Resolution](#) has some useful resources on its website, including a guide to conducting local investigations.
- 5.4 In the case of doctors, dentists and pharmacists, free advice is available to healthcare organisations from NHS Resolution's [Practitioner Performance Advice Service](#) (PPAS).
- 5.5 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. It says that in these cases, an NHS body should continue to try to resolve the complaint quickly unless there are compelling legal reasons not to do so.

## **6. Version control**

- 6.1 Final - March 2023

## Guide to the healthcare regulators

Health professional	Regulator	Web site/Contact Details
Doctors	General Medical Council	<a href="http://www.gmc-uk.org">www.gmc-uk.org</a>
Nurses and midwives	Nursing and Midwifery Council	<a href="http://www.nmc-uk.org">www.nmc-uk.org</a>
Dentists and dental practitioners	General Dental Council	<a href="http://www.gdc-uk.org">www.gdc-uk.org</a>
Pharmacists and pharmacy technicians	General Pharmaceutical Council	<a href="http://www.pharmacyregulation.org">www.pharmacyregulation.org</a>
Opticians and optical professionals	General Optical Council	<a href="http://www.optical.org">www.optical.org</a>
Osteopaths	General Osteopathic Council	<a href="http://www.osteopathy.org.uk">www.osteopathy.org.uk</a>
Chiropractors	General Chiropractic Council	<a href="http://www.gcc-uk.org">www.gcc-uk.org</a>
Registered healthcare professionals*	Health and Care Professions Council	<a href="http://www.hcpc-uk.org">www.hcpc-uk.org</a>
Social workers	Social Work England	<a href="http://www.socialworkengland.org">www.socialworkengland.org</a>

\*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.