

Complaints and other procedures

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 guidance has been created to 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 This guidance should be read in conjunction with the following modules:

- Identifying a complaint [Insert link](#)

- Who can make a complaint, consent and confidentiality [Insert link](#)
- Early Resolution [Insert link](#)
- A closer look - clarifying the complaint and explaining the process [Insert link](#)
- A closer look - providing a remedy [Insert link](#)
- A closer look - writing and communicating your final written response [Insert link](#)
- Complaints involving multiple organisations [Insert Link](#)
- Independent NHS complaints advocacy, and other specialist advice and support for people raising complaints [Insert link](#)

2. Standards and relevant legislation

2.1 The relevant Complaint Standards expectations are:

Welcoming complaints in a positive way

Organisations make sure staff are able to identify when issues raised in a complaint are likely to be addressed (or are being addressed) via another route, so a co-ordinated approach can be taken. Other possible routes include inquest processes, a local disciplinary process, legal claims or referrals to regulators. Staff know when and how to seek guidance and support from colleagues and are able to provide people with information on where they can get support.

- 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 [guidance](#) on the duty of candour says that people going through the procedure should be provided with 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) and Action against Medical Accidents (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 their own specific legislation and fitness to practise rules. They will apply these and the appropriate thresholds in deciding whether to instigate a fitness to practise investigation. For further information see the relevant website or contact the regulator for further information. [Insert Link to table](#)

3. What you should do

Complaints which 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. Likewise, if the issues you are considering overlap with issues already being investigated or reviewed elsewhere. You should also discuss with the person making the complaint what 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 which 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 advised of the availability of independent advocacy and advice to support them through the process. [Insert link to advocacy guide](#)

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 handling any complaint. A person 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 making the complaint, they should inform the complainant as soon as possible. They should provide a full explanation (in writing, unless requested not to) of the reasons why and advise the person making the complaint that they can appeal to the Parliamentary and Health Service Ombudsman if they feel this is unreasonable. (See guidance on referring to the Ombudsman [Insert Link](#).) 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 potential legal claim. The complaints process is not designed to determine legal liability or to provide compensation which 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 potential 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, the person making the complaint should be informed and advised of 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 the 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 they are making a referral to a regulator (see below). Healthcare organisations

should consider contacting NHS Resolution's [Practitioner Performance Advice Service](#) before taking 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 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 their 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 practise
 - may raise a question as to 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 may pose a risk to patients or the public's confidence in any of the health and social care professions. Referrals can be made either by employers or organisations, or 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 [Insert link](#)). 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 they 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 [[insert link](#)]).
- 3.19 When referring 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 their 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 from 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 do meet their threshold, a regulator will open an investigation and inform the individual practitioner. If there is a serious immediate threat to patient safety, they may make an interim order to restrict or stop the registrant working while investigations are carried out.
- 3.23 After considering all of the information and evidence gathered in the course of an investigation some cases will be closed 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 their specific role and remit described above, the regulator will consider whether the individual practitioner is a continued risk to patients if they are 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 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 their own specific rules and thresholds in deciding whether to carry out a fitness to practise investigation. If a concern doesn't suggest a registrant's ongoing fitness to practise may be impaired, the regulator won't 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](#)
 - [nurses and midwives](#)
 - [dentists](#)
 - 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 - [Insert Link \(see below\)](#)

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 [doctors](#), [nurses and midwives](#), [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 on 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. In these cases, it says that 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 Pilot Draft - March 2021

Guide to the Healthcare Regulators

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

*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.