

Identifying a complaint

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 explains how you can identify a complaint. It also explains how to handle complaints:

- that are not covered by the NHS complaints Regulations
- where the person plans to take, or is taking, legal action
- where another procedure such as a Coroner's Inquest or patient safety investigation is taking place
- that are about events that took place more than 12 months ago
- that are anonymous or general.

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](#)
- Who can make a complaint, consent and confidentiality [Insert link](#)
- Complaints and other procedures [Insert link](#)
- Early Resolution [Insert link](#)

2. Standards and relevant legislation

2.1 The relevant Complaint Standards expectations are:

Promoting a just and learning culture:

- Organisations make sure staff are trained to identify complaints in a way that meets the expectations set out in the Complaint Standards.
- Staff are trained to identify those complaints where mistakes have been made that may have resulted in significant impact. Staff ensure these mistakes are reviewed through the organisation's Duty of Candour processes. Organisations routinely share learning from complaints with other organisations (both locally and nationally) to build on insight and best practice.

2.2 The relevant Regulations that apply are:

- [The Local Authority Social Services and National Health Service Complaints \(England\) Regulations 2009](#) sets out the duty to handle complaints at section 6. The Regulations allow for a wide definition and a complaint can be made about any matter reasonably connected with the exercise of an organisation's NHS services.

2.3 The following complaints are not required to be dealt with under the Local Authority Social Services and National Health Service Complaints (England) Regulations (2009), regulation 8 (1):

- A complaint made by any NHS organisation or private or independent provider or responsible body.
- A complaint made by an employee about any matter relating to their employment.
- A complaint, the subject matter of which has previously been investigated under these or previous NHS Regulations.
- A complaint which is made orally and resolved to the complainant's satisfaction no later than the next working day. (However, see section 3.13 below).
- A complaint arising out of an NHS body's alleged failure to comply with a request for information under the Freedom of Information Act 2000.
- A complaint which relates to any scheme established under Section 10 (superannuation of persons engaged in health services) or Section 24 (compensation for loss of office) of the Superannuation Act 1972 or to the administration of those schemes

2.4 If a complaint (or any part of it) does not fall under this procedure you should, in accordance with the regulation 8(2)(b), explain the reasons for this, in writing, to the person raising the complaint and provide any relevant signposting information, for example to other organisations who are better placed to assist.

- 2.5 Regulation 12 states that a complaint must be made within 12 months of the date the matter complained about occurred or the date the person raising the complaint found out about it, whichever is the later.
- 2.6 Regulation 13, states that ‘a complaint may be made orally, in writing or electronically’. This includes in person, on the telephone, email, and on-line. Where a complaint is made orally you ‘must - make a written record of the complaint; and provide a copy ... to the complainant.’
- 2.7 Regulation 20 of The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (the 2014 Regulations) says there is a duty of candour and that organisations ‘must act in an open and transparent way with relevant persons in relation to care and treatment provided to service users in carrying on a regulated activity’.
- 2.8 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 a complainant expresses an intention to take legal proceedings, an NHS body should continue to try to resolve the complaint quickly unless there are compelling legal reasons not to do so. See the practical tools section below to read the note in full [[insert link](#)]

3. What you should do

What is a complaint?

- 3.1 A complaint is defined as an expression of dissatisfaction, either spoken or written, that requires a response. It can be about:
- an act, omission or decision you have made, and/or
 - the standard of service you have provided.
- 3.2 People do not have to use the word ‘complaint’ themselves. They may talk about ‘feedback’, ‘an issue’, ‘a concern’, or they may say they want to ‘tell you about’ something. You should use and reflect the language chosen by the person. The term ‘complaint’ used in this guidance covers all the variations that people might use.
- 3.3 To identify whether something is a complaint, ask yourself:
- is the person dissatisfied?
 - do they require a response?
- 3.4 If a complaint is made verbally, the 2009 Regulations require that a written record is made of the complaint and shared with the person who raised it. You also have to acknowledge all complaints within three days and offer to discuss the way the complaint will be handled and how long it is likely to take. There is more information in guidance [[insert link to guidance](#)].

Complaints not required to be dealt with under the 2009 Regulations

- 3.5 The 2009 Regulations set out the types of complaint that do not fall under the complaints process. Complaints made by staff or other NHS organisations are not required to be dealt with under these Regulations unless the member of staff is complaining as a patient or user of an NHS service.
- 3.6 If you decide that a complaint (or any part of it) is not required to be dealt with under the 2009 Regulations, you should write to the person who raised it and explain why. If there are other procedures or other organisations that can help, you should signpost the person to them.

Complaints involving other procedures, such as a patient safety investigation, a Coroner's Inquest or legal issue

- 3.7 If you establish that it may not be possible to achieve an appropriate outcome through the complaint process on its own, you should inform the person making the complaint. You should give them information about any other process that may provide the outcomes they are seeking.
- 3.8 This can happen at any stage in the complaint handling process and may include identifying issues that could or should:
- trigger a patient safety investigation
 - involve a Coroner's investigation or inquest
 - trigger a regulatory process, such as fitness to practise investigations or referrals
 - involve a legal issue that requires specialist advice or guidance.

For further details see guidance [[insert link to guidance](#)].

- 3.9 You should provide clear information to the person raising the complaint to make sure they understand the purpose of another procedure, how they will be involved and the options available. You should signpost them to sources of specialist independent advice to help them make an informed decision and help them with the relevant processes. For further details see guidance [[insert link to guidance](#)].
- 3.10 You should engage with staff or other organisations who can provide advice and support to agree on the best way to provide a full and comprehensive response to all the issues raised in the complaint.
- 3.11 If the person making the complaint is already taking part or later decides to take part in another process, and still wishes to continue with their complaint, 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 these cases, the complaint investigation will be put on hold until those processes conclude.

Complaints about events that took place more than 12 months ago

- 3.12 Under the Regulations, complaints must be made within 12 months of the date of the matter complained about, or the date the person raising the complaint found out about it. If a complaint is made to you outside this time limit, you should first consider the reasons for the delay in making the complaint. If this is not clear from the complaint in its current form, you must give the person making the complaint an opportunity to tell you about the reasons for the delay.
- 3.13 If you decide that the reasons given for the delay are reasonable, you should go on to consider if it is still possible to properly consider the complaint effectively and fairly. For example, if someone has been ill or has had caring responsibilities that have led to the delay, and the relevant records and staff are still available, you may decide to continue with your consideration of the complaint.
- 3.14 If you decide that there is not a good reason for the delay **and/or** that it is not possible to properly consider the complaint (or any part of it), you should explain this to the person raising the complaint, in writing, and explain that if they are dissatisfied with that decision they can approach the Parliamentary and Health Service Ombudsman. See example section below [[Insert Link](#)].

Complaints made in person that can be answered quickly

- 3.15 Staff often handle complaints that are made to them in person and resolve them quickly at the time they are raised, or very soon after. It is good practice to do this. Under the 2009 Regulations a complaint that is made verbally (that is, in person or over the phone) and is resolved to the individual's satisfaction no later than the next working day **does not need** to go through your complaints process.

Anonymous and general complaints

- 3.16 An anonymous complaint, or a general complaint that would not meet the criteria for 'who can complain' set out in the 2009 Regulations, can still be a valuable source of insight and learning. You should still consider the issues raised and, if appropriate, investigate the matter to identify whether there is any learning for the organisation.

4. Examples and case studies

- 4.1 Examples of complaints you might receive:

Categories of complaint examples

Early resolution may be suitable where:

- a service has not been provided that should have been
- a service has not been provided to an appropriate standard
- a request for a service has not been answered or actioned
- a member of staff was perceived as rude or unhelpful
- a staff member or contractor did not attend a scheduled appointment.

A closer look may be suitable where:

- the person does not want to engage in early resolution
- the issues raised are complex and will require detailed investigation
- the complaint is about more than one organisation
- the complaint is about both health and social care
- the complaint relates to issues that have been identified as serious or high risk/high profile

A complaint may be serious or high risk/high profile where it:

- involves a death or terminal illness
- involves patient safety issues
- involves homelessness
- involves a vulnerable person
- involves child protection issues
- involves major delays in service provision or repeated failure to provide a service
- has attracted media interest
- may present a risk to the organisation

4.2 Example letter declining to look at a complaint where the events are more than 12 months old: [Need an example letter declining an OOT complaint](#)

4.3 Example letter declining to look at a complaint where the issues are not required to be dealt with: [Need an example of a 'not a complaint to be dealt with under procedure'](#)

5. Practical Tools

5.1 March 2014 Department of Health and Social Care: Clarification note for complaints cases subject to litigation, inquests and other serious investigations:



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6. Version control

6.1 Pilot Draft - March 2021