

# Identifying a complaint



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# 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 This module will help you identify a complaint. It explains what ‘everyday conversations’ are and the difference between them and 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 You should read it alongside the [Model Complaint Handling Procedure](#) and the following guidance modules:
- Independent NHS complaints advocacy and other specialist advice
  - Who can make a complaint - consent and confidentiality
  - Complaints and other procedures
  - Early resolution.

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

## 2. Standards and relevant legislation

- 2.1 The relevant Complaint Standards expectations are:

### **Promoting a learning culture**

- 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](#) set out the duty to handle complaints at section 6. The Regulations allow 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 that is made orally and resolved to the complainant's satisfaction no later than the next working day.
- 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 that 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 regulation 8(2)(b), explain the reasons for this, in writing, to the person who has raised the complaint and provide any relevant signposting information, for example to organisations that 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 who has raised 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.

### 3. What you should do

#### Everyday conversations with patients and service users

- 3.1 Every day, staff interact with people who use (or are impacted by) your care and service. This means they often see and hear issues being raised that they can help with and resolve there and then, without the need for the person to make a complaint. This can include things like:
- a request for advice or an action
  - a need for an explanation to resolve confusion about what is happening or about a care or service issue
  - concern about an error that may have been made.

These are the sorts of everyday conversations that are not complaints. They are matters that can be sorted out immediately (or very quickly) and without the person becoming dissatisfied and deciding to make a complaint.

- 3.2 This is an important aspect of engaging with patients and service users and is the best, most cost-effective and time-efficient way to deal with issues before the person has an opportunity to become dissatisfied, and the issue becomes a complaint. Remember, though, that if you do not provide the action or explanation you promised, in the timescale discussed, then the issue can quite quickly become a complaint, so you should always deliver on what you say.
- 3.3 The rest of this guidance refers to those situations where it is not possible to resolve an issue as it arises and it becomes a complaint, or where an issue is clearly a complaint and needs to be handled under the NHS Complaint Regulations, your complaints procedure and the NHS Complaint Standards.

#### What is a complaint?

- 3.4 The NHS Complaint Standards define a complaint 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.’**
- 3.5 People do not have to use the word ‘complaint’ themselves. They may talk about ‘feedback’, ‘an issue’, or ‘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.
- 3.6 To identify whether something is a complaint, ask yourself:
- is the person asking for something or do they just need an explanation?

If the answer is ‘yes’ this is not a complaint.

- is the person clearly dissatisfied with something that has or has not happened to them?
- does the matter need to be looked into?
- do they require a response?

If the answer is 'yes' to these questions, this is a complaint.

If you are unsure about whether or not something is a complaint, consult your colleagues. Or you can simply ask the person if they are unhappy and if they would like you to look into the matter and provide a response.

- 3.7 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 working days and offer to discuss how a complaint will be handled and how long it is likely to take. There is more information on how to do this in the [Early resolution](#) and [A closer look - clarifying the complaint](#) guidance modules.

### **Complaints not required to be dealt with under the 2009 Regulations**

- 3.8 The 2009 Regulations set out the types of complaint that do not fall under the complaints process (see paragraph 2.3 above). 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.
- 3.9 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 could help, you should signpost the person to them.

### **Complaints involving other procedures, such as a patient safety investigation, a coroner's inquest or a legal issue**

- 3.10 If you establish that it may not be possible to achieve an appropriate outcome through the complaints process on its own, you should tell the person who has complained. You should give them information about any other process that may provide the outcomes they are seeking.
- 3.11 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
  - trigger your safeguarding procedures
  - involve a coroner's investigation or inquest
  - trigger a regulatory process, such as fitness to practice investigations or referrals
  - involve a legal issue that requires specialist advice or guidance.

For further details see the [Complaints and other procedures](#) guidance.

- 3.12 You should give the person who has complained clear information 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.
- 3.13 You should engage with staff or other organisations that can provide advice and support to agree the best way to provide a full and comprehensive response to all the issues raised in the complaint.
- 3.14 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 the 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 the processes conclude.

#### **Complaints about events that took place more than 12 months ago**

- 3.15 Under the 2009 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, you must give the person who has complained an opportunity to tell you about the reasons for the delay.
- 3.16 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.
- 3.17 If you decide that there is not a good reason for the delay, or you think 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 the examples and the case study section below for a template that you might find useful.

#### **Complaints made in person that can be answered quickly**

- 3.18 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 end of the next working day **does not need** to go through your complaints process.

### **Anonymous and general complaints**

- 3.19 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 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 To help colleagues identify complaints (and decide if they may be suitable for early resolution or not), it may be helpful to use a simple table like the example below. This table can be amended to reflect the particular types of complaint your organisation might receive:

### **Categories of complaint examples**

#### Early resolution may be suitable if:

- 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 service being provided is having an immediate negative impact
- an error has been made that can be corrected quickly
- 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 if:

- the issues raised are complex and will require detailed investigation
- the complaint is about more than one area of care/service or multiple organisations
- the complaint is about both health and social care
- the complaint raises issues that might affect other service users
- 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 if it:

- involves a death or terminal illness
- involves patient safety issues
- involves safeguarding issues
- 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 and you decide there is no good reason for the delay:

Dear [insert name]

As you know, we have received your complaint about [insert details of complaint].

As I explained when we spoke, there is a time limit for bringing complaints to us and unfortunately your complaint fell outside that time limit.

When we spoke, you explained that [include explanation (and any evidence) given by the person for the reason for the delay in complaining]. While I understand this [give explanation of how you have considered this explanation/evidence and have decided that it is not a good reason for the delay and why you think they could have complained earlier].

I hope you can see that we have considered this carefully. If you are unhappy with our decision not to look into your complaint and would like to take the matter further, you can contact the Parliamentary and Health Service Ombudsman. The Ombudsman makes final decisions on complaints that have not been resolved by the NHS, government departments and some other public organisations. Their service is free for everyone. There is also a time limit for making your complaint to the Ombudsman, so you should do this as soon as possible. To take a complaint to the Ombudsman, or to find out more about the service, go to [www.ombudsman.org.uk](http://www.ombudsman.org.uk) or call 0345 015 4033.

Yours sincerely

4.3 Example letter declining to look at a complaint where there is a good reason for the delay but you have decided that it would not now be practical to investigate the complaint because of the time elapsed:

Dear [insert name]

As you know, we have received your complaint about [insert details of complaint].

As I explained when we spoke, there is a time limit for bringing complaints to us and unfortunately your complaint fell outside that time limit.

When we spoke, you explained that [include explanation (and any evidence) given by service user for the delay in complaining]. I understand and accept this explanation and believe this is a very good reason for why you did not complain to us sooner.

I have carefully considered whether it would be possible [X months/years] later to investigate your complaint and provide you with the answers and outcome you seek [include details of the outcome sought if applicable]. Unfortunately, I have decided that this would not be possible and we would be very unlikely to deliver the outcome you are seeking. This is because [give explanation of how you have considered what would be involved in investigating the complaint and why you feel that it would not be practical to investigate and reach a satisfactory conclusion].

I hope you can see that we have considered this carefully. If you are unhappy with our decision not to look into your complaint and would like to take the matter further, you can contact the Parliamentary and Health Service Ombudsman. The Ombudsman makes final decisions on complaints that have not been resolved by the NHS, government departments and some other public organisations. Their service is free for everyone. There is also a time limit for making your complaint to the Ombudsman, so you should do this as soon as possible. To take a complaint to the Ombudsman, or to find out more about the service, go to [www.ombudsman.org.uk](http://www.ombudsman.org.uk) or call 0345 015 4033.

Yours sincerely

## 5. Practical tools

### 5.1 A simple desk aid to help identify if something is a complaint or not:

Everyday conversation	
	<ul style="list-style-type: none"><li>The service user is asking for something or just needs an explanation.</li></ul>

Complaint	<ul style="list-style-type: none"> <li>• The service user is clearly dissatisfied with something that has or has not actually happened to them.</li> <li>• The matter needs looking into.</li> <li>• They require a response.</li> </ul>
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- 5.2 March 2014 Department of Health and Social Care: Clarification note for complaints cases subject to litigation, inquests and other serious investigations:

[Complaints\\_litigation\\_clarification\\_note\\_March\\_2014.pdf](#)

## 6. Version control

- 6.1 Final - December 2022