

# Information for NHS trusts on the respective roles of the Parliamentary and Health Service Ombudsman and NHS Resolution in resolving NHS complaints and claims

**This document is for NHS trusts in England, particularly those staff who manage complaints and/or compensation claims raised against their trust.**

- It outlines the roles of the Parliamentary and Health Service Ombudsman and NHS Resolution and how their services overlap and interact.
- Staff who manage NHS complaints and/or compensation claims should use this document as a guide to decide when to involve the Parliamentary and Health Service Ombudsman or NHS Resolution in complaints or compensation claims.

**“We share a commitment to helping the NHS respond more effectively when things go wrong.”**

The Ombudsman and NHS Resolution are independent of each other, but share a commitment to help the NHS respond more effectively when things go wrong. They are working together to improve the interaction between the NHS complaints and claims systems and to ensure that NHS organisations understand the respective roles and services provided. For example, in a small number of cases where clinical negligence is a possibility, the Ombudsman may refer complainants directly to NHS Resolution rather than to the courts.

#### **The role of the Parliamentary and Health Service Ombudsman:**

The Ombudsman’s role is to make final decisions on complaints that have not been resolved locally by the NHS in England. The Ombudsman looks at complaints where someone believes there has been injustice or hardship because an organisation has not acted properly or has given a poor service and not put things right. The Ombudsman can recommend that organisations provide explanations, apologies and financial remedies to service-users, as well as that they take action to improve services.

#### **The role of NHS Resolution:**

NHS Resolution provides indemnity schemes for the NHS in England and resolves claims for compensation, primarily via the Clinical Negligence Scheme for Trusts and Liabilities to Third Parties Scheme. NHS Resolution also resolves concerns about the performance of individual practitioners, and appeals and disputes between primary care contractors and NHS England respectively. Through its Safety and Learning Service, it identifies themes and issues arising out of claims and provides feedback to its members to enable improvements to be implemented.

**“When complaints are well managed locally, an individual is unlikely to take their complaint to the Parliamentary and Health Service Ombudsman.”**

### **When something goes wrong in the NHS: who pays what and when?**

- When resolving local complaints, NHS organisations can make payments for service failure and maladministration that acknowledges pain, distress and inconvenience. These payments are not intended to compensate for clinical negligence.
- NHS organisations may identify a potential personal injury claim in the course of investigating a complaint. In some cases, and following legal advice, an organisation may be able to offer a financial remedy as part of their response to the complaint without the need for legal action with the potential for NHS Resolution to reimburse the organisation.
- **NHS Resolution** resolves compensation claims, including those relating to clinical negligence. It will take into account payments made as a result of resolving a complaint locally in deciding on levels of compensation for clinical negligence.
- **The Ombudsman** makes recommendations for payments to remedy hardship or injustice caused by service failure or maladministration with reference to ‘Principles for Remedy’ and **‘Our Guidance on Financial Remedy’**. This includes recommendations to remedy inconvenience and distress.

### **Good practice:**

- The Ombudsman recommends that NHS organisations refer to **‘Our Guidance on Financial Remedy’** when deciding what an appropriate payment is.
- When a potential claim for personal injury is identified during the course of a local investigation, organisations should seek advice from legal teams as early as possible. It may be possible to offer a suitable financial remedy as part of the complaint response without the need for legal action.

## Responding to requests for compensation when something goes wrong in the NHS

### Good practice:

- When an NHS organisation believes that clinical negligence has occurred, they must alert **NHS Resolution** as soon as possible.
- NHS organisations should ensure that complaints that include a request for a financial remedy are handled in line with the Ombudsman's [Principles for Remedy](#) and not automatically handled as a legal claim.

### Seeking reimbursement from NHS Resolution for payments made on the Ombudsman's recommendations

The Ombudsman may recommend payments made to remedy injustice in cases that relate to personal injury or property damage. Payments made by organisations may be eligible for full or part reimbursement by NHS Resolution and may be deductible from civil claims. However, NHS Resolution does not provide cover for maladministration and is unlikely to cover injustice caused by poor service.

### Avoiding duplicate compensation or financial remedy payments for the same incident

The Ombudsman is not usually able to consider complaints that seek a remedy that can also be achieved through legal action. However, the Ombudsman can provide remedies that might not be wholly achievable through legal action, such as formal apologies or changes to processes that prevent failings from re-occurring.

NHS Resolution can advise NHS organisations where recommendations for payment have been made by the Ombudsman to ensure that NHS organisations do not offer a financial remedy for the same injustice more than once. NHS organisations are advised to discuss cases in this category with their claims service team leader at NHS Resolution.

### Further information

[www.ombudsman.org.uk](http://www.ombudsman.org.uk)

[www.resolution.nhs.uk](http://www.resolution.nhs.uk)

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