

# Information Sheet

## 27 How to Make a Complaint

This information sheet is aimed at people who are having problems with their care home, local council or the NHS in **England**. It explains the steps you can take to challenge a decision or make a complaint.

If you live in Scotland, Wales or Northern Ireland you need to seek advice from either the local council or NHS in those countries to find out what you need to do to make a complaint. You could also ask your local Citizens Advice Bureau.

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*How to Make a Complaint* was published in August 2009. Every effort has been made to ensure that the information contained in this information sheet is correct. However, things do change so it is always a good idea to seek expert advice on your personal situation.

## General advice on making a complaint

If you are unhappy with the way you have been treated by your local council or NHS you may want to make a complaint. The different steps you can take are outlined in this information sheet. But first, here is some general advice on how to deal with any complaint.

- Decide if you want to make an informal or a formal complaint. To make an **informal complaint**, speak to someone to try to sort things out as quickly as possible. You can clear up many problems by having an informal chat with a member of staff at the organisation. Most people make an informal complaint first because a **formal complaint** is more serious and may take longer to resolve. For a formal complaint, ask for information about the procedure and put your complaint in writing. Someone will investigate and then reply, in writing, telling you what they are going to do about it. All service providers must have a complaints procedure. It must set out how service users, or those acting on their behalf, can complain about the service.
- Be clear about what it is you are unhappy about. Your complaint is more likely to be resolved to your satisfaction if you can be precise about what you are complaining about.
- Say what you want the result of your complaint to be. Do you want an apology? Do you want an explanation of what went wrong and why? Do you want something to be changed so that other people don't have the same experience you have had?
- In some cases it may be possible to get compensation. If this is what you want the complaints procedure may not be the right route for you. You may want to get advice on this.
- Try to be as clear and concise as you can in any letters you are writing.

- If you speak to someone about your complaint, by telephone or in person, it is a good idea to make a record of the time, date and name of the person you spoke to. For example, you may have made your initial complaint in person, or made a phone call to check your complaint has been received. Follow up any conversations with a letter confirming what was discussed. Make sure you keep a photocopy of any letters you send and keep all letters and emails you receive.
- If you are making a formal complaint, state this clearly in your letter. This will mean that your care home, local council or NHS service will have to deal with your complaint within set time limits. There is more information on the time limits for care home, local council and NHS complaints in the next three sections of this information sheet.
- You may find it useful to get further advice before making a complaint: for example, from your local **Citizens Advice Bureau**, or by calling our free advice service **SeniorLine** on **0808 800 6565 (0808 808 7575 in Northern Ireland)**. We give details later on where else you can go to get advice, depending on what your complaint is about.

## Complaining about a care home

If you live in a care home and you are not happy about the home, its staff or the treatment you receive, you can make a complaint. You can also make a complaint if you are the relative of somebody who lives in a care home and are not happy about their treatment. You have the right to feel safe, and to be treated with dignity and respect.

### Complaining to your care home

You can clear up many problems by having an informal chat with a member of staff or the manager of the care home itself. You have the right to complain if you are not happy about the way you are being treated.

If an informal complaint does not resolve the problem, you can use the care home's complaints procedure. You could ask a friend or relative, or your local Citizens Advice Bureau to help you make your complaint.

All registered care homes must have a **complaints procedure**, which should have been clearly explained to you when you moved in. It must set out how

service users or those acting on their behalf can complain about the service. All care homes should have a Service User's Guide, which must be given to each resident and anyone else who requests it. The Service User's Guide must include details of the complaints procedure.

The registered care provider, usually the care home manager, must respond to your complaint, in writing, within 28 days. The response must say what, if anything, the home is going to do following your complaint.

#### Complaining to social services

If you are not happy with the outcome of your complaint to the care home, you can make a formal complaint to your local social services. You can contact social services directly if you do not want to approach your care home with your complaint. You will be asked to complete a complaints form. Some complaints cannot be investigated under the social services complaints procedure.

If you do not wish to complain to the home directly you could also contact the manager of your local social services. If you are unhappy about the quality of care you or your relative is receiving, you may also want to ask for a reassessment of your care needs in case the home is no longer able to provide a service that meets your needs.

If social services were not involved in helping you find a care home, they may not investigate your complaint. If this is the case, the local council will write to you to explain why your complaint can't be dealt with and what else you might be able to do.

#### Complaining to the regulator

If you have complained to your care home or local social services and you are still not happy, you should complain to the regulator of care homes, the Care Quality Commission (CQC). In some cases, you can contact the regulator directly if you do not want to complain directly to the care home. The contact details for these two regulators can be found in the Useful contacts section, starting on page 16.

If your complaint is about a private care home, complaining to the regulator is the last way you can complain.

The regulatory bodies will not investigate your complaint, but they should check whether or not the care home is complying with the national care standards.

Complaining to the Local Government Ombudsman

If your complaint is about a local council care home you can complain to an ombudsman. You should complain to the Local Government Ombudsman. Its contact details can be found in the 'Useful contacts' section, starting on page 16.

Legal action

If you have been through all the stages above and you're still not happy, you may be able to go to court to try to resolve your dispute. This might be because there is a breach of your contract with the care home. Alternatively you might have a case for a **judicial review** if a public body such as the CQC or the local council has not carried out its legal duties properly. This can be very expensive unless you are eligible for legal aid. If you are eligible, the Legal Services Commission will be able to help you find a suitable solicitor. Your local Citizens Advice Bureau should be able to advise you about whether you are eligible for legal aid. Contact details for the Legal Services Commission can be found in the Useful contacts section, starting on page 16. Contact details for your local Citizens Advice Bureau will be in your phone book.

Getting help with making a complaint

You should contact the CQC helpline for advice on making a complaint about your care home. If you would like help with making your complaint, you can get advice from your local Citizens Advice Bureau or Age Concern. See the Useful contacts section, starting on page 16, for contact details.

Challenging your local council

Local councils are responsible for carrying out community care and carers' assessments and deciding which social care services you need. The service could be help to support you to continue living at home, or it could be a place in a care home.

There is more than one course of action you can take to challenge your local council; these are described in the following section.

You can challenge your local council if you disagree with a decision that has been made about your care, or about the funding of your care. For example, you may want to put in a complaint if you:

- have been refused an assessment or re-assessment of your needs;
- feel that you are being asked to wait an unreasonable length of time to have your needs assessed;
- don't feel the assessment took into account all your needs;
- feel that the services you are receiving are not meeting your needs;
- have a problem with the way your services are being provided;
- are being asked to wait a long time for equipment or adaptations;
- feel that you are being charged an unreasonable amount for your care; or
- are having problems getting local council funding for a care home place.

You cannot:

- complain about something that you have already made a complaint about (unless the situation has changed significantly since the earlier complaint);
- complain about something that is nothing to do with social services;
- complain about something trivial, just to be annoying or cause inconvenience – this is called being 'frivolous or vexatious'; or
- complain about something which is already being dealt with in a disciplinary or court case (judicial review can be an exception).

Normally, complaints must be made within 12 months of the event happening but occasionally late complaints may be considered if it would be unreasonable to expect you to have made it in time: for example because of grief or trauma. If you want to complain about something that happened more than 12 months ago you need to explain why you could not do it within the time limits.

As from **1 April 2009**, a new way of making a complaint about your local council is in place.

### Local council complaints procedure

Each local council must have a complaints procedure and make this clearly visible: for example, on its website. Complaints procedures vary from council to council so you need to contact your local council to find out what it is.

If you would like further information, you should be able to get a leaflet from your local council that explains its complaints procedure. It should also have a

complaints officer who can advise you. Or you can contact your local Citizens Advice Bureau or call our free advice service **SeniorLine** on **0808 800 6565** (**0808 808 7575** in **Northern Ireland**).

## Using the Ombudsman

If you are unhappy with the outcome of the complaints procedure carried out by your local council, you can make a formal complaint to the ombudsman. In England this is the Local Government Ombudsman.

The ombudsman can investigate complaints if the council:

- takes too long to do something
- doesn't follow its own set of rules
- breaks its promises
- treats you unfairly
- gives you wrong information or bad advice
- does not follow the right procedures to make a decision.

If the ombudsman upholds your complaint, they are able to ask the council to take action to put it right. Some of the things the LGO may ask your council to do include:

- apologising to you
- paying compensation
- take action or make a decision it has made before
- reconsider a decision it did not make properly in the first place
- improve its policies and procedures so the same thing doesn't happen again.

Complaints to the ombudsman are free, but unfortunately it can be a slow process. How long it will take depends on what the investigation is. When you make a complaint to the Local Government ombudsman ask them if they can tell you how long it will take. For more information, including forms and helpful advice, contact the Local Government Ombudsman. its contact details are in the Useful contacts section, starting on page 16.

## Local government Monitoring Officer

You can make a formal complaint to your local council's Monitoring Officer as an alternative, or in addition, to using the local council's complaints procedure.

Whether you can make a complaint to your local Monitoring Officer before going through your local council's complaint procedure will depend on what you are complaining about.

Several people have called Help the Aged to say that their local council doesn't have a Monitoring Officer. But each local council must have someone who takes on this role even if they don't have this specific job title. This is usually the council's senior solicitor. You may need to ask who does this job and find out their full name to get in touch.

Put your complaint in writing, setting out why you think the local council's decision is unlawful. There is no set time limit for the monitoring officer to deal with your complaint, but if you do not get a reply within a couple of weeks write again, or contact the Monitoring Officer by phone.

## Lobbying

Whatever else you do, you can also ask your local councillor or MP to take up your case. They can put extra pressure on your local council to resolve your complaint quickly. Similarly, a local group such as Age Concern, or a Citizens Advice Bureau, may be able to help. It may also be worth writing a letter to your local paper to let it know what the local council is doing. In the face of bad publicity, you may find that the local council reviews its decision. However, seek advice first – using the media doesn't always work.

Lobbying your local councillor or MP is not an alternative to using the complaints procedure or the law. It is usually sensible to carry on with a complaint in case your councillor or MP does not get a satisfactory response from the council.

## Advocacy services

You can get advice and support to make a complaint from an independent advocacy service. An advocate is someone who can support you and speak on your behalf. An independent advocacy service has expert knowledge of how the system works; it uses this knowledge to represent your interests and assist you to get your point across more effectively.

- Your **local council social services** department should be able to give you information about local advocacy organisations that can help you to make a complaint.

- The charity **Counsel and Care** can provide details of advocacy organisations in your area. It has an advice guide called *Independent Advocacy* that explains what independent advocacy is and who is able to get it. Call Counsel and Care on **0845 300 7585**.
- Your local **Age Concern** may provide an advocacy service. Contact details should be listed in your phone book.
- You can ask your local **Citizens Advice Bureau** for advice and support in making a complaint. Check your phone book for contact details.
- The charity **Action for Advocacy** has a database of advocacy services across England and Wales. Visit its website at [www.actionforadvocacy.org.uk](http://www.actionforadvocacy.org.uk) to find whether there is an advocacy service near you.

## Successful outcomes

Calls to Help the Aged show that it's often worth making a complaint if you are unhappy with a local council decision. There are lots of cases where people have successfully challenged local council decisions quickly and with relatively little effort. Here are two examples, both involving people who felt they had been unreasonably refused care home funding.

1. Mrs Dudley was living in a care home, in England, and her husband was still living at home. Mrs Dudley's savings had fallen to £23,000, so her husband contacted social services. A social worker visited Mrs Dudley and assessed her as needing residential care. The social worker told Mr Dudley that although his wife's savings were below £23,000 social services would not fund her care. Mr Dudley took advice and immediately made a formal complaint to social services. He also saw a solicitor about starting a judicial review and made this known to social services. As a result, Mrs Dudley's case was reviewed and social services agreed to fund her care home fees.
2. Miss Edwards was concerned about her mother and grandmother. Her grandmother was assessed as needing residential care and the social worker wanted her to sell her house to pay the fees. Her grandmother didn't want to do this as her daughter (Miss Edwards' mother), herself aged 62, still lived in the house. Miss Edwards was advised by Help the Aged that the social worker should ignore the value of her grandmother's home as her daughter was over 60 and living there. Miss Edwards was given details of the guidance the social worker should follow and with this information she got back in touch with the social worker. A week

later, Miss Edwards rang Help the Aged to say that the social worker had looked at the case again and agreed that social services would ignore the value of the grandmother's home and pay her residential care fees.

## Complaining about the NHS

If you are not happy with the treatment you have received from the NHS you can make a complaint. You can also complain if you feel that the NHS is not providing services or equipment to meet your needs.

Depending on the problem you have, it may be best to try to sort out the problem informally if you can by talking to the staff at the service involved. But if this does not help, you can use the NHS complaints procedure to make a formal complaint. You can use this procedure to complain about your NHS doctor, nurse, dentist, pharmacist, optician or any other NHS service you are unhappy with.

You have the right to make a complaint, have it considered and get a response from that NHS service. Ask for a copy of the complaints procedure – all NHS services should have one.

### Is there a time limit for making a complaint?

You usually need to make a formal complaint within twelve months of the incident you are unhappy about, or twelve months from the date you first became aware of it. In some cases it may be possible for this time limit to be extended: for example, if you couldn't complain within this time because you were too ill or grieving. But this will depend on the individual situation.

### Who can complain?

To use the NHS complaints procedure you must be a patient or a former patient of the NHS service you are complaining about. You can also complain on behalf of another person if that person does not have the physical or mental capacity to do so, if that person has asked you to represent them or if that person has died.

### How do I complain?

As from 1 April 2009 there are two stages in the NHS complaints procedure.

Stage one – complain to your local NHS body

The first stage of the NHS complaints system is to complain to the NHS service that you are unhappy with. Some large health centres and hospitals will have a designated complaints manager whom you can contact. Even if some smaller practices do not, it must have someone who is responsible for complaints. Ask for the name of the person who deals with complaints.

You can usually complain in person, over the phone or in writing. Make it clear that you are making a formal complaint and ask for a written acknowledgement (although you should get one anyway). If you complain in person or over the phone it is a good idea to follow this up in writing.

Your complaint should be acknowledged within three working days, either over the phone or in writing. When the NHS service acknowledges your complaint, it must offer to discuss the complaint with you at a time that is suitable for you. The discussion should include the way your complaint is being handled, how long it will take to carry out the complaint and when you should receive a response.

Many complaints are resolved at this stage.

Stage two – referral to the ombudsman

If you are not happy with the outcome of your complaint, you can refer your complaint to the Parliamentary and Health Service Ombudsman, which is independent of the NHS. The ombudsman can look into complaints about a service provided by a government department, agency or other organisation acting on their behalf. It will look at complaints from these organisations that have not acted properly or fairly or have provided a poor service.

Contact the ombudsman's office for advice on making your complaint. It can advise you on whether the ombudsman will be able to look at your complaint, and on what information you need to provide. Contact details are in the Useful contacts section, starting on page 16.

If he or she feels it is appropriate, the ombudsman can conduct an investigation into the complaint. If the ombudsman can take on your case, they will write to you within two working days, giving you a reference number. You should quote this if you call the Ombudsman up about your complaint. This service is free.

## Can I get financial compensation?

You cannot get financial compensation through the NHS complaints procedure. The Parliamentary and Health Service Ombudsman is able to recommend compensation as a remedy. If your query is specifically related to NHS continuing healthcare, see pages 12–14). Otherwise, to achieve compensation you would need to take legal action against the NHS. This can be costly and complicated but you may be able to get public funding through legal aid or find a solicitor who will take the case on a no-win, no-fee basis. You may be able to get free legal aid if you are on a low income. See our free information sheet, no. 29, *Entitlements for the Over-60s*.

If you are thinking about taking legal action it is a good idea to seek advice first from an organisation which has an expertise in this area, such as Community Legal Advice, Action for the Victims of Medical Accidents, a specialist lawyer or an independent advice centre.

## Getting help with making a complaint

If you need help to make a complaint, contact your local Patient Advice and Liaison Service (PALS). PALS may put you in touch with the local Independent Complaints Advocacy Service (ICAS), which can advise and support you in taking your complaint further.

Another organisation which can provide advice on patients' rights and making a complaint is the **Patients Association**. It can also give you information about other useful organisations. You can call the helpline on **0845 608 4455**.

You can also ask your local Citizens Advice Bureau for advice on how to make a formal complaint – look in your phone book for contact details.

## Challenging NHS Continuing Healthcare decisions

If you have been assessed for NHS continuing healthcare and refused it, you can challenge this decision.

The NHS must give you written reasons explaining why they have decided that you are not eligible for NHS continuing care, and should also explain that you have a right to request a review of that decision.

## Asking for a review

The first stage is to ask your local primary care trust (PCT) to review the decision. The PCT or local health board will review the decision by setting up a PCT review panel. Some PCTs involve a neighbouring PCT in carrying out a local review to make sure that the decision they reach is impartial.

## Taking the review to your local Strategic Health Authority (SHA)

If you are unhappy with the decision reached by the review, you can take your complaint to your local strategic health authority (SHA) to review your case. The SHA will review your case and assess the PCT on whether it has applied the procedures and policies correctly. The decision made by the SHA is usually accepted by the PCT, although it is not legally obliged to do so. The SHA should carry out the review and inform you of the outcome within two weeks except in exceptional circumstances.

Your local SHA should communicate with you about the review process clearly and in a timely way. You can attend the panel hearing or provide written representations. Representatives can attend to support you and speak for you if that is what you want. The rules do not specify whether or not you can bring a solicitor to represent you. Some strategic health authorities and local health authorities have a policy of allowing legal representatives and some do not.

If you disagree about the treatment you have received and where the NHS healthcare was offered, you must use the NHS complaints procedure (see pages 10–12), rather than using the procedure for challenging NHS continuing healthcare.

## Complaining to the Parliamentary and Health Service Ombudsman

If you are unsatisfied with the decision reached by the SHA, you can complain to the Parliamentary and Health Service Ombudsman. The Ombudsman will decide whether or not the decision given by the SHA was made properly and fairly. If they think that the decision was not made properly and fairly, they can either decide to carry out their own investigation of your case or they can refer your case back with an explanation of what they think has gone wrong.

## Compensation

If you have been paying for some or all of your own care, when you should have been receiving it free from the NHS, then you should be able to get your money back, with an appropriate amount of interest. This can happen at any of the stages in the review/complaints procedure.

If you want more information about financial compensation, then you may find it useful to look at the recommendations of the Department of Health in England in *NHS Continuing Healthcare: Continuing Care Redress* published in March 2007.

## Complaints about the NHS and your local council

As from 1 April 2009, complaints that involve both the local council and NHS are dealt with using a single complaints procedure. If you have a complaint about the local council **and** the NHS, you can complain to the complaints manager at either the NHS or local council. Once you make a complaint to either organisation, it is up to that organisation you complain to, to investigate the complaint and share knowledge with the other organisation. So if, for example, you complain to the complaints manager at the local council first, it would be that person's responsibility to share the complaint with the relevant person at the NHS.

You will receive a response about the complaint you made from the complaints manager at the body you originally complained to. You should receive a response from either the NHS or local council within three working days, offering to discuss your complaint with you at a time that is convenient to you.

Once you have had a conversation with the relevant body, your complaint will be investigated. You should receive an outcome to your complaint within six months. If you do not get a response within this time the relevant body must write to you to explain why it will take longer to respond to you.

## Judicial review

A judicial review is a request to the High Court to review a policy or procedure used by your local council or NHS organisation that has disadvantaged you in some way.

You can request a judicial review when:

- an official or body has acted in a way that no official or body should have acted
- an official or body has acted in a way that exceeds its powers
- a decision was taken without you having the opportunity to present your case
- a decision made was biased

- an official or body has exercised its indiscretion improperly
- an official or body did not make a decision when it should have done so
- there is incompatibility with European Law.

You must apply for a judicial review without delay; and in any event you must apply **within three months** of the decision you want to challenge (and in some cases sooner).

Depending on the circumstances you may not have to go through the local council or NHS complaints procedure before you apply for a judicial review. In an emergency, you can sometimes get an injunction very quickly in a judicial review case: for example, to stop the council unlawfully withdrawing your services.

If you are considering judicial review you will need specialist legal advice. The Legal Services Commission can tell you which solicitors' firms specialise in community care or public law. See the Useful contacts section, starting on page 16 for its contact details.

Applying for a judicial review is very expensive. If you are financially eligible for public funding, through free legal aid, you will either pay nothing or a monthly contribution to your costs. Contact the Legal Services Commission for more advice about legal aid.

If you are considering a judicial review you should let the local council or NHS organisation know – this may prompt them to resolve your case quickly!

**Note:** Certain successful judicial reviews have forced all local councils to reconsider their policies. For example, in 1997 Help the Aged, on behalf of older people, took Sefton Metropolitan Borough Council to judicial review over its decision to ignore the set capital limits and force people to use their savings to pay for residential care. Help the Aged was successful, and as a result new legislation and guidance has been created to protect the savings of people entering care homes.

## Useful contacts

### **Citizens Advice Bureaux**

Check your phone book to find your local group.

### **Care Quality Commission (CQC)**

National Correspondence

Citygate

Gallogate

Newcastle-Upon-Tyne NE1 4WH

Tel: 03000 616161

Web: [www.cqc.org.uk](http://www.cqc.org.uk)

The Care Quality Commission (CQC) inspects and reports on care services and councils in England to improve social care.

Legal Help

### **Legal Services Commission**

4 Abbey Orchard Street

London

SW1P 2BS

Advice line: 0800 085 6643

Web: [www.legalservices.gov.uk](http://www.legalservices.gov.uk)

### **Community Legal Advice**

Tel: 0845 345 4345

Web: [www.communitylegaladvice.org.uk](http://www.communitylegaladvice.org.uk)

Ombudsmen

### **Local Government Ombudsman (England)**

PO Box 4771

Coventry CV4 0EH

Tel: 0300 061 0614

Web: [www.lgo.org.uk](http://www.lgo.org.uk)

Email: [advice@lgo.org.uk](mailto:advice@lgo.org.uk)

Deals with complaints about local councils in England.

## **Parliamentary and Health Service Ombudsman (England)**

Millbank Tower

Millbank

London SW1P 4QP

Helpline: 0345 015 4033

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

Email: [PHSO.enquiries@ombudsman.org.uk](mailto:PHSO.enquiries@ombudsman.org.uk)

Deals with complaints about NHS organisations in England.

NHS: information and advice about your rights and making a complaint

England:

### **Independent Complaints Advocacy Services (ICAS)**

London	0845 120 3784
South East	0845 600 8616
Eastern (Beds; Herts)	0845 456 1082
Eastern (Cambs; Norfolk; Suffolk)	0845 456 1084
Eastern (Essex)	0845 456 1083
South West	0845 120 3782
West Midlands (Birmingham; the Black Country)	0845 120 3748
West Midlands (Shropshire; Staffordshire)	0845 337 3054
West Midlands (Coventry; Warwickshire; Worcestershire; Herefordshire)	0845 337 3056
East Midlands	0845 650 0088
North East	0845 120 3732
North West	0845 120 3735
Yorkshire/Humberside	0845 120 3734

### **Patient Advice and Liaison Service (PALS)**

In England PALS can give general advice on making formal complaints and help to resolve less serious complaints through informal negotiation. Call NHS Direct on 0845 46 47 to get the details of your local PALS or ask your local primary care trust (its details should be in your phone book)

For further information contact:

Information Resources Team  
Help the Aged  
207–221 Pentonville Road  
London N1 9UZ  
Tel: 020 7278 1114

If you have access to the internet you can download our advice leaflets and information sheets by logging on to **[www.helptheaged.org.uk](http://www.helptheaged.org.uk)**

**SeniorLine** is the free welfare rights advice and information service run by Help the Aged for older people and their carers. Trained advice workers offer free, confidential and impartial advice about:

- welfare and disability benefits
- care at home
- residential care
- housing options and adaptations
- access to health and community services.

Freephone: **0808 800 6565**

Textphone: **0800 26 96 26**

**9am to 4pm, Monday to Friday**

If you are in **Northern Ireland**, contact **SeniorLine** on **0808 808 7575**.

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Help the Aged is a registered charity No. 272786, registered in England at the above address.