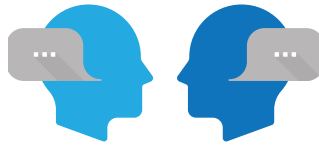




# A GUIDE TO EFFECTIVE COMPLAINTS RESOLUTION ENGLAND



[MEDICALPROTECTION.ORG](https://www.MEDICALPROTECTION.ORG)



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### IMPORTANT – PLEASE NOTE

Due to the dynamic nature of medical law we suggest that you access our website at [medicalprotection.org](http://medicalprotection.org) for the most up-to-date information, correct as at January 2016.

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This booklet is published as a resource for Medical Protection members in England. It is intended as general guidance only.

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## FAQS

Your frequently asked questions

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We protect and support the professional interests of more than 300,000 members around the world. Membership provides access to expert advice and support together with the right to request indemnity for complaints or claims arising from professional practice.

Our in-house experts assist with the wide range of legal and ethical problems that arise from professional practice. This can include clinical negligence claims, complaints, medical and dental council inquiries, legal and ethical dilemmas, disciplinary procedures, inquests and fatal accident inquiries.



## ADDITIONAL INFORMATION

References

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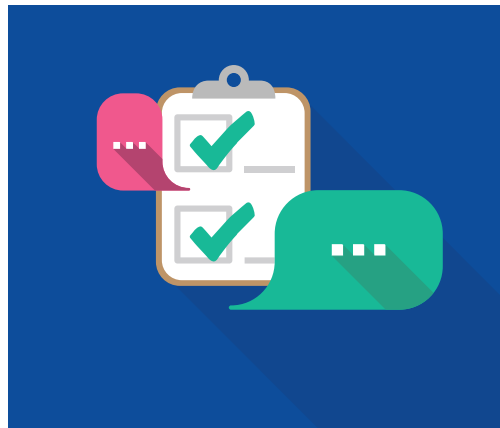
Our philosophy is to support safe practice in medicine and dentistry by helping to avert problems in the first place. We do this by promoting risk management through our workshops, E-learning, clinical risk assessments, publications, conferences, lectures and presentations.

MPS is not an insurance company. The benefits of membership are discretionary as set out in the Memorandum and Articles of Association – this allows us the flexibility to provide help and support even in unusual circumstances.

# Introduction

The Regulations governing NHS complaint handling that came into effect in England in April 2009 followed extensive public consultation and research by the Department of Health and were intended to bring about a fundamental shift in the approach to complaints handling within the NHS. With this aim in mind, the Regulations were drafted to allow healthcare providers the flexibility to adopt a truly “patient-focused” approach to complaints handling. They form a statutory foundation on which to rest the principles of good complaint handling promoted by the Parliamentary and Health Service Ombudsman.

All healthcare providers within the NHS have legal, contractual and professional obligations to provide an accessible and suitably responsive complaints procedure for service users.





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# 1

## OVERVIEW

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# OVERVIEW

## LEGAL AND CONTRACTUAL OBLIGATIONS

### The Local Authority Social Services and National Health Service Complaints (England) Regulations

2009 oblige NHS organisations to have arrangements in place to deal with patient complaints. These arrangements must comply with the regulations.

The Health Act 2009 places a duty on NHS organisations (including contractors) to “have regard to the **NHS Constitution**”:

- You have the right to have any complaint you make about NHS services dealt with efficiently and to have it properly investigated.
- You have the right to know the outcome of any investigation into your complaint.
- You have the right to take your complaint to the independent Health Service Ombudsman in your jurisdiction, if you are not satisfied with the way your complaint has been dealt with by the NHS.

From April 2013, all GP practices have to be registered with the **Care Quality Commission**, under the provisions of the Health and Social Care Act 2012. As a condition of registration your practice are required to ensure that people’s concerns and complaints are listened and responded to and used to improve the quality

of care. This includes the need to be able to demonstrate that:

- People know how to make a complaint or raise concerns, are encouraged to do so, and are confident to speak up.
- People are treated compassionately and given the help and support they need to make a complaint.
- You are open and transparent about how complaints and concerns are dealt with.
- Lessons are learned and shared with others. (CQC Key Lines of Enquiry for NHS GP Practices and GP out-of-hours services, R4).

All health and social care providers will be assessed against the “I statements” in the Ombudsman/Healthwatch’s publication *My Expectations*. This forms part of the Care Quality Commission assessment of how organisations are listening, responding and acting on concerns and complaints, [ombudsman.org.uk/improving-public-service/vision-for-good-complaint-handling](http://ombudsman.org.uk/improving-public-service/vision-for-good-complaint-handling).

**The Duty of Candour** is a statutory duty to be open and honest with patients or their families when something goes wrong. It applies to all health and social care organisations registered with the Care Quality Commission.





Medical Protection supports open communication, and we encourage members to apologise where things have gone wrong, regardless of fault, [medicalprotection.org/uk/resources/factsheets/england/england-factsheets/apologies](https://www.medicalprotection.org/uk/resources/factsheets/england/england-factsheets/apologies).

## OMBUDSMAN

In England, the Parliamentary and Health Service Ombudsman is responsible for investigating second-stage complaints. The office has published a series of Principles – of good administration, of remedy and of good complaint handling. These “set out the approach [the Ombudsman’s] Office will take when considering standards of complaint handling” at local level, so they are a key resource when designing and operating a practice complaints system. (See Appendix 1, page 18 for a summary of *Principles of Good Complaint Handling*).

## GMC

In *Good Medical Practice*,<sup>1</sup> the GMC says, “You must respond promptly, fully and honestly to complaints and apologise when appropriate. You must not allow a patient’s complaint to adversely affect the care or treatment you provide or arrange.”

Doctors who fail to comply with this guidance could face sanctions affecting their registration.

## THE CONSEQUENCES OF POOR COMPLAINT HANDLING

We are often called on to assist members when a complaint has been referred for review by the Ombudsman. We have found that many of these cases could have been resolved at local level if more care had been taken in investigating the complaint and in drafting the letter of response. Although it can be tempting to deal brusquely with complaints that you feel have no foundation, or to respond defensively, this is likely to inflame rather than resolve the problem. There are significant implications associated with failure to deal adequately with a complaint, such as:

- More work
- Damage to reputation
- Escalation
- GMC referral
- Litigation.

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1 2013, para 61

# OVERVIEW

## WHAT'S CURRENT

The biggest change ushered in by the current system is the shift from a process-driven to an outcomes-driven procedure. The aim is to provide accessible, flexible and responsive patient-centred complaints handling, integrally linked to continuous service improvements and patient safety.

Apart from a few minor alterations to the legal framework in which the complaints procedure will sit (see page 8), the main statutory changes are:



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1. The introduction of new, unified, Regulations that apply to primary and secondary care in the NHS as well as voluntary and independent sector organisations contracted to the NHS and to adult social care. This should make it much easier to provide a “one-stop-shop” for cross-boundary complaints by co-ordinating complaint handling. Provisions regarding joint working across boundaries have been strengthened, and providers now have a duty to co-operate in the handling of complaints.
2. The time constraint on bringing a complaint has been lengthened. Complainants now have 12 months from the occurrence giving rise to the complaint or from the time that they become aware of the matter. The complaints manager will retain the discretion to investigate complaints brought later than this if there are good reasons for the delay and it is still possible to carry out an investigation (for example, a delay in diagnosis or bereavement).
3. The need to negotiate a complaints plan with the complainant including agreement on timescales for investigation.



## KEY ELEMENTS OF THE REGULATIONS

The Regulations governing NHS complaints are not prescriptive in the sense that they impose rigid timescales to meet or stipulate how you should investigate a complaint, but they do provide a legal framework within which you must apply certain principles.

The framework sets out the following fundamental requirements:

1. The practice must have arrangements in place to handle complaints efficiently, investigating them properly and delivering a timely and appropriate response. It must make information about these arrangements available to the public.
2. The practice has a duty to give complainants the support that they need to follow the complaints procedure or to inform them of advice available (such as the NHS Complaints Advocacy Service).
3. Complainants must be treated with respect and courtesy and must be told the outcome of the investigation.
4. The complaints-handling arrangements must include procedures for ensuring that necessary actions are taken in light of the outcome of a complaint.
5. One of the practice's partners must be designated the "Responsible Person" who ensures that complaints are handled in compliance with the Regulations and that lessons learned from complaints are implemented.
6. The practice must also have a designated "complaints manager" to manage the complaints procedures. This person must be readily identifiable to service users, but does not necessarily have to be one of the practice team. It can be someone employed to carry out the role across a number of health and social care organisations if you decide to set up a joint complaints function.
7. The "Responsible Person" and the "complaints manager" can be the same person.
8. Complaints can be made by patients or anyone affected by the actions, omissions or decisions of the practice, either on their own behalf or by a representative. Consent can be a complex matter, particularly if the patient has died, was a child or young person or an adult without capacity. You must ensure that the patient has given their written consent before you can disclose clinical information to a third party.

In the case of a patient representative, the practice must be satisfied that he/she is acting in the best interests of the person on whose behalf he/she is complaining. If it decides

## OVERVIEW

that this is not the case, it must notify the complainant in writing, giving reasons for its decision. If you are in any doubt or have any questions about this, we advise you contact us for further advice.

9. Complainants can direct their complaints to NHS England rather than the practice and NHS England may undertake the complaint handling itself or, if it deems it appropriate and has the complainant's consent, refer the complaint to the practice concerned.

NHS England is obliged to notify the practice of the details of a complaint, provided it has the complainant's consent to do so.

10. Oral complaints that are satisfactorily resolved no later than the next working day are not subject to the Regulations.
11. All other complaints – whether made orally, in writing or electronically – must be acknowledged, either orally or in writing, within three working days of receipt. If the complaint is made orally, it must be recorded in writing and a copy given to the complainant.
12. The acknowledgement must include the offer of a discussion (which might be by telephone or a meeting) to agree a plan of how the complaint will be handled and agree reasonable timescales (taking into account any time you need to contact those

members of staff involved who may be away or who have left the practice as well as seeking advice from MPS) for investigating and concluding the complaint.

13. If the complainant declines the offer to discuss the issue, the practice should decide how the complaint will be handled, based on the available information. A letter should be sent to the complainant setting out how the complaint will be investigated and the expected timescales.
14. The complaint must be investigated appropriately and speedily and the complainant should be kept informed of progress.
15. The handling of cross-boundary complaints must be co-ordinated between the organisations involved and the complainant should be given a co-ordinated response. The responsible bodies concerned have a duty to co-operate with each other.
16. Once the investigation has been concluded, a letter (or, with the complainant's consent, an email) must be sent to the complainant, setting out how the complaint has been investigated, the evidence considered and the conclusion reached. This letter should also include details of actions the practice has and will be taking as a result of its findings. Explanations of clinical matters should be written in accessible language.



**17.** The letter should be signed by the “Responsible Person” (or someone delegated by the practice to carry out this function on his/her behalf). It should confirm that the practice is satisfied with the way it has dealt with the complaint, making it clear that nothing more can be done at local level and that the complainant can take the complaint to the Ombudsman if he/she wishes.

**18.** The practice’s complaints handling arrangements must be monitored to ensure that they are working effectively and that no discrimination against complainants has ensued.

**19.** A record must be kept of each complaint received, detailing the subject and outcome of the complaint and whether it was resolved within the agreed timescale.

**20.** The practice must supply the NHS England Local Area Team with an annual report containing the following information:

- The number of complaints received.
- The number of complaints that were upheld.
- The number of complaints that are known to have been referred to the Health Service Ombudsman.

- A summary of the reasons for the complaints.
- A narrative about significant issues relating to the practice’s experience of complaints during the year, including lessons learned and actions taken.

The report must also be made available to any person on request.

Within this framework, each organisation is free to develop its own procedures to suit the local situation and to apply them flexibly to accommodate the circumstances pertaining to individual complaints. Because this is a fairly loose framework, it is important to understand the principles that should apply in order to ensure that you are complying with both the spirit and letter of the Regulations.

## THE PRINCIPLES

The thrust of the Regulations is to encourage a culture in which feedback from patients is actively invited and facilitates service improvements. Frontline staff should be trained and empowered to deal with verbal complaints on the spot if possible.

### COMPLIMENTS, COMMENTS, CONCERNS AND COMPLAINTS

We aim to provide patients with the best care we can, but we will sometimes fall short of the mark. If you have any compliments, comments, concerns or complaints about our service, we want to hear about it.

We would encourage you to speak to whoever you feel most comfortable with – your doctor, a nurse, a receptionist or manager – but if you would prefer to give your feedback in writing, please send it to the Practice Manager, Peter Brown, at the address below. You can also send us a message via the practice website or by filling in one of the forms in the waiting room and putting it in the box marked “Feedback”.

If you have a complaint to make, please don't be afraid to say how you feel. We welcome feedback to help us improve our standards and you will not be treated any differently because you have complained. We will just do our best to put right anything that has gone wrong.

Alternatively, you have the right to approach NHS England if you do not feel comfortable in contacting us directly and raise your complaint directly with them.

### ACCESSIBLE

To be accessible, your complaints procedure must be visible, but it is not enough merely to display notices and leaflets pointing to one avenue for making a complaint. To be truly accessible, potential complainants need multiple access points and, more importantly, a perception that they will be heard, that their views will be respected and they will not be discriminated against for raising their concerns. They must also trust that it is worth doing – ie, they must be satisfied that their complaint will be investigated thoroughly and impartially and that there will be a result.

Here is an example of a notice that reflects the spirit of the legislation.

Access should be simple, whether it be by talking to a member of staff directly, sending an email or letter, or by filling in an online or paper form. It helps if your leaflets and website contain some guidance about information to include in a complaint – what happened, when, where, who was involved, what was the outcome, what the complainant would like you to do, etc. You should also outline what they can expect to happen next, including issues of confidentiality and consent to share information.

Thought must also be given to accessibility for people with language or learning difficulties. Written material should be in the main languages used by your local population



and you should also have easy read and larger print versions for patients who have difficulty reading. On a more subtle level, an atmosphere of openness and courtesy, with staff who are trained to respond to signs of annoyance or dissatisfaction and who convey a willingness to listen, are important aspects of accessibility.

## FLEXIBLE AND RESPONSIVE

Tailor your complaint handling to suit the particular circumstances. The amount of time and effort you spend on investigating and resolving the complaint should be proportionate to its seriousness. Conducting a risk assessment using the matrix in Appendix 2 (pages 18-19) will help you evaluate the seriousness of a complaint. Some complaints will take longer to resolve than others and the timescale should be discussed and agreed with the complainant at the outset if possible.

The final response letter should cover all the issues raised and contain a full explanation written in a clear, jargon-free style. An apology should be given, along with an explanation of what you are doing to put things right. Even if the investigation shows that the complaint was groundless, the complainant should still be thanked for giving you the opportunity to look into the matter and to clear up any misunderstandings.

The letter should also provide details about the Ombudsman and advocacy (eg, the NHS Complaints Advocacy Service).

## LESSONS LEARNED

Compliments, comments, concerns or complaints – whether they are minor issues dealt with on the spot or more serious complaints requiring investigation and a formal response – should be recorded and used to inform service improvements. It is good practice to review your complaints log periodically to see if trends and themes have emerged over time that indicate a recurring or persistent problem that should be addressed. All feedback should be discussed in practice meetings.

Some issues can stimulate immediate changes, but others might require analysis to identify the underlying causes of a problem. There are two methods for doing this – a significant events audit (SEA) or a root cause analysis (RCA). Detailed guidance on conducting an SEA or RCA can be found on the website [nrls.npsa.nhs.uk](https://nrls.npsa.nhs.uk) Much of this guidance can also be usefully applied in the investigation of a complaint.

## CO-ORDINATED HANDLING

Now that all NHS organisations (including voluntary and independent sector organisations under contract) and social services in **England** are all governed by the same legislation, co-ordinated complaint handling should be easier to achieve than it was in the past. Practices are therefore encouraged to provide a co-ordinated response when there is a multi-agency and/or multi-doctor complaint.

## OVERVIEW

When you receive a complaint that involves other organisations, you should (with the patient's consent) copy the complaint and your acknowledgement letter to the organisations concerned. They will institute their own investigations, but you might need to share records between you to facilitate a co-ordinated approach. If so, you must operate within the bounds of the legal and professional framework governing the use of personal information. Your NHS England Local Area Team is likely to have an inter-agency information-sharing protocol that you should follow. If not, you should ask your Caldicott Guardian for guidance.

The most effective way of co-ordinating the complaint handling is for the agencies concerned to agree which of them will take on the lead role, and be responsible for making sure that the complaint handling stays on track and for keeping the complainant informed about progress.

An effective way of achieving this co-ordination would be to share a complaints manager in partnership with other agencies in your locality. Alternatively you could approach your NHS England Local Area Team to ask if they would co-ordinate on your behalf.

A co-ordinated response also relates to a multi-doctor complaint within a practice when it is advisable to pull together contributions from all involved into one combined reply. Where at all possible, this should include input from any doctors who are no longer working at the practice – for example, locums or doctors who have retired or moved on.

## LOCUMS AND DOCTORS IN TRAINING

Although a complaint may be about a locum or a doctor in training, who are liable for their own clinical decisions, the practice still have responsibility for managing the complaint and any response should therefore be sent out from the practice.

If the doctor concerned is no longer working at the practice every effort should be made to contact them to obtain their comments.

A copy of the draft co-ordinated response should be agreed with all those involved before it is sent to the complainant.

## DEPUTISING AND OUT-OF-HOURS SERVICES

Where there is a complaint against a deputising doctor, it can be made directly by the complainant to the deputising service for them to investigate and reply. To enable them to do so the practice may need to provide the complainant with contact details or agree that they can forward on the concerns. The patient's registered GP will not necessarily be involved in the investigation at all.

Again if the complaint also involves the practice itself a co-ordinated response, in conjunction with the deputising service, should be considered (Co-ordinated handling, p. 15).





## REQUESTS FOR COMPENSATION

If you are aware through a complaint that a patient intends to pursue a claim for compensation please contact Medical Protection as soon as possible. A claim no longer excludes investigation of a complaint under the NHS complaints procedure and therefore particularly careful handling of the complaint is required in order not to prejudice any legal action.

If a patient is seeking some form of financial redress the Ombudsman’s “Principles for Remedy” does include the possibility of financial remedy at Local Resolution if the patient has suffered injustice and hardship as a result of maladministration or poor service. What the Ombudsman expects is for the patient, where possible, to be returned to the position they were in before the poor service took place. Again this is an issue you need to discuss with Medical Protection as consideration of such a payment would be dependent on the nature of the case.

The Ombudsman also has the right to recommend a financial remedy following an investigation if the complaint is upheld.

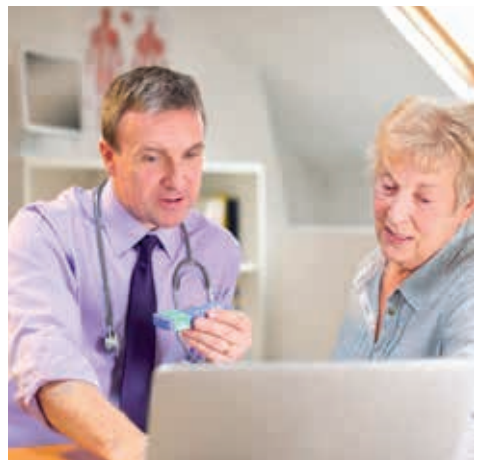
## REMOVING PATIENTS FROM THE PRACTICE LIST

A small but significant number of complaints are referred to the Ombudsman every year because practices have removed patients from their lists after they made a complaint. In many of these cases the complaint is upheld because the

practice concerned had not adhered to its policy for removal from the list (or did not have a policy in place).

Although GPs do have a right to remove patients from their lists, they cannot do so arbitrarily. GMC guidance is very clear on this matter, **[gmc-uk.org/guidance/ethical\\_guidance/21160.asp](https://www.gmc-uk.org/guidance/ethical_guidance/21160.asp)**. Moreover, current legislation governing NHS complaints – The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009, The Health Act 2009 and the Health and Social Care Act 2008 – specifically prohibit NHS bodies from discriminating against patients because they have complained about the service they received.

For more detailed information on this topic, see our factsheet “Removing Patients from the Practice List”. Download it from our website at **[medicalprotection.org](https://www.medicalprotection.org)**.



## APPENDICES

### APPENDIX 1: A SUMMARY OF PRINCIPLES OF GOOD COMPLAINTS HANDLING

The Parliamentary and Health Service Ombudsman, *Principles of Good Complaint Handling* (2008), p. 1.

1. Getting it right
2. Being customer focused
3. Being open and accountable
4. Acting fairly and proportionately
5. Putting things right
6. Seeking continuous improvement.

These Principles are not a checklist to be applied mechanically. Public bodies should use their judgment in applying them to produce reasonable, fair and proportionate results in all the circumstances of the case. The Ombudsman will adopt a similar approach when considering the standard of complaint handling by public bodies in her jurisdiction.

Parliamentary and Health Service Ombudsman (the Principles series of booklets are essential reading for anyone involved in complaints handling) [ombudsman.org.uk](http://ombudsman.org.uk).

### APPENDIX 2: THE RISK ASSESSMENT MATRIX

#### Step 1: Decide how serious the issue is

SERIOUSNESS	DESCRIPTION
<b>LOW</b>	<p>Unsatisfactory service or experience not directly related to care. No impact or risk to provision of care.</p> <p><b>OR</b></p> <p>Unsatisfactory service or experience related to care, usually a single resolvable issue. Minimal impact and relative minimal risk to the provision of care or the service. No real risk of litigation.</p>
<b>MEDIUM</b>	<p>Service or experience below reasonable expectations in several ways, but not causing lasting problems. Has potential to impact on service provision. Some potential for litigation.</p>
<b>HIGH</b>	<p>Significant issues regarding standards, quality of care and safeguarding or denial of rights. Complaints with clear quality assurance or risk management issues that may cause lasting problems for the organisation, and so require investigation. Possibility of litigation and adverse local publicity.</p> <p><b>OR</b></p> <p>Serious issues that may cause long-term damage, such as grossly substandard care, professional misconduct or death. Will require immediate and in-depth investigation. May involve serious safety issues. A high probability of litigation and strong possibility of adverse national publicity.</p>



## Step 2: Categorise the risk

Decide how likely the issue is to recur

SERIOUSNESS	LIKELIHOOD OF RECURRENCE
Rare	Isolated or 'one off'- slight or vague connection to service provision
Unlikely	Rare - unusual but may have happened before
Possible	Happens from time to time - not frequently or regularly
Likely	Will probably occur several times a year
Almost certain	Recurring and frequent, predictable.

## Step 3: Categorise the risk

Source: Department of Health, *Listening, Responding, Improving – A Guide to Better Customer Care* (26 February 2009), pp. 17-18.

	LIKELIHOOD OF RECURRENCE				
	RARE	UNLIKELY	POSSIBLE	LIKELY	ALMOST CERTAIN
LOW	LOW				
		LOW			
MEDIUM					
			LOW		
HIGH				EXTREME	

## RESOURCES

Parliamentary and Health Service Ombudsman (The Principles series of booklets are essential reading for anyone involved in complaints handling) [ombudsman.org.uk](http://ombudsman.org.uk). Medical Protection helpline: **0800 561 9090** For further medicolegal advice and resources, please visit [medicalprotection.org](http://medicalprotection.org) Local Medical Committees. Advice and assistance are available from your LMC. Contact details for all LMCs in England are available on the BMA website at [bma.org.uk](http://bma.org.uk), and NHS Complaints Advocacy at [nhscomplaintsadvocacy.org/](http://nhscomplaintsadvocacy.org/) for details of your local NHS Complaints Advocacy Service.

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# 2

## SIX STEPS TO SUCCESSFUL RESOLUTION

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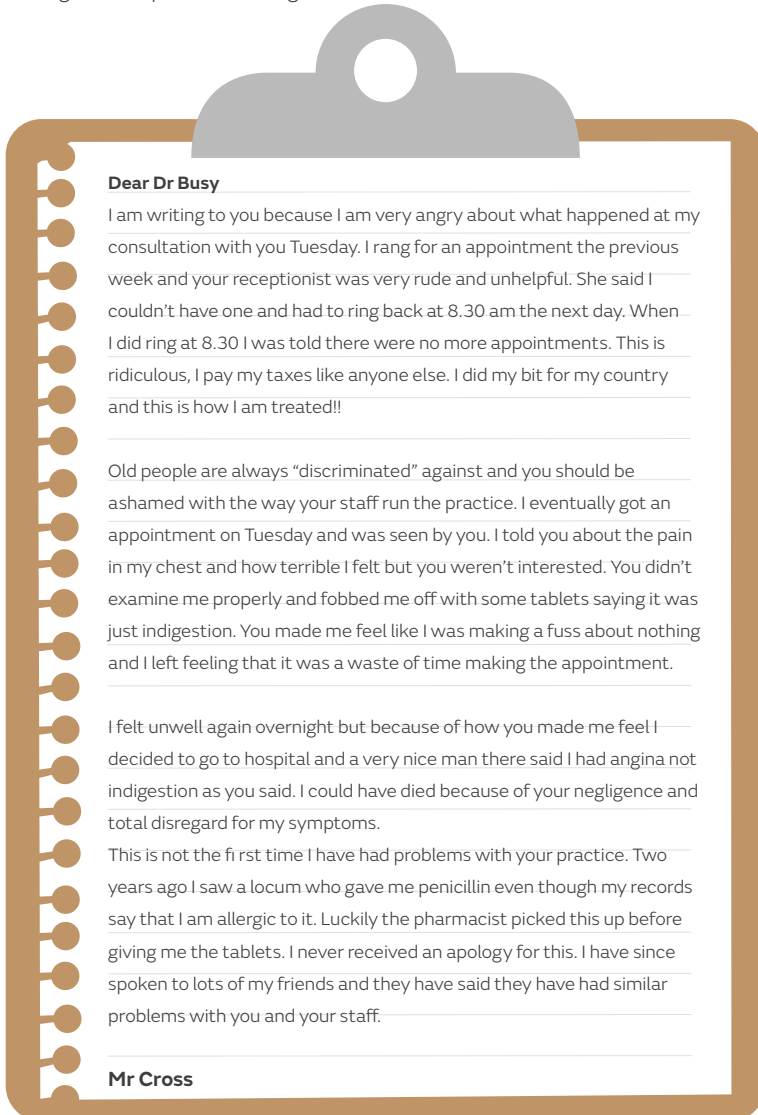




## SIX STEPS TO SUCCESSFUL RESOLUTION

### CASE STUDY

This case study is not intended as a prescriptive approach, but provides a guide based on the principles of good complaints handling.





## STEP 1 INITIAL ACTION ON RECEIPT OF COMPLAINT

- Log complaint.
- Pass to complaints lead.
- Check whether there is any immediate action that needs to be taken in relation to the patient's care.
- Check whether there are any consent issues.
- Consider whether it would be helpful to seek advice from Medical Protection.
- Do initial risk assessment.

The practice manager, as the complaints manager for the practice, has logged in the complaint from Mr Cross. There are no consent issues as the complaint has been received from the patient. She has been in touch with the hospital to ask for their report on Mr Cross's attendance to see if there is any immediate action that needs to be taken on follow up. With the help of the senior partner in the practice (who is not Dr Busy), she has risk assessed the administrative issues (appointments) and the clinical issues (consultation and diagnosis). It is considered that an in-house investigation would be appropriate and proportionate to the level of risk but liaising with another partner who was not involved to obtain an objective view on the clinical aspects of the case.

## STEP 2 ACTION TO BE TAKEN WITHIN THREE WORKING DAYS OF RECEIPT OF THE COMPLAINT

- Acknowledge the complaint
- The acknowledgement can be oral or written, but should include:
  - an apology for the difficulties the patient has experienced.
  - an invitation to discuss the way forward.
  - details of an advocacy service.
  - a copy of the practice's complaints procedure.

If you cannot contact the complainant by phone within the three working days required, you should acknowledge the complaint in writing. One way forward, under such circumstances, would be to enclose a draft plan of action for the complainant's consideration, asking for confirmation within a set timescale.



# 2

## SIX STEPS TO SUCCESSFUL RESOLUTION

### STEP 3 FINALISE A PLAN OF ACTION FOR INVESTIGATING A COMPLAINT

The plan should include:

- Complaint reference number.
- Complainant's name and contact details.
- Complainant's preferred means of contact (if it is email make it clear that this may not be a secure means of corresponding).
- Patient's name and details if different from complainant.
- Has consent been sought/obtained, if appropriate?
- Name of person who contacted the complainant.
- Date of contact.
- Summary of complaint with dates of incidents.
- List of issues to be investigated.
- Outcome the complainant is seeking.
- Agreed investigation plan (eg, internal investigation by whom, external investigation by whom).
- Consent to share information with those involved in the investigation.
- Agreed timescale for a response.
- How the practice will provide the response.
- Details of source of advocacy suggested.
- Any further information which may be helpful (eg, language or disability issues).

Send a copy of the plan to the complainant.

During her telephone conversation with Mr Cross the practice manager has confirmed that the issues for investigation are:

- Difficulty in getting an appointment and attitude of receptionist on 26 and 27 March.
- Failure to diagnose angina at the consultation and the doctor's attitude on 31 March.
- Failure to identify his allergy to penicillin in the past.
- Third party feedback about problems experienced by other patients.

Mr Cross has agreed that:

- The practice manager will investigate the issues relating to the appointment system, attitude of the receptionist and third party feedback.
- The senior partner will investigate the clinical issues relating to the alleged missed diagnosis and the patient's allergy.

The practice manager explains that she cannot comment on the third party feedback Mr Cross has provided in his letter but she is willing to let him have information on the general feedback the practice have received via its patient surveys.





When asked what he would like to see achieved at the end of the investigation, Mr Cross stated that he wanted to see an improvement in the appointment system and wanted an apology from Dr Busy for what he considered to be a misdiagnosis. He also wanted an apology from the practice, with reassurances, about his penicillin allergy.

A timescale for the investigation is negotiated. The senior partner is on leave for a week and the practice manager allows for this in estimating how long the investigation will take. She indicates that Mr Cross should receive a full response within four weeks. She gives a specific date.

The practice manager agrees that she will ring Mr Cross to let him know when the response is being posted to him. It is also agreed that once Mr Cross receives the letter setting out the findings of the investigation, the practice manager will ring him to see whether he would like to come into the surgery to discuss the matter further, before Local Resolution is signed off.

She includes in the plan confirmation of the advocacy services available. A copy of the plan is sent to Mr Cross with an invitation to get in touch if he is unhappy with any aspect of it.

## STEP 4 THE INVESTIGATION

An investigation could include:

- Obtaining statements from staff/staff interviews.
- Reviewing records/policies/procedures.
- Obtaining information from other sources if necessary.
- Drawing conclusions from the findings.
- Discussing the conclusions as a practice and deciding on the actions to be taken.
- Drawing up an action plan.

Details of all documentation, notes of interviews and staff statements are kept on the complaint file.

It is advisable to consider asking a doctor who has not been involved in the patient's care to review the clinical management. This injects some objectivity and independence into the process and reflects the Ombudsman's *Principles of Good Complaints Handling*.



## SIX STEPS TO SUCCESSFUL RESOLUTION

The practice manager:

- Interviews staff who dealt with Mr Cross's requests for an appointment.
- Leads a general discussion on the current appointment system at a practice meeting. In doing this she also reviews other feedback on the appointments system.
- Reviews feedback from patient surveys, to obtain the opinion of patients about the service provided by the surgery in general.

The senior partner:

- Reviews the clinical notes and discusses these with Dr Busy. He highlights the need for better record-keeping.
- Obtains a report on Mr Cross's hospital visit.
- Checks that penicillin allergy has been marked clearly on records.

The senior partner and the practice manager review the evidence and draw conclusions. They make a list of improvements they feel need to be made, as a result of the complaint for discussion at the practice meeting.

### STEP 5 RESPONSE

- You should consider including the following elements in a response letter, but also be mindful of the plan you agreed with the complainant.

- Check the draft response with Medical Protection if you consider this to be appropriate.
- An apology and some acknowledgement of distress (condolences where appropriate).
- A summary of the main issues they have raised in their letter (this will also help you focus your response).
- What action you have taken to investigate the complaint (eg, spoken to the staff concerned, reviewed records/policies).
- A clear explanation in response to each of the issues raised. If this relates to a consultation, refer to the history you took; any examination and findings (including negative findings); treatment provided; advice given and any follow up.
- What action the practice is taking, as a result of the complaint, to reduce the risk of a similar occurrence.
- An invitation to meet or contact you again if they have any further questions.
- Details of their redress, through the complaints procedure to the Ombudsman, and their right to use an independent advocacy service if they have not already done so.
- A reiteration of your apology for what occurred.



## STEP 6 MONITORING AND REVIEW

A letter of response is sent to Mr Cross. The practice manager rings Mr Cross to tell him it is on its way and invites him to contact her when it is received, or she will ring him in two days time if she has not heard from him.

Two days later they discuss the response in greater detail. Mr Cross is happy with the issues relating to the appointments system and is pleased to know that there are to be improvements. However, the hospital report did not confirm a definite diagnosis of angina and he therefore still remains concerned. The practice manager arranges for him to come in to discuss this with the senior partner and also to have a further medical check up for reassurance. He is invited to bring someone with him if he wishes. He does not feel this is necessary and he will come alone. Confirmation of this conversation and the details of the meeting are sent to Mr Cross by post.

At the end of the meeting with the senior partner, with Mr Cross's agreement, Dr Busy is invited to join them, in order that the doctor/patient relationship can be re-established.

After the meeting Mr Cross feels reassured. The senior partner writes to him again to confirm the main points that they discussed at the meeting and confirming that Local Resolution is now completed. Mr Cross's rights through the Ombudsman are reiterated in this letter.

There should be follow up on the action arising from a complaint. For example:

- Would it be beneficial to share lessons learned more widely?
- Check agreed action is taken within set timescale.
- Provide feedback to practice team and, if appropriate, complainant.

The practice manager makes the agreed changes to the practice appointment procedures and ensures all staff are aware of the new process.

She reviews the feedback from patients following the subsequent patient survey and notes increased satisfaction with the appointment system. She feeds this back to the practice and to the complainant.

The senior partner audits Dr Busy's record-keeping to ensure improvement.

A note of the service improvements achieved is made for inclusion in the annual report.

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# 3

## FREQUENTLY ASKED QUESTIONS

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# 3

## FREQUENTLY ASKED QUESTIONS

### 1. HOW OFTEN SHOULD WE REVIEW OUR COMPLAINTS PROCEDURE?

We would suggest this is done annually. You will need to check that your procedures comply with the current regulations and the guidance and principles issued by the Ombudsman.

You may find it helpful to liaise with other practices and your NHS England Local Area Team over the final procedure as there is a common process across health and social care. It is quite possible that your local health and social care network has a co-ordinated approach.

It is also suggested that you make sure ALL staff within the practice are aware of the process. Your NHS England Local Area Team may be able to help with sources of training. Don't forget your complaints information leaflets also need to be kept up-to-date.

### 2. DO WE NEED TO HAVE A DESIGNATED COMPLAINTS MANAGER?

Yes, but each practice also needs to have a designated "responsible person" who should be a partner. The responsible person will be responsible for ensuring compliance with the complaints regulations and making sure action is taken as a result of the complaint. The responsible person and the complaints manager could be the same person.

### 3. I'VE JUST RECEIVED A COMPLAINT – WHAT DO I DO?

You need to make early contact with the complainant. You are required to acknowledge the complaint within three working days and invite the complainant to discuss the way forward.

The sooner you engage with the complainant (subject to consent if not the patient) the better. Waiting for a response to an invitation to discuss the complaint included in the acknowledgement letter can cause delay.

The discussion does not have to be face to face – whatever is the most convenient for both parties.

### 4. WHAT SHOULD I INCLUDE IN AN ACKNOWLEDGEMENT LETTER?

- An acknowledgement of receipt.
- An apology and recognition of distress, anxiety (condolences where appropriate).
- Enclose the agreed complaints plan if already discussed or a draft proposed plan with an invitation to discuss within a time-scale.
- Details of advocacy service, eg, NHS Complaints Advocacy Service.



## To negotiate a plan, are you able to make contact with the complainant?

### YES

Speak to the complainant.

Have a template plan that you complete, to ensure that you cover all necessary issues during the discussion.

Send a copy of the plan to the complainant

### NO

You may want to consider sending a draft proposed plan with the acknowledgement, inviting discussion but placing a time-scale for response in the acknowledgement letter

For example, *if we have not heard from you by (allow a week from expected receipt) we will commence the investigation along the lines suggested.*

**NOTE:** You can start gathering together evidence whilst you are waiting for the complainant to make contact.

## 5. WE HAVE RECEIVED A COMPLAINT WHICH IS OUT OF TIME; DO WE NEED TO INVESTIGATE IT?

A complaint should be lodged not later than 12 months after the date of the incident complained about, or the date on which the patient became aware that they had cause for complaint.

However, although there is a time-scale for lodging a complaint, if there is good reason why the complaint could not be lodged within the time-scale and it is still possible to investigate the complaint effectively and fairly, then the time-scale should be waived.

Ask the complainant for the reasons for the delay. You will then need to make a judgment as to whether or not the delay is justifiable.

## 6. WE HAVE RECEIVED A COMPLAINT BUT FEEL WE CAN EASILY RESOLVE IT.

Have you discussed the situation with the complainant?

Are they willing for you to deal with the matter informally?

Has this decision been an informed one?

Have you provided them with the options available to them? For example, dealing with it informally with a verbal response or through the complaints procedure with a written response.

Have you set a time-scale for feeding back to them?

# 3

## FREQUENTLY ASKED QUESTIONS

Are they clear that if you fail to resolve the matter informally they have the right to escalate the matter to a formal complaint?

Have you made a record of this discussion?

Although you may be dealing with a matter outside of the complaints regulations are there still lessons to be learned?

### 7. WHAT SHOULD BE INCLUDED IN THE PLAN?

Develop a template that covers all situations.

If the complaint has come via NHS England, have they already made any agreements with the complainant about how the complaint will be handled?

#### **Consider including:**

- Complaint reference number
- Complainant's name and contact details
- Complainant's preferred means of contact (if it is email make it clear that this may not be a secure means of corresponding)
- Patient's name and details if different from complainant
- Has consent been sought/obtained, if appropriate

- Name of person who contacted the complainant
  - Date of contact
  - Summary of complaint with dates of incidents
  - List of issues to be investigated
  - Outcome the complainant is seeking
  - Agreed investigation plan (eg, internal investigation by ... whom, external, investigation, by whom)
  - Consent to share information with those involved in the investigation
  - Agreed time-scale for a response
  - How the practice will provide the response
  - Details of source of advocacy suggested
  - Any further information that may be helpful (eg, language or disability issues).
- ### 8. WHAT FACTORS SHOULD I TAKE INTO ACCOUNT WHEN SETTING THE TIME-SCALE?

Do you have all the records to hand or do you need to recall these?

Are you going to use someone from outside of the practice as part of the investigation?





Is the investigation likely to include a meeting prior to the written response (how available are the parties)?

Do you need to contact doctors who have left the practice?

Also allow time to take advice from Medical Protection. If the investigation is likely to take more than a few weeks, keep the complainant regularly updated at specified intervals and build this into your 'plan'.

Sometimes you may find that what seemed to initially be a straightforward investigation can become more complex. There is no reason why you can't go back to the complainant and renegotiate the time-scale as long as you can provide good reason for doing so.

## **9. NHS ENGLAND WANTS TO INVESTIGATE OUR COMPLAINT – CAN THEY DO THIS?**

A complainant has the right to approach NHS England if they do not want to write directly to the practice. NHS England can then manage a complaint at Local Resolution.

They will obtain the consent of the complainant to contact the practice and then ask you to undertake a local investigation and draft up a reply to the complaint addressed to the complainant.

They will ask that you send this reply to them for them to review before it is forwarded to the complainant.

If the time frame NHS England set for you to complete your investigation and draw up your response is not achievable you can negotiate an extension.

## **10. THERE HAS BEEN A DELAY BY NHS ENGLAND IN SENDING US A COMPLAINT.**

Ask NHS England why there has been a delay. Was it an issue of consent to share the information? When you draft up your response to the complaint you may wish to mention the date you received the complaint letter.

## **11. HOW DO I DECIDE HOW TO INVESTIGATE A COMPLAINT?**

Use a risk assessment tool. The investigation should be proportionate to risk. For example, you are unlikely to consider involving an external investigator for a complaint about the practice's appointment system. However also be aware of the complainant's wishes.\*

## **12. THE COMPLAINANT WANTS SOMEONE FROM OUTSIDE THE PRACTICE TO INVESTIGATE THE COMPLAINT.**

Would this be a proportionate and reasonable response to the level of seriousness of the complaint?

\* An example of a risk assessment tool Appendix 2 page 18

# B

## FREQUENTLY ASKED QUESTIONS

Is the complainant happy for all relevant information to be shared outside of the practice?

Would the patient be happy for someone within the practice who was not involved in the care to take the lead on the investigation?

Is the complainant aware that they have the right to ask NHS England if they will manage the investigation?

If an external investigation is felt to be appropriate, have you reached an agreement on who the external investigator will be?

Are there any cost implications?

Does that person have the necessary independence, skills and knowledge to undertake the investigation and are they indemnified?

### 14. WHAT SHOULD I INCLUDE IN A RESPONSE LETTER?

You should consider including the following elements in a response letter, but also be mindful of the plan you agreed with the complainant.

- An apology and some acknowledgement of distress (condolences where appropriate).
- A summary of the main issues they have raised in their letter (this will also help you focus your response).

- The action you have taken to investigate the complaint (eg, spoken to the staff concerned, reviewed records/policies).
- A clear explanation in response to each of the issues raised. If this relates to a consultation, refer to the history you took; any examination and findings; treatment provided; advice given and any follow-up.
- What action the practice is taking as a result of the complaint to reduce the risk of a similar occurrence.
- An invitation to meet or contact you again if they have any further questions.
- Details of their redress through the complaints procedure to the Ombudsman and their right to use the NHS Complaints Advocacy Service.
- A reiteration of your apology for what occurred.

### 15. HOW LONG DOES A COMPLAINANT HAVE TO APPROACH THE OMBUDSMAN ONCE LOCAL RESOLUTION IS COMPLETE?

The complainant has 12 months from the point when they became aware that they had cause to raise a complaint. However, the Ombudsman will take into account the time taken at local resolution when deciding whether to exercise discretion to accept a case outside of the 12-month time limit.



It is suggested that in your final response you state:

*If you are not satisfied with my response, you have the right to take your complaint to the Parliamentary Health Service Ombudsman. The Ombudsman is independent of government and the NHS. Her service is confidential and free. There are time limits for taking a complaint to the Ombudsman, although she can waive them if she thinks there is a good reason to do so.*

*If you have questions about whether the Ombudsman will be able to help you, or about how to make a complaint, you can contact their helpline on 0345 015 4033, email [phso.enquiries@ombudsman.org.uk](mailto:phso.enquiries@ombudsman.org.uk) or fax 0300 061 400. Further information about the ombudsman is available at [ombudsman.org.uk](http://ombudsman.org.uk).*

*You can write to the Ombudsman at:  
The Parliamentary and Health Service Ombudsman,  
Millbank Tower, Millbank, London SW1P 4QP*

## **16. I HAD A CALL FROM THE OMBUDSMAN'S OFFICE ASKING ME TO SEND THEM A COPY OF THE COMPLAINT FILE. WHAT SHOULD I DO?**

Firstly, for reasons of confidentiality, ask them to put it in writing so you know they are who they say they are.

They will require the following documents:

- Copy of original complaint.
- Copy of your acknowledgement letter.
- Copy of consent if relevant.
- Copy of complaint plan.
- Notes of any meetings with the patient/ complainant.
- Any intervening correspondence such as holding letter(s), with reasons for any delays.
- Copy of the investigations which might include: statements from staff/doctors, policies/ procedures.
- Relevant extract of medical records.
- Final response including outcome, lessons learnt, action/changes to be made and details of PHSO. It is advisable to destroy any previous drafts of your response just retaining the final version that was sent to the complainant.

Present your documentation in chronological order, most recent documents at the top. Do not include drafts of documents, only final revisions. Do not include correspondence between the practice and MPS.

# 3

## FREQUENTLY ASKED QUESTIONS

### 17. WE HAVE RECEIVED A COMPLAINT WHICH ALSO RELATES TO THE HOSPITAL AND SOCIAL CARE.

Has the complaint also been sent to the other agencies? If not, you will need consent to share it.

Subject to agreement with the complainant, make contact with the complaints managers within the other agencies concerned. Decide who is going to take the lead on the complaint, be the main contact point with the complainant and co-ordinate the response.

When submitting your response to the co-ordinator of a multi-agency complaint, ask to see the final co-ordinated response letter in draft to ensure that your comments are accurately reflected.

### 18. DO WE HAVE TO CO-OPERATE WITH OTHER AGENCIES IN A MULTI-AGENCY COMPLAINT OR CAN WE DO OUR INVESTIGATION SEPARATELY?

There is a statutory duty to co-operate. The process encourages a co-ordinated response. However:

- What are the views of the complainant?
- How interlinked are the issues?

### 19. HOW DO WE DECIDE WHO SHOULD TAKE THE LEAD ON A MULTI-AGENCY COMPLAINT? WE DO NOT HAVE THE RESOURCES WITHIN THE PRACTICE TO DO THIS.

Resourcing and staff experience and expertise, are some of a number of deciding factors affecting who should take the lead.

Against which agency is the most serious aspect of the complaint?

Which agency has the major part of the complaint to investigate?

Does the complainant have a preference?

Have you considered approaching NHS England to see if they will co-ordinate on your behalf?

### 20. A COMPLAINT HAS COME TO US WHICH ACTUALLY RELATES TO THE HOSPITAL; CAN WE PASS IT TO THE TEAM?

Have you got the complainant's consent to forward the complaint elsewhere?

If the complainant does not want you to share the letter, what are their reasons?

Provide them with the contact details of the



complaints manager at the relevant Trust.

## 21. IF WE GET A COMPLAINT THAT INDICATES AN INTENTION TO TAKE LEGAL ACTION, WHAT SHOULD WE DO?

The complaint can still be investigated under the complaints regulations, as legal action is no longer exempt from the regulations. However, seek advice promptly before making any contact with the patient, as there will need to be careful handling of the issues to prevent prejudicing any legal case.

## 22. A COMPLAINANT HAS ASKED FOR COMPENSATION

The Ombudsman's *Principles for Remedy* does include the possibility of financial remedy if the patient has suffered injustice and hardship as a result of maladministration or poor service. What the Ombudsman expects is for the patient, where possible, to be returned to the position they were in before poor service took place.

For further information the PHSO's publication *Principles for Remedy* can be found at [ombudsman.org.uk/improving-public-service/](https://ombudsman.org.uk/improving-public-service/)

### ombudsmansprinciples.

## 23. WILL WE BE ASKED FOR THE NUMBER OF COMPLAINTS WE HAVE HANDLED AT THE END OF THE YEAR?

Yes, this information must be available to any person on request. You are obliged to provide an annual report which includes:

- The number of complaints received.
- The number upheld.
- The subject matter of the complaints.
- How many have been referred to the Ombudsman.
- Any issues of importance and/or action taken as a result.

However, it would be good practice, as a means of continuous improvement, to also log any compliments, comments and concerns as these, along with complaints, are valuable feedback from your patients.

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# 4

## ADDITIONAL INFORMATION

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## ADDITIONAL INFORMATION

Complaints Regulations for England, *The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009* – [legislation.gov.uk/ukSI/2009/309/contents/made](http://legislation.gov.uk/ukSI/2009/309/contents/made)

GMC, *Openness and Honesty When Things Go Wrong: The Professional Duty of Candour*, – [gmc-uk.org/guidance/ethical\\_guidance/27233.asp](http://gmc-uk.org/guidance/ethical_guidance/27233.asp)

Information on Advocacy – [nhscomplaintsadvocacy.org](http://nhscomplaintsadvocacy.org)

Medical Protection, *Guidance on Handling Complaints* – [medicalprotection.org/uk/booklets/complaints-series](http://medicalprotection.org/uk/booklets/complaints-series)

Medical Protection, *Request for Speaker/training* – [medicalprotection.org/uk/education-and-events/request-a-speaker](http://medicalprotection.org/uk/education-and-events/request-a-speaker)

My Expectations for Raising Concerns – [ombudsman.org.uk/improving-public-service/vision-for-good-complaint-handling](http://ombudsman.org.uk/improving-public-service/vision-for-good-complaint-handling)

NHS Constitution – [nhs.uk/choiceintheNHS/Rightsandpledges/NHSConstitution/Pages/Overview.aspx](http://nhs.uk/choiceintheNHS/Rightsandpledges/NHSConstitution/Pages/Overview.aspx)

NHSLA, *Saying Sorry* – [nhsa.com/claims/Documents/Saying%20Sorry%20-%20Leaflet.pdf](http://nhsa.com/claims/Documents/Saying%20Sorry%20-%20Leaflet.pdf)

Parliamentary and Health Service Ombudsman, *Principles for Remedy* – [ombudsman.org.uk/improving-public-service/ombudsmansprinciples/principles-for-remedy](http://ombudsman.org.uk/improving-public-service/ombudsmansprinciples/principles-for-remedy)

Parliamentary and Health Service Ombudsman, *Principles for Good Complaints Handling* – [ombudsman.org.uk/improving-public-service/ombudsmansprinciples/principles-of-good-complaint-handling-full](http://ombudsman.org.uk/improving-public-service/ombudsmansprinciples/principles-of-good-complaint-handling-full)

Parliamentary and Health Service Ombudsman, *Principles of Good Administration* – [ombudsman.org.uk/improving-public-service/ombudsmansprinciples/principles-of-good-administration](http://ombudsman.org.uk/improving-public-service/ombudsmansprinciples/principles-of-good-administration)

RCGP, *E.learning: Why Complaints Are Important* – [elearning.rcgp.org.uk/enrol/index.php?id=110](http://elearning.rcgp.org.uk/enrol/index.php?id=110)

Scottish Public Services Ombudsman, *Guidance on Apology* – [spsa.org.uk/search/gss/guidance%20on%20-%20Leaflet.pdf](http://spsa.org.uk/search/gss/guidance%20on%20-%20Leaflet.pdf)

Department of Health (Archives), *Listening, Responding, Improving: A Guide to Better Customer Care*

Advice Sheet 1: *Investigating Complaints*

Advice Sheet 2: *Joint Working on Complaints – an Example Protocol*





Advice Sheet 3: *Dealing with Serious Complaints*  
– [webarchive.nationalarchives.gov.uk/20130123195720/http://www.dh.gov.uk/en/publicationsandstatistics/publications/publicationspolicyandguidance/dh\\_095408](http://webarchive.nationalarchives.gov.uk/20130123195720/http://www.dh.gov.uk/en/publicationsandstatistics/publications/publicationspolicyandguidance/dh_095408)







## MEDICAL PROTECTION

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[medicalprotection.org](http://medicalprotection.org)

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F +44 (0) 113 241 0500

E [info@medicalprotection.org](mailto:info@medicalprotection.org)

### Medicolegal enquiries

T 0800 561 9090 | +44 (0) 113 241 0200

F +44 (0) 113 241 0500

E [querydoc@medicalprotection.org](mailto:querydoc@medicalprotection.org)

### Membership enquiries

T 0800 561 9000 | +44 (0) 113 241 0533

(Mon – Fri: 8.00am – 6.30pm)

Calls to Membership Operations may be recorded for monitoring and training purposes.

F +44 (0) 113 241 0500

E [member.help@medicalprotection.org](mailto:member.help@medicalprotection.org)

Please direct all comments, questions or suggestions about Medical Protection service, policy and operations to:

#### Chief Executive

Medical Protection Society

33 Cavendish Square,

London W1G 0PS, United Kingdom

In the interests of confidentiality please do not include information in any email that would allow a patient to be identified.

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