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GUIDE TO HEALTHCARE COMPLAINTS

A guide to healthcare complaints

The majority of patients have a positive experience of their NHS treatment. Where this is not the case there are a number of options open to a patient, the first of which is to bring a complaint. This guide is designed to help you do that.

Six Top tips for making a complaint

- 1 A patient has a right to make a complaint.
- 2 The moment a complainant seeks legal advice or assistance the NHS Complaints Procedure will be stopped.
- 3 Complaints should be addressed and resolved at local level.
- 4 A complainant will not obtain compensation through the NHS Complaints Procedure.
- 5 Keep a close watch on the time limits if legal action is also being contemplated.
- 6 Complaints can be a very useful source of information on which to base advice or whether there is a viable claim for compensation.

Every NHS run organisation is designed to have a complaints procedure. The procedure is broadly the same across most NHS hospitals but may vary in relation to GP practices. To find out more, contact the Practice Manager of your GP practice or the complaints department or patient liaison officer at your hospital.

NHS Complaints and Procedure

If you have concerns regarding the care or treatment that you have received, or if you have been refused treatment, you have the right to make a formal complaint.

The complaints system has three stages.

- Stage 1 - Local Resolution
- Stage 2 - Independent Review/Healthcare Commission
- Stage 3 - The Health Service Ombudsman

These stages apply whether the complaint is about a hospital, doctor, nurse, physiotherapist or anyone else employed by the Trust or GP, dentist, optician, NHS pharmacist or a member of the Ambulance Service. There is a right to make a complaint about every aspect of NHS treatment.

In order to access the complaints procedure the complainant must be a patient or former patient of the institution or practitioner concerned. It is possible to claim on behalf of somebody else, the hospital or practice must agree that the complainant is a suitable representative of the patient concerned.

Time Limits

The complaint must be made within 12 months of the date of the incident or discovery of the problem. The NHS organisations do have discretion to waive the time limit if there is good reason to do so. A general rule is that a complaint should be made as soon as possible after the incident occurred.

Stage 1 – Local Resolution

This is the starting point of all NHS complaints procedures. All GP surgeries, hospitals, dentists, opticians and other NHS care providers should have leaflets and information concerning how complaints are to be made and the complaint should be addressed and resolved at a local level.

In the first instance a complaint should be made to either the complaints manager or in an NHS Trust, the Patient's Advisory Liaison Service (PALS) or relevant member of staff such as a board manager.

Minor Complaints

These should be dealt with straight away and they may include a failure to clean the toilets or floors, beds or loss of clothing or rudeness of staff.

More Serious Complaints

A complaint can be made orally or in writing to the Complaints Manager. If the Complaints Manager cannot deal with it immediately they should acknowledge receipt of the complaint within 2 working days. If the complaint is made orally this may be accompanied by a written record of the initial complaint and an invitation for the complainant to sign and return it. The Complaints Manager must investigate the complaint, to resolve it speedily and efficiently. They may make arrangements for consolidation, mediation or assistance to resolve the complaint. The complainant should be informed about the process.

The Complaints Manager should prepare a written response to the complaint which summarises the nature and substance of the complaint, attempts to resolve it and any conclusion. This should be received within 20 working days of receipt of the complaint. If attempts to resolve the complaint locally have been unsuccessful the complainant will be informed of the right to have the case reviewed by the Healthcare Commission.

We know that in lots of cases the times limits above are not adhered to by NHS treatment providers.

Stage 2 – Independent Review/Healthcare Commission

The Healthcare Commission is the Health Watchdog for England and can only deal with complaints about treatment provided by the NHS in England. This is the second tier of the NHS complaints procedure. The complaint must first have been made to the NHS organisational practitioner concerned and if this has been exhausted or there has been no satisfactory outcome or the Complaints Manager has decided not to investigate within the time limit, the complainant can request the Healthcare Commission to consider the complaint.

www.healthcarecommission.org.uk/_db/_documents/complaintsleafletmarch2007.pdf

A complainant will need to complete relevant independent review request form which is available from the NHS Trust and from the Independent Complaints Advisory Service on line.

www.healthcarecommission.org.uk/_db/_documents/complaints_form.pdf

This form should be accompanied by a copy of the report or letter from the Trust that has marked the end of the local resolution stage and any other relevant documentation and a summary of the facts.

A Case Manager will be allocated and should acknowledge receipt of the complaint within two working days and they should start collating the information and respond to the complaint. Rules seek the complainant's permission to access relevant medical records to investigate the complaint.

If they have sufficient information they will recommend a course of action. The complainant will be informed of this decision as well as the organisational practitioner against whom the complaint has been made.

Panel Hearing

Upon receipt of the report the complainant or the NHS treatment provider has the right to ask for a panel to hear and consider the issues. Either party can request a panel hearing, which means a panel of 3 lay people would be brought together to hear the case. This will be based on the complainant's representation and/or representations of the organisation or practitioner that the complainant is against, any witnesses and the investigation report.

Stage 3 – The Health Service Ombudsman

If the complainant is still not happy they can appeal to the Health Service Ombudsman. This must be no later than a year from the date when the complainant became aware of the events, subject to the complaint. The time limit can be waived in special circumstances. A complaint can be made in writing to:

Health Service Ombudsman
Millbank Tower
Millbank
London
SW1P 4Q

Or online : www.ombudsman.org.uk/make_a_complaint/health/index.html

The complaint should have a brief summary of what has happened, when and where, and who was involved. It should have an explanation of which stages the complaint has already been through. The complaint should contain contact details for the complainant, including a day time telephone number, fax number and email address if possible and copies of all relevant documents.

Health Service Ombudsman can now consider complaints about clinical competence such as:

- unsatisfactory care or treatment.
- failure to provide a service that ought to have been provided.
- poor administration such as mistake over appointments, poor complaints handling, rudeness, misleading advice.

The Ombudsman will not usually take action if the organisation or practitioner complained against could reasonably be expected to put things right.

Possible recommendations include:

- taking no further action;
- referral of the case back to the NHS treatment provider;
- a meeting, conciliation or mediation;
- corrective action to the National Clinical Assessment Authority;
- referral to the Health Service Ombudsman;
- referral to statutory bodies;
- further investigation;
- referral for inspection.

The General Medical Council (GMC) Complaints Procedure

If a patient or relative is unhappy with the doctor's treatment or care and wants an apology, explanation or review of the treatment received then the first point of contact would be the person in charge of the care at local level. A complaint should first of all be made to the individual, whether that be the Ward Manager or the Consultant or head of the department or for the GP, the Practice Manager.

The GMC is responsible for ensuring doctors maintain good practice in accordance with the standards set by the GMC. It is possible to contact the GMC direct by telephone. All telephone calls are confidential. Doctors can also be reported in writing at

St James' Building
79 Oxford Street
Manchester
M1 6FQ

or email: practice@gmc.uk.org

It is also possible to download the complaints form from their website:

www.gmc-uk.org-concerns-making_a_complaint-complaint_form.pdf

All complaints are reviewed. If it is decided not to investigate the GMC may pass the complaint to the doctor's employer so it can look more closely. If the GMC decide to investigate they will give the complainant a chance to respond and a fax sheet will be sent to the complainant entitled 'investigating concerns'.

www.gmc-uk.org-concerns-printable_documents-investigating_concerns.pdf

Once the GMC Fitness to Practice Director has full details of the complaint and the doctor's comments, the case will be considered by two case examiners, one medical and one non-medical who will consider whether the concerns are serious enough to warrant a hearing. The Hearings are held in private.

The GMC will not investigate all complaints. The trigger is whether or not there is a question as to the doctor's fitness to practice.

Possible action by the GMC

They can:

- Issue a warning;
- Impose conditions on the doctor's registration so that they are only allowed to treat patients under supervision or that they are restricted to certain areas of practice;
- Agree undertakings, for example to refrain or work under supervision;

- Suspend the doctor from the register so that they cannot practice, during the period of the suspension
- Remove the doctors name from the register;
- It is possible for a doctor to apply to have his suspension lifted or his/her name to be put back on the register.

The GMC cannot:

- Explain in detail what happened;
- Ordered a doctor to provide the treatment a patient might want;
- Pay compensation;
- Fine a doctor;
- Order a doctor to give access to medical records;
- Order a doctor to apologise.

Complaints about Private Treatment

Private hospitals and clinics carrying out medical treatment are regulated by the Care Standards Act 2000. They must operate a complaints procedure which would follow the same pattern as the NHS complaints procedure. This means that:

- Complainants need first to try to be dealt with the issue at a local level.
- If that is unsuccessful they should make a formal complaint to the hospital or clinic that has provided the treatment.
- The complainant should then address the organisation concerned complete with any documentation in support;
- If the complainant remains unhappy or if there is a lack of response it is possible to complain to the Healthcare Commission.
- You cannot complain to the Health Services Ombudsman as they do not cover private treatment.
- If the complaint is about a professional's fitness to practice the complaint should be made to the GMC.

Nursing and Midwifery Council (NMC) Complaints Procedure

This is to protect the public by setting and maintaining standards for those regulated by the NMC. Complaints should be made at a local level, either orally or in writing and supported by documents.

If the complaint is very serious, i.e. the nurse or midwife is unsafe and poses a danger to patients the NMC should be contacted direct by telephone or letter. This is available from their website www.nmc/uk.org

Telephone number 020 7333 6541

The form should be sent to:

Fitness to Practice Department
NMC
23 Portland Place
London
W1B 1PZ

In the letter it is vital to identify the name of the health professional, details of the complaint with dates and the complainant's name and contact details. The letter will be acknowledged within 5 working days.

If it falls within the remit of the Fitness to Practice Department it will be investigated but if it falls outside or there is insufficient evidence the case will be closed. In any event, the NMC will endeavour to put complainants in touch with someone who can help and support them through the process.

If the evidence is upheld and the complaint is investigated further, then a nurse or midwife may have to appear at a formal nursing midwifery hearing. This will be convened by the NMC consisting of a panel of specialists who will hear the evidence in private and then adjudicate.

“They supported me, they kept me informed, and I just knew they were doing everything in my best interests.”

Client

For more information visit www.novumlaw.com or call us on 0800 884 0777