



counsel + care 
for older people, their families and carers

factsheet

Information from Counsel and Care: 18

Complaints about Community Care and NHS Services

Making a complaint can feel daunting. However, in certain circumstances, it is a necessary and essential step to take.

If you receive or need care and/or support from the council Social Services or the NHS you might not be satisfied with the level, quality or type of care you receive. This factsheet details when you can make a complaint, how to organise it, and also looks in some detail at the processes involved in the council Social Services and NHS complaints procedures.

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Your donations, legacies and payroll giving enable Counsel and Care to get the best care and support for older people, their families and carers

Counsel and Care is a national charity; however the creation of the Scottish Parliament, and the Welsh and Northern Ireland Assemblies means there are differences in the ways each region cares for and supports older people. The information in this factsheet applies essentially to England although there may be similarities with Scotland, Wales and Northern Ireland.

Further information

In this factsheet the telephone number of any organisation mentioned has been provided. Counsel and Care also produce factsheet **24: Information – Other Useful Organisations** which lists the full contact details of other organisations and agencies which you may find useful.

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1 Why you may want to make a complaint

If you are concerned about the quality of service you are receiving or you have been refused a service, sometimes using a formal complaints procedure is the best way to challenge decisions or to improve the services you are offered. You may also want to complain on behalf of a friend or relative.

If you are considering making a complaint about the service you are receiving or a decision that affects you, it is a good idea to talk it over first with an independent organisation. For example, you could contact an advice agency like Counsel and Care, a Citizen's Advice Bureau the Patient Advice and Liaison Service (PALS) or the Independent Complaints Advocacy Service (ICAS).

2 Informal complaints

Whilst most organisations have a formal complaints procedure, in many circumstances, complaints can be resolved informally by initially raising your concerns with the relevant department or member of staff. This will give the organisation an opportunity to provide you with an explanation about what has happened or to reconsider their decision. However, you should not allow the organisation to delay or detract you from making a formal complaint.

If you want to raise an informal complaint, you can do this either in person or by writing a letter. It is worth making sure that the organisation is provided with all the relevant information about you that they may need to reconsider their decision. They may not have taken all your circumstances into account when they made the decision that you are not satisfied with. If progress is made or if your concerns are resolved, it may be that a formal complaint is not necessary. If you remain dissatisfied with the way that your concerns have been dealt with, you may want to move the complaint to the formal stage, using their complaints procedure.

3 Formal complaints

If you are not satisfied with the way your concerns have been dealt with, you can make a formal complaint using the official complaints procedure. Government regulations mean that local councils and the NHS must have a complaints procedure in place and they must publish details of this to users of the service.

The organisation's complaints leaflet should explain how to make a complaint and what to expect from the process. Sometimes, the leaflet will have a detachable form which you can use to make your complaint. You should ask about their response time-scales when you make your complaint so you know when to expect a reply.

Your letter should concentrate on the **main facts** of what you are complaining about, for example, if you are dissatisfied with the reliability of a service, your letter should state the dates and times it was unreliable. You should keep copies of all of the letters you send or receive about your complaint for your own records.

If you make a complaint in person or by telephone you should note down the name of the person you speak to, and ask that they send you a letter confirming that your complaint has been received and detailing who is investigating it.

It is useful to consider that anything said in person or on the telephone may be difficult to confirm. If you feel you have been given important facts or information by a member of staff, ask them to confirm it in writing. It is a good idea to keep a record of the telephone calls you make or receive, and to note down the name of the person you spoke with.

If a situation has arisen or an issue has been unsatisfactory for some time, involving yourself or a vulnerable person you care for, many emotions can be generated. To resolve a complaint successfully and improve the situation it is important to remain focused on the facts. The professionals involved also have a responsibility to treat you with respect and to respond appropriately to your concerns, and likewise, many organisations have procedures about the way service users behave towards members of staff.

4 Independent advocacy services

You may find in some situations that an independent advocate can help resolve issues, and help clarify communication between you and the professionals. If the advocate is independent they will not be employed by the organisation you are complaining about. An independent advocate will represent your views if you are unhappy about a situation or decision and can discuss with you in private and in confidence to establish what outcome you would like. With your permission, the independent advocate can speak on your behalf or support you to speak for yourself and to represent your views. This can be important especially for people who feel unable to speak out for themselves or who feel unable to challenge the people/professionals involved.

The independent advocate will not make decisions for you, but will ensure that you have all the information you need to be able to make an informed decision. This includes making sure that you can understand some of the complicated information that some organisations provide. They can support you at or attend meetings on your behalf.

You can find a local independent advocacy organisation by contacting the Older People's Advocacy Alliance (OPAAL) (tel.: 01736 740991 or 01782 844036). Alternatively you could contact your local Age Concern whose contact details will be available in your telephone directory.

5 Complaining about care in your own home

If you are dissatisfied about the standard of care you are receiving in your own home from health services, the council Social Services or a care agency, you should first speak to someone in charge of the service. This may be the manager or supervisor of the home care services, the manager of the district nurses, or the manager responsible for the social worker involved in organising your care.

If you are dissatisfied with the response you receive from a manager, you can make a complaint using the organisation's complaints procedure. If the service you receive is provided by the NHS you will need to use the NHS complaints procedure (see section 8). If the service is provided by your local council Social Services you need to use the local council's complaints procedure (see section 7). If the service is arranged by you and provided by a private agency or a voluntary organisation, they should have their own internal complaints procedure. However, if the service is provided by a private or voluntary agency, but was arranged by Social Services following a care needs assessment, you can complain about the service using the local council's complaints procedure.

If you are complaining about home care provided by Social Services or a private agency, you can also complain to the Commission for Social Care Inspection (CSCI) (tel.: 0845 015 0120). CSCI is the independent body which registers and regulates social care in England. They can investigate

your complaint if it concerns a National Minimum Standards issue. If you live in Scotland or Wales, please see the respective versions of this factsheet for details about who to contact to take your complaint forward.

5.1 If the complaint relates to abuse

If the concerns you have relate to a form of abuse, (for example, theft, negligence, physical or emotional abuse), it should be reported to the local council Social Services Protection of Vulnerable Adults coordinator. The POVA coordinator has a responsibility to investigate any alleged abuse and to check that the staff members had been fully checked on employment. Before staff start work with vulnerable adults they have to be checked against the POVA register and the Criminal Records Bureau and anyone with a history of abuse would not be employed. If a member of staff commits abuse in this environment, they would be reported to POVA and the CRB, and would be prevented from working in a similar environment in the future. For further information, please see factsheet **20: Abuse: Older People at Risk**.

6 Complaining about care in a care home

All care homes are required to have a complaints procedure in place in accordance with the Care Standards Act 2000. They must also ensure that all residents have access to this procedure.

If you are a resident, or a relative or friend of a resident, you can begin by making your concerns known to the care home manager or matron. You could also ask another member of staff to speak to them on your behalf.

If you are not satisfied with the response you receive or any attempts to resolve your concerns or you do not want to discuss the complaint with the staff at the home, you can make a complaint to an inspection officer at the Commission for Social Care Inspection (tel.: 0845 015 0120). CSCI can investigate your complaint if it relates to a National Minimum Standards issue. You can write or speak to the inspectors in confidence, but confidentiality may be difficult to maintain if they are to investigate particular events or circumstances to a full resolution. You do not have to tell the home that you have made a complaint to CSCI, but you may wish to do so, so that the home is aware that you are treating your concerns seriously and that you are aware of your right to do so.

If your complaint does not relate to a National Minimum Standards issue you should use the complaints procedure of the home you are in. If you are financially supported in the home by your local council Social Services

you can use their complaints procedure to take your issues forward if you feel they have not been resolved. If you fund your own placement in the care home and feel that the home's complaints procedure has not resolved your concerns, you may wish to check your contract with the care home to check whether the terms you agreed to are being breached. If this is the case you may wish to contact the Office of Fair Trading for advice. If your complaint does not relate to the National Minimum Standards being unmet or the contract terms being breached you may wish to think about moving into a different care home. You may also wish to consider involving an independent advocate to help you resolve your complaint (see section 4 of this factsheet for further details).

If your fees in the home are being paid by your local Social Services they are required to carry out an annual review of your care. You could discuss any difficulties or complaints you have about your care and the home with the person who reviews your needs or with a manager at the council Social Services department. However, if you have serious concerns that need resolving immediately, do not wait for the review meeting, but contact the council Social Services department to request an urgent review of your care needs.

If you need help or support to communicate with staff or have a complaint, you could consider seeking the support of an independent advocate. They can assist in making sure the opinion of the service user is taken into consideration by the staff. You will be able to find a local independent advocacy scheme by contacting your local Age Concern

(their contact details will be available in your telephone directory.) For more information about how advocacy can help, see section 4 and factsheet **25: (Independent) Advocacy**.

7 Complaints about the local council

If you are concerned about a community care service you receive from the council Social Services or a decision made by them, they will have a formal complaints procedure that you can use. Local council Social Services departments have a duty to provide information detailing their complaints process and the name and address of the person responsible for making sure your complaint is dealt with properly. This person is known as the Complaints Officer.

If you are making a complaint about the conduct of a social worker, you may find it useful to make reference to the General Social Care Council Code of Practice for social workers. All social workers must abide by this Code as part of their professional registration. The Code can be read at www.gbcc.org.uk/NR/rdonlyres/8E693C62-9B17-48E1-A806-3F6F280354FD/0/Codes_of_Practice.doc or can be obtained by calling the GSCC on 020 7397 5100.

7.1 The Social Services formal complaints procedure

The Social Services complaints procedure covers concerns about:

- The process of assessment for services in your own home or a care home
- Inappropriate denial of services
- The financial assessment process and level of charges for care

- The standard and quality of the services that the council are responsible for providing
- Poor communication
- Lack of information
- Provision of incorrect information.

Currently there are three stages to the local council complaints procedure. New procedures for complaints are due to be introduced in July 2006, and this factsheet will be updated accordingly.

7.1.1 The informal stage

Initially, local council Social Services must attempt to resolve any issues informally. If you are dissatisfied with any aspect of the services provided by the council Social Services, you should first talk to or write to a care manager, social worker, or their supervisor. Ask for their response to be put in writing.

7.1.2 Formal registration and the response

If you are not satisfied with the outcome of the informal complaint to the manager or Complaints Officer you should register your complaint formally in a letter or use their complaints form. You may want to ask someone to help you with this, such as an independent advocate.

The local council Social Services should write to you within 28 days of receiving your formal complaint. You should either receive a response to your complaint, or if there is a delay in investigating they should give the

reasons why this has happened. If there is a delay in responding to the complaint the local council Social Services department should give you a full response within three months of receiving your letter. However, they can take longer if the investigation is complex. But they should inform you about this and keep you updated about when you can expect a response.

The local council Social Services can either appoint an independent investigating officer who has had no previous contact with your case to carry out the investigation, or they can undertake an internal investigation. Any investigating officer should gather together all of the relevant information relating to your complaint and address each point you have made. In many cases, they may offer a meeting at this stage. If you agree to a meeting you can take an independent advocate.

7.1.3 Review Panel meeting

If you remain dissatisfied with the response to the second stage of your formal complaint, you can request that it is heard at a Review Panel meeting. You must request this review within 28 days of receiving the decision to the second stage of the investigation.

Within 28 days of receiving the request for a review, an independent panel meeting should be arranged on a date that is mutually convenient. You should be given 10 days notice of when and where the review is to be held. You should also be provided with the name and status of the panel members. You can ask someone to go along to the review with you. This

person cannot be a solicitor or barrister acting in a professional capacity, but could be an independent advocate or someone from an advice agency.

The outcome of the review meeting should be recorded within 24 hours, although realistically the panel often asks for an extension of this deadline to give them time to consider the information fully. A report stating their recommendations will be forwarded to the Director of Social Services who will make a decision about whether to accept the panel's decision and recommendation. The local council Social Services is required to take account of the recommendations of a review panel, but does not have a duty to act on them. However, the local council should take the findings of a review panel into account in any action it decides to take.

The local council Social Services will have 28 days to decide on what, if any, course of action to take.

If you are still not satisfied with the decision, you should seek advice on the further action you may take. Further options are detailed below.

7.2 The Local Government Ombudsman

The Local Government Ombudsman (LGO) can investigate complaints about failures in the administration systems and processes of council Social Services departments in England. There are strict rules about the type of complaint the Ombudsman can investigate. The Ombudsman will not

generally investigate your complaint unless you have been through the local council's complaints procedure first.

A complaint to the LGO must usually be made within 12 months of the problem originally arising unless there are special reasons. Outcomes are generally limited to recommendations, but the Ombudsman can suggest compensation. (In Wales, contact the Public Services Ombudsman for Wales (tel.: 01656 641 150) and in Scotland, contact the Scottish Public Services Ombudsman (tel.: 0870 011 4372)).

7.3 The Monitoring Officer

All councils must have a Monitoring Officer. This may be a Senior Manager, the Head of the legal department, or the Chief Executive of the council. The Monitoring Officer has a duty to investigate any decision made by a member of staff within the council that may not be in accordance with the Government policy or legislation the council must abide by. If you think a decision made by your council Social Services might be illegal, you can write to the Monitoring Officer asking them to investigate. You may wish to seek advice from an advice organisation, such as Counsel and Care or the Citizens' Advice Bureau, about taking this route.

8 Health service complaints

If you are dissatisfied about your treatment or any service provided by the NHS, or if you have been refused health treatment, it would be a good idea to identify who is responsible for the service. For example, is the service private, or is it provided by your GP, health centre, hospital or Primary Care Trust? All Primary and Secondary Care Trusts must have a Patient Advice and Liaison Service (PALS) which should be able to assist you in directing your complaint to the correct department. You can obtain details of your local PALS from your library, the GP surgery or local hospital.

8.1 The NHS complaints procedure

Complaints about services or treatment provided by the NHS using the NHS complaints procedure must be made within certain time limits:

- Within 6 months of the event you wish to complain about *or*
- Within 6 months of finding out about the right to complain providing it is within 12 months of the event.

A complaint made outside these time limits may be accepted if you can demonstrate that there is a good reason for not complaining before this.

Complaints can be made to any member of NHS staff by you, by a friend or by a relative as long as you have given your permission for them to complain on your behalf. You may want to request support to make a complaint from an independent advocate. Contact Older People's

Advocacy Alliance (tel.: 01736 740091) for details of local advocacy services.

The NHS complaints procedure has the following stages:

8.1.1 Local resolution

You should first try to resolve your complaint with the staff member or team who is providing the health care. Your local Patient Advice and Liaison Service (PALS) should help you try to resolve the complaint quickly so that you do not have to take the complaint further. PALS should also act as one of the gateways to local independent advice and advocacy for you if you feel that you need the support to make a formal complaint.

8.1.2 The Complaints Manager

You can make your complaint to the named Complaints Manager (usually found in the formal complaints form) employed by the Primary Care Trust or NHS Trust. The Complaints Manager is responsible for dealing with written complaints on behalf of the Chief Executive of the Trust. He or she should ensure that your complaint is investigated in situations where you do not wish to discuss your complaint with the people directly involved in your care; where staff feel unable to deal with your complaint; or where frontline staff feel they have resolved the complaint but you are still not satisfied with the outcome.

8.1.3 An Independent Review panel

If you are not happy with the outcome of the local resolution you can request to arrange for your complaint to be heard by an Independent Review panel. This is known as **stage two** of the formal complaints procedure. There is no automatic right to have your complaint heard by

an Independent Review panel. A member of the Health Care Commission, known as a convenor, will decide whether it is appropriate. The decision not to set up an Independent Review panel should be given to you in writing. If you disagree with the decision of the convenor not to set up an Independent Review panel, you can complain to the Health Service Ombudsman (HSO), the Scottish Public Service Ombudsman (in Scotland), or the Public Services Ombudsman (in Wales).

If an Independent Review panel is arranged to hear your complaint you should receive details about the results of its investigations, conclusions and suggestions. You should also have the opportunity to check a draft report and make comments. There is a target time of six months for the whole Review panel process to be completed.

8.2 The Health Service Ombudsman

If you disagree with the findings of the review panel you can refer your complaint to the Health Service Ombudsman (HSO). The HSO is completely independent of the NHS and the Government.

The Ombudsman is able to investigate complaints about:

- 'Maladministration' - that is *poor administration or the wrong application of rules*
- 'Clinical judgment' - *an inappropriate action/decision made by a member of staff*. Complaints concerning clinical judgment can only be made for incidents occurring after April 1996.

The Ombudsman will not investigate your complaint until you have exhausted the formal NHS complaints procedure first.

A complaint made about NHS care should usually be made within 12 months of the event occurring unless there are special reasons, for example, if you are late making a complaint because of delays in the NHS complaints procedure.

Complaints about Scottish services should be made to the Scottish Public Services Ombudsman (tel.: 0870 011 4372), and in Wales, complaints should be made to the Public Services Ombudsman (tel.: 01656 641150).

8.3 Serious complaints against a doctor or nurse

If you have a complaint that may be serious enough to justify removing a nurse or health staff's professional registration, you can make a complaint to the Nursing and Midwifery Council (tel.: 020 7637 7181). This is the regulatory body for nursing, midwifery and health visiting and is set up to establish and improve standards of nursing in order to serve and protect the public. They investigate complaints against nurses, midwives and health visitors and have the power to remove their professional registration if necessary.

If you have a complaint about your GP, you should first contact your GP surgery, as all GP practices must have a complaints procedure. You can also contact the PALS at your local hospital, or write to the Complaints Manager at your local Primary Care Trust (all contact details for local

organisations will be available in the telephone directory, or at local libraries).

If you have a serious complaint about a doctor, you can also complain to their professional organisation, the General Medical Council (GMC). The GMC has the legal power to investigate doctors working in the UK and can take a range of action. To make a complaint to the GMC you can write or call their complaints department (tel.: 0845 357 3456).

8.4 Complaints about NHS Continuing Health Care

If you have been refused free NHS Continuing Health Care you can ask for a review of the NHS decision. This Review Process is a separate process to the NHS complaints procedure. The Review Process is only for people requesting a review of a decision by the NHS not to pay for the continuing long-term care needs of a patient. Please see factsheet **27: Continuing Care: Should the NHS be paying for your care?** for more details about how you can raise a complaint.

9 Beyond complaints procedures

If you have made a complaint to a local council or NHS Trust but you remain dissatisfied with the outcome, there are further steps you can take.

9.1 Getting others interested

You may consider trying to obtain support from a voluntary organisation, pressure group or from a political representative. Local councillors or MPs hold surgeries in your area and can also be contacted by email or letter. You can find out where and when from your local library. You can also write to the Government Minister responsible for the public service you are concerned about. The Department of Health website (www.dh.gov.uk) provides details of which Ministers are responsible for NHS care or social care. You could try to get publicity through newspapers, magazines or demonstrations. You should consider that there is a possibility that by involving other agencies, or the media, your personal control over the situation may be difficult to maintain.

9.2 Judicial Review

It is possible to challenge decisions made by a public authority such as a council or the NHS, in the High Court, called Judicial Reviews. The High Court hearing will look at the public authority's decision and decide whether it has followed the law correctly. The court hearing cannot change the law itself and a Judicial Review would usually only be agreed if all other avenues for resolving the complaint have been exhausted, and the issue was felt to be related to an incorrect interpretation of the law.

Each side is usually represented by a barrister and the case is heard by a judge. Legal Aid may be available to cover the costs of proceedings, subject to your financial situation and the merits of your case. However, if you are not eligible for legal aid, a Judicial Review may be extremely expensive.

The judge will decide the case and can make a public authority act according to its decision. There is also a right to go back to court if a public authority fails to follow the court's decision.

9.3 Private legal action

It is possible to sue a public authority in the courts. The process is slow and can be very expensive. If you lose, you may have to pay your opponent's legal costs.

Solicitors for the Elderly (tel.: 01992 471 568). This organisation has a database with the details and information of solicitors that have experience and/or specialise in these issues. Many solicitors may not have the necessary knowledge to assist you so it is a good idea to ensure the solicitor you employ has the necessary abilities.

Community Legal Service solicitors (tel.: 0845 608 1122). The Community Legal Service aims to improve people's access to legal services, information and assistance. They have a directory line that has details of organisations that have the CLS Quality Mark and can advise you

of solicitors in your area that may offer legal advice in any of the categories of law that deal with health or social care.

Our advice workers can advise on a wide range of issues affecting older people, their relatives and carers. Counsel and Care produce a range of factsheets which can be downloaded from our website www.counselandcare.org.uk, or by calling 0845 300 7585.

This factsheet is not a full explanation of the law and is aimed at people over 60.

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