Headway
the brain injury association

Making a complaint about health and social care services

after a brain injury

When you are unhappy with health or social care providers, it is important to make your opinions heard. The information in this publication should help you get the support you need to communicate with staff and resolve most issues.

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Introduction

When you are unhappy with health or social care providers, it is important to make your opinions heard. You should never feel that you have to suffer in silence and it is important to raise concerns, both for the benefit of yourself and other future users of the service. Often a simple discussion with the relevant people will be enough to resolve matters. However, for serious difficulties, you have may to take the issues to higher authorities.

There can be many contentious care and treatment issues for brain injury survivors, and this is not always the fault of staff members. Procedures are in place throughout the UK, Channel Islands and the Isle of Man to deal with complaints, and this publication provides a comprehensive guide. The information should also help you get the support you need to communicate with staff and resolve most issues. The below steps can help you through this process.

The information in this publication does not replace clinical or legal guidance from professionals.

The organisations listed in this publication are provided for information purposes only. Their inclusion does not imply endorsement, recommendation, or approval by Headway. Users should make their own assessment of any organisation or service before engaging with them.

Know your rights

It is important to know your rights as a public service user. The following documents have been published for NHS service users and staff in England and Scotland:

- The NHS Constitution - explains what staff, patients and the public can expect from the NHS in England, including details of complaints processes. It is available at www.gov.uk/government/publications/the-nhs-constitution-for-england.

- The Charter of Patient Rights and Responsibilities - summarises the rights and responsibilities of everyone who uses the NHS in Scotland. It is available at www.nhsinform.scot/care-support-and-rights/health-rights/patient-charter/the-charter-of-patient-rights-and-responsibilities.

Issues to consider before proceeding

It is important to know what you want the outcome of your complaint to be. Would you be content with an apology or do you want formal action taken against a staff member? Do you want a fundamental change to policies and procedures? You

need to be clear from the outset on the action you want to be taken.

Make sure you keep records of any relevant evidence. This includes notes of dates and times of incidents, formal letters or emails and details of conversations. You may need to present some of this to strengthen your case. It may also be useful for keeping events in your mind, as a complaint can take a while to be resolved.

Try to be as clear and concise as possible with your complaint and keep to the main issue/issues. Also remember to keep dated copies of all official letters or emails you send and receive during the process.

Local resolution

To resolve any issue with either NHS or local authority social services, you should first go to the organisation concerned. Try talking to the individual or individuals you have concerns with or to their line manager. Matters can often be resolved quickly and satisfactorily by this method. You can also ask to talk to the director responsible for the area of concern. If the issue is of patient safety then you could ask to speak to the lead for patient safety and risk; all hospitals should have an individual responsible for this.

If this action isn't appropriate, or matters have become more serious and you wish to pursue a formal complaint, then you should ask for details of the organisation's complaints procedure. You should do this as soon as possible, usually within 12 months of the incident in question or of it coming to your attention. This time limit can be extended under certain circumstances, as long as it is still possible to investigate.

All NHS and local authority social services departments have their own complaints procedure and this must be followed to its

conclusion before any further action can be taken. All social services departments must have a complaints manager to deal with such issues, and large NHS practices and hospitals should do as well. Small, local practices may not have a complaints manager, but they must have a procedure and a designated individual responsible for overseeing it. GP complaints in Northern Ireland can also be taken to the Health and Social Care Board's complaints manager, who can act as a conciliator between you and the practice.

The person in charge should be able to arrange for an independent mediator, conciliator or advocate to help. That person should be able to discuss things with you, attend meetings and help you to get your point across. Matters can usually be resolved at this stage if the procedure is followed correctly.

Remember that you can have a family member, carer, friend or your local MP make a complaint on your behalf with your written permission.

Alternative approaches and local systems

Alternatively, for NHS complaints you could complain to the commissioner of the service. This can make things a bit less personal and help to remove you from uncomfortable encounters at the service you are complaining about. The following systems apply around the UK.

England

Integrated care boards (ICBs) are responsible for commissioning primary care services (such as GPs, dentists, opticians or pharmacy services), hospital services, mental health services, out of hours services, NHS 111 and community services. You should therefore contact the responsible ICB if

your complaint is regarding any of these services. You can find details of your local ICB at www.england.nhs.uk/contact-us/about-nhs-services/contact-your-local-integrated-care-board-icb.

NHS England is responsible for commissioning healthcare in prison, military healthcare and specialised services that support people with a range of rare and complex conditions. You should therefore contact NHS England if your complaint is regarding any of these services. Details are available at www.england.nhs.uk/contact-us/feedback-and-complaints/complaint/complaining-to-nhse.

Scotland

All NHS services in Scotland are commissioned by NHS Healthboards. You can find details of your local Healthboard at www.scot.nhs.uk/organisations.

Wales

In Wales, all healthcare services are commissioned by Local Health Boards (LHBs). You can find details of your local LHB at www.gov.wales/nhs-wales-health-boards-and-trusts.

Northern Ireland

In Northern Ireland, both NHS and social services are commissioned by the Local Commissioning Groups (LCGs) of Health and Social Care Northern Ireland. You can find details of making a complain at www.nidirect.gov.uk/articles/how-complain-or-raise-concerns-about-health-services.

Channel Islands

Health and social services on the Channel Islands are commissioned by the States of Jersey and States of Guernsey Health and Social Care Departments. The initial complaint should be dealt with by the local resolution process described above, which should be done within six months of the department first becoming aware of the issue. This time limit can be extended if it is unreasonable to enforce it.

Isle of Man

Health services are commissioned by the Department of Health for the Isle of Man.

Referral to an ombudsman or other service

If the complaint is not resolved to your satisfaction then you can refer it to an ombudsman in England, Wales, Scotland and Northern Ireland, usually within 12 months of the time you first became aware of the problem. This time limit is a discretionary rule though, and can be waived in certain circumstances, such as if the local resolution process took a long time. Alternative systems are in place in the Channel Islands and the Isle of Man.

Here is a summary of the systems and organisations across the UK. Detailed information and complaints forms are available on each organisation's website or by contacting the relevant departments.

England

- The Parliamentary and Health Services Ombudsman deals with complaints about any NHS service.

- The Local Government and Social Care Ombudsman deals with complaints about social care.

Scotland

- The Scottish Public Services Ombudsman deals with complaints about any public services in Scotland

Wales

- The Public Services Ombudsman for Wales deals with complaints about both the NHS and local councils

Northern Ireland

- The Northern Ireland Public Services Ombudsman deals with complaints about public bodies in Northern Ireland

Channel Islands

- In Jersey, if your complaint has not been resolved initially you will need to contact the Jersey Care Commission.

- In The Bailiwick of Guernsey, you will need to contact the Health and Social Care Customer Care Team.

Isle of Man

- If your complaint has not been resolved by a service provider or Manx Care, you will need to contact the Health and Social Care Ombudsman Body.

Information and support

The following services can provide help and support at any

stage. It can be useful to contact them for more information even before you make the initial complaint.

England

The Patient Advice and Liaison Service (PALS) can be a useful source of advice and support. There is a PALS at all English hospitals which can help to deal with any concerns you have about your relative's treatment and help to arrange meetings with consultants. You can find details of the hospital's PALS at www.nhs.uk/service-search/other-health-services/patient-advice-and-liaison-services-pals.

Healthwatch England is a health and social care champion and listens to patient experiences to improve standards of care. You can find details of your local Healthwatch service at www.healthwatch.co.uk/your-local-healthwatch/list.

Every local authority has a legal obligation to provide an independent health and social care complaints advocacy service. The way this service is provided varies in different regions. For example, in some areas the NHS Complaints Advocacy Service is run by Voiceability (www.voiceability.org/about-advocacy/types-of-advocacy/nhs-complaints-advocacy). In some other areas the service is run by POhWER (www.pohwer.net/nhs-complaints-advocacy). Elsewhere, local councils, or groups of councils, have their own systems in place.

The Voiceability and POhWER services in some areas can only provide NHS complaints advocacy. If these services don't operate in your area or they can't help with a social services complaint, they or your local authority should be able to signpost to a service that can.

Citizens Advice can be a great source of support as well. You

can find details of your local Citizens Advice at www.citizensadvice.org.uk/about-us/contact-us/nearby.

Scotland

The Patient Advice and Support Service (PASS), run by the Citizens Advice Bureau, provides free, confidential information, advice and support to NHS users in Scotland. The service can help you to raise concerns and complaints. You can find details of your local PASS at www.pass-scotland.org.uk.

You can also find other types of advocacy services in Scotland from the Scottish Independent Advocacy Alliance (SIAA). For further information, visit www.siaa.org.uk.

Citizens Advice Scotland can be a source of support as well. You can find more details at www.cas.org.uk.

Wales

You can contact LLAIS Wales for help with making a complaint to the NHS or social services. For more information visit www.llaiswales.org. You can also find advocacy services in Wales from Advocacy Support Cymru (www.ascymru.org.uk).

Advicelink Cymru (www.advicelinkcymru.org.uk) can also offer information and advice.

Northern Ireland

The Patient and Client Council (PCC) (www.pcc-ni.net) in Northern Ireland offers support for concerns or complaints and also offer an advocacy service.

The independent advice network Advice NI (www.adviceni.net)

is another source of information about your rights and should be able to signpost to local advocacy services.

Channel Islands

The best source of advice for complaints at any level is the Health and Social Services Department for the relevant island. These departments regulate all health and social care services on the islands and handle all complaints.

Citizens Advice (CA) is also an excellent source of support and advice on complaints in the Channel Islands. There are two services on the islands: Jersey CA (www.citizensadvice.je) and Guernsey CA (www.citizensadvice.org.gg).

What to do if you still aren't happy with a decision

If you aren't satisfied with the ombudsman's final ruling, ask for their decision review procedure. They will not necessarily investigate your complaint again, but should look at whether all the evidence was taken into account and a fair decision made.

If you are still unhappy with the decision after the steps above, then you might want to look into the possibility of taking legal action. This may involve a process called a 'judicial review', which is a form of court proceeding in which a judge can review the legality of a decision made by a public body.

Taking legal action against a government body can be a long, costly and complex process, so you will need to seek expert legal advice. You should discuss the possibility of pursuing court proceedings with a specialist solicitor as soon as possible after the final decision is made.

For help with finding solicitors with experience in handling brain injury cases, browse through our Solicitors Directory. The list consists of personal injury solicitors, but they also have departments dealing with different legal specialities. The firms have an understanding of brain injury issues and have signed up to our code of conduct, making them a good first contact.

You might also want to consider contacting your local Member of Parliament and asking for their support. MPs should always be willing to listen to their constituents and help if they can. They can often write or sign letters and may even attend meetings with you. You can find details of your local MP at www.members.parliament.uk/FindYourMP.

Abuse and professional misconduct

If you suspect a professional of misconduct, or you have reason to believe misconduct or abuse is occurring within a council or health service, then you can report the issues to the appropriate regulatory bodies. The following is a list of regulatory bodies covering the UK.

Professional bodies

- The General Medical Council (GMC) (www.gmc-uk.org) - regulates all practising doctors in the UK and can investigate complaints if you think a doctor's actions are putting patients in danger, or you have concerns about a doctor's honesty.

- The Nursing and Midwifery Council (NMC) (www.nmc.org.uk) - regulates all UK, Channel Islands and Isle of Man nurses and midwives and can investigate concerns about individual practitioners.

- The Health & Care Professions Council (HPC) (www.hcpc-uk.org) - regulates a wide range of professions including

psychologists, occupational therapists, speech and language therapists, radiographers, physiotherapists, dietitians and many more. The HPC investigates complaints about fitness to practice.

- Social Work England (www.socialworkengland.org.uk) – regulates social workers in England.

- Scottish Social Services Council (www.sssc.uk.com) - regulates social workers in Scotland.

- Social Care Wales (www.socialcare.wales) - regulates social workers in Wales.

- The Northern Ireland Social Care Council (www.niscc.info) - regulates social workers in Northern Ireland.

If the profession of the individual you are concerned about is not covered by the organisations above, then visit the Professional Standards Authority website, available at www.professionalstandards.org.uk. There you can search the Statutory Regulators Directory by profession.

Care homes and services

- The Care Quality Commission (CQC) (www.cqc.org.uk) - regulates hospitals, primary healthcare providers (including GPs) and social care providers in England. The CQC cannot investigate individual complaints but can listen to your experiences and use them to follow-up and take action against providers.

- Care Inspectorate (www.careinspectorate.scot) - regulates and inspects all care services in Scotland.

- Care Inspectorate Wales (www.careinspectorate.wales) - regulates and inspects all care services in Wales.

- The Regulation and Quality Improvement Authority (RQIA) (www.rqia.org.uk) – responsible for monitoring and inspecting all health and social care services in Northern Ireland.

- The Isle of Man Registration and Inspection Unit (www.gov.im/about-the-government/departments/health-and-social-care/registration-and-inspection-team) – regulates and inspects care homes on the Isle of Man and will soon cover other forms of care services, such as home care and day care services.

- The Health and Social Services Departments of the States of Jersey and Guernsey regulate and inspect all health and social care services on the Channel Islands. They should be contacted for complaints of all kinds. They do not necessarily cover all private homes and services, but will still be able to advise about the best course of action.

Finally, it is now compulsory for all local councils to have a Safeguarding Adults Board in place. Concerns about a vulnerable adult in any circumstances can be reported to the safeguarding team at your local authority.

Medical negligence claims

If there has been harm as a result of negligence by an NHS organisation or healthcare professional then you may be able to claim compensation. You should seek specialist legal advice as soon as possible and solicitors on our list may be able to help. Some of the firms have clinical negligence franchises and specialist clinical negligence panel members.

You can also contact the organisation Action against Medical Accidents (AvMA) for specialist advice. AvMA can also put you in contact with specialist solicitors, and can offer support throughout the process. You can find out more about AvMA at www.avma.org.uk.

NHS Resolution (www.resolution.nhs.uk) also deals with compensation claims for NHS organisations in England and their website provides information about negligence claims.

Withdrawal of treatment

Sometimes decisions need to be made about whether to continue life-prolonging treatment. In such cases, the clinical team must go through a formal process, and may need to seek a court judgement.

If there is a disagreement between the medical team and family members, it is important that the family make this clearly known to the medical team. They should also give their reasons for disagreement, for example if the decision would have been against the patient's personal wishes or values.

Mediation should be offered to allow everyone to express their views and, if possible, seek agreement.

If an agreement still cannot be reached, an application should be made to the Court of Protection.

Further information on this topic is available in our publication *Coma after brain injury.*

We hope that this has been a helpful resource. Please consider sharing your feedback with us by scanning the QR code or by visiting our publication feedback survey https://uk.surveymonkey.com/r/hwpublications.

Learn more and support our work at www.headway.org.uk/get-involved.

This information was last reviewed in 2022.

We're here to listen.

If you need support, or have a question about brain injury, contact our free nurse-led helpline:

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helpline@headway.org.uk

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