

# Advising residents about health and social care complaints: a guide for councillors



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### **About the Centre for Public Scrutiny (CfPS)**

The Centre for Public Scrutiny is an independent charity, focused on ideas, thinking and the application and development of policy and practice for accountable public services. CfPS believes that accountability, transparency and involvement are strong principles that protect the public interest. We publish research and practical guides, provide training and leadership development, support on-line and off-line networks, and facilitate shared learning and innovation.

### **About the Local Government Association (LGA)**

The LGA is the national voice of local government. We work with councils to support, promote and improve local government.

We are a politically-led, cross-party organisation that works on behalf of councils to ensure local government has a strong, credible voice with national government. We aim to influence and set the political agenda on the issues that matter to councils so they are able to deliver local solutions to national problems.

We are a membership organisation. In total, 415 authorities are members of the LGA for 2014/15. These members include 351 English councils, the 22 Welsh councils via the Welsh LGA, 31 fire authorities, 10 national parks via corporate membership through ENPAA and one town council.

# Introduction

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The ill-treatment of older patients at Mid-Staffordshire NHS Foundation Trust and abuse of people with learning disabilities at Winterbourne View Hospital, have highlighted the need for a complaints system that is more responsive to patients, service users and their relatives and friends. The recent Clwyd-Hart review of the complaints system reinforces the need for improved communications among other recommendations for dealing with complaints.

This joint CfPS and LGA guide aims to help councillors support residents who wish to make a complaint about a health or social care service. The guide provides basic information and sources of further advice, but does not constitute legal advice and should not be represented as such. Councillors should not advise residents on legal matters, but may use the resources described below to refer their residents to further sources of help.

There are many ways people can get involved in the general planning, monitoring and evaluation of health and social care services, for example through local Healthwatch, local authority health scrutiny, social services user groups, GP patient participation groups and CCG and local authority consultation and engagement exercises. These are generally not for raising individual complaints but for gaining an overview of patients' and service users' experiences and for enabling them to participate at a strategic, planning level. (But note that local Healthwatch may also be commissioned to provide a complaints advocacy service to support individuals – see below.) Councillors may find it useful to have contact details to hand for such local organisations. Local authority and local Healthwatch websites should be useful sources of information.

Sometimes, people who have received treatment or care may wish to give informal feedback and comments on the quality and manner of their own care without making a written complaint. Also, some users may be dissatisfied with a service but reluctant to make a complaint because they are concerned about the consequences, either in terms of their future experience of services or because they feel making a complaint will be a time consuming and complex process. There are systems for early resolution of concerns and for drawing attention to an issue without making a complaint. If issues can be settled at this stage with a care provider, it is likely to be the best way of obtaining a speedy resolution. Councillors should encourage residents to raise issues directly, in the first instance, with the care provider(s). However, sometimes patients and service users may not be satisfied with the response they receive and will wish to make a complaint using formal procedures.

## The right to complain and the Duty of Candour

The NHS Constitution sets out a number of specific legal rights for patients and the public in relation to complaints, including the right to have any complaint they make about NHS services acknowledged within three days and to have it properly investigated. The NHS Constitution sets out further rights and pledges in relation to how complaints are handled and progress is reported (see *Sources of further information* below).<sup>1</sup> In particular it includes a pledge that making a complaint will not adversely affect someone's future treatment.

Users of social services commissioned by local authorities, whether they are funded by the local authority or by the service user (self-funded) also have a statutory right to complain. All health and social care commissioners must have a proper written complaints procedure to enable them to do so. There is a single joint complaints

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<sup>1</sup> A right is a legal entitlement protected by law. The NHS Constitution also contains pledge which the NHS is committed to achieve, but are not legally binding.

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framework for health and social care which is contained within the *Local Authority Social Services and National Health Services Complaints (England) Regulations 2009*. Providers of health and social care must also have an effective complaints system in order to meet the Care Quality Commission's (CQC) standards for registration.

The right to complain is in part mirrored by a statutory 'Duty of Candour' (from October 2014) on providers of health and social care to be open with patients and service users when things go wrong. They must inform patients and service users or their representatives when they believe or suspect that care or treatment has caused serious injury or death (see *Sources of further information*). Observance of this duty is enforced by the CQC. The underlying principle is that staff should disclose information about unanticipated events in a patient's or service user's care and apologise when appropriate.

CQC registration standards:

 [http://www.cqc.org.uk/sites/default/files/documents/gac\\_-\\_dec\\_2011\\_update.pdf](http://www.cqc.org.uk/sites/default/files/documents/gac_-_dec_2011_update.pdf)

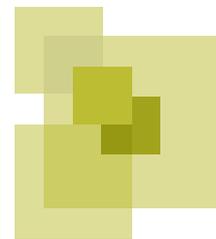
## Equality and human rights

Organisations and people providing health and care services are not allowed to discriminate because of age, disability, gender reassignment, pregnancy or maternity, race, religion, sex or sexual orientation, marriage or civil partnership. Conversely, health and care services can make targeted arrangements to ensure that particular groups of people have the same access to services as everyone else. If someone is disabled, a health or care service provider must make 'reasonable adjustments' to allow them to use their services. If they don't do this, they must be able to show that their failure to do so is justified, otherwise they will be discriminating. Examples of making reasonable adjustments include providing information on audiotape as well as in writing, or installing a ramp to allow wheelchair access.

The legal framework of human rights law, including the Human Rights Act and judgements made by the European Court of Human Rights requires that health and social care workers, alongside other providers of public services, respect the dignity of people using services. The human rights legislation is also designed to safeguard other rights that are relevant to health and social care, notably the right to privacy and to a family life. Many infringements of human rights can be resolved without recourse to the courts, for example, by informal discussion or by using a health or care organisation's own complaints procedure. It is useful to be aware of the human rights legislation when raising issues of dignity, respect, privacy and the right to a family life, for example in relation to the quality of care for people with dementia or people detained under the Mental Health Act.

 **Helpline of the Equalities and Human Rights Commission: 0808 800 0082**

Councillors should be aware of the rights and duties described in this guide so as to reassure residents who may be concerned about the consequences of making a complaint.



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## Signposting different kinds of complaint

Councillors will need to know roughly the nature of the complaint and what service or institution it is about in order to help residents find the right contacts. Complaints can be made to or about providers and commissioners of services. For each type of complaint, the process usually starts with the complaints system of the organisation complained about. If a complaint cannot be resolved by the organisation, there are further steps up to and including court proceedings. Of course, it is always best for people to try to have a complaint resolved at an early and local stage. In the NHS, a complaint may go to either the commissioner (eg a clinical commissioning group) or provider (eg a hospital). In social care a complaint can go to the local authority or to the provider (eg a care home). Some people may feel uncomfortable going directly to the provider of services they are complaining about. The decision should rest with the person complaining, but if they choose to go first to the commissioner of services, the commissioner will need to contact the provider to understand the context of the complaint.

Normally, unless local resolution has been attempted, neither CQC nor the Local Government Ombudsman or Parliamentary and Health Service Ombudsman will investigate a complaint. They will, however advise about where at the local level a complaint should be taken, if a patient or service user is not sure. Section 3 below describes the correct complaints route for different types of complaint.

- i** **CQC general inquiry line: 03000 61 61 61**
- Local Government Ombudsman general inquiries: 0300 061 0614**
- Parliamentary and Health Service Ombudsman inquiries: 0345 015 4033.**

# Support for people making complaints

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At each level, there are potential sources of support for people making complaints.

## Patient Advice and Liaison Services (PALS)

There is likely to be a PALS or equivalent service in each hospital providing NHS services. (If it is not called 'PALS', this service may be called 'customer care' or a similar title.) PALS and their equivalent offer confidential advice, support and information to NHS patients. The hospital website should give information about how to contact PALS or how to raise a concern or complaint. PALS are intended to help resolve concerns or problems quickly and, if possible, before they escalate into a complaint. Some clinical commissioning groups (CCGs) offer PALS to give general advice and support about NHS primary care services. If PALS can't resolve an issue, they should have information about the complaints procedure for their particular NHS organisation and about how to get independent help to make a complaint. PALS are not always as accessible as people may expect – for example, PALS staff may cover different hospital sites or work part time. It may be useful for councillors to get feedback from residents about how helpful local PALS have been. This is something that a health and wellbeing board or health scrutiny committee may be interested in.

## Complaints advocacy services

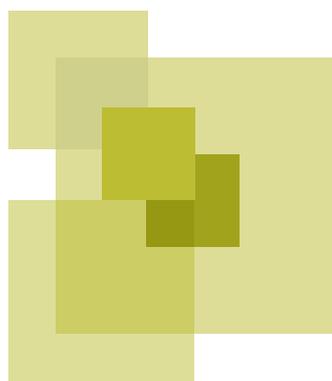
Each local authority with social services responsibilities has a statutory duty to commission independent complaints advocacy services (these are widely referred to as ICAS – standing for 'independent complaints advocacy service' - or as NHS CAS). Support can range from assistance with letter writing through to help navigating the NHS complaints system and representation in meetings that may be confusing or distressing for individuals. The local Healthwatch or another provider may be commissioned to provide the local ICAS/NHS CAS. Alternatively, it may be provided by other voluntary or private sector organisations, some covering more than one area.

## Mental health advocacy services and independent mental health advocates (IMHAs)

Local authorities are responsible for commissioning a service (IMHAs) to provide advocacy on behalf of people detained under the Mental Health Act 1983 (Section 131A). This statutory service is often commissioned through voluntary organisations. The local authority, the PALS of the local mental health trust and the local Healthwatch should all have information about this service. People with dementia should be provided with access to advocacy in line with the code of practice that accompanies the Mental Capacity Act 2005.

## Independent domestic violence advisors (IDVAs)

An IDVA is a named professional case worker for domestic abuse victims whose primary purpose is to address the safety of 'high risk' victims and their children. IDVAs work with local authorities, the police, the NHS and voluntary and community organisations. Your local authority's website should contain information on specialist domestic abuse services in your area.



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## Local Healthwatch

Each local authority with social services responsibilities is required to commission an independent local Healthwatch organisation. They are intended to work in partnership with other local organisations to provide a patient and service user perspective on health and social care. Local Healthwatch have a duty to provide an information and signposting service. This means that they should be able to advise individuals on how to take up a complaint about any aspect of social or health care in the local area, including signposting people to the local NHS CAS/ICAS. Some local Healthwatch have also been contracted by the local authority to provide the local ICAS. In this case, they should provide individual support to people making a complaint, rather than simply signposting them to other sources of support.

To find your local Healthwatch, click on:

 <http://www.healthwatch.co.uk/find-local-healthwatch>

## Citizens' Advice Bureaux (CAB)

People can also get help to make a complaint about the NHS or social care from their local CAB. In some cases, the CAB will have the contract to run the local Independent Complaints Advocacy Service, in which case it should provide more support than simple advice about how to complain.

To search for details of your nearest CAB, including those that can give advice by e-mail, click on: <http://www.citizensadvice.org.uk/index/getadvice>



## Other sources of support

Some local community organisations may be able to help individuals with complaints. A number of organisations are specifically set up to advocate for different groups in the community, for example mental health service users and people with other health conditions. They may be helpful in supporting someone to put across their case. Local groups supporting people with different conditions such as Alzheimer's or sensory or physical disabilities may also offer support.

At the national level, a number of organisations have advice lines. These include:

- Action against Medical Accidents: [www.avma.org.uk](http://www.avma.org.uk)  
(helpline: 0845 123 2352)
- Patients Association: <http://www.patients-association.com>  
(helpline: 0845 608 4455)
- Relatives and Residents Association (for social care residential homes):  
[www.relres.org](http://www.relres.org) (helpline: 020 7359 8136)
- Mind (information and advice on mental health issues):  
[www.mind.org.uk](http://www.mind.org.uk) (infoline: 0300 123 3393)
- Rethink Mental Illness: [www.rethink.org](http://www.rethink.org)  
(information line: 0300 5000 927)

## Where to direct different kinds of complaint

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Generally, a complaint can be made about a service or an organisation by anyone who has been affected by its actions (or lack of action). If someone wants to complain on behalf of another person, such as a child, the organisation must be satisfied that they are a suitable representative and/or they must show that they have permission from the service user (or would-be service user) to discuss their complaint. NHS complaints relating to children may also need to consider whether they are mature enough to consent to treatment etc. (See the explanation at:

**i** [http://www.nspcc.org.uk/Inform/research/briefings/gillick\\_wda101615.html](http://www.nspcc.org.uk/Inform/research/briefings/gillick_wda101615.html)).

Complaints usually need to be made within 12 months from when the matter being complained about occurred. Complaints should be investigated by someone not involved in the complaint and people who are making a complaint should be assured of the investigator's impartiality.

Complaints can be made by email, letter, in person, or by phone. If they are made by phone or in person, the service should provide a written copy of the complaint. People making a complaint should be advised to keep a record of what is said and to whom it is said.

### Complaints about adult social care providers

Complaints could be about a care home, a day care service or care provided in someone's own home. People who fund their own care, as well as people funded by the local authority, have a right to complain. The first stage is to make a complaint to the provider concerned, using their complaints procedure, which they should be able to provide in written form.

If a complaint can't be resolved with the provider, and if the care in question has been commissioned by the local authority, a complaint can be made to the adult social services department of the local authority, which must have a member of staff who deals with complaints. Complaints to local authorities go through a number of stages. Self funders who have a complaint that cannot be resolved with their provider can go straight to the Local Government Ombudsman (see below) – they do not need to take their complaint to the local authority.

If a complaint cannot be resolved locally, and the provider has been commissioned by the local authority, the next stage is to refer the matter to the Local Government Ombudsman who will normally only investigate complaints once the council or care provider has been given a reasonable opportunity to deal with the situation. If a complaint is taking a very long time to be resolved locally, the Ombudsman can inquire about progress, which may help speed things up, but they have no enforcement powers. The Ombudsman can investigate complaints both by people who are funded by the local authority and those who fund themselves. Recommendations by the Ombudsman can include financial compensation to the complainant.

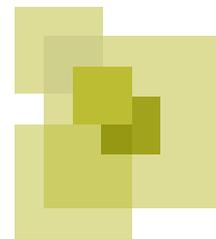
The services of the Ombudsman are free and independent. If they decide that the provider or local authority has got things wrong, they can make recommendations to put things right: [www.lgo.org.uk/adult-social-care/](http://www.lgo.org.uk/adult-social-care/) (helpline: 0300 061 0614).

**i**

Local Government Ombudsman, 'How to complain about a care home or care in your home': <http://www.lgo.org.uk/GetAsset.aspx?id=fAAxADUAMgA4AHwAfABUAHIAAdQBIAHwAfAAwAHwA0>

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The Care Act 2014 introduces a new right to appeal against some decisions local authorities make about the provision of care and support under the Act. This is in



addition to existing ways of challenging decisions about adult social care, so does not replace the current complaints process. At the time of writing, regulations have not yet been issued on matters such as who will be able to appeal and in what circumstances. Complaints managers in local authorities should have these details once regulations are issued.

It may be possible to challenge the final decision on a complaint by taking a judicial review. Judicial reviews are a challenge to the way a decision has been made, rather than the rights and wrongs of the conclusion reached. Judicial reviews can only be taken against public bodies. Taking a judicial review may be costly and would need professional advice. Judicial review may not always be the best route for people with unresolved complaints. There are alternative legal remedies. Councillors should not advise residents about judicial review or legal matters, although they may wish to mention recourse to the courts as a possibility.

Information from the Public Law Project about judicial review:

- i** [www.publiclawproject.org.uk](http://www.publiclawproject.org.uk), [www.judiciary.gov.uk/you-and-the-judiciary/judicial-review](http://www.judiciary.gov.uk/you-and-the-judiciary/judicial-review).

### Complaints about children's social care services

Complaints should be made first to the provider and then to the complaints manager of the children and family services department of the council. If they can't be resolved at this level, they can be referred to the Local Government Ombudsman, *unless they are already the subject of legal proceedings*, when they must be dealt with by the courts. Recommendations by the Ombudsman can include financial compensation. The Ombudsman can give free extra help, such as finding an advocate, to children and young people making a complaint:

- i** <http://www.lgo.org.uk/publications/fact-sheets/complaints-about-children-care-services/> (helpline: 0300 061 0614). Recourse to judicial review, as above, can, in rare cases, be the final stage.

The Children and Families Act 2014 will replace statements of Special Educational Need (SEN) with Education, Health and Care (EHC) plans. These plans cover not only the special support a child is entitled to at school but also what health and social care services they may need. In addition to making a complaint, the Act gives children and parents the right to ask the local authority for independent disagreement resolution services about any aspect of SEN provision, and health and social care disagreements. Parents and young people who are considering appealing to the Tribunal also have a right to independent mediation about EHC needs assessments and the special educational element of an EHC plan, or who want mediation on the health and social care elements of an EHC plan. Mediation arrangements complement but are distinct from the disagreement resolution arrangements. Most provisions under the Act apply from September 2014.

### Complaints about social care commissioners

Complaints may sometimes be about the behaviour of the local authority itself, for example in relation to assessments of whether someone is eligible for free social care, issues around direct payments, the nature of care packages (as distinct from the quality of service), or safeguarding issues such as failure to deal with a reported issue. In such cases, they must first be made through the complaints manager of the local authority. If unresolved, they can then be made to the Local Government Ombudsman as above.

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## Complaints about healthcare providers

To complain about any aspect of NHS treatment, the complaints procedure of the organisation in question should be used. NHS organisations must have a designated complaints manager and a procedure. In some areas, there is a patient liaison service offered by clinical commissioning groups (CCGs). They will be able to give general advice about complaints about health services. Local Healthwatch should have information about patient liaison services in your area.

If a resident does not want to complain directly to the service provider, it is also possible to complain about a service to the NHS organisation that commissions the service. In general, the NHS national umbrella organisation, NHS England, commissions most primary care, such as GP, community pharmacy and dental services. It also commissions certain specialised services, offender healthcare and NHS services for the military.

Complaints about these services can be made to NHS England:

- i** [www.england.nhs.uk](http://www.england.nhs.uk) (helpline: 0300 311 22 33).

Complaints about secondary care, such as hospital and some community care, can be made to the local clinical commissioning group which commissions these services.

- i** Councils should have details for your local clinical commissioning group or visit the website: [www.nhs.uk/Service-Search/Clinical-Commissioning-Group/LocationSearch/1](http://www.nhs.uk/Service-Search/Clinical-Commissioning-Group/LocationSearch/1)

When a healthcare commissioner (ie NHS England or a CCG) receives a complaint about a service it commissions it may decide to deal with the complaint or decide that it is more appropriate for the service provider to do so. In either case, the commissioner will need the consent of the person complaining to forward the complaint to the provider.

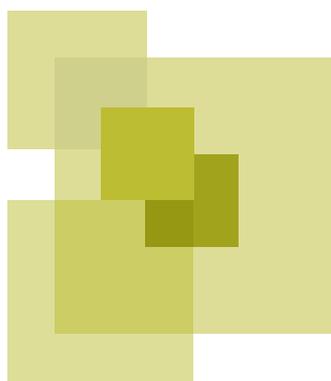
If local resolution is not possible, the next stage is to contact the Parliamentary and Health Service Ombudsman (PHSO). The PHSO can look at complaints about all NHS-funded healthcare services, including those provided by private hospitals. It cannot look into complaints about privately-funded healthcare services. Like the Local Government Ombudsman, the PHSO is a free, independent complaints service. If they decide that the NHS has got things wrong, they can make recommendations to put things right, including making recommendations for financial redress.

- i** Parliamentary and Health Service Ombudsman: [www.ombudsman.org.uk](http://www.ombudsman.org.uk) (helpline: 0345 015 4033, textphone: 0300 061 4298).

It may also be possible to take a judicial review or other legal action, as in the case of social care services (see above).

## Complaints about healthcare commissioners

Complaints about healthcare commissioners, for example about refusal to commission a particular treatment or service or about an inadequate commissioning specification, must first be made to the commissioner. The next stages are as for complaints about healthcare providers, ie through the Parliamentary and Health Service Ombudsman.



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## Complaints about children's health plans

As noted above, the Children and Families Act replaces statements of Special Educational Need (SEN) with Education, Health and Care plans. Complaints about the health services provided for in a plan can be made using the existing NHS complaints procedures. The right to ask for independent mediation applies to all aspects of the plan. If a complaint is made about the healthcare provision in a plan, the local authority should inform the relevant health commissioning body – either the clinical commissioning group or NHS England, depending on which service is in question – and ask them to organise mediation.

## People refused treatment or medicines: exceptional case funding requests

Regulations under the Health and Social Care Act 2012 contain a number of provisions to require commissioners of health services (including clinical commissioning groups, NHS England and local authorities) to fund drugs and treatments recommended by National Institute of Health and Care Excellence (NICE) in its technology appraisals or highly specialised technology assessments.<sup>2</sup> For other drugs and treatments the NHS Constitution explains that patients have the right to expect the local NHS decisions on funding to be made rationally following a proper consideration of the evidence, and for the local NHS to explain its decision if it decides not to fund a drug or treatment. The Handbook to the NHS Constitution explains that while NHS commissioners can have a policy not normally to fund a particular drug or treatment, they must be able to consider whether to fund that drug or treatment for an individual patient on an exceptional basis.

In addition, decisions by the courts have made it clear that, although an NHS commissioner (which includes local authorities commissioning public health services) can have a policy not to fund a particular treatment (unless recommended in a NICE technology appraisal recommendation), it cannot have a blanket policy; ie it must consider exceptional individual cases where funding should be provided.

## Complaints about use of the Mental Health Act

As in all the cases above, people should first complain to the service they are unhappy about. If this does not result in a solution, the Care Quality Commission (CQC) has powers, under the Mental Health Act 1983 (MHA) to investigate complaints about people who are, or have been:

- detained in hospital under the Act
- subject to a Community Treatment Order
- subject to guardianship.

Complaints should normally be made within 12 months of the events or decisions complained about. They might cover issues such as the way in which assessments and decisions based on them have been made, failure to give appropriate information to the individual about their rights, or failure to involve people in decisions about their care.

People who are detained under the MHA have a legal right to have support from someone who can help them make a complaint. The local authority should have information on the local independent mental health advocacy service (IMHA) it commissions.

<sup>2</sup> The relevant Regulations are the National Institute for Health and Care Excellence (Constitution and Functions) and Health and Social Care Information Centre (Functions) Regulations 2013.

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If the CQC is asked to investigate a complaint, it has the power to carry out an investigation where it may look into the nature of the complaint, wider systems and processes, complete a visit as a result of the complaint and look at all related matters. In relation to complaints about the MHA, the CQC acts in an ombudsman-type role, so would not progress to the Parliamentary and Health Service Ombudsman unless it felt the complaint was not related to the MHA.

Click to find CQC information on complaints about the MHA:

-  [http://www.cqc.org.uk/sites/default/files/documents/complaining\\_about\\_use\\_of\\_mha\\_policy.pdf](http://www.cqc.org.uk/sites/default/files/documents/complaining_about_use_of_mha_policy.pdf)  
(phone 03000 616161 and press '1' for the mental health team).

### Complaints about deprivation of liberty under the Mental Capacity Act

The Deprivation of Liberty Safeguards (DoLS) are an amendment to the Mental Capacity Act 2005 (MCA). They are intended to protect people when restrictions and restraint are used under this Act. In March 2014, the Supreme Court clarified the definition of deprivation of liberty. They describe the acid test as being that a person is not free to leave and is subject to continuous supervision and control. This means that more people are likely to meet the test than as it was previously applied. The test would now apply to people who are in supported living, foster care or adult placements. For example, people who have been deprived of their liberty under the Act have a right to challenge this in the Court of Protection at any time without paying a fee for legal support. People deprived of their liberty and their unpaid representatives are entitled to the support of an independent mental capacity advocate (IMCA). Local authority/NHS areas usually have a DoLS helpline, but further independent advice is also available from national voluntary organisations such as those representing the interests of people with mental health problems and older people.

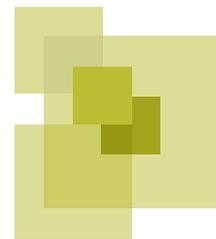
-  Social Care Institute for Excellence, 'At a glance 43: the Deprivation of Liberty Safeguards: <http://www.scie.org.uk/publications/atagance/atagance43.asp>

### Complaints about professional misconduct

If someone has concerns about the professional conduct of a NHS practitioner or social services employee, they can write to their professional or regulatory body to make a complaint. Examples of professional misconduct include when a practitioner has a sexual relationship with a patient, makes false claims about their professional qualifications or breaks a patient's confidentiality.

People may make a complaint to a regulatory body even if they have also made a complaint under the NHS and local authority social services complaints procedure. However, if an investigation has already started under the complaints procedure, the regulatory body may decide to wait for the outcome of this before deciding what action it should take.

-  To find out which professional body regulates each relevant profession, see the Professional Standards Authority's list at: [www.professionalstandards.org.uk](http://www.professionalstandards.org.uk).



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## Complaints about complex cases

There may be more than one commissioner and/or provider involved in more complex complaints, for example if someone wants to complain about hospital care and community care. In such cases, the organisations involved should keep the person with the complaint at the centre of their response and ensure that a single response is co-ordinated.

If a complaint is not resolved locally and is brought to the Local Government Ombudsman and/or Parliamentary and Health Service Ombudsman, the ombudsmen have powers to enable them to work together where a complaint involves both health and social care services; and will provide a joint response.

## Taking legal action

It may be possible for individuals to challenge the final decision on their complaint by taking a judicial review. This is a procedure which allows a court of law to review decisions made by public bodies. There is more information about judicial review on the Public Law Project's website at: [www.publiclawproject.org.uk](http://www.publiclawproject.org.uk). Taking legal action is usually costly and complex. All NHS bodies and local authority social services are insured and legal action will usually be defended by an insurance company. Councillors should not, of course, give legal advice. Some voluntary organisations such as CABs, Mind and the Children's Legal Centre can provide some legal advice.



## Safeguarding concerns

Safeguarding is everybody's business. Any person may recognise and report abuse or neglect, and everyone can play a part in building communities where abuse does not happen. As community leaders, championing the wellbeing of their constituents, councillors are in a position to raise awareness of adult and child safeguarding. They may become aware of individual cases of abuse through their work with constituents and have a responsibility to report it as soon as it comes to their attention.

If someone has any concerns that care being provided is causing abuse, harm or neglect, or that vulnerable adults and children are being exploited in any way, for example by web/phone scams or hate crimes, they should refer their concerns to the local authority and/or the police for further investigation. Your council will have an emergency duty officer/help desk for adults and children's services whose phone number should be on the council's website. Your local police service may also have a vulnerable adults and/or children's unit – the receptionist answering the phone will know whom to contact. The police should be called if you have any concerns or suspicions that a crime has been committed.

# Learning from complaints

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## Building on service users' and patients' experience

Learning from complaints helps organisations continually to improve both the services they provide and also the experience of all their patients. Some organisations have invited patients to a board or other relevant meeting to communicate their experience of the complaints system directly. Councillors have an important role to play in facilitating such meetings and in helping local health and care commissioners and providers to learn from complaints.

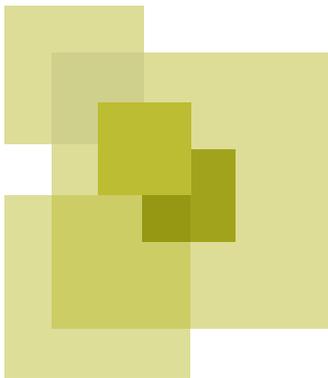
By listening to their residents, councillors are in a good position to notice trends or patterns in complaints, for example if they hear of several separate complaints about a certain service or individual. Trends and patterns can be very important in identifying underlying problems and be a driver for improved services. Councillors have a number of different opportunities to draw attention to trends and patterns they have noticed in complaints. Interested parties include:

- the boards of NHS trusts which should receive regular reports of complaints, how they have been dealt with and how services have been perceived by patients.
- the council's portfolio holders for adult social care and children's services and the relevant directors who should also be receiving regular reports
- representatives on the local health and wellbeing board
- the council's health overview and scrutiny committee or panel
- the local Healthwatch.

## Raising concerns with the Care Quality Commission (CQC)

The CQC does not normally deal with individual complaints, unless related to the Mental Health Act. However, people can report their experiences to the CQC and raise issues of concern. This could result in action being taken against a care provider. Councillors can encourage residents to report concerns to CQC to assist in their inspection and monitoring work, as well as taking formal complaints under the system described above. Your adult social services department, representatives on your health and wellbeing board and local Healthwatch should be able to provide details of local representatives of CQC.

The Care Act 2014 gives the CQC additional powers to regulate healthcare and care providers. These powers enable the CQC to establish a new ratings system for health and care services and to ensure that care providers are financially sustainable. Under the Act people will still be able to report concerns about providers to the CQC but they will also be able to report concerns about the financial health of a care provider.



## Sources of further information

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NHS Constitution: <http://www.nhs.uk/choiceintheNHS/Rightsandpledges/NHSConstitution/Documents/2013/the-nhs-constitution-for-england-2013.pdf>

Handbook to the NHS Constitution: <http://www.nhs.uk/choiceintheNHS/Rightsandpledges/NHSConstitution/Documents/2013/handbook-to-the-nhs-constitution.pdf>

Statutory Duty of Candour for health and adult social care providers: <https://www.gov.uk/government/consultations/statutory-duty-of-candour-for-health-and-adult-social-care-providers>

The Local Authority Social Services and NHS Complaints (England) Regulations 2009: <http://www.legislation.gov.uk/uksi/2009/309/contents/made>

NHS Choices guide to the NHS complaints procedure: <http://www.nhs.uk/choiceintheNHS/Rightsandpledges/complaints/Pages/NHScomplaints.aspx>

Citizens advice guide to NHS complaints: <http://www.adviceguide.org.uk>

Guide to good handling of complaints for CCGs: <http://www.england.nhs.uk/wp-content/uploads/2012/03/20130513-Good-complaints-handling-for-CCGs-FINAL-version-for-publication.pdf>

Local Government Ombudsman: [www.lgo.org.uk](http://www.lgo.org.uk)

Parliamentary and Health Service Ombudsman: [www.ombudsman.org.uk](http://www.ombudsman.org.uk)

Complaining about the use of the Mental Health Act: [http://www.cqc.org.uk/sites/default/files/documents/complaining\\_about\\_use\\_of\\_mha\\_policy.pdf](http://www.cqc.org.uk/sites/default/files/documents/complaining_about_use_of_mha_policy.pdf)

Information Commissioner's Office: [www.ico.gov.uk](http://www.ico.gov.uk) (phone: 08456 306060) (Can help people find out what personal information is held about them, and access information from a public body)

### Background to the current reforms

Final report of the Mid-Staffordshire NHS Foundation Trust Public Inquiry (February 2013) – chaired by Robert Francis QC: <http://www.midstaffpublicinquiry.com/report>

A Review of the NHS Hospital Complaints System: Putting Patients Back in the Picture (October 2013) – report by Rt Hon Ann Clwyd MP and Professor Tricia Hart: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/255615/NHS\\_complaints\\_accessible.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/255615/NHS_complaints_accessible.pdf)

Transforming Care: a national response to Winterbourne View Hospital (December 2012) – final report by Department of Health in response to abuse uncovered by Panorama programme: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/213215/final-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/213215/final-report.pdf)

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June 2014