

Factsheet 66w ● August 2024

Resolving problems and making a complaint about NHS care in Wales



Age Cymru Advice

0300 303 44 98

www.agecymru.org.uk

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1 Information about this factsheet

This factsheet explains how National Health Service (NHS) organisations in Wales should handle complaints about NHS services. It describes what to expect when your complaint is investigated and what you can do if you remain dissatisfied with the outcome of a local investigation.

The factsheet also covers what should happen where your complaint covers *both* NHS and social care services (provided or arranged by your local authority social services department).

Although this factsheet primarily covers NHS care, there is a small section towards the end that offers information in regard to problems with private health providers (see section 14).

Note: The information given in this factsheet is applicable in Wales. Different rules apply in England, Northern Ireland and Scotland. Contact Age UK, Age NI and Age Scotland respectively for further information.

1.1 Definitions and terminology

Structure of the NHS in Wales

The Welsh Government has ultimate responsibility and accountability for all aspects of the NHS in Wales. However, the actual day-to-day operation of NHS Wales will be delivered through Local Health Boards (or in some instances, NHS Trusts) – see below.

Health services may be referred to as **‘primary’** or **‘secondary’** care services.

Primary care services

Primary care services are delivered by the health professionals you see when you first have a health problem, or seek advice on how to stay healthy – for example, GP practices, district nurses, dental surgeries, pharmacists, opticians, or other businesses providing NHS services.

Secondary care services

Secondary care services are usually provided in hospital following an emergency admission via the A&E department, or treatment provided via an out-patient appointment. The ambulance service is also a secondary care service.

Local Health Boards

There are seven Local Health Boards (LHBs) in Wales. Each LHB is responsible for delivering all NHS healthcare services in the geographical area they cover. The following table lists the LHBs and has further information on the areas of Wales they cover. Further information can also be obtained from the NHS Wales website at:

www.nhs.wales/hpb/local-services

Local Health Board	Area covered
Betsi Cadwalader University Health Board	Anglesey, Gwynedd, Conwy, Denbighshire, Flintshire and Wrexham
Hywel Dda University Health Board	Carmarthenshire, Ceredigion and Pembrokeshire
Powys Teaching Health Board	Powys
Swansea Bay University Health Board	Swansea, Neath and Port Talbot
Cwm Taf Morgannwg University Health Board	Rhondda Cynon Taf, Bridgend and Merthyr Tydfil
Cardiff & Vale University Health Board	Cardiff and the Vale of Glamorgan
Aneurin Bevan University Health Board	Blaenau Gwent, Caerphilly, Monmouthshire, Newport, Torfaen

NHS Trusts

In addition to the LHBs, there are currently three NHS Trusts:

- **Welsh Ambulance Services University NHS Trust**

Responsible for emergency services across Wales (plus they also operate the Non-Emergency Patient Transport Service).

- **Velindre NHS Trust**

Provide “specialist cancer and blood services across South and Mid Wales through Velindre Cancer Centre and the Welsh Blood Service”¹.

- **Public Health Wales NHS Trust**

Public Health Wales provide and manage a range of public health, health protection and healthcare improvement services (including surveillance, prevention and control of communicable diseases). They make information about protection and improvement of health available to the public.

Llais

Llais is an independent standalone body that represents the voices and opinions of people in Wales in regard to health and social care services.

As part of this remit, it can provide independent help and advice if people are experiencing problems with, or want to make a complaint about, NHS services in Wales.

They can assist in regard to raising issues informally, as well as formal complaints.

Llais can also help with issues involving local authority social services departments (this topic is not covered within this particular factsheet, though can be found in Age Cymru’s Factsheet 59w *How to resolve problems and make a complaint about social care in Wales*).

Llais has replaced the former Community Health Councils.

¹ ‘About us’, NHS Wales: Velindre University NHS Trust website: <https://velindre.nhs.wales/about-us/> (last accessed 12 August 2024).

See section 3.7 below for further details about the role of Llais in the NHS complaints process.

2 Your right to complain about NHS services

Everyone has a right to expect good quality services from public bodies, such as the NHS, and for things to be put right if they go wrong.

Before you approach anyone, it is helpful to have a clear idea of what you want to raise concerns or complain about and what you would like to see happen as a result.

Addressing an issue informally

In many cases, raising concerns as soon as possible after an event makes it more likely that things can be put right quickly and prevented from getting worse.

Approaching the staff concerned or your local **Llais** office can mean an issue is resolved promptly and satisfactorily at an early, informal, stage (see section 3.7 below for further information on Llais).

Addressing an issue via the formal complaints route

If you feel your concerns have not been adequately addressed upon first raising them, you may want to make a formal complaint. Additionally, if you feel that the seriousness of the issues warrants a wider investigation, a formal complaint is likely to be the best way to ensure this happens. If the event you wish to complain about is in the past then, again, a formal complaint may be most appropriate.

When you make a complaint, you have a right to have your concerns listened to and properly investigated as quickly as possible and to know the outcome.

Sections 3 to 5 below go on to detail the formal NHS complaints procedure in more depth.

3 ‘Putting Things Right’ – the system for NHS complaints in Wales

There is a two-stage system for resolving complaints about the NHS in Wales:

- **Stage one**

This stage will involve a local investigation by the body concerned, using the formal complaints procedure if required. The Welsh Government has produced guidance, ‘*Putting Things Right*’ (see below), which details how NHS bodies in Wales should handle complaints or concerns which are raised with them.

- **Stage two**

This will involve taking your complaint to the Public Services Ombudsman for Wales, if you remain dissatisfied following the local investigation.

Note: See sections 4 and 5 below for more information on the two stages.

As well as dealing with individual cases, an aim of the ‘Putting Things Right’ process is to improve the quality and standard of care for NHS services overall by applying lessons learnt from concerns and complaints – for example, to increase patient safety and reduce the likelihood of similar issues occurring again.

3.1 The ‘Putting Things Right’ guidance (version 4 – May 2023)

A copy of the guidance can be found on the Welsh Government’s website at:

www.gov.wales/information-handling-concerns-staff-working-nhs-putting-things-right

The guidance should be adhered to by all NHS bodies in Wales (including “independent providers...providing NHS funded care”²).

The guidance assists staff to interpret the relevant legislation on which they're based – *NHS (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011* – and apply best practice in handling complaints.

Note: Welsh Government consultation on proposed changes to the Putting Things Right process

This consultation ran between February and May 2024. A list of the Welsh Government's proposals can be found on their website at:

www.gov.wales/consultation-proposed-changes-putting-things-right-process.html

3.2 Obtaining information on how to make a complaint

All staff should be able to provide general information on making a complaint – for example providing an information leaflet on the complaints procedure. However, they should also be aware of who in their organisation has responsibility for co-ordinating the handling of individual complaints and be able to provide you with the relevant contact details – see section 3.4 for further information.

If you prefer not to raise concerns or complaints directly with staff from the organisation involved, you could ask for the contact details of your local **Llais** office.

Llais should be able to offer support to help you raise your concern and/or make a complaint. Further information on the remit and role of Llais can be found in section 3.7 below.

² 'Information on handling concerns for staff working for the NHS: Putting Things Right', Welsh Government website: www.gov.wales/information-handling-concerns-staff-working-nhs-putting-things-right (last accessed 9 August 2024).

Providing information in accessible formats

Organisations offering NHS services should provide information explaining their arrangements for dealing with complaints. They should take account of the diverse needs of people who use their services when deciding how this information is made available. For example, they should provide information in a variety of languages, or appoint an interpreter where necessary.

Any impairment of sight, hearing or other factors affecting your ability to communicate should also be taken into account – for example, if you have a learning disability or have had a stroke.

Note: First language Welsh speakers

The Putting Things Right guidance states that staff should be “sensitive to the requirements of first language Welsh speakers in the handling of their concerns”. Arrangements “should be in place to ensure that they are able to raise their [issues and] discuss them with Welsh speaking members of staff and receive a response in Welsh”.

3.3 Who can make a complaint and about what?

You can raise concerns or make a complaint if you are unhappy with any NHS service you are currently receiving (or have received). This includes NHS services provided by:

- Your GP or practice-based staff.
- The ambulance trust.
- Hospitals – including, Accident & Emergency services, outpatient or inpatient treatments.
- An independent hospital or treatment centre treating you *on behalf* of the NHS.
- Community based NHS staff such as:
 - district nurses;
 - dentists;
 - optometrists;
 - pharmacists.

Concerns and complaints could involve a range of issues

For example:

- your diagnosis;
- general care or attitude of staff;
- lack of care provided, or neglect;
- specific treatment/s received;
- poor or inadequate communication about your care; *or*
- poor allocation or planning of appointments, or late running appointments.

Note: It is important to pin down exactly what you wish to complain about and what you would like to happen as a result (also see section 3.6 below).

Complaints do not necessarily have to be made by the person receiving services

You may be able to pursue a complaint even if you are not the person who has actually received the service. For example, you can submit a complaint where:

- You are, or are likely to be, affected by the issue being complained about.
- You are doing so on behalf of a friend or relative (provided they agree that they are happy for you to do so). If you are making a formal complaint you may find it useful to have their permission in writing.
- You are doing so on behalf of a relative or friend who – within the meaning of the *Mental Capacity Act 2005* – ‘**lacks the capacity**’ to complain.
- You are doing so on behalf of a relative or friend who has since died.

Note: The Mental Capacity Act 2005

One of the main principles established under the *Mental Capacity Act (MCA)* is that any decision made, or action taken, on behalf of someone without capacity must be made in their 'best interests'.

If the NHS organisation believes you are not acting in the 'best interests' of the person who lacks capacity it can refuse to pursue your complaint – however, it must tell you in writing why it has taken this decision.

Further information on the MCA, including the full '**Code of Practice**' for the Act, can be found on the GOV.UK website at:

www.gov.uk/government/collections/mental-capacity-act-making-decisions

Age UK's Factsheet 22 *Arranging for someone to make decisions on your behalf* also has further information on the MCA.

3.4 Which members of staff have responsibility for complaints handling?

Services provided by a secondary care provider – for example, a hospital or the ambulance service

A Local Health Board (LHB) or NHS Trust will operate these services. The relevant LHB or Trust must have a member of staff who is responsible for the **direct handling** and managing of individual complaints. Putting Things Right suggests that they should be known as a *Senior Investigations Manager* (or another similar job title). It is likely they will be supported by a team of other suitably qualified staff.

As mentioned above, all staff should be aware of the contact details for the Senior Investigation Manager and their team.

In addition to the role involving direct handling of complaints, Local Health Boards and NHS Trusts must also have a designated individual, at executive director/officer level, who has *overall* organisational responsibility for complaints handling.

They will be “charged with overseeing the day to day management of [the] arrangements”³, making sure that they are in line with the regulations and guidance discussed at the beginning of section 3. They would have overall responsibility for ensuring that action is taken, where necessary, in the light of the outcome of a complaint.

Services provided by primary care providers – for example, GP practices, dental surgeries, pharmacists, opticians, or other businesses providing NHS services

Primary care providers should also have someone with overall organisational responsibility for complaints handling. They must be someone with similar seniority to an executive director/officer within an LHB or NHS Trust – for example, a Chief Executive Officer (CEO), or a partner in charge of, or responsible for, the management of an organisation.

In cases involving primary care providers, as well as being able to make your complaint direct to the actual ‘provider’ of the service, you can also complain to the Local Health Board (LHB). This is because the LHB ‘commissioned’ the service – i.e. the primary care provider operates a particular service as a result of an arrangement entered into with the LHB.

If you submit your complaint to the LHB, it will need to make a decision in regard to whether it is appropriate for it to investigate. Upon receiving your complaint, they would initially check whether you had already raised the issue with the primary care provider and whether an investigation was subsequently carried out as a result. If so, provided that the investigation was conducted in line with the Putting Things Right procedure, the LHB would not investigate it again. However, they should advise you of your right to take the complaint to the Public Services Ombudsman for Wales – see section 5.

If you have not already raised the issue with the primary care provider, then the LHB will decide – depending on the nature of the issue – whether it is more appropriate for them to investigate, or if the primary care provider is better placed to do so.

³ Putting Things Right – Guidance on dealing with concerns about the NHS from 1 April 2011 (Version 4 – May 2023), Welsh Government.

Each case will be different, but an example – in this case a GP practice – of how the LHB may reach this decision would be:

- If it was an issue regarding administration (e.g. allocating appointments) or attitude of staff at a practice, the LHB would be likely to refer the complaint to the GP practice to deal with (though the LHB **must** ask if you mind them forwarding details of your complaint. If you consent, the LHB must forward it within 2 working days).
- If the case concerns a fundamental issue in regard to clinical care, it would be more appropriate for the LHB to investigate.
- If it appeared that the relationship between the patient and GP practice had become particularly strained – meaning patients would find it difficult to raise concerns directly with them – then it could be more appropriate for the LHB to lead on the investigation instead.
- If a complaint involved both the GP practice and a secondary care service (for example, a hospital or the ambulance service), then it may make sense for the LHB to investigate the whole issue.

If the LHB does decide that it is appropriate for them to deal with the complaint, they must tell you and the service provider. The LHB will then handle the complaint according to the Putting Things Right guidance.

3.5 Time limits for making a complaint

You should normally make a complaint:

- within **twelve months** of an event occurring; *or*
- within twelve months of the date that the matter about which you wish to complain **first came to your attention**.

Investigating an older complaint

It may be possible for a complaint which is out of time to be investigated; **however**, this is at the discretion of the responsible NHS body (also, note the three year rule – see below). In using this discretionary power, they must consider whether the person raising the issue had good reason not to notify them of the complaint earlier.

For example, this might be because someone had not realised there was a problem earlier, or were too ill to make a complaint.

The NHS body must also consider whether – in light of the time that has elapsed – it would still be possible to investigate the issue in a thorough and fair manner.

Complaints from three or more years ago

It is **not** generally possible for a complaint to be investigated if the date of the event you wish to complain about occurred **three or more years** ago (or three or more years from the date the complainant first became aware of the matter).

The Putting Things Rights guidance advises that “this time limit was chosen as it is consistent with the limitation period which is in place for the consideration of clinical negligence claims (which is usually three years), but there are exceptions to the rule such as [where] the person who raised the concern lacks capacity under the Mental Capacity Act 2005”. In this type of case, “the three-year period may never begin to run, or it can start at the date of recovery”.

3.6 Making an effective complaint

The need to make a complaint often arises in stressful or emotional circumstances. Seeking support (also see sections 3.7 & 3.8 below) and considering the following tips and suggestions can help you engage confidently with the process.

Be clear what your complaint is about:

- Who was affected? Their name, date of birth and address.
- What happened or went wrong? Be as specific as you can and keep correspondence short and to the point.
- When and where did it happen? Has it happened before?
- Who was involved on the staff side?
- Why were you unhappy?
- Keep your tone of voice or written correspondence polite and professional.
- Send supporting documentary evidence and list it in your email or letter.

Decide what you would like to happen as a result of your complaint

For example, this might be:

- an apology; *and/or*
- an explanation of why the incident happened; *and/or*
- an agreement to rectify the results of poor care; *and/or*
- an explanation of what has been, or will be done, so it does not happen again.

Keep records of the progress of your complaint

Once you have made your complaint, keep a record of details such as:

- names, contact details and job titles of anyone you speak to;
- dates of conversations, what was said, decisions made and deadlines agreed;
- copies of all emails and correspondence and ask for written confirmation of verbal promises.

3.7 Support to help you raise concerns or make a complaint – the role of Llais, including their advocacy services

When you first identify a problem, you may not want to raise it directly with the staff concerned or – having raised it – you may feel your concerns have not been adequately addressed. Under these circumstances, you may wish to contact your local your local **Llais** office.

Llais is an independent statutory body designed to represent the voices and opinions of people in Wales in regard to health and social care services.

Part of their remit will involve providing help and advice to people if they have problems with, or complaints about, NHS services. They should also monitor the quality of NHS services from the point of view of patients.

Each local Llais office should have a **complaints advocacy team** who can provide you with “free, independent, and confidential support”. This can include:

- support to “make a complaint about a service, care or treatment provided or paid for by the NHS”;
- “support you to make a complaint on someone else’s behalf, including if someone has died”;
- put you in touch with other organisations that may be able to help;
- “answer questions about the [complaints] process and explain your options” *and/or*
- “provide a step-by-step guide to the process”, along with advice on how to navigate it⁴.

Further information

- Llais provide further information in a ‘Complaints Advocacy Guide’ on their website at:

www.llaiswales.org/have-your-say/raising-concern-about-health-and-social-care-services/llais-complaints-advocacy-guide

- You can find the contact details for the Llais office covering your local area at:

www.llaiswales.org/in-your-area

3.8 Support to help you raise concerns or make a complaint – other organisations that may be able to offer advice, support or advocacy

You may also be able to get support to pursue an NHS complaint from other advice organisations (this could be in addition to receiving help from Llais, or as an alternative to them). Further information and contact details for each of the listings below can either be found via weblinks included, or in the ‘Useful organisations’ section at the end of the factsheet:

- There may be a local Age Cymru in your area which runs an advocacy service (if they don’t run one themselves, they may be able to provide contact details for a similar service in your area).

⁴ ‘Raising a concern about health and social care services’, Llais website: www.llaiswales.org/have-your-say/raising-concern-about-health-and-social-care-services (last accessed 13 August 2024).

- You can also find a list of advocacy services (within each local authority area) on our website at:

www.ageuk.org.uk/cymru/our-work/advocacy/hope---helping-others-participate-and-engage/advocacy-services-in-wales

- The Public Services Ombudsman for Wales website also has a list of organisations that may be able to offer advocacy services at:

www.ombudsman.wales/advice-advocates

- A healthcare charity, the Patients Association, campaigns for equal access to high quality health services and for the right of patients to have full involvement in decision making regarding their care.
- You may have a local Citizens Advice who could assist.

3.9 Complaints involving more than one organisation

If your complaint involves services provided by more than one organisation, the organisations involved **have a duty to co-operate**.

For example, these types of scenarios may occur where a complaint involves services provided by both a hospital *and* a local authority social services department – i.e. you want to make a complaint to the hospital about your discharge, but part of the complaint relates to social care services provided when you arrived home (or entered a care home).

Alternatively, there could also be occasions when two NHS organisations are involved, such as a hospital and GP practice.

The organisation that receives your complaint must approach the other one and they must agree between them and tell you who will:

- take the lead in handling your complaint;
- be your point of contact and take responsibility for communicating with you;
- co-ordinate the handling of the complaint and any investigations;
- ensure you receive a single response, addressing all issues agreed at the outset.

If you make a complaint to the wrong organisation, the person receiving your complaint should tell you and the organisation concerned. They should also inform you of the name of the organisation and person they will forward your complaint to.

They must seek your permission before forwarding the details on.

Note: The complaints procedure for local authority social services departments

As mentioned above, an NHS body and a social services department should work together and co-ordinate a response to your complaint if it includes elements provided by both organisations.

There is a separate complaints procedure for services provided by a local authority social services department, so part of this co-ordination process may involve deciding which organisation will be the ‘lead body’ and, therefore, which complaints route is most appropriate for your particular issue.

The Welsh Government guidance for local authority social services departments on complaints – *A guide to handling complaints and representations by local authority social services* (August 2014) – states that:

“Complaints that cross public bodies – Where a complaint crosses a number of public bodies it is essential that each public body understands its responsibilities and accountabilities. Local authorities must work within the complaints framework provided [in ‘*A guide to handling complaints and representations by local authority social services*’] but should, unless there are very good reasons not to do so, co-ordinate their investigations and responses with the other public bodies involved”. The social services complaints handling guidance “has been aligned, where appropriate, with the NHS complaints procedure Putting Things Right [and] this should enable a more streamlined and citizen focussed approach”.

A copy of the complaints guidance for social services can be accessed at:

www.gov.wales/social-services-complaints-procedure

4 Stage 1 – resolving concerns or complaints locally

Local staff should respond flexibly and promptly to reach a fair and satisfactory outcome to individual concerns or complaints.

4.1 Resolving an issue without making a formal complaint

It may not always be necessary to raise a formal complaint. The staff member you approach may be able to respond quickly in way that clears things up to your satisfaction. Or alternatively, the informal involvement of your local Llais team may be able to achieve a similar outcome.

4.2 What to expect if you feel you need to make a formal complaint

You may decide you wish to make a formal complaint because, for example:

- you feel that informal attempts to resolve the situation haven't worked; *or*
- you don't feel this route would be appropriate; *and/or*
- you feel the situation is of a level of seriousness that it should go straight to the formal process.

The Putting Things Right guidance states that complaints must be handled:

- “efficiently and openly”;
- be properly investigated; *and*
- where necessary, action must be taken in light of the outcome of the investigation.

The guidance states that complainants must:

- be treated with respect and courtesy and “have their expectations and involvement in the process established early on”;

- be provided with a specific named staff member who will act as a contact throughout the handling of the complaint (the complainant must also be provided with the contact details of the allocated person);
- receive as far as reasonably practical, assistance to enable them to understand the procedures to be followed and be advised of the advocacy service provided by Llais (see section 3.7 above);
- receive a timely and appropriate response to their complaint;
- be kept informed if, for any reason, there is a delay in the investigation being carried out and/or the final decision being reached on the outcome of the complaint; *and*
- at the end of the process, be fully informed of the outcome of the investigation.

4.3 Acknowledging and pursuing your complaint

The guidance does not stipulate the form local resolution must take, so organisations can be flexible in order to address complaints appropriately and proportionately. However, there are fundamental elements that must be observed:

- You can make a complaint in person, by phone, letter, or e-mail. If made in person or by phone, the person you speak to must log the complaint, including the name of the complainant and the person affected (if different). A copy of the written record of the complaint must be given to the person who raised the concern. Therefore, you can check that their interpretation of your complaint is correct (you might also find it useful to make a note of the name of the person you spoke to, together with the date and time of your conversation, as well as the phone number you used to contact them).
- Your complaint should be acknowledged within **two working days** of receipt. As indicated in section 4.2 above, you must then be provided with a **named contact** who you can liaise with throughout the handling of the complaint. You should be provided with contact details to allow you to get in touch with them when you need to.
- The complainant should also be offered a meeting at the outset to allow them to discuss the way an investigation will proceed – see section 4.4 below. You should be kept updated on the progress of an investigation.

- Where an investigation is required, you should receive a full written reply within **thirty working days** of the first receipt of the complaint. Where this is not possible, the complainant must be told the reason why the delay is occurring and receive a response as soon as possible (and definitely within **6 months** of the original date of receipt).
- As part of its investigation an NHS body must consider whether your case might qualify for ‘**redress**’ – see section 7 below for further information on the NHS Wales ‘Redress arrangements’.

4.4 Investigating and responding to complaints

As touched upon previously, when your complaint is acknowledged, you **must** be offered the opportunity to discuss your complaint and how it might be handled. This can be a face to face meeting or a phone call. This allows you to:

- explain your complaint in your own words;
- outline what you would like to see happen as a result of raising the issue;
- hear what can realistically be achieved by investigating your complaint;
- consider if support from Llais would be helpful;
- find out about timescales and when a response may be expected;
- agree how you would like to be kept informed of developments.

You should be advised that a relative, friend or advocate can accompany you to any meetings.

Note: If you do not wish to have a discussion, the complaints team will let you know in writing how your complaint is to be managed.

4.5 Conclusion of an investigation – a final written response

At the end of an investigation, you should receive a final written response, which should include:

- an apology, where appropriate;
- an explanation of how the complaint has been investigated and conclusions reached;
- copies of any expert opinions sought during the investigation and/or relevant medical records, if appropriate;
- explanations of any actions to be taken (including whether ‘redress’ is applicable – see section 7 below);
- an offer for you to discuss the results of the investigation with the executive director/officer (or their nominated representative); *and*
- details of your right to take your complaint to the Public Services Ombudsman for Wales if you remain dissatisfied – see section 5 immediately below.

5 **Stage 2 – taking a complaint to the Public Services Ombudsman for Wales**

If you are not satisfied with the way your complaint has been dealt with by the NHS, you can ask the Public Services Ombudsman for Wales to look into it. The Ombudsman is impartial and independent from the NHS.

The Ombudsman can tell you if they are able to help you and advise on how to make your complaint. For information on how to contact them, see section 15 below.

If your complaint concerns the services of both the NHS and a local authority, the Public Services Ombudsman for Wales will be able to investigate the complaint as a whole, as both types of organisation fall within the Ombudsman’s remit.

The Ombudsman service will normally expect you to have gone through the complaints procedure – in full – with the organisation concerned, prior to contacting them.

If the Ombudsman finds that NHS treatment you received fell below ‘appropriate clinical standards’, or that there were significant administrative failings, they may recommend that the Local Health Board takes action “to remedy the situation as far as is reasonably possible”⁵.

Note: ‘Appropriate clinical standards’

The Ombudsman explains that they “aim to establish what would have been appropriate care and treatment in the situation complained about and to decide whether the care, treatment or decisions complained about fell short of that”.

They “will seek to establish what constituted appropriate clinical care and treatment on the facts of the case by reference to a range of material, including relevant standards or guidance, the accounts of the complainant, the clinician or organisation complained about and any other relevant records and information”.

“Relevant standards or guidance [they] may consider in health cases include National Institute for Health and Care Excellence (NICE) guidance...professional regulators’ Codes of Practice and...guidance from Royal Colleges, national and local protocols or policies [and] Welsh Government directives”⁶.

Further information can be found on the Ombudsman’s website at:

www.ombudsman.wales/clinical-standards

5.1 NHS complaints that the Ombudsman can look into

The Ombudsman can examine complaints regarding care provided by (or commissioned through) the NHS in Wales.

⁵ ‘NHS Complaints’, Public Services Ombudsman for Wales website: www.ombudsman.wales/fact-sheets/health-nhs-complaints-general-information (last accessed 14 August 2024).

⁶ ‘Clinical Standards: Our Standards in Clinical Care Cases’, Public Services Ombudsman for Wales website: www.ombudsman.wales/clinical-standards (last accessed 14 August 2024).

Their website explains that they “can look at the care the patient had and ask [their] clinical advisers to look at whether the treatment given was appropriate”. Factors to be considered could include:

- “poor clinical judgement”;
- “failure to provide treatment to an appropriate standard”;
- “care which fell below an appropriate standard”;
- “poor record keeping”; *or*
- “clinically unreasonable delays in giving treatment”.

The Ombudsman can also consider whether Local Health Board staff dealt with you in a reasonable manner. Examples of actions that could be unreasonable include:

- not providing “appropriate explanations to the patient and – where the patient consents – their family about the diagnosis and care plan”;
- “administrative failings, such as arrangements for appointments or loss of clinical records”; *or*
- “poor complaint handling”.

5.2 NHS complaints that the Ombudsman would not be able to assist with

The Ombudsman will **not** be able to:

- become involved in your ongoing treatment or care;
- provide a “second opinion” in regard to a medical diagnosis; *or*
- pursue any further action if they consider a reasonable clinical judgement has been made by the NHS in your case (even though you may personally disagree with this).

Private health treatment

In general, the Ombudsman will not be able to consider complaints in regard to private health treatment, *except* where all *three* of the following are met:

- “you have had some treatment from the NHS for the health issue”;
- “you have also paid privately for some part of that treatment” **and**
- they “cannot investigate the complaint about the NHS care without also looking at the treatment paid for privately”⁷.

Note: Also see section 14 below for further information about private treatment.

6 Other related NHS duties or Welsh Government policies which may be relevant to the complaints process

6.1 Duty of Quality

Under the duty of quality “all NHS organisations [in Wales] have a legal responsibility to continually improve the quality of the services they provide”⁸.

The duty came into effect in April 2023 through the *Health and Social Care (Quality and Engagement) (Wales) Act 2020*. It applies to all NHS organisations and staff (plus also Welsh Ministers, in relation to their health functions).

The Welsh Government has published the following guidance, available at the link which follows:

The Duty of Quality Statutory Guidance 2023 and Health and Care Quality Standards 2023, Welsh Government, April 2023.

www.gov.wales/duty-quality-healthcare

⁷ ‘NHS Complaints’, Public Services Ombudsman for Wales website: www.ombudsman.wales/fact-sheets/health-nhs-complaints-general-information (last accessed 14 August 2024).

⁸ ‘Duty of Quality’, Public Health Wales website: <https://phw.nhs.wales/about-us/duty-of-quality> (last accessed 15 August 2024).

Under the duty, NHS bodies “should ensure the decisions they make deliver care that is **safe, timely, effective, efficient, equitable** and **person-centred**”⁹.

6.2 Duty of Candour

The duty of candour has been a legal requirement for all NHS organisations in Wales since April 2023.

The Welsh Government explain that the duty requires the NHS “to be open and transparent with service users when they experience harm whilst receiving health care”. NHS bodies are therefore required to:

- “talk to service users about incidents that have caused harm”;
- “apologise and support them through the process of investigating the incident”;
- “learn and improve from these incidents”;
- “find ways to stop similar incidents from happening again”¹⁰.

Note: The duty of candour is intended to build upon the existing ethos within the Putting Things Right guidance (as such, the latest version of the guidance has been designed to align with and support the duty of candour).

When does the duty of candour procedure apply?

The following two conditions **both** have to be met for the duty to apply:

- a person “to whom health care is being or has been provided by the [NHS] body has suffered an adverse outcome” *and*

⁹ The Duty of Quality Statutory Guidance 2023 and Health and Care Quality Standards 2023, Welsh Government, April 2023.

¹⁰ ‘The NHS Duty of Candour’, Welsh Government website: www.gov.wales/nhs-duty-candour (last accessed 15 August 2024).

- “the provision of the health care was or may have been a factor in the service user suffering that outcome” (i.e. the adverse outcome “must therefore relate to the provision of the care by the NHS body rather than being solely attributable to the person’s illness or underlying condition”¹¹).

If the duty is triggered due to the above circumstances, then the NHS body **must** “notify the **service user** who has suffered [an] adverse outcome” (or a ‘relevant person’ who is acting on their behalf – for example, if the service user lacks mental capacity). This should be done ‘in person’ via a telephone call, “audio-visual communication (such as a video call)”, or face to face, followed by a written notification within five working days¹².

Receiving an initial apology

NHS staff are advised that “making a meaningful, personalised apology is a key part of the ‘in-person’ notification process”, although it should be borne in mind that an apology (or other similar steps taken) in the duty of candour procedures does not necessarily, at this stage, “amount to an admission of negligence or to a breach of statutory duty” – i.e. this is because further enquiries and/or an investigation may be required to establish the exact facts of individual cases¹³.

Further enquiries and investigation

“When notifying the service user or person acting on their behalf that the duty of candour has been triggered, an NHS body must...also give an explanation of the actions and further enquiries it will take to investigate the circumstances of the...adverse outcome”¹⁴.

In the vast majority of cases, the investigation will be carried out under the existing processes, as outlined in the Putting Things Right guidance and detailed in sections 3 and 4 above.

¹¹ The Duty of Candour Statutory Guidance 2023, Welsh Government, April 2023.

¹² Ibid

¹³ Ibid

¹⁴ Ibid

Retrospective application of the duty of candour

Adverse outcomes may become known “following retrospective serious case reviews...or following a decision made by the medical examiner service or a coroner’s inquest, where the cause of death attributed was not known at the time of the incident. Additionally, further detail, not known during the initial review, may become known during the investigation of the incident” – the duty may still apply in these sorts of scenarios¹⁵.

Further information on the duty of candour processes

The Welsh Government have published the following which contain further information on the duty:

- **The Duty of Candour Statutory Guidance 2023** –
www.gov.wales/duty-candour-statutory-guidance-2023
- **The NHS Duty of Candour: information leaflet** –
www.gov.wales/nhs-duty-candour-information-leaflet

7 NHS Redress – where there may have been negligence by an NHS organisation or healthcare professional

If you or a family member believes you have been harmed by an NHS organisation or healthcare professional as a result of negligence, you are entitled to an explanation and may be able to get compensation for your injuries.

The Putting Things Right guidance states that “**redress relates to situations where the patient may have been harmed and that harm was caused by a Welsh NHS body**”.

Depending on the situation, redress may comprise:

- a written apology; **and/or**

¹⁵ Ibid

- an offer of suitable ‘remedial treatment’ with a view to trying to improve your condition and restore your health, “as far as possible”, to the position you would have been in “had the treatment complained of or negligent care not occurred”¹⁶; **and/or**
- financial compensation.

Note: The guidance relating to redress does not apply to primary care practitioners or to independent providers.

Financial compensation rules

The Putting Things Right guidance advises that if, at any point during a complaint investigation, “it is considered that a qualifying liability exists, then the Welsh NHS Body must determine whether or not an offer of redress should be made”.

However, they “**may only make an offer of redress for a qualifying liability by way of financial compensation in which the sum does not exceed £25,000**”.

Note: ‘Qualifying liability’, as referred to above, means negligence having occurred in regard to the care you have received. Section 7 of the Putting Things Right guidance has further information on qualifying liability and the law.

Redress can only be considered if there is a proven qualifying liability – therefore, investigations will need to seek “to prove that the Welsh NHS body has **both failed in its duty of care** to a patient **and** that the breach of duty of care has been causative of the harm that the person has suffered. It is only when both these tests are satisfied that a payment of compensation should be considered”¹⁷.

¹⁶ Putting Things Right – Guidance on dealing with concerns about the NHS from 1 April 2011 (Version 4 – May 2023), Welsh Government.

¹⁷ Ibid

Legal advice

The law around ‘qualifying liability’ is a complex area. However, Welsh Government regulations specify that “where the Redress arrangements are engaged, legal advice **without charge** to the person who notified the concern [or complaint] will be available”.

The “legal advice may only be sought from a recognised firm of solicitors with known expertise in clinical negligence and who are accredited by the Law Society or from the Action against Medical Accidents Clinical Negligence Panel”¹⁸.

Note: Action against Medical Accidents (AvMA) are a charity committed to patient safety and justice – see section 15 below for their contact details.

You could also approach AvMA for advice if any financial compensation will be likely to exceed £25,000 and you have, therefore, been told that the case cannot be considered under the redress arrangements.

8 A complaint about the way the NHS used the Mental Health Act

You can make a complaint if you are unhappy about the way NHS staff have used the *Mental Health Act 1983*.

You should first raise your concerns with the local service that provided your care. If you would like some support to make your complaint, you can ask to talk to an **Independent Mental Health Advocate (IMHA)**. They are specialist advocates trained to work within the framework of the Mental Health Act.

IMHAs can assist with issues such as:

- Help people understand their rights under the *Mental Health Act 1983* and the reasons for certain decisions having been taken by health professionals.

¹⁸ Ibid

- Assist the person to express their views about their care and treatment and, if necessary, raise concerns about treatment and/or explore alternative options.
- Provide support by accompanying the person to meetings with professionals involved in their care and treatment.

Note: You could also contact the charity, Mind – see section 15 below for their contact details. Mind has further information on the IMHA service in Wales on their website at:

www.mind.org.uk/information-support/guides-to-support-and-services/advocacy/imhas-wales

If you are not happy with the outcome of a local investigation of your complaint, you can contact the healthcare regulatory body, the **Healthcare Inspectorate Wales (HIW)**. HIW monitor the use of the *Mental Health Act* and protect the interests of people whose rights are restricted under this legislation.

Further information on HIW can be found below in section 10.

9 NHS responsibilities to monitor and report on complaints handling

NHS organisations must keep a record of:

- each complaint received (and what it was about);
- the outcome of the complaint; *and*
- whether they met the agreed time frame for providing a response or whether they had to amend the time frame.

They must also produce an annual report, which should include the following:

- how many complaints they received;
- the nature and substance of concerns;
- how many complaints they decided were well founded;

- how many complaints were referred to the Public Services Ombudsman for Wales;
- “any matters of general importance arising out of [complaints received] or the way that they were handled”. This could include noticeable trends signifying “areas of concern within particular departments, staff groups, treatments or services provided”; *and*
- “actions taken to improve services as a result of a concern/s” and complaints¹⁹.

10 The Healthcare Inspectorate Wales

The Healthcare Inspectorate Wales (HIW) is the independent inspector and regulator of all healthcare in Wales. This includes independent healthcare providers, as well as NHS services. HIW have responsibility for ensuring that all providers of health services in Wales meet required quality and safety standards.

Although HIW is **not** required to investigate individual complaints, they are interested in making a record of any concerns or complaints that people have, so that they may monitor these to help form an overall picture of trends in health services – for example, in quality and safety. As a result, they may investigate issues that suggest wider or continuing failings within the NHS.

Investigations and reviews

HIW may utilise information gathered from the following when deciding whether to carry out an investigation or review of a service or organisation:

- patients and/or their representatives;
- findings from their own inspections, or other intelligence they have collected;
- serious incident notifications from health services; *or*
- information passed to them by other audit, regulatory or inspection bodies.

¹⁹ Ibid

If they receive “a number of similar concerns about a health service, this might trigger an unannounced inspection activity. The information may also provide a picture of similar concerns being experienced across Wales, which may lead to [HIW] undertaking a special review”²⁰.

The seriousness and/or frequency of any incidents may well also be a factor in the decision to initiate an investigation, review and/or inspection.

See section 15 below for contact details for HIW.

11 Who else could you contact if you are unsatisfied with NHS care?

11.1 Older People’s Commissioner for Wales

The role of the Commissioner is to ensure the interests of older people in Wales, aged 60 or over, are safeguarded and promoted.

The aims and role of the Commissioner include:

- reviewing the adequacy and effectiveness of law, policies and strategies which affect the interests of older people; *and*
- monitoring and reviewing how complaints, advocacy, advice and whistleblowing arrangements are working in practice to ascertain whether Wales is effective in safeguarding the rights and welfare of older people.

The Commissioner reports annually to the First Minister (in the Welsh Government) on how these responsibilities have been carried out. See section 15 below for their contact details.

11.2 Contacting a political representative – Members of the Senedd (MSs) or your Member of Parliament (MP)

You may wish to raise issues with your MSs or MP. As health is a devolved issue in Wales, it may be more appropriate to contact your MSs, though you might also choose to contact your MP depending on the exact nature of the issue.

²⁰ Concerns and complaints about Health Services in Wales, Healthcare Inspectorate Wales, 2022.

You are represented in the Senedd (the Welsh Parliament) by five members. One for your local area and four for the region of Wales you live in. Contact details can be obtained from the Senedd Cymru website at:

<https://senedd.wales/find-a-member-of-the-senedd>

Contact details for your MP can be found on the UK parliament website at:

www.parliament.uk/mps-lords-and-offices/mps

12 Safeguarding concerns in relation to NHS services, care or treatment

The term ‘safeguarding’ means a range of activities aimed at upholding an individual’s fundamental right to live in safety, free from abuse and neglect.

Some adults are at potentially increased risk of neglect or abuse because of their dependence on others – for example, people living with dementia, with a sensory impairment, learning difficulty or frailty.

Harm and abuse can happen anywhere including hospitals, or other NHS institutions, where it might involve ignoring medical or physical care needs such as:

- permitting development of pressure ulcers;
- misuse of medicines (for example, what have been termed ‘chemical cosh’ medicines as an alternative to providing an appropriate level of care to manage complex needs); *or*
- failure to ensure adequate nutrition and liquids.

Further information

Age Cymru’s Factsheet 78w *Safeguarding older people in Wales from abuse and neglect* has detailed information on:

- what to do if you are an older person who is being abused or neglected, or may be at risk of this;
- what to do if you are concerned on an older person’s behalf that they are being abused; *plus*
- who to report abuse to and how cases must be handled.

13 Complaints about individual health professionals – organisations that regulate health staff

If you believe a doctor or other health professional has been guilty of professional misconduct that could call into question their fitness to practice, you can make a complaint to their professional regulatory body. These bodies have procedures for investigating 'fitness to practice' concerns. Instances that could give cause for concern in this context might include:

- seriously or persistently failing to work competently and safely;
- having inappropriate relations with a patient; *or*
- breaching confidentiality.

Professional bodies for the main health professions:

Section 15 below has contact details for each of these organisations.

- **Doctors**

General Medical Council

- **Nurses and midwives**

Nursing and Midwifery Council

- **Dentists**

General Dental Council

- **Opticians**

General Optical Council

- **Pharmacists**

General Pharmaceutical Council

- **Chiropodists/podiatrists, dietitians, occupational therapists, paramedics, physiotherapists, radiographers and speech and language therapists**

Health and Care Professions Council (HCPC)

Note: The above is not an exhaustive list of the different professions covered by the HCPC. See their website for a full list at:

www.hcpc-uk.org/public/which-professions-do-hcpc-regulate/

14 **Complaints about private healthcare providers**

If you are unhappy with healthcare you have paid for yourself, contact the provider of the service and give it the opportunity to investigate your concerns and respond to you.

If you are not happy with their response, you could contact the **Independent Sector Complaints Adjudication Service (ISCAS)**.

They represent many independent healthcare organisations and have a code of practice for their members on dealing with complaints and a guide for patients. They only look into complaints involving one of their members. See section 15 below for contact details for ISCAS.

You could also contact the relevant professional body if your complaint involves a ‘fitness to practice’ concern – see section 13 above.

Also see section 10 above in regard to the health regulator, the Healthcare Inspectorate Wales, which also covers private healthcare providers.

15 **Useful organisations**

Action against Medical Accidents (AvMA)

AvMA is a charity for patient safety and justice. It has a free and confidential helpline to support people affected by medical accidents.

Helpline: 0345 123 2352

Website: www.avma.org.uk

Age Cymru Advice

Free and confidential information and advice on matters affecting the over 50s in Wales.

Tel: 0300 303 44 98

E-mail: advice@agecymru.org.uk

Website: www.agecymru.org.uk/advice

Age Cymru organisations (local)

Your local Age Cymru may be able to provide advice and support on a range of issues. **Age Cymru Advice** can provide details of your local Age Cymru (see above), or visit the Age Cymru website at:

www.agecymru.org.uk/local

Citizens Advice

National network of free advice centres offering confidential and independent advice, face to face or by telephone.

Tel: 0800 702 2020

Details of your nearest CAB can be found at:

www.citizensadvice.org.uk/wales

General Dental Council (GDC)

The General Dental Council (GDC) is responsible for registering all dentists and other dental care professionals who practise in the UK.

Tel: 020 7167 6000

Website: www.gdc-uk.org

General Medical Council (GMC)

The GMC registers doctors to practise medicine in the UK. They should protect and maintain the health and safety of patients by ensuring doctors comply with recognised standards. Members of the public may report the conduct of a doctor to the GMC.

Tel: 0161 923 6602

Website: www.gmc-uk.org

General Optical Council (GOC)

The GOC is the regulator for opticians, optometrists, dispensing opticians and optical businesses practicing in the UK. It is responsible for investigating 'fitness to practice' complaints.

Tel: 020 7580 3898

Website: www.optical.org

General Pharmaceutical Council (GPhC)

The GPhC is the independent regulator for pharmacists and pharmacy premises in the UK.

Tel: 020 3713 8000

E-mail: info@pharmacyregulation.org

Website: www.pharmacyregulation.org

Health and Care Professions Council (HCPC)

The HCPC regulate a range of professions, including: chiropodists / podiatrists, dietitians, occupational therapists, paramedics, physiotherapists, radiographers and speech and language therapists.

Tel: 0300 500 6184

Website: www.hcpc-uk.org

Healthcare Inspectorate Wales (HIW)

HIW is the independent inspector and regulator of NHS healthcare and independent healthcare organisations in Wales.

Tel: 0300 062 8163

E-mail: hiw@gov.wales

Website: www.hiw.org.uk

Independent Sector Complaints Adjudication Service (ISCAS)

ISCAS is a voluntary scheme for independent healthcare providers. It provides independent adjudication on complaints about ISCAS members.

Tel: 020 7536 6091

E-mail: info@iscas.org.uk

Website: www.iscas.org.uk

Llais

A body that represents the voices and opinions of people in Wales in regard to health and social care services.

Tel: 029 20 235558

E-mail: enquiries@llaiscymru.org

Website: www.llaiswales.org

Contact details for your local Llais team: www.llaiswales.org/in-your-area

Mind

A charity that provides information and support to empower anyone experiencing a mental health problem.

Mind Infoline: 0300 123 3393

Website: www.mind.org.uk

NHS 111 Wales

A service that provides telephone and web advice on a wide range of health issues and common illnesses, as well as local services such as GP practices, dentists and support groups.

Tel: 111

Website: www.111.wales.nhs.uk

Nursing and Midwifery Council (NMC)

The NMC aims to safeguard patients by ensuring nurses and midwives deliver care to a high standard. Members of the public can report the conduct of a nurse or midwife to the NMC.

Tel: 020 7637 7181

Website: www.nmc-uk.org

Older People's Commissioner for Wales

Independent champion for older people across Wales.

Tel: 03442 640 670

E-mail: ask@olderpeople.wales

Website: www.olderpeople.wales

Patients Association (The)

A healthcare charity that supports the rights of patients.

Tel: 0800 345 7115

Website: www.patients-association.org.uk

Public Services Ombudsman for Wales

The Ombudsman looks to see whether people have been treated unfairly or have received a bad service from a public body, such as the NHS or a local authority.

Tel: 0300 790 0203

E-mail: ask@ombudsman.wales

Website: www.ombudsman.wales

Welsh Government

The devolved government for Wales.

Tel: 0300 060 4400

E-mail: customerhelp@gov.wales

Website: www.gov.wales

16 Further information about Age Cymru

16.1 Who we are

Age Cymru is the national charity for older people in Wales. We work to develop and deliver positive change with and for older people.

Together with our local partners:

- we provide information and advice;
- we deliver wellbeing programmes;
- we provide independent advocacy;
- we support carers; *and*
- we campaign and research.

Age Cymru

Mariners House
Trident Court
East Moors Road
Cardiff
CF24 5TD

029 2043 1555

www.agecymru.org.uk

Registered Charity 1128436

16.2 **How we can help**

Age Cymru Advice: our information and advice service for matters affecting people over 50 in Wales

Age Cymru Advice is committed to being the foremost information and advice service to older people in Wales. We aim to provide effective, accessible, high-quality information and advice while offering a free, impartial and confidential service. Age Cymru Advice can assist older people themselves, their family, friends, carers, or professionals. All of our guides and factsheets are available to download from our website, or you can contact our advice line to have copies posted to you for free.

Local support

Age Cymru Advice also acts as a gateway to our local services. Face to face support via local offices and home visits may be available to people requiring additional or more specialised support.

Getting in touch

If you want to talk to one of our expert advisers, in Welsh or English, call us on **0300 303 44 98**. Our advice line is open between 9am and 4pm, Monday – Friday.

(Calls are charged at the same rate as a call to a standard 01 or 02 number. They will also be automatically included in any landline or mobile inclusive minutes package).

You can also:

- email us at advice@agecymru.org.uk; *or*
- visit our website at www.agecymru.org.uk/advice



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Our quarterly newsletter contains details of our campaigns, services and how you can support our work. Sign up today by visiting:

www.agecymru.org.uk/agematters

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16.3 How you can help

All the information and advice we provide is free and completely impartial. In many cases our timely intervention can be life changing. We are an ageing population and more people than ever are coming to us for support. You can help us be there for those that need us most.

Make a donation

No matter how small or large, donations make a massive difference and help us continue our important work.

Call: **029 2043 1555**

Visit: **www.agecymru.org.uk/donate**

Every donation we receive helps us be there for someone when they need us.

- £10 helps towards a fully trained expert advice worker to respond to queries from people who need the support of our information and advice service.
- £20 helps towards the cost of us producing free information guides and factsheets that provide useful advice on issues affecting people over 50.

Fundraise

Whether it is having a bake sale, running a marathon or knitting small hats for the Big Knit, there are so many ways to raise vital funds to support our work.

Call: **029 2043 1555**

Visit: **www.agecymru.org.uk/getinvolved**

Volunteer with us

All volunteer roles at Age Cymru support us to improve lives. However you'd like to get involved, we'd love to hear from you.

Call: **029 2043 1555**

Visit: **www.agecymru.org.uk/volunteer**

Leave us a gift in your will

With a gift to Age Cymru in your will, you can do so much to make sure older people have the support they deserve in the years to come. Leave a world less lonely.

Call: **029 2043 1555**

Visit: **www.agecymru.org.uk/legacy**

