

ALTERNATIVES TO MAKING A CLAIM

There may be options other than litigation that you will wish to consider and this will be particularly true if you have been fortunate enough not to have suffered permanent or serious injury. In these circumstances, you may feel that it is more important for you to obtain an explanation of what went wrong and/or an assurance that the mistake will not happen again rather than to obtain compensation.

All NHS patients have the right to have any complaint that they make about their treatment investigated promptly and properly. Every general practitioner, NHS dentist and NHS hospital must have a designated Complaints Manager and you should make your complaint directly to that person or alternatively to your local NHS Primary Care Trust. The complaint can be made orally or in writing but should be submitted within twelve months of the incident about which you wish to complain. It is up to the individual surgery, hospital or NHS Primary Care Trust as to precisely how they deal with complaints but the Complaints Manager should acknowledge your complaint within three working days and at the same time discuss and agree with you how the complaint is to be investigated and the date by which you should receive a full response. Every NHS Trust has a Patient Advice and Liaison Service (PALS) who will provide you with advice and assistance in pursuing your complaint. Alternatively, you can obtain assistance from the Independent Advocacy Service (although despite its title, it is not truly independent of the NHS).

If you are dissatisfied with the way in which your complaint is dealt with you can complain to the Parliamentary and Health Service Ombudsman, Millbank Tower, Millbank, London, SW1P 4UP, telephone number 0345 0154033, www.ombudsman.org.uk. Your complaint to the Ombudsman must be made within one year of your original complaint.

If there has been serious misconduct or a serious lapse of appropriate clinical care by a general practitioner, dentist, optician or pharmacist whilst treating an NHS patient such as to amount to a potential breach of their terms of service with the NHS the local Strategic Health Authority may take disciplinary action. Patients are entitled to ask the Strategic Health Authority to consider whether or not to take disciplinary action but only after the complaints procedure has been concluded. It is a matter for the Strategic Health Authority to decide whether or not disciplinary action should be taken. If the Strategic Health Authority does decide that there may have been conduct which might justify disciplinary action it will carry out an investigation and if then satisfied that disciplinary action is justified it will refer the matter to a disciplinary committee of another independent Strategic Health Authority who will consider the evidence and make a final decision as to whether the general practitioner, dentist, optician or pharmacist has been guilty of conduct that merits a disciplinary penalty. The hearing is held in private with the employing Strategic Health Authority acting as the prosecution.

It is important to emphasise that the mere fact that a general practitioner, dentist, optician or pharmacist has made a clinical mistake will not in itself be sufficient to justify disciplinary action. The mistake must be of a nature that calls the clinician's competence into question.

The enquiring Strategic Health Authority will report its findings and recommendations to the employing Strategic Health Authority, which is not bound to follow the recommendations but may decide upon its own sanctions. This can include a financial penalty, the issue of a formal warning and/or the placing of a limitation on the number or type of patients that the clinician can treat.

If there have been repeated disciplinary findings against a general practitioner, dentist, optician or pharmacist the Strategic Health Authority can, if satisfied that the clinician has been guilty of continuing bad practice, direct that he or she be either suspended temporarily or disqualified permanently from NHS work.

The NHS complaints system applies to all treatment that is funded by the NHS even if it is provided in a private hospital. However, patients receiving treatment that is not funded by the NHS do not have recourse to the NHS complaints procedure nor to the Ombudsman. The Strategic Health Authority disciplinary procedures also only apply to conduct during the provision of NHS funded treatment.

Most private hospitals are members of the Independent Healthcare Advisory Services, who are the trade association for private hospitals and which requires its members to follow its Code of Practice for handling complaints. The Code sets out a procedure under which, as a first step, you should write to the hospital manager to set out your complaint in writing.



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You should then receive a full written response within twenty working days. If you are unhappy with that initial response you can ask for an internal appeal to be conducted by Chief Executive of the company that owns the hospital. You must submit the request for an appeal within twenty working days of receiving the initial written response. If you are then dissatisfied with the outcome of that appeal, you will have the right to ask that the matter be referred to the adjudication service of the Independent Healthcare Advisory Services. You must make that request within twenty five working days of being notified of the result of your appeal, by writing to the Independent Sector Complaints Adjudication Service, Centre Point, 103 New Oxford Street, London, WC1A 1DU. Telephone 020 7379 8598. There is no further appeal from the external adjudication procedure.

If your treatment in a private hospital was paid for by a health insurer it will also be worth complaining to the insurance company.

If your complaint relates to treatment that you received privately outside a hospital you should address your complaint in the first instance to the individual clinician concerned but if you remain dissatisfied you should then write to the clinician's professional regulatory body e.g. in the case of a doctor the General Medical Council and in the case of a dentist the General Dental Council. All of the professional regulatory bodies require their members to deal with any complaints in an appropriate manner and therefore they will always be willing to take whatever action is necessary in order to ensure that you receive a proper response to your complaint.

If you are dissatisfied with private (i.e. non NHS) dental treatment you can seek assistance from the Dental Complaints Service, The Lansdowne Building, 2 Lansdowne Road, Croydon, CR9 2ER, telephone 08456 120540, website www.dentalcomplaints.org.uk. The service is free and is operationally independent from the General Dental Council who fund it.

The professional regulatory bodies will also be willing to consider any complaint of serious misconduct or a serious failure to provide appropriate clinical care in relation to any of their members irrespective as to whether the patient was being treated privately or under the National Health Service. If following an investigation and a formal hearing the allegation of serious misconduct or clinical failing is upheld they have the power to suspend the clinician or even remove his or her right to practice. Not all clinical mistakes will justify such action but only those that demonstrate that the clinician is persistently failing to reach an acceptable standard of practice.