

Help with your NHS Complaint - Sheet 9

The Parliamentary and Health Service Ombudsman

The Parliamentary and Health Service Ombudsman, (PHSO) for NHS Complaints or the Local Government Ombudsman (LGO) for Public Health complaints, are the second and final stage of the complaints process. More information about the first stage Local Resolution can be found in the sheet “Making an NHS Complaint”.

What does the Ombudsman do?

The Parliamentary and Health Service Ombudsman’s offices specifically undertake independent investigations into complaints that the NHS services in England has not acted properly or fairly, or has provided a poor service.

When will they consider a complaint?

The Ombudsman’s office will, normally, only take on a complaint after efforts have been made to resolve the complaint locally, with the NHS, and a response has been received.

It is the Ombudsman’s view that a practice or trust should be given a chance to respond and, where appropriate, try to put things right, before they become involved.

Are there any exceptions?

You can approach the Ombudsman before your case has finished local resolution if there are exceptional circumstances, for example if you have been diagnosed with a terminal condition. This does not mean that they will investigate the complaint rather than the service provider, but they could try to speed up the process by contacting them and explaining the situation, or maybe even suggesting a remedy to the complaint, depending on the complexity or urgency of the case.

What will the Ombudsman do?

Once a submission has been made to the Ombudsman’s offices, they will investigate the way your complaint has been handled, considering three things known as The Ombudsman’s principles. These are

- Good administration
- Remedy
- Good complaint handling

These are explained briefly below. These are our short summaries and we can provide more detailed information if you need it.

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Principles of Good Administration

The Ombudsman describes good administration in terms of:

- ‘Getting it Right’ - have the law and the organisation’s own policies and procedures been complied with?
- ‘Being customer focused’ - are services accessible; is there clear, accurate and up to date information about them; are consumers clear about their entitlements and has the organisation met the promises it made?
- ‘Being open and accountable’ - has information been handled as openly as the law allows; are records usable and reliable; has the organisation taken responsibility for the actions of their staff?
- ‘Acting fairly and proportionately’ - has the organisation treated you fairly and with respect and has it treated you equally and impartially?
- ‘Putting things right’ - have mistakes been acknowledged; has there been an explanation of what went wrong; have things been put right quickly and effectively?
- ‘Seeking continuous improvement’ - regularly reviewing services and using feedback (including complaints) to improve services.

Principles for Remedy

The Ombudsman describes remedy in terms of:

- ‘Getting it right’ - quickly acknowledging and putting right cases of maladministration that have led to injustice or hardship, not just for the complainant but also for other people who may have been affected.
- ‘Being customer focused’ - apologising and explaining what went wrong; dealing with people sensitively and professionally; making sure people know what to expect and providing remedies that take account of people’s individual circumstances.
- ‘Being open and accountable’ - being open and clear about how and why the decision has been made to remedy the problem a certain way.
- ‘Acting fairly and proportionately’ - treating people without bias; offering remedies that are proportionate to the problem and offering a remedy to everyone who may have suffered as a result of the problem.
- ‘Putting things right’ - wherever possible putting people back in the position they would have been had the problem not occurred and where this is not possible, providing compensation in some other appropriate way.
- ‘Seeking continuous improvement’ - using lessons learned to improve services and to ensure that the same problem is not repeated.

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Principles of good complaint handling

The Ombudsman describes good complaint handling in terms of:

- ‘Getting it right’ - handling complaints in line with the law, regulations and guidance; having complaint management systems as an integral part of services and having clear leadership and accountability in terms of complaints.
- ‘Being customer focused’ - having clear and simple complaints procedures; making complaints processes easy to access, responsive and sensitive; listening to what people say they want their outcomes to be and responding flexibly.
- ‘Being open and accountable’ - having clear information about how to complain; having clear service standards and giving honest, evidence-based explanations.
- ‘Acting fairly and proportionately’ - treating people impartially; investigating complaints thoroughly and fairly; making sure that someone (who wasn’t involved in events leading up to the complaint) reviews the complaint and acting fairly towards staff as well as the person bringing the complaint.
- ‘Putting things right’ - acknowledging mistakes and apologising where appropriate; providing prompt, appropriate and proportionate remedies; considering all relevant factors when offering a remedy and recognising that pursuing a complaint can add to the difficulties caused by the original complaint.
- ‘Seeking continuous improvement’ - using feedback from complaints to improve services and, where appropriate, telling the person who complained about any changes that result from their complaint.

Completing the form

There is a form which should be completed for submissions to the Ombudsman’s office which asks you to give a brief summary of the complaint so far. You may find it useful to speak to Healthwatch about this, to decide the issues you wish to include. Sometimes, you might decide that you want to draft a covering letter for the Ombudsman which outlines your issues and the progress the complaint has made. It is quite acceptable to write ‘please see covering letter’ rather than complete the various boxes on the form.

A submission should include copies of all relevant correspondence about the complaint. This might be letters of complaint, trust responses, meeting minutes, action plans or emails sent and received. These should be organised into date order and you can refer to the attached correspondence in Section 6 ‘What was your original complaint...’

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The Ombudsman's (PHSO) process

When a case is received at the PHSO it is assessed initially to see if it falls within their remit (e.g. is it a health complaint? has it already been raised with the service provider?) They will then go on to assess it using the three principles mentioned above before accepting it for investigation.

What happens now?

Once a complaint has been submitted, it should be acknowledged within 5 working days. This letter should also say who will be managing the response, and give a reference number to quote in future correspondence or on the phone. It might be a good idea to make a note of this for future reference. This will then be passed on to an assessor who may telephone you to discuss your complaint and should write to you to say if the case has been accepted for further investigation or not within 40 days of it being received at their offices.

If the case is accepted for investigation

If the Ombudsman feels that the case has met the criteria, it will be allocated to a case manager for further investigation. For this, the PHSO will normally access the medical records for the patient, and may seek clinical advice or a second professional opinion. They may make recommendations for the trust, or they do have the capacity to make ex-gratia payments for inconvenience, hardship or to return the complainant to the position they were in before. They can also recommend that a service or trust compensate an individual and specify an amount. This is different to compensation for medical negligence, but the Ombudsman's helpline will be able to discuss this with you in more detail.

If the case is refused for investigation by the PHSO

If a case is refused it may be for several reasons:

- It is Premature - Local resolution has not been exhausted
- The case falls outside of their remit e.g. It is about private treatment
- It is 'out of time' for approaching the PHSO - over 12 months since the incident you are complaining about
- The Ombudsman feels that the trusts have made every reasonable effort to resolve the complaint

So what happens if the Ombudsman decides not to investigate your case?

You can complain about a decision which has been made by the Ombudsman by approaching the Ombudsman's office review team. They will not consider a review of the complaint if you simply 'disagree' with their decision; a submission needs to be made to the review team detailing why you are unhappy or if there are things you think have not been considered fully. The Ombudsman's office complaints

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policy states that they will aim to respond to these issues within 16 weeks, but once received; the decision of the review team is final.

The end of the process

Once a case has reached this point, it has now completely exhausted the NHS Complaints Procedure, and can no longer be supported Healthwatch Tameside. The only remaining option if you are unhappy would be to submit your case for Judicial Review. This is a legal process and is beyond our expertise. You would need to seek the advice of a solicitor for this. A complaint cannot progress to Judicial Review without first appealing the decision of the PHSO through the review team.

Who are the LGO?

The Local Government Ombudsman's (LGO) office specifically undertakes independent investigations into complaints that there has been a failing in Public Health provision to individuals, or a poor service has been provided. The body complained about must have a chance to sort out the complaint before the LGO can consider it.

They can offer help and support via a helpline on 0300 061 0614. It is open from 8.30am to 5.00pm, Monday to Friday. (Calls to 03 numbers will cost no more than calls to national geographic numbers (starting 01 or 02) from both mobiles and landlines, and will be included as part of any inclusive call minutes or discount schemes in the same way as geographic calls.)

You can normally only go to one Ombudsman - whichever (PHSO or LGO) is appropriate for the service you are complaining about.

This sheet last updated: 09/04/2014

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