

Factsheet 66w ● February 2022

Resolving problems and making a complaint about NHS care in Wales



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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 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 13).

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 – see section 16 for their contact details.

1.1 Future changes

There are some changes – likely to come into force from April 2023 – which will affect some of the content covered in this factsheet. See section 14 below for further details. Prior to this date, the information in this factsheet will remain applicable.

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 Community Health Council can mean an issue is resolved promptly and satisfactorily at an early, informal, stage.

Note: Community Health Councils (CHCs) are statutory bodies that 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.

See section 3.6 below for further details about the role of CHCs in the complaints process.

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.

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

The 'Putting Things Right' guidance

The most up to date version of the full guidance document appears to be *Version 3* (dated November 2013). However, the Welsh Government only features brief information on its website, without a link to the main guidance:

www.gov.wales/nhs-wales-complaints-and-concerns-putting-things-right

Note: A copy of the full guidance document, which is a lot more detailed, can be found on the NHS Wales website at:

www.wales.nhs.uk/sitesplus/documents/861/Healthcare%20Quality%20-%20Guidance%20-%20Dealing%20with%20concerns%20about%20the%20NHS%20-%20Version%203%20-%20CLEAN%20VERSION%20%20-%2020140122.pdf

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.

Note: There are likely to be changes to the 'Putting Things Right' procedure and guidance from April 2023 – see section 14 below.

3.1 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 3.3 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 **Community Health Council (CHC)**.

The CHC 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 CHCs can be found in section 3.6 below.

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”.

3.2 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 3.5 below).

Complaints do not 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 complain¹.
- You are doing so on behalf of a relative or friend who has since died.

¹ 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 but 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 and a briefer information leaflet explaining the duties of health and social care professionals 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.

3.3 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 in section 3.1 above, all staff should be aware of the contact details for the Senior Investigation Manager and their team.

Note: LHBs are responsible for delivering all NHS healthcare services within a particular geographical area – there are seven covering Wales.

In addition to the LHBs, there are three NHS Trusts with an all-Wales remit – the Welsh Ambulance Services NHS Trust, Velindre NHS Trust (provides specialist cancer services) and Public Health Wales NHS Trust (provides and manages a range of health protection, healthcare improvement and health advisory services).

You can find out which LHB or Trust will have responsibility for your complaint from NHS 111 Wales – see section 15 for contact details. Alternatively, you can obtain further information from the NHS Wales website at:

www.wales.nhs.uk/nhswalesaboutus/structure

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”², 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.

² Putting Things Right – Guidance on dealing with concerns about the NHS from 1 April 2011 (Version 3 – November 2013), 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.

3.4 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)³.

Putting Things Right states that there may be some very exceptional cases where an issue that is over three years old could be reviewed. For example:

“If the person who raised the concern lacks capacity under the Mental Capacity Act 2005, the three-year period may never begin to run, or it can start at the date of recovery”.

3.5 Making an effective complaint

The need to make a complaint often arises in stressful or emotional circumstances. Seeking support (also see section 3.6 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 try not to make generalisations.
- When and where did it happen? Has it happened before?
- Who was involved on the staff side?
- Why were you unhappy?

³ 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).

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

- This might be an apology, explanation of why the incident happened, agreement to rectify the results of poor care, an explanation of what has been, or will be done, so it does not happen again.
- Keep your tone of voice or written correspondence polite and professional. Keep correspondence short and to the point.
- Send supporting documentary evidence and list it in your email or letter.
- Once you have made your complaint, keep a record of names, contact details and job titles of anyone you speak to, dates of conversations, what was said, decisions made and deadlines agreed.
- Keep all emails and correspondence and ask for written confirmation of verbal promises.

3.6 Support to help you raise concerns or make a complaint – including the role of Community Health Councils (CHCs)

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 like to contact your local **Community Health Council (CHC)**.

CHCs are a statutory and independent voice whose role is to represent the interests of the public in the health service in their area. They are “the independent NHS ‘watchdog’ in Wales concerned with all aspects of NHS care and treatment”⁴. Part of this 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.

⁴ ‘Independent Advocacy Service for NHS Complaints’, Community Health Council advocacy leaflet

Each CHC will run a **Complaints Advocacy Service**. Early involvement or intervention by staff of the Complaints Advocacy Service has the potential to resolve problems or concerns before they become a major issue. The service will be “free and independent” and offer “confidential support, advice and guidance for those wishing to make a complaint”. The “level of support will depend on each complainant’s individual needs”⁵.

If it doesn’t prove possible to resolve an issue at an early stage, the Complaints Advocacy Service should be able to support you through the formal complaints process – for example, helping to prepare for and go with you to meetings, as well as helping you explore your options at different stages.

Further information and links to the contact details for all of the CHCs in Wales can be found on the NHS 111 Wales website at:

<https://111.wales.nhs.uk/localservices/communityhealthcouncils>

If you are unsure which CHC covers your area, you could telephone NHS 111 Wales, who should be able to advise – see section 15.

Note: Other advice organisations

You may also be able to get support to pursue an NHS complaint from other advice organisations. For example:

- There may be a local Age Cymru in your area which runs an advocacy service.
- There is a healthcare charity, the Patients Association, which 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 Bureau (CAB) who could assist. CAB provide advice on a range of topics.

See section 15 for contact details for each of these organisations.

⁵ Ibid

3.7 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 to the other organisation.

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. It may not always be necessary to raise a formal complaint. The staff member you approach or member of the Community Health Council may be able to respond straight away or within days of an issue being drawn to their attention.

4.1 What to expect when you make a formal complaint

If you do make a formal complaint, the 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 their Community Health Council (see section 3.6 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.
- At the end of the process, be fully informed of the outcome of the investigation.

4.2 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 4.1 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 4.3 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 6 below for further information on the NHS Wales ‘Redress arrangements’.

4.3 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 the local Community Health Council 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.

4.4 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 6 below).
- An offer for you to discuss the results of the investigation with the executive director/officer (or their nominated representative).
- Details of your right to take your complaint to the Public Services Ombudsman for Wales if you remain dissatisfied – see section 5 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 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”⁶.

The Ombudsman is impartial and independent from the NHS. They cannot order public bodies to do what they recommend, but “in practice, they almost always do”⁷.

⁶ ‘NHS Complaints Factsheet’, Public Services Ombudsman for Wales website: www.ombudsman.wales/fact-sheets/health-nhs-complaints-general-information/ (last accessed 18 February 2022).

⁷ Ibid

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”.

To determine this, they will make 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”⁸.

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.

Their website explains that they “can look at the care the patient received and ask [their] own clinical advisers to consider whether the treatment provided 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

⁸ ‘Clinical Standards: The Public Services Ombudsman for Wales’s Standards in Clinical Care Cases’, Public Services Ombudsman for Wales website: www.ombudsman.wales/clinical-standards/ (last accessed 18 February 2022).

- “clinically unreasonable delays in providing 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 received 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”⁹.

Also see section 13 below for further information about private treatment.

⁹ ‘NHS Complaints Factsheet’, Public Services Ombudsman for Wales website: www.ombudsman.wales/fact-sheets/health-nhs-complaints-general-information/ (last accessed 18 February 2022).

6 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.

Putting Things Right 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**
- an offer of suitable treatment and/or rehabilitation to help relieve or resolve the health issue which has been caused; **and/or**
- financial compensation.

Putting Things Right goes on to clarify that:

Redress should be considered if, during an investigation, the complaints team considers that a ‘qualifying liability’ that would “attract financial compensation of £25,000 or less exists or may exist”.

A payment will **only** be made “if there is a proven qualifying liability...investigations will therefore be seeking 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...this must be made very clear to patients and their representatives as often people believe that there only needs to have been poor care for the test of negligence to be satisfied and for compensation to be owed”.

Notes:

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

This is a complex area and so you may wish to speak to Action against Medical Accidents – a charity committed to patient safety and justice (see section 15 below for their contact details).

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

What will happen if an injury may attract compensation of more than £25,000?

The Putting Things Right guidance advises that:

“The Redress arrangements should not be engaged [by the NHS] where it is considered at the investigation stage that the amount of financial compensation that would be awarded would exceed the limit set out in Regulation 29 [of the National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011], currently £25,000”¹⁰.

Therefore, “where it is clear from the outset that...damages if a qualifying liability were to be established would exceed £25,000 the Redress arrangements should not be triggered and the person who notified the concern should be advised to seek legal advice and be given the contact details for their local CHC [Community Health Council]”.

Again, you may also wish to speak to *Action against Medical Accidents*. In addition to general support, they are able to provide a list of solicitors with specialist experience in medical negligence claims.

¹⁰ The Putting Things Right guidance is based on the National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011

7 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.
- 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.aspx#entitled

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 that Act.

Further information on HIW can be found below in section 9.

8 NHS responsibilities to monitor and report on complaints handling

NHS organisations must keep a record of:

- Each complaint received; what the complaint was about, including the outcome; 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 a section on the following:

- How many complaints they received.
- How many they decided were well founded.
- How many complaints were referred to the Public Services Ombudsman for Wales.
- A summary of the subject matter of complaints and matters of importance arising from them or the way they were handled.
- Any action taken (or to be taken) to improve services as a consequence of their investigations.
- Identification of trends over the year – e.g. problems in particular departments or with certain treatments, including localities.

9 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.

If they receive “a number of similar concerns about a health service, this might trigger an unannounced inspection visit. The information may also [lead them to undertake] a special review...where there may be systemic failures in delivering health services”¹¹.

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.

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

10.1 Older People’s Commissioner for Wales

The role of the Older People’s Commissioner for Wales is to ensure that the interests of older people in Wales, aged 60 or over, are safeguarded and promoted.

¹¹ Concerns and Complaints about Health Services in Wales, Healthcare Inspectorate Wales, November 2019

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.

10.2 **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 will probably be more appropriate to contact your MSs. 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

11 **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.

12 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/

13 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 12 above.

Also see section 9 above in regard to the health regulator, the Healthcare Inspectorate Wales, which also covers private healthcare providers.

14 **The Health and Social Care (Quality and Engagement) (Wales) Act 2020 – future changes to ‘Putting Things Right’ and other elements related to NHS concerns or complaints**

The *Health and Social Care (Quality and Engagement) (Wales) Act 2020* became law on 1 June 2020.

However, it has yet to be implemented. At the time of writing – February 2022 – **the Welsh Government expects this to happen in April 2023.**

Of relevance to the subject matter of this factsheet, the Act will:

- “strengthen the existing duty of quality on NHS bodies and extend this to the Welsh Ministers in relation to their health service functions” (“the details of how the duty will work in practice will be contained in statutory guidance, which will be developed in partnership with stakeholders”);
- “establish an organisational duty of candour on providers of NHS services, requiring them to be open and honest with patients and service users when things go wrong” (the duty “seeks to promote a culture of openness” and improvement in care within the health service “by encouraging organisational learning”, thus “avoiding future incidents”)¹²;

¹² ‘The Health and Social Care (Quality and Engagement) (Wales) Act: summary’, Welsh Government website: www.gov.wales/health-and-social-care-quality-and-engagement-wales-act-summary-html (last accessed 17 February 2022).

- “make adjustments to existing Putting Things Right (NHS complaints) Regulations and guidance, to align these with and support the new duty of candour”¹³;
- “place a similar duty of candour on independent healthcare providers, using existing powers under the Care Standards Act 2000”¹⁴. “This will align the NHS and regulated independent healthcare, whilst complementing the duty placed on providers of regulated services (under the Regulation and Inspection of Social Care (Wales) Act 2016), to create a whole system approach to candour”; *and*
- “strengthen the voice of citizens, by replacing Community Health Councils with a new all-Wales Citizen Voice Body”. A significant change will be that, whilst the current Community Health Councils (CHCs) represent the voice of the public in NHS services only, the new Citizen Voice Body “**will exercise functions across health and social care**”¹⁵.

Note: Further information on the *Health and Social Care (Quality and Engagement) (Wales) Act 2020* can be found on the Welsh Government’s website at:

www.gov.wales/health-and-social-care-quality-and-engagement-wales-act-summary-html

¹³ ‘Written Statement: The Health and Social Care (Quality and Engagement) (Wales) Act 2020 – Update on implementation’, 24 March 2021, Welsh Government website: <https://gov.wales/written-statement-health-and-social-care-quality-and-engagement-wales-act-2020-update> (last accessed 16 February 2022).

¹⁴ Ibid

¹⁵ ‘The Health and Social Care (Quality and Engagement) (Wales) Act: summary’, Welsh Government website: www.gov.wales/health-and-social-care-quality-and-engagement-wales-act-summary-html (last accessed 17 February 2022).

15 Useful organisations

Action against Medical Accidents (AvMA)

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

Helpline: 0845 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 Bureaus (CABs)

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

Community Health Councils (CHCs)

CHCs are a statutory and independent voice in health services in Wales. They work to enhance and improve the quality of local health services. For information on the CHC covering your area, see the NHS 111 Wales website at:

<https://111.wales.nhs.uk/localservices/communityhealthcouncils>

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. You can find out if a professional is registered by searching the register on their website.

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

E-mail: goc@optical.org

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

Mind

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

Mind Infoline: 0300 123 3393

Mind Cymru: 029 2039 5123

E-mail: info@mind.org.uk

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. NHS 111 Wales has contact details for Complaints Advocacy Services run by the Community Health Councils in Wales, 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 640670

E-mail: ask@olderpeoplewales.com

Website: www.olderpeoplewales.com

Patients Association (The)

A healthcare charity that supports the rights of patients.

Tel: 0800 345 7115

Website: www.patients-association.com

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 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

Age Cymru is the national charity for older people in Wales.

We campaign, we research and we fundraise to make sure we build a better life for all older people. We ensure older people's voices are heard, we challenge and change attitudes and we fight discrimination wherever we find it. We provide a range of national and local services and programmes directly to older people in the community and we ensure the highest standards so you can be assured of consistency and quality wherever you see the Age Cymru name and logo.

Our family includes local Age Cymru partners and national partners, Age NI, Age Scotland and Age UK.

Our information materials

Age Cymru and Age UK publish a large number of free information guides and factsheets on a range of subjects, including money and benefits, health, social care and housing. Some resources, such as this factsheet, are produced 'in-house' by Age Cymru, whilst others are branded Age UK and – depending on the subject matter – contain either information which is applicable in England and Wales, or for the whole of the UK.

Contact details

Age Cymru Advice

Tel: 0300 303 44 98 (9am to 4pm, Monday – Friday)¹⁶

¹⁶ 0300 numbers are reserved exclusively for charities and not-for-profits. Calls made to an 0300 number are charged the same as a call to a standard 01 or 02 number. They are also automatically included in any landline or mobile inclusive minutes package.

E-mail: advice@agecymru.org.uk

Website: www.agecymru.org.uk/advice



www.facebook.com/agecymru



www.twitter.com/agecymru



www.youtube.com/agecymru

Contact us if you would like:

- To order copies of any factsheets or information guides.
- Further advice if you cannot find the information you need in this factsheet.
- Details of your nearest local Age Cymru organisation.

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