

# NHS Complaints procedure – FAQs

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## **Who can complain?**

A complaint can be made by a patient, or anyone else who has been affected by the action, omission or decision of the practice that led to the complaint.

There is concern that in opening up the complaints system to individuals with indirect involvement there is potential for abuse of the system. While it is important that the complaints procedure does not prejudice those with legitimate grievances, it should also protect GPs from the possibility of malicious accusations.

Practices should inform their LMC (local medical committee) if they encounter any apparent misuse of the complaints system.

In some cases a complaint may be made by a third party acting on behalf of someone else. For example, when:

- the individual has died
- the individual is a child
- the individual is physically or mentally incapable of making a complaint
- the individual asks a third party to make a complaint on their behalf.

When a complaint is made by a third party on behalf of a child or individual lacking mental capacity, the practice must be satisfied that:

- there are reasonable grounds for this method of representation
- the third party is genuinely acting in the best interests of the individual.

If the practice is not satisfied that this is the case, they must inform the representative in writing, stating the reasons for this decision.



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## What happens with complaints made by or on behalf of a child?

When a complaint is made on behalf of a child, the practice must be satisfied that:

- there are reasonable grounds for the complaint being made by this individual rather than the child
- the complaint is being made in the best interests of the child.

If the practice is not satisfied that this is the case, written notification of this decision must be sent to the representative.

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## What happens when a complaint is made directly to NHS England?

If a complaint is made directly to a practice then NHS England need not be involved; however, a complaint about a practice may be made directly to NHS England. If this is the case, NHS England will seek permission from the complainant to share the details of the complaint with the practice. It will be made clear to the complainant that if they do not agree to this the matter cannot be pursued.

NHS England may decide that it is appropriate that they handle the complaint; however, it is clearly the intention set out in the guidance that complaints should be managed as near to the complainant as possible and NHS England should seek to achieve this by passing the complaint to the practice.

In this case, the complainant must consent to having the complaint passed on to the practice and the complaint will then be deemed to have been made to the practice rather than NHS England.

Practices are advised to contact their LMC if they feel they are being treated unfairly or inappropriately and LMCs should inform the BMA GPC (general practitioners committee) if they have concerns that this matter is being addressed inadequately or inappropriately by NHS England.

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## What happens when the complaint involves a locum GP?

In order to account for complaints involving locum GPs, practices must seek an agreement from locums that they will participate in the complaints procedure if required to do so.

As complaints can be made to the practice up to a year after the reason for the complaint, it is possible that complaints will arise after the locum GP has moved on.

Practices should ensure that locums involved in the complaints process are given every opportunity to respond to complaints and it is important that there is no discrepancy between the way the process treats locums, salaried GPs or GP partners.

This does not apply to out-of-hours organisations.

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## Does the complaints procedure have disciplinary or legal repercussions?

The complaints process is entirely separate from disciplinary procedures. A complaint does not necessarily mean that disciplinary action will be pursued and there is nothing in the regulations that states a requirement to do so.

However, it is possible for the complaints procedure to run simultaneously with a disciplinary or legal procedure where such procedures will not be compromised by the complaints process.

The current complaints procedure asserts that, where possible, a response should be issued; however, the disciplinary or legal case must not be jeopardised by the response. In such cases, practices will wish to seek advice from their legal and medical defence organisation advisers before proceeding.

Practices should be prepared for the possibility of facing disciplinary, complaints and legal proceedings concurrently. LMCs should clarify with NHS England how they intend to ensure that their handling of performance investigation and complaints procedures are separated appropriately and should report concerns to the BMA GPC (general practitioners committee); similarly, practices should contact their LMC for advice if they feel the actions of NHS England are unfair or inappropriate.

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## What is the definition of a complaint?

A complaint that is made in writing to the practice should be dealt with by following the current complaints procedure regulations.

A complaint that is made orally and that is dealt with to the complainant's satisfaction by the end of the next working day is not considered to be an official 'complaint' and the complaints procedure regulations need not be applied.

Complaints made to NHS England will be dealt with only through the complaints procedure if the complainant agrees to share the details of the complaint with the practice.

A complaint must be made within 12 months of the date of the event that is the subject of the complaint or the date that the matter came to the complainant's attention. However, discretion can be used if the complainant is considered to have good reason for a delay in complaining and if it is still possible to investigate the complaint fairly and effectively.

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## What do we have to do immediately?

Practices must appoint, or reappoint, a complaints manager. They must also appoint a 'responsible person' who must be, in the case of a partnership, a partner. For a sole contractor, the responsible person must be that contractor, and for a company or other organisation, it should be a director of the organisation. This is a minor change from the previous system where the equivalent position could be held by a manager in the practice.

It is acceptable to appoint the same person to both roles.

An official complaint must be acknowledged by letter or telephone (keeping a record of the call) within three working days of its receipt, stating that the complaint will be investigated.