



## The MDU's guide to the combined NHS and social care complaints procedure

### Stage two - Parliamentary and Health Service Ombudsman

Please note that this guidance applies to England. There are some differences in the way the NHS complaints procedure operates elsewhere in the UK - separate guides are available.

#### Second stage - Parliamentary and Health Service Ombudsman

Complainants who are not satisfied with the initial response to their complaint can refer it for investigation by the Parliamentary and Health Service Ombudsman. The Ombudsman can also consider complaints brought by the subject of the complaint and grievances about the administration of the complaints procedure itself.

The complaint must be referred to the Ombudsman within 12 months of the final correspondence at completion of local resolution. This will usually be 12 months from receipt of the final response letter relating to the original complaint.

#### Screening process

The Ombudsman has discretion as to whether or not to investigate a complaint and considers each case on its merits. The Ombudsman's office will not consider a complaint about a decision simply because the complainant disagrees with the outcome, but will require evidence that the decision was taken wrongly. In particular, statutory provisions require the Ombudsman to consider complaints only when injustice or hardship arises from failure in a service, or failure to provide a service, or maladministration.

In November 2008 the Ombudsman published a booklet *Principles of Good Complaint Handling* and the principles outlined in that booklet (see Medico-legal guide 1.1) offer a framework of good complaint handling that sets out the approach that the office will take when considering standards of complaint handling by public bodies, which include NHS bodies and organisations providing NHS services. The same principles will also apply to any complaints made about the service the Ombudsman provides.

In deciding whether to dismiss or investigate a complaint, the Ombudsman has access to all the paperwork generated by local resolution and has powers to compel disclosure of documents and the attendance of witnesses, if necessary. The Ombudsman's office may also obtain independent professional advice as required, and is assisted by specialist assessors for all matters involving clinical judgement.

If it decides not to investigate a complaint, the Ombudsman's office will write to the complainant setting out the reasons for the decision.

#### Investigation

If an investigation goes ahead, the practical aspects are usually undertaken by the Ombudsman's representative, who will interview all those involved. While a professional 'friend' may accompany a doctor to the interview, a detailed discussion with one of the MDU's medico-legal advisers in advance of the meeting is usually the most appropriate and useful form of assistance.

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A confidential draft report is prepared for the complainant and doctor to check for accuracy. The parties may need to obtain professional advice at this stage and doctors may seek the MDU's assistance in preparing any statement to correct errors of fact. A doctor may not challenge the conclusions that the Ombudsman draws from the agreed facts of the case, though representations can sometimes be made in relation to the conclusions and recommendations.

The Ombudsman's final report is sent to all interested parties. It is also sent to the chief executive of the responsible body for action on any recommendations made. A copy is also sent to the Secretary of State and published, in anonymised form, on the Ombudsman's website.

### Recommendations

The Ombudsman addresses questions of fault where appropriate and may make recommendations about changes to an individual's or organisation's work so that lessons are learnt.

Although compliance with recommendations cannot be enforced, in practice doctors usually adopt recommendations that have been made.

For individual medico-legal advice:

**24-hour advisory helpline 0800 716 646**

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