

# How we look into complaints

## Deciding whether to investigate

We make final decisions about complaints that have not been resolved by the NHS in England, UK government departments and some other UK public organisations.

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We have a **three-step process** for dealing with complaints. An investigation is the final step in our process, but not all the complaints that come to us go through to this step.

Our website includes lots of examples of complaints we've investigated, if you would like to find out more about what we can do.



This guide is about **step two** in our process - how we decide whether to investigate your complaint. If you have any questions about what we do, please get in touch.

We also have guides to steps one and three of our process on our website.

Go to [www.ombudsman.org.uk](http://www.ombudsman.org.uk) or call us on 0345 015 4033.

# What to expect: a quick guide to step two

After our initial checks on your complaint, we take a closer look at it to decide if we should carry out an investigation.

This guide explains the different reasons why we can't always investigate the complaints that come to us. If we decide not to investigate your complaint, we will make sure we clearly explain why.

The caseworker handling your complaint will contact you to introduce themselves.

We will read all the information we have about your complaint. We make sure we understand in detail what has happened so far, what you remain unhappy about, how this has affected you (or other people), and what you want to happen as a result of complaining to us.

We will discuss your complaint in detail and will explain more about our role and the types of issues we can look at during an investigation. We do this to make sure you have a clear idea about what to expect from us.

We will also let you know if we need any more information from you (for example, any other documents you may have from when you complained to the organisation), and whether we need to speak to the organisation to get more details.

Occasionally, we may need to get some expert advice (for example, from a medical professional who has had nothing to do with your complaint), or carry out some research, to make sure we have a detailed understanding of the issues. If we need to do this, we will let you know what we are doing and how long that will take.

Our job is to look at all of the facts and to be unbiased and fair to both you and the organisation.

When we have a full understanding of your complaint, we will then look carefully at five key questions.

## We look at:

- 1 Who brought the complaint - whether you have suffered personally or been affected in some other way because of what happened, or whether you are making the complaint for someone else.
- 2 Timings - when you first became aware of the problem.
- 3 Whether legal action is open to you.
- 4 Whether there is another organisation that is better placed to deal with your complaint.
- 5 What led you to complain: what did the organisation do wrong, what happened because of this, and what has been done to respond to your concerns.

By the end of step two, you will know:

- if we can resolve your complaint without the need for a formal investigation,
- whether or not we are going to investigate your complaint, and how we reached this decision,
- what will happen next if we are going to investigate your complaint,
- what other options you might have if we are not investigating your complaint.

## How long will this take?

We will usually complete step two, and give you our decision about whether we will investigate your complaint, within **20 working days** of receiving it through our website, or by email or letter.

The rest of this guide has more details about how we decide whether to investigate a complaint.

# Step two in detail

## 1 We look at who brought the complaint to us

We have to make sure the right person is making the complaint. By law, the person who has been affected should make the complaint to us unless this is not possible. You can make a complaint for someone if they cannot do so themselves, for example, if they are a young child or do not have the ability to make a complaint. You can also make a complaint for someone who has died.

If it's your complaint, you may want to ask somebody else, like an advocate or representative, to support you. This is absolutely fine but we will need to check to make sure you are happy for them to make your complaint for you.

If you are making a complaint for somebody else, we will discuss this with you to make sure they have given you permission to do this.

## 2 We look at when the problem happened

There are time limits for making your complaint to us. The law says you need to make your complaint within a year of becoming aware of the problem.



If your complaint is **not about the NHS** and is about a UK government department or another UK public organisation, you need to make your complaint to an MP within a year. This is because by law, these complaints need to come to us through an MP.

Normally, if we receive a complaint outside these time limits, we cannot investigate it. However, the law does give some flexibility on this and in some circumstances we may still be able to investigate.

If you were not able to complain to us in time, we will talk to you about what happened, so we can understand why you did not complain sooner. We will look at how much time has passed, and whether that means it is still possible for us to carry out an investigation.

We will discuss this with you to make sure we take everything into account. If we think that we cannot investigate because of these time limits, we will clearly explain our decision and how we reached it.





### 3 We look at whether legal action is open to you

We need to look at whether you could get an answer to your complaint by taking legal action - like going to court or a tribunal about the problem. The law says we cannot investigate a complaint if you have (or had) the option to do this. However, the law also says we can be flexible, and so we will look at what the right option should be to get an answer to your complaint.

There are also some things that can only be done by taking legal action, like appealing a cut to benefits.

If we can see that there is (or was) a possible legal route to answer your complaint, we will talk to you about that. We will make sure we understand your concerns and what you want to happen as a result of your complaint. We will also take into account factors such as how much it might cost you to take legal action, and how long it might take.

If it looks to us like legal action would answer your concerns, or be able to give you the outcomes you are looking for, we may decide this is a better option for you.

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### 4 We look at whether there is another organisation that is better placed to deal with your complaint

Some complaints can be looked at by us, and also by other organisations. This includes organisations like the General Medical Council, General Dental Council, the Care Quality Commission and the Independent Office for Police Conduct.

If we see that another organisation could also look at your complaint, we consider whether that organisation is better suited to giving you an answer to your complaint and whether it can provide the outcomes you are looking for. We do this to make sure that we can offer you the best possible route to resolving your complaint.

If we think this might apply to your complaint, we will talk to you about that. We will clearly explain what the other organisation does, how it works, and how we think it may be able to offer you a more appropriate route to get an answer to your complaint.

We will also speak to the other organisation to get its views on whether it's better placed to look at your concerns.

Following our discussion with you and the other organisation, if we think it is better placed to look at your complaint, we will help you make your complaint to it.

## 5 We look at what led you to complain.

There are three questions we look at here. Before we propose to investigate your complaint, we have to be able to **answer 'yes'** to each of these:

### Does it look to us like the organisation may have made mistakes or given a poor service?

We are not carrying out an investigation at this stage, so we only need to see some indication that there is something for us to look into.

If we cannot see any indication that the organisation made mistakes, acted unfairly or gave a poor service, we would not investigate and we will clearly explain why and how we reached that conclusion.

If it looks like the organisation may have made mistakes, acted unfairly, or given a poor service, we then look at what effect this has had.

### Yes

### Does it look to us like the mistakes or poor service have caused suffering or affected you or somebody else in some other way?

When we talk to you about your complaint, we will make sure we understand what happened and how you (or the person you are complaining for) have suffered or been affected.

If we can't see signs that you, or the people involved, have suffered or been affected in some other way, we would not investigate and we will clearly explain why and how we have reached that conclusion.

If we can see signs that you, or the people involved, have suffered or been affected in some other way, we then look at what the organisation has done already to respond to your complaint.

### Yes

### Does it look to us like potentially there is more that needs to be done to address the issues?

We look at what the organisation has done already to respond to your complaint, what action it took (if any), and whether this has already put things right.

We will talk to you about this, to get your view about what the organisation has done to resolve your complaint and why you remain unhappy.

If we can see that what happened has had an impact, which the organisation has not yet fully addressed, then it's likely we will have good reason to investigate.

If we think that the organisation has already put matters right and has responded appropriately to the issues, we would not investigate and we will clearly explain why and how we reached that conclusion.

Sometimes when we are looking at what's happened, we might see that your complaint has actually not yet been all the way through the organisation's complaints process, or that there is clearly more that the organisation could do to respond to your complaint.

If this is the case, we will talk to both you and the organisation to see what more can be done. If necessary, we won't propose to investigate until the organisation takes more action itself.

If you are not happy after that, you should come back to us and we will look again at the issues.

# What happens next?

We'll do a last check on your complaint before we decide whether or not to propose to investigate. This includes these important practical questions:

## **Can we resolve your complaint now without the need to investigate?**

We always check to see if there is a quicker way to get an answer to your complaint. If we think this is possible, we will speak to you and the organisation about a possible solution.

## **Are we sure that our proposed investigation will meet your expectations?**

We will always make sure that we discuss with you what we can and cannot do in our investigation, and whether this will meet your expectations of what you would like to see at the end.

## **Are there other issues that mean we cannot carry out an investigation at this time?**

We look at whether we could get enough information to help us come to a firm conclusion. For example, if a lot of time has passed, records might have been destroyed.

We also look at whether other investigations or hearings are happening that may affect our investigation. For example, if there is a coroner's inquest or if another organisation is looking at something that is linked to your complaint, then we may decide to wait and see if this deals with your concerns.

We will discuss these possible issues with you, so you can see what we are thinking.

## Our decision



### If we propose to investigate your complaint

We will let you know and the organisation too, so it has the opportunity to comment on the issues you have raised. Following your and the organisation's comments on our proposal, we will decide whether to confirm our investigation. We will also let you know if there is any part of your complaint that we have decided we will not look at during our investigation. If there is anyone specifically named in your complaint, we will make sure they are aware of our investigation as well.



### If we do not propose to investigate your complaint

We will explain why and what information we used to reach that decision.

We will contact you to go through our decision in the way you have asked us to, and we will send you our decision in writing too.

We will also let you know how you can give us feedback about our service. This includes how you can ask for a review of our decision if you think we have got something wrong - for example, if you think we missed some important information when we were making our decision.