



Rights and complaints procedures for **health** and **care** services

A guide for the **voluntary sector** working in the **criminal justice system**



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Introduction	3
Rights and complaints at a glance	4
The NHS constitution	5
The Care Act	7
Complaints advocacy services	9
Local Healthwatch	10
NHS services complaints procedure	11
Regulatory bodies	13
Care Quality Commission	13
NHS Improvement	15

Introduction

This resource provides guidance on what to do if your service user has not received the standard of healthcare to which they are entitled. It is designed for voluntary organisations working with people in the criminal justice system.

It provides an overview of the rights to which everyone is entitled (the NHS Constitution and the Care Act), regardless of whether they are in prison or in the community. These rights cover a broad range of services including primary care (such as GPs and dentists), secondary care (such as mental health services), substance misuse services, and social care.

Understanding and pursuing a complaint can be a complex process. In this guide, we set out the procedure for pursuing an NHS complaint, as well as the free and independent support that is available to individuals wishing to follow this course of action (see [complaints advocacy services](#) **9**).

The guide includes brief details of the regulatory bodies and other organisations




to which service users, or their advocates, can report their concerns.

For information about the health landscape for those working in criminal justice, see [Navigating the health landscape](#) .



Rights and complaints at a glance

+ Click any coloured box to find out more

<p>Patient rights</p> 	
<p>Making a complaint</p> 	
<p>National regulation</p> 	
<p>Local monitoring</p> 	

The NHS constitution



What is the NHS constitution?

The [NHS constitution](#) sets out the principles and values of the NHS, along with 29 separate patient rights. The NHS constitution has not created or replaced any legal rights for patients, but brings together in one place existing legislation on patients' rights.

Below we have highlighted those most relevant to voluntary sector organisations supporting offenders:

- + The right to access NHS services, and not be refused access on unreasonable grounds
- + The right to receive care and treatment that is appropriate to you, meets your needs and reflects your preferences
- + The right to expect the NHS to assess the health requirements of your community and to commission services to meet those needs as considered necessary (including prisons)
- + The right to be treated with a professional standard of care
- + The right to drugs and treatments that have been recommended by National Institute for Health and Clinical Excellence (NICE) for use in the NHS, if your doctor says that they are clinically appropriate for you
- + The right to be treated with dignity and respect, in accordance with your human rights
- + The right of access to your own health records and to have any factual inaccuracies corrected
- + The right to choose your GP practice, and to be accepted by that practice unless there are reasonable grounds to refuse, in which case you will be informed of those reasons
- + The right to be involved in discussion and decisions about your healthcare
- + The right to have any complaint made about the NHS service acknowledged within three working days and to have it properly investigated
- + The right to take a complaint to the independent Parliamentary and Health Service Ombudsman or Local Government Ombudsman if unsatisfied with the way the complaint has been dealt with by the NHS
- + The right to compensation where you have been harmed by negligent treatment.

Who is it for?

The rights set out in the NHS constitution apply to everyone who is entitled to NHS services. These responsibilities apply to all providers of NHS services, including:

- + All NHS bodies
- + NHS services delivered by both the private and voluntary sector
- + Local authority public health services, which includes drug and alcohol services.

The rights set out in the constitution apply to both people in prison and in the community. There are further rules and considerations for children, people who lack mental capacity and patients detained under mental health legislation.

How to challenge if rights under the constitution have been breached

There are a number of ways to proceed if a person feels that their rights have been breached under the NHS constitution. They may:

- + Pursue the complaint themselves – see [NHS complaints procedure](#) **11**
- + Choose to pursue a complaint with support from a free [complaints advocacy service](#) **9**
- + Lodge their concerns with the [local Healthwatch organisation](#) **10**, with or without formally pursuing the complaint through the NHS complaints procedure
- + Notify the relevant [regulatory body](#) **13** (which will be the [Care Quality Commission \(CQC\)](#) **13** in most cases) of concerns, with or without formally pursuing the complaint through the NHS complaints procedure.

In serious cases of misconduct by a doctor you can also complain to the [General Medical Council](#) **13**, which has the power to remove a doctor from the register.

In cases of negligent treatment, patients can pursue compensation through legal action. This can be a complex and costly process. Further information and advice is available from the [Citizens Advice Bureau](#) **13**.

Useful resources

Rethink provides a useful factsheet, [NHS treatment: your rights](#) **13**.

The [Handbook to the NHS constitution](#) **13** sets out further information on each of the 29 rights in the constitution.

The Care Act



What is the Care Act?

The Care Act (2014) sets out how people's care and support needs should be met, how care should be funded, the responsibilities of local authorities and the rights of those in need of social care. The Act covers support for people with learning disabilities and mental health needs as well as physical and sensory care needs. Section 76 of the Act explicitly applies it to people in prison. The Act includes:

- + The right to an assessment for anyone who appears to need care and support
- + The right for carers to have their own needs assessed and met
- + The right for a person, and their carer or someone else they nominate, to be involved in the assessment of their care needs and in developing their care plan.

A key principle of the Act is that individuals should be empowered to take part in every decision about their care.

The wellbeing principle

The Care Act introduced a general duty on local authorities to promote an individual's 'wellbeing'. This means that they should always have a person's wellbeing in mind when making decisions about them or planning services.

Wellbeing can relate to:

- + Personal dignity including respect
- + Physical and mental health and emotional wellbeing
- + Protection from abuse and neglect
- + Control by the individual over their day-to-day life (including over care and support and the way it is provided)
- + Participation in work, education, training or recreation
- + Social and economic wellbeing
- + Domestic, family and personal relationships
- + Suitability of living accommodation.

Who is it for?

The rights set out in the Care Act apply to everyone who is eligible for care and support. This includes people in the community and those in prison or Approved Premises, with three limitations:

- + People in prison cannot be deemed as 'carers' under the terms of the Act (even when they are providing care support to another prisoner, for example under a prison buddy scheme), and so are not eligible for a carers assessment
- + People in prison cannot receive direct payments for their care support
- + People in prison do not have the right to a choice of living accommodation.

The local authority in which a prison or Approved Premises is located is responsible for assessing and meeting the care needs of any person residing there (regardless of where that person is from). When a person moves to a different prison, or is released, this responsibility transfers to the new local authority.

The Care Act applies primarily to adults in need of care and support, adult carers, and young people transitioning to adult social care. For children or young people with care and support needs, and young carers, the Children and Families Act (2014) applies.

How to challenge

If an individual feels that their rights under the Care Act have not been met, they may:

- + Complain to the social care provider (if they are already receiving care support).
- + Complain to the social services department of the local authority. Each social services department will have its own complaints procedure to follow. You can find [details of your local authority here](#).
- + If they are not happy with the outcome of a complaint, they may be able to take it to the Local Government Ombudsman. Further details and guidance on how to complain is available on the [Ombudsman website](#). They will usually only respond

to a complaint if you have taken it to the relevant local authority first.

- + Lodge their concerns with the [local Healthwatch organisation](#) [10](#), with or without making a formal complaint as above.
- + Notify the relevant [regulatory body](#) [13](#) – which will be the [Care Quality Commission \(CQC\)](#) [13](#) in most cases – of concerns, with or without making a formal complaint.

Useful resources

RECOOP has produced a set of [easy read leaflets about the Care Act for people in prison](#) [↗](#) (free registration required).

Carers UK have a helpful section for carers on their website, [Care Act FAQ](#) [↗](#).

Complaints advocacy services



What are complaints advocacy services?

Local authorities have a duty to commission independent advocacy services to provide free advice and support to people considering or making an NHS complaint. This includes providing an advocate to support someone making a complaint at any stage of the process. These are known as complaints advocacy services and are provided by a number of organisations across local areas, including Healthwatch.

Who are they for?

People in prison share the same right to access support from these services as people in the community although there may be issues around physical access in the prison setting.

Useful resources

Many local complaints advocacy service websites include information on the complaints procedure, including easy read leaflets. Voiceability, which is a provider of complaints advocacy services, has

a useful [map](#) on their website which allows you to find your local service.

If less formal support is required, Patient Advice and Liaison Service (PALS) provide further guidance on the NHS complaints procedure and liaison. The NHS Choices website provides contact details for [your local PALS](#).

The Care Quality Commission (CQC) has produced [guidance](#) on complaining about a health or social care service.

Further information on [complaining about NHS services](#) is available on the NHS Choices website.

Further information on the [complaints procedure in prisons](#) has been compiled by the Prison Advice Service. The Prison Reform Trust provides advice through their telephone line on the complaints procedure as it applies in prisons. Telephone 0808 802 0060. Lines are open Mondays, Tuesdays and Thursdays 3.30-5.30pm.

Local

Healthwatch



Contents page

Rights and complaints at a glance

What is local Healthwatch?

The 152 local Healthwatch organisations are the patient champions for health and social care services. They are responsible for ensuring that the views and experiences of local service users are taken into account, and alert the national body, Healthwatch England, of concerns about specific providers. They have the power to enter local healthcare providers to hold them to account.

Local Healthwatch have a responsibility to provide local service users with information about what choices are available to them, and to signpost them to support when they are dissatisfied with the standard of care that they have received.

In some areas, the local authority may have commissioned local Healthwatch to provide the complaints advocacy service. In others, this may be provided by a separate organisation.

Useful resources

The Healthwatch England website provides contact details for all [local Healthwatch organisations](#).

NHS services

complaints

procedure



Making a complaint about an NHS service

There is a two stage process for making a complaint about the standard of care received from an NHS service. With the exception of negligence or malpractice, this is the complaints procedure to follow if your client feels that their legal rights, summarised in the [NHS constitution 5](#), have been breached.

This same procedure applies for all NHS commissioned services, regardless of provider (including NHS, private and voluntary sector organisations). See [complaints advocacy services 9](#) for free independent support that is available throughout this process.

If an individual is unable to complain themselves they can nominate someone to act on their behalf with written consent. Young people are encouraged to complain independently, unless specific reasons prevent this.

All NHS organisations must have a procedure for dealing with patients' complaints. The

NHS constitution sets out a patient's rights in relation to how their complaint should be processed, and the timescales for responses.

First stage (local resolution)


The first stage of the process for anyone wishing to make a complaint is to contact the service itself. Complaints should be made as soon as possible, and no later than 12 months after the care was received, or the need to complain becomes apparent.

If you do not feel comfortable speaking to the service itself, you can contact the commissioner of the service:

- + For GPs, dentists and other primary healthcare services this is the NHS England Local Area Team
- + For hospital services, mental healthcare and other secondary healthcare services this is the Clinical Commissioning Group
- + For substance misuse services in the community this is the Local Authority Public Health team

- + For all healthcare services in prisons, healthcare complaints should be sent to:
NHS England, PO Box 16738, Redditch
B97 9PT. Tel. 0300 3112 233.

Second stage (Parliamentary and Health Services Ombudsman)

If you are not happy with the response that you have received from the service or commissioner, you can take your complaint to the Parliamentary and Health Service Ombudsman. Further details and guidance on [how to complain](#)  is available on the Parliamentary and Health Service Ombudsman website.

You can also contact the Parliamentary and Health Service Ombudsman: The Parliamentary and Health Service Ombudsman, Millbank Tower, Millbank, London SW1P 4QP
Tel. 0345 015 4033.

Regulatory bodies




Healthcare regulatory bodies in England are responsible for maintaining the quality and safety of care provided (the Care Quality Commission) and for regulating the healthcare market (Monitor).

They have statutory powers to register service providers and monitor their performance. The Care Quality Commission also has responsibility for handling complaints about use of the Mental Health Act. See [NHS services complaints procedure 11](#) for all other health complaints.

Care Quality Commission

Key responsibilities

The [Care Quality Commission \(CQC\)](#)  makes sure that health and social care services in England provide people with safe, effective, compassionate and high-quality care.

It does this by:

- + Registering care service providers
- + Monitoring, inspecting and regulating services to ensure they meet fundamental standards of care
- + Taking appropriate action if services are failing to meet these standards
- + Working with local groups, including local Healthwatch, to understand people's experiences of care
- + Listening to and acting on people's experiences of care.

Coverage of services

In the community:

- + Hospitals
- + GPs
- + Dentists
- + Ambulances
- + Community mental health services, including people subject to care under the Mental Health Act. This also includes child and adolescent mental health services (CAMHS), assertive outreach and crisis resolution and home treatment teams.
- + Community learning disability services
- + Substance misuse services in the community, including services provided by Criminal Justice Intervention Teams (CJIT)
- + Care services (including care homes for adults and nursing and domestic services).

In custody:

- + Prisons
- + Young Offender Institutions
- + Secure Training Centres

- + Immigration Removal Centres
- + Some services in police custody.

The CQC website has more details on the [health services it inspects in prisons](#) and other places of detention.

Sharing your experiences

To do their job well, it is important to CQC to hear about people's experiences of care. It helps it decide when, where and what to inspect.

By giving it this information, you'll help to improve the overall quality of care for people in contact with the criminal justice system in England. You could also help prevent poor care and abuse happening to others in the future.

CQC is especially keen to hear from groups who experience barriers to accessing care, or those whose voices are seldom heard, including people in contact with the criminal justice system and their families.

You can share your experience of care via [their website](#) or use the contact details below.

Responsibilities for individual complaints about care or treatment

If you've experienced or seen poor care, you have a right to feed back or complain to the organisation that provided or paid for the care. The CQC cannot make these complaints for you or take them up on your behalf, because it doesn't have the powers to investigate or resolve them.

The only exception to this is for people whose rights are restricted under the Mental Health Act. More information on [complaining about the use of the Mental Health Act](#) is available on the CQC website.

If you do give feedback or make a complaint to an organisation that provided or paid for care, CQC would like to know. This information helps it build a picture of how well a particular service cares for all the people who use it.

Contact CQC

By phone

03000 616161

(8.30am – 5pm, Monday to Friday)

By post

CQC National Customer Service Centre

Citygate

Gallowgate

Newcastle-upon-Tyne

NE1 4PA

By email

enquiries@cqc.org.uk

NHS Improvement

Key responsibilities

[NHS Improvement](#) is responsible for overseeing NHS trusts, foundation trusts and independent providers of NHS-funded care. It offers support to help local healthcare systems improve, as well as holding providers to account and, where necessary, intervening.

NHS Improvement works closely with the Care Quality Commission, NHS England and other partners to achieve consistent regulation. It uses a Single Oversight Framework to assess NHS providers and identify potential support needs across five themes:

- + Quality of care
- + Finance and use of resources
- + Operational performance
- + Strategic change
- + Leadership and improvement capability.

Coverage of services

NHS trusts and foundation trusts, and NHS-funded care in both community and custodial settings are subject to regulation by NHS Improvement.

Responsibilities for individual complaints about care or treatment

NHS Improvement's duties do not include a role in the NHS complaints process, and it is unable to deal with individual complaints about services provided by NHS foundation trusts or any other healthcare service providers.

Get in touch

We hope you found this publication useful and would welcome comments on this publication, Clinks' work on health and justice more generally, or any concerns you have about health and care provision for people in the criminal justice system.

Please contact Hazel Alcraft at Clinks:
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For further information on health and care and the criminal justice system, please go to www.clinks.org/health .

You may also be interested in our publication [Navigating the health landscape in England: a guide for the voluntary sector working with offenders](#) .



supporting voluntary organisations that
work with offenders and their families

Our vision

Clinks' vision is of a vibrant and independent voluntary sector working with informed and engaged communities to enable the rehabilitation of offenders for the benefit of society.

Our mission

Clinks supports, represents and campaigns for the voluntary sector working with offenders. Clinks aims to ensure the sector and all those with whom they work, are informed and engaged in order to transform the lives of offenders.

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