



MDU

Medico-legal guide to The NHS complaints procedure

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Writing a response

Most doctors will be involved in complaints investigations and clinical governance procedures as a routine part of their professional practice. Even if you are not the subject of a complaint, you are likely to have a professional interest in the procedure. You may also be involved in investigating and responding to complaints, or providing independent clinical advice, or in considering complaints as part of the appraisal or revalidation processes.

General principles

Doctors who receive a formal complaint are advised to discuss their response with the practice or trust complaints manager.

In secondary care, a written response may be sent from the chief executive, or from a responsible person on the chief executive's behalf.

If a complaint is submitted to the primary care organisation rather than to a GP practice, the doctor(s) involved should be fully consulted and have the opportunity to provide statements of their involvement in the matter. A primary care organisation might also seek independent expert advice on the clinical aspects of the complaint. In all cases you should ask to be involved in the response to the complaint and your comments should be fairly represented. If you do not think this is the case, you are advised to contact the MDU.

Responding to the complaint

The tone of your response needs to be professional, measured and sympathetic. You also need to take into account the following points.

Patient confidentiality

If a complaint is from the patient's representative, you must ensure the patient has given consent before you can disclose clinical information to a third party. It can be a complex matter, particularly if the patient is a child or an adult without capacity so do not hesitate to seek expert advice from the MDU on this issue.

Timescale

You are required to investigate and respond to a complaint promptly. If there is likely to be a delay in forwarding a comprehensive response, you or the complaints manager will need to explain the reasons for this in advance to the complainant and ensure the complainant is kept informed of progress.

Typed response

Type the response on headed paper if possible, or type your full postal address and telephone number at work.

Identify yourself

State your registered name and GMC reference number, and describe your relationship with the patient (eg GP, consultant, registrar, locum). If the complaint involved several doctors, you should make it clear how you were involved in the patient's care.

Addressing the complaint

The following points apply whether you are responding to the complaint as a complaints manager, or if you are a doctor in a senior position who is not the subject of the complaint. If you are the responsible person you will need to sign off on the response and take responsibility for ensuring the practice learns from it.

The response should be capable of standing on its own

Do not assume the reader has any background knowledge of the case. Several people may read your response apart from the complainant, such as the complainant's relatives and advisers.

Give a detailed report of the part you played, including a factual chronology of events as you saw them

Describe each and every consultation or telephone contact, referring to the clinical notes if you need to. Include relevant medical history, your working diagnosis or your differential diagnoses. State whether you saw the patient alone or accompanied by another person and give the name and status of the other person.

Specify which details of your account are based on memory, contemporaneous notes or usual or normal practice

No one expects you to make copious clinical notes of every last detail, nor will you be expected to remember every detail of a consultation that at the time appeared to be routine. It is acceptable to quote from memory, but if you cannot recall the details of a case, then state what your 'usual' or 'normal' practice would have been in the circumstances of the case.

Say what you found, and what you looked for but failed to find

If your evidence is challenged, it may be on the basis that you failed to put yourself in a position to make an adequate assessment. Your response at the outset should clearly describe the full extent of the patient's history and your examination.

Respond to every concern

Respond to each and every concern raised by the complainant as far as possible, including your opinion of what happened. Sometimes you can combine this with the chronology of events, but often it is better to deal with one and then the other. Many complaints arise from a misunderstanding, and a detailed description of the pathophysiology involved can be helpful. In some cases this might include references to journal articles or standard medical textbooks, though care should be taken to do this in a way that the patient or complainant will understand.

Complaints involving more than one clinician

If a complaint involves more than one clinician, or both social care and healthcare, it is hardly ever appropriate to express an opinion on the acts and omissions of a colleague, unless they are under your direct supervision. The procedure requires a joint response and this should include a full account from each clinician or care provider of their part in the matter.

Where several clinicians are involved, each should comment on the parts of the case they were involved with. It is usually best to combine the comments into a single response for the complainant. Where this is not possible, the complaints manager's response should be written so as to help the complainant understand how the individual accounts relate to the complaint.

Say sorry where appropriate

No doctor can get it right every time. Medicine is a life-long learning experience and every doctor can learn something from every complaint. Complainants often simply want an apology and an assurance that what happened to them will not happen to anyone else. Saying sorry is not an admission of liability. This is recognised in section 2 of the Compensation Act 2006 which says:

'An apology, an offer of treatment or other redress, shall not of itself amount to an admission of negligence or breach of statutory duty.'

Enclose a photocopy of the contemporaneous clinical notes

If the handwriting is not clear, it might be necessary to provide a word-for-word, line-by-line, typewritten transcript, with abbreviations written out in full.

Do not alter the notes

This may sound obvious, but it can lead to more serious trouble than the original complaint. If the patient records have been amended because there was a mistake in the original, this should be clearly marked, dated and legibly signed. Similar procedures should be followed for electronic records, where alterations can be seen on an audit trail.

Analyse complaints

The practice or hospital is expected to analyse each complaint in order to learn from it, identify concerns that need to be addressed and to decide what action, if any, needs to be taken. The response should include details of what you have done, or intend to do, to remedy the concerns you identified and ensure the problem is not repeated.

Style

Avoid jargon or medical abbreviations

Many lay people understand something like BP, but would they know SOB (shortness of breath), for example? All medical terms are best written in full. If you mention a drug, give an idea of what type of drug it is (antidepressant, antihypertensive, and so on). Give the full generic name, dosage and route of administration as well.

Write in the first person when describing your part in the proceedings

The reader should have a good idea who did what, why, when, to whom, and how you know this occurred.

Example

Rather than 'The patient was examined again later in the day', it is far more helpful to say, 'I asked my registrar, Dr Jim B, to examine the patient and the notes show that he did so.'

You may wish to include an offer to meet the patient to discuss the contents of the report and to answer any questions that may arise from it.

Response sign-off

Finally, the response should be signed off by the responsible person within the organisation, or someone authorised to do so on their behalf. The response letter should:

- answer the complaint
- explain how the complaint has been investigated
- detail action the organisation intends to take as a consequence of the complaint
- give clear advice to the complainant that they may take the case to the Ombudsman if they are still dissatisfied.

A good complaint response takes time and careful thought. It is worth the effort.

Remember, most complaints are resolved successfully at the first stage. The prime purpose of the complaints procedure is to address the concerns of the complainant in order to resolve the complaint and to help you identify changes that may be needed to improve your practice.

A thorough and detailed first response should help to minimise the risk of further correspondence from the complainant asking for clarification and further medico-legal complications.

For individual medico-legal advice:

24-hour advisory helpline

T **0800 716 646**

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