

# Independent complaints resolution for health treatment in the private sector

In an ideal world, all complaints would be addressed swiftly and effectively at local level, but there are of course occasions where that is not achieved. When responding to all complaints, a private healthcare provider should clearly set out what action a patient may take in the event that they remain dissatisfied following the local complaints-handling process.

The NHS guarantees the right to independent arbitration for patients who have been treated by the NHS or received NHS-funded treatment in the independent sector. Each country in the UK has its own health ombudsman who can investigate NHS complaints which remain unresolved at local level.

For privately funded healthcare (self-paying or through insurance) the picture is more complex. There is no “standard” complaint procedure that applies, with each organisation free to implement its own procedures, and the health ombudsmen have no role to play.

## **Private dental complaints**

Recourse for unresolved dental complaints relating to private treatment can be accessed through the Dental Complaints Service, an arms-length body of the General Dental Council, that provides a free and impartial service. The DCS is able to look into complaints raised within 12 months of the relevant treatment taking place (or within 12 months of the patient becoming aware that they have something to complain about).

Where a complaint remains unresolved, the DCS will work with the parties involved through a complaints officer to try to reach a satisfactory resolution, often by negotiating a refund of fees paid for treatment being complained about. Where resolution is not possible, they can (with the consent of both parties) arrange a panel meeting as the final stage of their complaints process. The panel will hear from both parties and make a recommendation in order to resolve the complaint, although the DCS has no formal power to enforce such a recommendation. A failure to accept the panel decision, and/or a failure to co-operate with DCS can trigger a referral to the Fitness to Practise Directorate of the GDC. DCS can and does refer complaints straight to the GDC if it believes the issue complained about to be very serious and not suitable for the DCS process.

Where NHS and private treatment is carried out within the same course of treatment the patient that cannot be resolved at local level the patient can choose to raise their complaint either with DCS or the Ombudsman.

## Private medical complaints

For complaints about private medical treatment, there is no one single point of contact for patients who remain dissatisfied following a local complaints-handling process. The Independent Sector Complaints Adjudication Service (ISCAS) represents many independent healthcare providers, but not all. ISCAS operates a code of practice for complaints management which independent providers can subscribe to as members. This is on an entirely voluntary basis and members can be found within their directory.

ISCAS has a helpful *Patients' Guide* - <https://iscas.cedr.com/patients/complaints-process/> developed in conjunction with the Patient's Association, a voluntary patient support and advocacy group, which explains how to make a complaint.

If the private healthcare provider is registered with ISCAS and local complaint resolution has not brought about a satisfactory outcome, a complainant has the right to refer the matter to independent external adjudication through ISCAS. This referral must be made within six months of receiving the final local complaint response (unless there is a good reason for not having made the complaint sooner). The service is free and funded by contributory provider organisations. The adjudicator can uphold, or not uphold, each aspect of a complaint, and has discretion to award goodwill payments up to £5000. They may also highlight any relevant points of learning and make recommendations regarding the way the healthcare provider operates. Like the health service ombudsmen, their decision is final and there is no further appeal stage.

If, however, the private healthcare provider is not registered with ISCAS, there is currently no means by which a patient can seek an independent review of their complaint.

### Further action

As above, while the health service ombudsmen in the UK cannot investigate complaints about privately funded healthcare services, (including care provided by private patient units within NHS trusts and health boards), private providers may face scrutiny from other organisations where a service user remains dissatisfied.

A complainant can raise a complaint directly to the **Care Quality Commission (CQC)** in England or the equivalent bodies in Scotland – **Healthcare Improvement Scotland**, Northern Ireland – **The Regulation and Quality Improvement Authority**, and Wales – **Healthcare Inspectorate Wales**. The above bodies are independent systems regulators of health and adult social care in the UK. They inspect both NHS organisations and independent providers and will take note of complaints which may be used as part of their inspection process.

A further option for a complainant if they remain unhappy about an issue relating to a private hospital would be to contact the relevant Local health authority. Private hospitals in England and Wales have to register with local health authorities, which carry out regular inspections.

## Future Position

The Paterson Inquiry, which was convened to look into the case of a rogue breast surgeon who performed inappropriate or unnecessary procedures and operations, highlighted the impact of the current position with complaints against private healthcare providers. Accordingly, it recommended that 'information about the means to escalate a complaint to an independent body is communicated more effectively in both the NHS and independent sector'. and that 'all private patients should have the right to mandatory independent resolution of their complaint.'

The Government accepted these recommendations in principle in December 2021, noting that the CQC would strengthen its guidance on this area, and in particular they would expect to see arrangements in place for patients being provided private healthcare to access independent resolution. A review of uptake is planned and, if not widespread, the government have indicated a will to explore amendments to current legislation to ensure adoption.

We will continue to monitor developments in this area and review this note in the event that legislative change does indeed follow.

In the meantime, we would encourage our members who provide private healthcare services to ensure that they have a clear, published policy on complaints handling and to consider making arrangements for independent resolution of complaints, should that prove necessary.