

# businesscompanion

## trading standards law explained

### Part 5: External investigations

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It's possible that your complainant may still be dissatisfied. You must make it clear in your CHP that, when circumstances like these arise, there are organisations outside of your care home that can conduct their own investigation into your resident's, or their representative's, complaint. Who these organisations are will depend on:

- what country you are based in
- the nature of your resident's, or their representative's, complaint
- how the service they receive is funded

For example, in Scotland, you should explain that someone can escalate their complaint to an external body (the regulator, Care Inspectorate Scotland) from the beginning, without having to first exhaust your own CHP. However, this is not the same 'route' a complainant would take if your care home was based in England, Wales and Northern Ireland.

Another difference between the nations is that, in England, the Care Quality Commission (CQC) can only encourage care homes to signpost residents to the Local Government and Social Care Ombudsman when your own CHP has been exhausted and a resolution has still not been found. The CMA's view is that, under consumer law, care homes must clearly explain how and when a complaint can be escalated to the ombudsman, as well as to other relevant bodies. In Northern Ireland, Scotland and Wales it is written into law that care homes must do this.

#### **What information should be communicated, when and to whom**

In this chapter we shall outline these differences through flowcharts to help you navigate the requirements in your own country, and by how a resident's services are funded. To help care homes understand their responsibilities under consumer law more generally, the CMA has issued compliance advice. An extract from their guidance (about what should be communicated, when and to whom) is below:

"You should make clear in your written complaints handling procedure and decision letter that if a resident remains dissatisfied with how you have dealt with their complaint or your decision, they have the right to escalate the complaint externally, and make them aware of how and to whom they can escalate their complaint with the relevant contact details.

"You should clearly explain how and when the complaint can be escalated to the local authority, NHS or other public funding body, the Care Inspectorate in Scotland, the relevant ombudsman, and any ADR scheme you may be signed up to (for example, through a trade body arbitration scheme you belong to).

You should make clear any differences in how and to whom a complaint can be escalated depending on the nature of the concern. In relation to:

"The local authority or HSC Trust, or NHS funding body: you should make clear in what circumstances the resident can escalate their complaint to the local authority or HSC Trust or NHS body (such as the appropriate Clinical Commissioning Group in England), for example where it is paying for or has arranged the placement.

"The relevant national ombudsman: you should explain the ombudsman's role and remit. It is important that you also make clear whether the ombudsman can consider complaints from self-funded residents. The ombudsman is the ultimate and final stage in the complaints resolution process for both State and self-funded residents in England and Wales. In Northern Ireland, the Northern Ireland Public Services Ombudsman is also the final stage in the complaints resolution process unless the resident is entirely privately funded. However, in Scotland, the Scottish Public Services Ombudsman can only investigate alleged maladministration on the part of the Care Inspectorate in terms of how it dealt with a complaint about a care home.

"The relevant sector regulator for the care home: you should explain that the sector regulators can investigate alleged breaches of their specific regulations on safety and quality which they are responsible for enforcing. The Care Inspectorate in Scotland, unlike the other national sector regulators, can also investigate individual complaints more generally."

## **Optional and compulsory routes to resolution**

Once a complainant has exhausted the CHP at your care home, there are generally two options for taking it further: optional and compulsory resolution.

Alternative Dispute Resolution (ADR) is an optional way of resolving a dispute without going to court.

However, it is important that you make it clear to the resident and their representatives that engaging in ADR is voluntary and they can seek independent redress through the relevant ombudsman service without engaging in ADR.

ADR involves an independent and impartial third party who considers the evidence in a dispute and makes a decision, offers a view or helps the parties involved come to an agreement when their internal complaints system has failed to resolve the problem.

In comparison, a compulsory dispute resolution body is a sector ombudsman, which is an independent official who has been appointed to investigate complaints that people make against the government or public organisations.

Some can only investigate publicly funded service complaints in care homes, while others have powers to investigate all complaints, no matter how the complainant's service is funded.

The ombudsman offers a free and impartial service to consumers to investigate complaints in a fair and independent way. An ombudsman will usually investigate if it believes a care home may have acted unreasonably and if hardship or injustice has been caused. Examples of individual complaints that an ombudsman may investigate include:

- poor service
- service failure
- delay

- bad advice

The ombudsman will aim to put it right by recommending a suitable remedy. It is not an appeals body for other organisations' decisions, and generally it can't award compensation or penalise individuals, but it can check if a decision has been made properly.

Some ombudsman offices have specific powers to publish complaints handling procedures, and to monitor and support best practice.

If an ombudsman finds that something has gone wrong, it can:

- ask your care home to consider your decisions again
- ask you to change your decisions
- recommend that you improve your services in a particular way
- recommend that you apologise to the parties involved

The ombudsman's powers may differ slightly between countries in the UK, but generally speaking they are the final stage for your residents or their representatives to make a complaint against adult social care providers, short of taking court action. Your care home's CHP must signpost to the relevant ombudsman for your country, so that a resident or their representative can pursue a complaint further if they remain dissatisfied after exhausting the CHP at your home or with their social services' CHP.

You are advised to read the CMA's compliance advice on how to handle complaints in full in their latest guide, *UK Care Home Providers for Older People - Advice on Consumer Law: Helping Care Homes Comply with Their Consumer Law Obligations* (starting on page 111). Visit [gov.uk/government/publications/care-homes-consumer-law-advice-for-providers](https://www.gov.uk/government/publications/care-homes-consumer-law-advice-for-providers)

For more information about relevant legislation and regulatory guidance, and advocacy and support organisations for each UK nation, go to our 'Sources and further reading' section.

## Key points of note

### England

#### When residents can bypass your CHP

If a resident doesn't want to complain directly to your establishment, and their local authority is involved in their placement, they can complain directly to their local authority, using their CHP.

In England, residents are able to complain directly to their local authority if it:

- assesses a resident's need for adult social care
- arranges and directly provides the care
- arranges and buys (commissions) the care to be carried out by someone else, such as a private company or charity

#### Why your residents can't complain direct to CQC

England's regulator, the Care Quality Commission (CQC), cannot investigate individual complaints from residents or their representatives because it does not have the powers to investigate or resolve them. The only exception to this is for residents whose rights are restricted under the Mental Health Act. However, they do still want to be informed of complaints as your residents make them to help the CQC protect others from going through similar experiences. Also, the CQC requires providers to report on complaints, including numbers of complaints received and how they were resolved.

*Source: Care Quality Commission*

### **When the LGSCO can investigate**

The Local Government and Social Care Ombudsman can investigate all complaints about care homes, regardless of how a resident's service is funded. So, both services that are paid for by a council or self-funded by a resident or their family can be investigated by the Ombudsman if a complaint arises.

*Source: Care Quality Commission*

## **Scotland**

### **When residents can bypass your CHP**

The Care Inspectorate Scotland has powers to not only inspect care homes, but also to investigate complaints and impose requirements and legal notices on you as a registered care provider. This means that, should an issue arise, a resident at your care home can bypass your own complaints handling procedure (CHP) and complain directly to the regulator. It usually only investigates complaints from residents where the issue arose no more than six months before a complaint was first made, except where there are exceptional circumstances.

However, the regulator will encourage residents to complain to you first, as their care provider, as research suggests that complaints are best resolved as close to the point of service delivery as possible.

Where a resident is persuaded to complain directly to you as their care provider, the Care Inspectorate will record the matter raised with them, even if they don't take any action to investigate themselves. However, in circumstances where a resident does not wish to complain directly to your care home, the regulator may well decide that the matter would be best investigated through your CHP and refer the resident back to you.

*Source: Care Inspectorate Scotland*

### **Who can complain to the Ombudsman?**

The Scottish Public Services Ombudsman is the final stage for investigating complaints about publicly funded services in Scotland, which would include services in care homes. The final stage for self-funding residents paying for services in a care home in Scotland is the Care Inspectorate Scotland.

### **What are the Scottish Ombudsman can investigate and time limits?**

The Scottish Public Services Ombudsman cannot deal with complaints about the actual care and the

standards of care delivered by a care home. This is done by the Care Inspectorate in Scotland. What it can investigate includes:

- social work decisions
- information provided about social work services
- delays
- how a resident has been treated, including staff behaviour
- how people have communicated with a resident
- financial assessments
- how a social work service responded to a resident's complaint

If a resident wants to pursue a complaint through the Ombudsman, they should do this within 12 months of them realising that a social work service has done something wrong.

*Source: Scottish Public Services Ombudsman*

## **Wales**

### **Routes to complaint**

Welsh regulator the Care Inspectorate Wales (CIW) cannot legally investigate individual complaints or resolve disagreements. So it suggests that residents or their representatives go to their service provider in the first instance, which could be you or a public body that has commissioned you to provide a resident's care. However, the CIW does welcomes concerns, comments and compliments, as this is an important source of information about services it regulates.

In most circumstances, the Public Services Ombudsman for Wales will expect residents to have complained to their care provider first, too, before they are approached. However, the ombudsman will sometimes make exceptions - for example, if they consider that a resident's immediate safety is at risk. Residents or their representatives can also complain to the ombudsman before your care home has concluded its investigations if you are taking too long to deal with it. In general, the Ombudsman considers 12 weeks a reasonable time for you to respond to a complaint.

Since November 2014, the Public Services Ombudsman for Wales has been able to investigate complaints from people who fully fund their own care, whether that relates to personal or nursing care. The Ombudsman usually deals with complaints within 12 months of a resident or their representative becoming aware of a problem.

*Source: Care Inspectorate Wales and Public Services Ombudsman for Wales*

### **Retrospective claims time limits for NHS-funded care**

Residents in your care home receiving a service for a physical or mental health need can make a claim to their local health board for a retrospective assessment of past care needs. However, there is now a one-year rolling cut-off period for these claims. The Public Services Ombudsman for Wales will now not normally consider complaints about delay in relation to historic retrospective claims.

*Source: Public Services Ombudsman for Wales*

## **Name change for regulator**

In January 2018, the Welsh regulator changed its name from the Care and Social Services Inspectorate Wales to the Care Inspectorate Wales. According to the regulator's website: "From now on, if you see the name 'Care and Social Services Inspectorate Wales' or 'CSSIW', this should be read as 'Care Inspectorate Wales' or 'CIW'. Both are valid."

*Source: Care Inspectorate Wales*

## **When a resident can use a social services CHP**

A resident can pursue a complaint directly with their local authority, rather than through your care home's complaints handling procedure (CHP), if:

- the authority directly provides the service (or has declined to, but your resident believes they should be providing it), or
- where a resident is receiving their services from a separate, independent provider such as a care home, but it is the local authority that has arranged and commissioned the service
- if one of your residents is a self funder and the local authority has been involved in assessing them and recommending the need for a care home placement, that self funder can use the social services complaints procedure in the following scenarios:
  - if they decided to arrange their care in a home that is owned by the local authority
  - where the local authority had to arrange the placement for someone as they were not able to do so themselves (and there was no one else available to help)
  - where an authority has arranged a placement because they were requested to do so by the self funder, using their right under the Social Services and Well-being (Wales) Act 2014
- under the last two scenarios, a resident can only use their local authority's CHP to complain about how the local authority chose and organised their care home placement. Any complaints about the care they have since received in your care home would then have to go through your care home's CHP

*Source: Age Cymru*

## **Northern Ireland**

### **When the ombudsman cannot investigate in NI**

The Northern Ireland Public Services Ombudsman (NIPSO) can only investigate complaints if a resident's service is publicly funded. This means that if a person pays for their service themselves using their own funds entirely and they remain dissatisfied after exhausting your own care home's complaints handling procedure (CHP), they would have to seek legal advice if they wanted to pursue it further. However, there are very few 'self-funding' placements within the sector, with most generally made through the five Health and Social Care Trusts.

*Source: Commissioner for Older People for Northern Ireland, and CMA*

### **Working with HSC Trusts to resolve complaints**

If one of your residents or their representatives wishes to make a complaint and you are contracted to supply their service on behalf of a Health and Social Care Trust (HSC Trust), they can either complain directly to you using your CHP, or they can go through their HSC Trust's CHP. If the complainant uses your CHP, you will generally be expected to investigate and to respond directly to them. However, you are also required to notify the relevant HSC Trust of any complaints you receive without delay, and in any event within 72 hours. This gives the HSC Trust the option to determine if they should investigate themselves if they consider the issue to be serious enough, or if it would be appropriate to do so.

### **When care homes investigate complaints without HSC Trust participation**

When your care home has investigated a complaint, the response you write for the parties involved should also be shared with the relevant Health and Social Care Trust (HSC Trust). In your letter of response to the complainant you must advise them that, if they remain dissatisfied they can progress their complaint to the relevant HSC Trust, which will then determine whether the complaint warrants further investigation. You should also advise your complainant of their right to go to the ombudsman. However, it is possible that, where complaints have been dealt with by your care home without any HSC Trust participation and referred to the ombudsman, the ombudsman may decide that the HSC Trust is best placed to continue any investigation.

### **Time limit for notifying a complainant of route to ombudsman**

Once an investigation using your care home's CHP is complete (and if you are contracted to supply that service by a Health and Social Care Trust) you must inform your resident or their representative of their right to refer the matter to the Northern Ireland Public Services Ombudsman. You must do this in writing within two weeks of the day on which your CHP was exhausted.

*Source: Northern Ireland Public Services Ombudsman*

### **Out of area complaints**

If you are contracted to look after a resident on behalf of a Health and Social Care Trust (HSC Trust), and that resident lives at your care home in Northern Ireland but has a complaint about events that took place elsewhere, the HSC Board or HSC Trust that commissioned the service or purchased the care for that person is responsible for coordinating the investigation and ensuring that all aspects of the complaint are investigated.

[Download the resident complaint flowchart for England](#)

[Download the resident complaint flowchart for Scotland](#)

[Download the resident complaint flowchart for Wales](#)

[Download the resident complaint flowchart for Northern Ireland](#)

[\*\*< Part 4: Internal complaints\*\*](#)

[\*\*> Part 6: Staff training\*\*](#)

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### **Source URL:**

<https://businesscompanion.owastaging.co.uk/focus/care-homes-complaints/part-5-external-investigations>