Making a complaint in the independent healthcare sector

A guide for patients
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1. Introduction

The independent healthcare sector prides itself on providing patients with some of the best available healthcare. However, there may be times when expectations are not met. If you are not satisfied with the service you, or a relative or friend has received at an ISCAS member hospital or clinic1, it is your right to have your concerns investigated and to be given a full and prompt reply.

ISCAS has been established for over 12 years and continues to be the recognised complaints management framework in the independent healthcare sector, serving patients, the public and healthcare organisations. The ISCAS Complaints Code of Practice provides a structure within which complaints against Provider ISCAS members are addressed.

The Patients Association is an independent charity (No. 1006733) that helps to provide patients with a voice on health and social care issues. It works across these fields, not just in connection with private care or the NHS. The Helpline number is 0845 608 4455 and the email is helpline@patientsassociation.com. The Helpline can provide direct advice and support, referrals or booklets on issues such as how to complain, how to access medical records, living wills, and you and your dentist/doctor.

If you are thinking of making a complaint about your care at a provider ISCAS member, this guide tells you about the procedure and gives you advice about how to get the most out of the Code to achieve a satisfactory response. It should also be noted that all patients have the right to notify their concerns to the appropriate healthcare regulator - however the regulator does not investigate individual complaints (apart from in Scotland).

If you are a parent concerned about a child, or if you are a young person concerned about your treatment, there is an alternative version of this leaflet called ‘Mumbles and Grumbles’ available from www.iscas.org.uk.

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1 For simplicity an ISCAS member hospital or clinic will be referred to as a ‘Provider’.
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1.1. Who can access the ISCAS complaints code?
The ISCAS complaints code applies to:
• ISCAS member services.
• Doctors and other healthcare professionals who practice at any of these ISCAS member facilities, about treatment provided there. (To clarify, the code applies to doctors and other healthcare professionals, even where they are not employed by the clinic and have practising privileges [this means they agree to provide certain services within the hospital or clinic as independent practitioners].)
• NHS patients receiving care in an independent hospital are entitled to use the providers’ local complaints procedure but have recourse to the NHS complaints procedure.
• Patients using the services of any IDF (Independent Doctors Federation) member.
Please contact ISCAS if you are unsure whether you can access the ISCAS code. All ISCAS members are also listed on the ISCAS website: www.iscas.org.uk

1.2. What do I want to achieve?
Before making a complaint, it is important to think about what you want to achieve, as the ISCAS Code can only deal with certain matters.

1.3. Under the Code, ISCAS member hospitals CAN:
• Acknowledge when things have gone wrong.
• Give the complainant an apology, where appropriate.
• Take action to put things right.
• Share details of how the organisation has investigated and has learnt from the complaint including any changes made as a result.
• Make a gesture of goodwill offer, where appropriate.

1.4. However, the Code CANNOT:
• Deal with any treatment provided in the NHS - including if in an NHS private patient unit (that is, if you paid privately for your treatment in an NHS hospital).
• Suspend the registration of a doctor or any other health professional.
• Deal with issues of causality and liability in relation to allegations of clinical negligence. If in doubt, please contact ISCAS for advice.
• Offer revision surgery or other remedial procedure as an outcome of your complaint. (An ISCAS provider hospital can make such an offer in certain cases but the adjudication process cannot).

1.5. Is there a time limit for making a complaint?
It is best to make your complaint as soon as possible, as memories will be fresher and it will be easier to investigate the facts.

You should normally complain within six months of the incident you are concerned about, or within six months of finding out that there was something to complain about. The Provider may be willing to investigate complaints after this time if you have a good reason why you could not act sooner (for example, if you were unwell).
For information, Department of Health (or equivalent in Scotland, Wales & Northern Ireland) guidance requires hospitals to keep adult patients’ medical records for a period of eight years.

1.6. Can I act on someone else’s behalf – or they on mine?

If you feel anxious about making a complaint yourself, you can always ask a relative or friend to do so on your behalf. The Provider will ask the friend or relative to obtain your permission in writing. By doing this you are waiving your right to confidentiality of your own clinical information, by sharing this with the person acting on your behalf.

Likewise, if you are unhappy with the way a friend or relative has been treated, you may make a complaint for them. You will need their permission in writing to do this.

Where someone does not have capacity to give their own consent, ISCAS can only accept consent from an authorised person with Legal Power of Attorney (specifically a Court of Protection appointed Deputy authorised to make health and welfare decisions).²

Consent is still needed in situations where the person is very young, too ill or if the person has died, when the Access to Health Records Act 1990 applies. There are limited access rights for the personal representative of a deceased relative under the Access to Health Records Act 1990.

1.7. Can I access my health records?

You have a right to see your health records under the Data Protection Act 1998. However, please note that access to health records can be refused if disclosure is likely to cause mental or physical harm to yourself or someone else.

A fee is likely to be charged for granting access to health records. The maximum fee in England, Scotland, Wales and Northern Ireland as set out in the Data Protection Act is £50. For further information about accessing your health records, you should contact the Provider concerned. The Information Commissioners Office can also provide additional information.

ISCAS is registered with the Office of the Information Commissioner and manages data according to national guidelines. Patient records are restricted to ISCAS staff only and are retained for a period of seven years. Thereafter records are destroyed securely.

1.8. The complaints process, litigation and clinical negligence

Where you have stated that it is your intention to seek legal advice, the Provider should continue to follow the local complaints procedure (whether at stage one or two). Wherever feasible the Provider should attempt to resolve your complaint where appropriate and not abandon the use of the local complaints procedure due to a potential legal claim.

In cases where a legal claim has been made, then those areas of the complaint that are central to the legal claim (i.e. clinical negligence and issues of causality) will not be considered under the complaints procedure but other areas may.

² Read more on the Court of Protection website at: www.gov.uk/become-deputy/overview
2. Local Resolution – Stage One

2.1. How do I start?
The ISCAS Code has three progressive stages:
1. Local Resolution
2. Complaints Review
3. Independent External Adjudication

Before you make a complaint, ask the Registered Manager\(^3\) for a copy of their complaints procedure. The Registered Manager of every Provider has direct responsibility for dealing with complaints against their particular facility. At the Local Resolution stage, he/she should look into and respond to your complaint. The aim is to try and sort out any problems as quickly and informally as possible.

If you address your concerns to a member of staff, it is a good idea to make a note of when you did this, who you spoke to and how the matter was dealt with. It is useful to have a record of this if you need to take the matter further at a later date. If you do not wish to speak to a member of ‘frontline’ staff, or if you are not happy with how they dealt with your concerns, you can take your complaint to the Registered Manager.

You can make your complaint verbally initially, but it is important that you confirm your complaint in writing. If your complaint is about a clinician/independent practitioner you should address it to both the clinician/practitioner and to the Registered Manager. The Patients Association, Citizen’s Advice Bureau or POhWER is able to assist people with writing complaints letters.

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\(^3\) The Registered Manager is a term used by the Regulator and it is the person in the position of Hospital Director, Chief Executive, Clinic Director etc.
2.2. What should I include in my letter at Stage One?
You do not need to write a long and very detailed letter, but you should include all the points you wish to address. You should tell the Provider:

- Who or what has caused your concerns. Try to make clear the most important points. If you are complaining about a member of staff, give their name and position (if you know it).
- Where and when the events took place.
- What action you have already taken, if any.
- What results you want from your complaint.

2.3. Should I keep a written record?
It is important for you to maintain an accurate record of events. Keep a record of:

- All your papers and correspondence relating to the complaint.
- All the telephone calls you have had, including the date of the call, who you spoke to and what the call was about.
- Any visits or meetings, together with details of what was discussed.

2.4. What should I do if I am offered a meeting?
Before agreeing to attend a meeting it is a good idea to discuss arrangements for the meeting with the Registered Manager and to give your views on how you would like it to be conducted:

- Ask what form the meeting will take so that you are well prepared.
- Ask who will be at the meeting, and who will lead it.

- If there is someone you do not want to see, let the Registered Manager know (for example, some people may not wish to meet the person who they are complaining about, whereas others may feel it is important for them to be present).
- Ask where the meeting will be held and how long it will be.
- If you have any special challenges for moving, seeing or hearing make them known to the Registered Manager.
- If you have particular questions you would still like answered, tell the Registered Manager in advance so that he/she can seek out the information or make sure that the right staff are at the meeting. It is a good idea to bring a copy of the questions to the meeting so you can remember what they are.
- Ask that notes be taken at the meeting and that a copy of these be sent to you. Also make notes yourself as it is easy to forget what has been said.
- Inform the Registered Manager if you plan to bring someone with you. Think about taking a friend or relative with you to the meeting. It can be helpful to have someone with you to give you support and to take notes. It is also useful to be able to talk to them afterwards to go over what was said and to think about what to do next. Make sure they know the questions you want to ask and what you want to achieve.

After the meeting, if no further action is proposed, the Provider should send you a full, written response concerning local resolution. This response should also tell you what to do next if
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you are not satisfied. If you are not happy with the response to your complaint, let the Registered Manager know that you are still not satisfied and explain why.

Normally, you will be expected to have completed each stage of the complaints procedure before you can proceed to the next stage. However, if you feel that the local investigation of your complaint is not being conducted properly (for example, it is taking an unreasonably long time) it may be worth asking for a complaints review and give your reasons why.

2.5. Time frames at Stage One

The ISCAS Code provides clear timeframes within which the Provider should operate.

The Provider’s Registered Manager should normally send you a written acknowledgement within two working days of receipt of your complaint (unless they send you a full reply within five working days).

The Registered Manager should send you a full, written response within 20 working days of receipt of your complaint. Where the Registered Manager is still investigating your complaint you should be sent a letter explaining the reason for the delay.

Occasionally it may take even longer than this to carry out a full and thorough investigation, particularly if your complaint is very complex. In such situations, the Registered Manager should let you know the reasons for the delay and tell you when he/she anticipates being able to respond.

In any event you should receive an update letter every 20 working days pending a conclusion being reached. In looking into your complaint, the Registered Manager may ring you to talk to you about your concerns or offer to meet with you.
3. Complaints Review – Stage Two

If you wish to request a complaints review, you should do so within six months of the date of the final written response at stage one. Your request should be made in writing but there may be exceptional occasions when it is acceptable for it to be made verbally.

The complaints review stage is the responsibility of what, for ease of reference, ISCAS calls the Investigating Director\(^4\). This means that someone who has not been involved in your complaint and is not involved in the daily operation of the hospital/clinic will consider this stage.

The Investigating Director will consider the complaint and may undertake a review of the correspondence and the handling of the issue at Stage 1. The Investigating Director will then either confirm the decisions and actions of the Registered Manager or offer an alternative resolution.

In the event that the Investigating Director confirms the Registered Manager’s original decision or if you are not satisfied with the alternative resolution offered – you have the right to refer the matter to independent external adjudication. You need to do this within six months of receiving the Investigating Director’s final letter in which he/she reminds you of this right. If it is after this time you may not be able to access the adjudication service.

The Investigating Director will explain how you can request an independent external adjudication in his/her final letter to you at the completion of Stage Two. The procedure is for you to write to the ISCAS Secretariat to request Stage Three at:

Independent Sector Complaints Adjudication Service
70 Fleet Street, London, EC4Y 1EU
info@iscas.org.uk

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\(^4\) The Investigating Director may be the Chief Executive Officer or Managing Director of the organisation (when the hospital/clinic belongs to a group), or in the case of independent hospitals/clinics, a non-executive director or trustee.
4. Independent External Adjudication – Stage Three

Independent Adjudicators are independently appointed from outside the ISCAS and its membership.

It is important that you are aware of the following principles relating to the independent external adjudication procedure:

- You pay no entry fee to access or participate in the independent external adjudication procedure.
- There is no guarantee that the Adjudicator will uphold any financial offer you may have had from an ISCAS member at Stage 1 or 2 - everything will be considered afresh.
- Before participating in the procedure you will be asked to sign consent documentation, which explains the principles of the process.
- Before participating in the procedure you must agree that the Independent Adjudicator’s decision will be the final resolution of all the matters you have raised in your complaint.
- If you accept any payment offered by the procedure, you must accept it in full and final settlement of your complaint.
- There is no appeal from the independent external adjudication procedure.
- The Independent Adjudicator’s decision, although final in terms of the complaints procedure does not affect your statutory rights.

Some cases will, because of the seriousness of the issues raised and their potential for legal compensation not be suitable for being managed under the ISCAS Code. However, the Adjudicator may still be able to consider those aspects of the complaint that do not relate to clinical negligence. If you think that you might fall into this category, contact the ISCAS Secretariat.

4.1. What should I include in my letter at Stage Three?

Your letter should include the following:

- Adequate details of your complaint and your reasons for requesting adjudication, you can make use of the letter you wrote at stage one if that is helpful.
- Copies of all documents, correspondence and/or clinical records that you wish the Adjudicator to consider – do not staple documents together.
- What outcome you would like to achieve.
4.2. ISCAS adjudication and statutory regulators

Once you have received the Independent Adjudicator’s adjudication decision on your complaint, you can request that it is sent to the Care Quality Commission England (or the Provider’s regulator in Scotland, Wales or Northern Ireland).

It is important to know that the Care Quality Commission does not have the ability to:

- obtain or to assist in securing the return of money paid;
- investigate those services or individuals who are not required to be registered by the Care Quality Commission;
- consider matters where the complaint is not a direct breach of a condition of registration or of a regulation.

The Care Quality Commission does not provide a complaints arbitration or resolution service but will use the information in the Independent Adjudicator’s report in their regulatory work with the Provider. You may also send information to the Care Quality Commission about the complaint at any time during the Stage Three process.

The regulatory bodies across the four countries are:

**England** - Care Quality Commission
Telephone: 0300 061 6161

**Scotland** - Healthcare Improvement Scotland
Telephone: 0131 623 4300

**Wales** - Healthcare Inspectorate Wales
Telephone: 0300 062 8163

**Northern Ireland** - Regulation and Quality Improvement Authority
Telephone: 0800 917 0222

4.3. Complaints about ISCAS or the Independent Adjudicator

If you need to make a complaint about the way ISCAS has handled a complaint at Stage Three, or about the Independent Adjudicator, you should write to the Director of ISCAS at:

**Independent Sector Complaints Adjudication Service**
70 Fleet Street, London, EC4Y 1EU
info@iscas.org.uk

ISCAS also welcomes feedback and suggestions from people who have used the service.

4.4. Obtaining a copy of the ISCAS Complaints Code of Practice

A copy of the Independent Sector Complaints Adjudication Service Complaints Code of Practice can be downloaded from: www.iscas.org.uk or by contacting ISCAS at the details provided below.

4.5. Here to Help

To find out more about whether ISCAS can help you, please do get in touch:

**Independent Sector Complaints Adjudication Service**
70 Fleet Street, London, EC4Y 1EU
Telephone: +44 (0)20 7536 6091
Email: info@iscas.org.uk
www.iscas.org.uk