

When things go wrong...

This section is what to do when things go wrong, starting with ideas about how to avoid this through to making a formal complaint. Providing feedback, raising a concern, or making a complaint is different from safeguarding. If the safety of your relative or anyone else is in question, or you know somebody is being abused then immediate action is required.



Individual organisations will have their own processes but in general there are 3 main stages to follow when raising a concern or making a complaint. Depending on the issue, you may need to miss a stage and go straight to making a formal complaint or a safeguarding referral.

Stage 1

How to reduce the risk of needing to raise a concern or make a complaint:

- Develop a good relationship with the health and social care professionals involved in your relative's life and work in partnership
- For the professionals who are involved in your relative's day to day life, e.g. support staff, agree to have regular feedback sessions to identify what is working well and areas for improvement. Make sure that what is working well is recorded, e.g. positive behaviour support plan, communication passport. Information about what makes a good day is far more important than what causes a bad day
- Make sure assessments (e.g. Care Act) are used as a guide to what should be happening. This means that it is not you - personally - asking for something to improve, change but what has been commissioned (paid for)
- For areas that need to improve, agree what needs to happen, who needs to do it and by when. Putting this into an action plan format is a good idea
- Keeping records means that if you do have to raise a concern or make a complaint you have evidence of what has already been done to try and resolve any issues.
- Keep copies of all written correspondence, e.g. letters and emails
- Dates and times of telephone calls, who you spoke to and a summary of what was discussed
- Details of answerphone messages including dates and times and whether you left a message or the other party left you a message. If your service allows you, save the messages

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- Dealing with any issues promptly can reduce the risk of things getting worse and can result in positive outcomes, e.g. identify a training need, leading to additional support for your relative or their support staff.

What is the difference between a concern and a complaint:

- A concern is something you are worried about, which can often be resolved at the time it is raised
- A complaint is a statement about something that is wrong or that you are unhappy with which requires a formal response
- You could be concerned about something and raise it, and if you are not happy with how it has been dealt with, you may then make a complaint about that concern

Raising a concern or making a complaint on behalf of your relative can be stressful. You may worry about:

- how it will affect your relationship with the professionals who are involved in your relative's care and support and/or treatment
- whether you will be excluded (left out) going forward, e.g. not invited to meetings
- whether your relative will be treated differently
- how to speak and what to say
- whether it will make a difference
- the time and energy required
- having the confidence and necessary skills, e.g. representing your relative in meetings, writing letters

When to raise a concern or make a complaint

Here are some examples of when you might want to raise a concern or make a complaint:

- You have tried to solve the issue informally, e.g. through feedback but this has been unsuccessful
- Your relative's agreed plans are not being followed, e.g. communication passport, positive behaviour support plan
- You believe that your relative's safety, health, and wellbeing needs are not being met or that they could be met better
- There have been a series of mistakes in your relative's care and support and/or treatment
- Professionals involved in your relative's care and support and/or treatment have acted unprofessionally
- Your relative's care and support and/or treatment have taken too long to be implemented
- If your views as a family carer are continuously ignored to the disadvantage of your relative's care

Stage 2

How to raise a concern

- Depending on the type of concern, the first option may be to speak directly to the people involved in your relative's day to day care and support and/or treatment
- Consider whether anyone external to the service can help you raise the concern, e.g. social worker, the person responsible for commissioning (paying for) the service, professional independent advocate, another family member or friend
- Be clear that you are raising a concern
- If the issue has already been discussed e.g. as feedback, provide proof of this
- Follow up your concern in writing (either a letter or email)

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Stage 3

Making a complaint

If trying to resolve an issue through feedback or by raising a concern has not worked, then you may have to make a complaint officially either in writing or face to face in a meeting.

Knowing what to do

- All organisations have a complaints procedure. You can ask for a copy of this, or it may be available through their website. If you need it in a different format, the organisation has a responsibility to provide this
- Ask for a named person as your point of contact and their details, e.g. direct telephone number, email
- Ask for a reference number to be allocated specifically to your complaint. Use this whenever you speak or write to the relevant person/organisation about your complaint

Don't delay

- Complain as soon as possible after the event as it is much easier to remember all the details and there may be a time limit
- If you are unhappy with the reply you may have the opportunity to take your complaint to a second stage. Again do so as soon as possible and explain why you are not satisfied with the first reply

Put it in writing

- Put your complaint in writing. If you don't feel confident about doing this, ask for help from another family member, friend, or professional independent advocate
- Make sure everything you write has a date on it and ask for a reply within the timescales set out in the organisation's complaints procedure
- Give your contact details (telephone, email and

address) and also your preferred method of communication, e.g. if you would like all contact to be via email, say this. This means that if the person dealing with the complaint needs more information they can contact you easily

- Keep notes/write down details of all conversations and the dates they took place. Having a specific diary for this is helpful
- Cover all the relevant points as clearly and as briefly as you can
- It may be easier to use numbered lists and headings
- If you are sending a letter by post, do this using the 'signed for' service. If you are sending a letter by email and you have a delivery and read option use this. This means you can be sure that your letter/email has been received successfully
- Send copies of any letters, documents to all the people who may be affected by the complaint, e.g. if you are complaining to an organisation about the level of support your relative is receiving, include their social worker

Be clear about what you want

- Think about what you would like to happen and what changes you want to see to make things better – and state these in your complaint
- If you want an apology, say so

Be polite

- Whether writing or speaking, try to be polite and calm
- Be assertive, not aggressive

Check it through

- Ask someone e.g. another family member, friend, or professional independent advocate to read any letters/emails you are going to send. If they can't understand it, then the person you are sending it to is likely to struggle as well.

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Provide evidence (proof)

- Where possible, have proof to support your complaint, for example dates and times of when things have happened, who was involved, photographs (if it is appropriate to share them and consider issues such as consent, privacy) or other evidence
- Send copies (keep any originals yourself) of any documents which support your complaint. Local libraries often have photocopiers for general use

Respond appropriately

- Read all letters and documents that are sent to you relating to your complaint. If for some reason you cannot reply by the date specified because you are unwell or away on holiday, explain this and ask for more time

Attending meetings

- If possible, always take another family member, friend or professional independent advocate to meetings as a witness
- Ask if somebody at the meeting will take responsibility for making notes and agreeing actions (things that need to be done)
- Request any information discussed during the meeting is provided in writing and given to you (either on the day, emailed or posted) for your records
- If the information provided after the meeting is not accurate, raise this and request the necessary amendments are recorded

Be patient about timescales

- It may take some time for your complaint to be considered but don't be afraid to chase politely if nothing seems to be happening to progress matters and especially if agreed timescales are missed

It's okay to ask for help

- Organisations such as your local Citizens Advice Bureau, family carer's centres, charities or advocacy organisations may be able to assist you

When the organisation has finished looking into your complaint they should write to you, explaining:

- What they have done
- Whether they think you were right
- What, if anything, is going to change to make things better

If you are not happy with the outcome of the complaint

- You should receive a written response to your complaint, including how it has been investigated, if it has been upheld and what, if any, action will be taken as a result. This letter should explain the next steps to take if you are unhappy with the outcome including contacting the Ombudsman.



[For more information on making a complaint see the Carers UK website](#)

What is an Ombudsman

An Ombudsman is an independent person appointed to look into complaints about organisations free of charge. You must contact the Ombudsman within 12 months of when you first complained and within 1 month if you are contacting the Local Government Ombudsman.

Below are details of the Ombudsman:

- England: [Parliamentary and Health Service Ombudsman](#) Tel: 0345 015 4033 (For complaints that have not been resolved by the NHS in England, UK government departments and some other UK public organisations)

Family Carer Advocacy Resource

- England: [Local Government and Social Care Ombudsman](#) – Tel: 0300 061 0614 (For any unresolved complaints against local authorities and some other organisations providing local public services)

Both organisations provide detailed information about how they can help, step by step guides to making a complaint and details of recent cases and the outcomes.

Further information:

Cerebra



[Click here for the Accessing Public Services Toolkit \(for children and young people\) which includes template letters](#)

Citizens Advice

Citizen's Advice provide detailed guidance on making health and social care complaints, including an online template letter tool to include the correct information in an NHS complaint:



[Click here to read the guidance](#)

NHS complaints



[Click here to read more on how to complain to the NHS](#)

Independent Complaints Advisory Services (ICAS)

Independent Complaints Advocacy Services (ICAS) – ICAS provides support to people wishing to complain about the treatment or care they receive under the NHS. Contact your local Patient Advice and Liaison Service (PALS) for your local ICAS team.



[Click here for more information on the Patient Advice and Liaison Service](#)

CQC

Anybody can contact the CQC and provide feedback about their personal experience, on behalf of somebody else or as a witness. If the feedback is part of a complaint, this should be sent to the service provider first. If you are unhappy with the outcome, then contact CQC. CQC can also investigate complaints related to the detention of people under the Mental Health Act:



[Click here for more information on the CQC website](#)



[This infographic describes CQC's Declare your Care campaign](#)

Carers UK

Carers UK has a suggested template you can use if you need to write a complaints letter:



[Click here to view the template letter](#)

NHS England

Click here to read about NHS England's Ask Listen Do resources which are designed to support organisations to listen, learn from and improve the experiences of children and adults who have a learning disability, autism or both and their families and carers and make it easier to give feedback, raise concerns and complaints. There is also a booklet featuring tips:



[Click to read about Ask Listen Do on the NHS England website](#)



[Click here to read the Ask Listen Do Top Tips booklet](#)

Disability Law Service

The Disability Law Society provide free legal advice on community care, employment, housing, and welfare benefits to people with a learning disability, autism or both and their family carers to ensure that they have access to their rights and justice.



[Click to visit the Disability Law Service website](#)

Centre for Adults Social Care – Advice, Information and Dispute Resolution (CASCAIDr)

CASCAIDr is an online specialist advice charity who are experts in the legal principles that govern how adult social services operate in England including their relationship with rights to NHS services



[Click to visit the CASCAIDr website](#)

Local Government and Social Care Ombudsman

Read this statement from the Local Government and Social Care Ombudsman about complaints made relating to funding disputes



[Click to read the statement](#)

Safeguarding

Raising a safeguarding concern is different from making a complaint. If you are in any doubt about your relative's safety, or anybody else, it is better to report it. If, after investigation, it does not meet the threshold for safeguarding it may still result in a positive outcome such as identifying an unmet need for a family carer, e.g. a need for a break from caring or within a service e.g. a training need.

We all have a duty to speak out when we feel something is not right.

NHS England's definition



Safeguarding means protecting a citizen's health, wellbeing and human rights: enabling them to live free from harm, abuse and neglect.

Safeguarding children, young people and adults is a collective responsibility

The Care Act 2014 requires that all Local Authorities must have Safeguarding Adults Boards which:

- Make enquiries, or ensure others do so, if it believes an adult is experiencing, or is at risk of, abuse or neglect
- An enquiry should establish whether any action needs to be taken to stop abuse or neglect, and if so, by whom

- Arrange, where appropriate:
 - a Safeguarding Adult Review where the adult has 'substantial difficulty' in being involved in the process and where there is no other appropriate adult (family carer, other family member, friend, unpaid carer) to help them or
 - an independent advocate to represent and support an adult who is the subject of a safeguarding enquiry
- Co-operate with its relevant partners in order to protect adults experiencing/or at risk of abuse or neglect

Categories of safeguarding

- Physical abuse (e.g. inappropriate or unlawful use of restraint)
- Psychological or emotional abuse (e.g. lack of meaningful activities/swearing, taunting, verbal abuse)

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- Sexual abuse (e.g. unwanted looking or touching)
- Financial or material abuse (e.g. spending somebody's money inappropriately/using somebody's personal belongings without permission)
- Organisational or institutional abuse (The Department of Health and Social Care definition: Including neglect and poor care practice within an institution or specific care setting such as a hospital or care home, or in relation to care provided in one's own home. This may range from one off incidents to ongoing ill-treatment. It can be through neglect or poor professional practice as a result of the structure, policies, processes and practices within an organisation.)
- Neglect and acts of omission (e.g. ignoring medical, emotional or physical care needs. No proactive intervention, e.g. daily awareness - has your relative been to the toilet, routine health checks/screening such as dentist, eye health and vision, medication review)
- Self-neglect (personal hygiene, substance misuse, hoarding)
- Disability hate (mate) crime (e.g. children throwing stones at the window/name calling/people being persuaded to do things in return for friendship, e.g. can you deliver this for me ..., let's go to the pub for lunch but you will have to pay)
- Modern slavery (people being forced to work for reduced or no wages)
- Domestic abuse (threatening physical violence/controlling someone)
- Prevent abuse and harm that may increase the need for care and support and/or treatment
- Maintain and improve good practice, learn lessons
- Reveal patterns of abuse that were previously undetected and that could identify others at risk of abuse so action can be taken. For example, following the deaths of 3 people at a service (Cawston Park), and the subsequent enquiry, the published [safeguarding adults review](#) (SAR) led to NHS commissioning a national review to check the safety and wellbeing of all people with a learning disability, autism or both in a mental health inpatient setting

Why are people with a learning disability, autism or both at risk of safeguarding concerns

- Unable to tell somebody because of communication difficulties, e.g. can't speak or sign
- Nobody is listening
- Power imbalance, e.g. support staff controlling what your relative can and can't do
- Reliance on others
- Used to/acceptance of lower standards of treatment
- Lack of understanding about what being safe is
- Fear of the consequences of telling somebody
- Not knowing who to trust
- People providing care and support justifying their actions (e.g. he has behaviour described as challenging, it is the only way to manage him - referring to use of physical intervention, e.g. holding your relative and preventing them from moving)
- [Closed cultures](#)
- Being placed in a mental health service far from home which limits external oversight, e.g. through family visits or limited community presence which means nobody sees your relative and how they are being supported

Why we need safeguarding

- Help people to access the right kind of support to reduce risk and promote wellbeing
- Prevent death or serious harm
- Coordinate effective and efficient responses
- Enable early intervention to prevent the escalation of risk

Read the Challenging Behaviour Foundation's information about safeguarding including a step by step guide to what should happen in adult safeguarding cases:

[Click here to read the more](#)



The Department for Health and Social Care guidance states "Safeguarding is not a substitute for:

- providers' responsibilities to provide safe and high-quality care and support
- commissioners regularly checking the safety and effectiveness of the services they fund
- the Care Quality Commission (CQC) ensuring that regulated providers comply with the fundamental standards of care or by taking enforcement action
- the core duties of the police to prevent and detect crime and protect life and property"

Safeguarding and advocacy

Self-Advocacy

If your relative has capacity and is able to participate in the process they can choose to represent themselves. Or they can ask you (family carer), other family member, or friend to support them.

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If there is no conflict of interest then you can support your relative through the process.

If your relative is not living with you, then ask the service supporting them if and how they will inform you of any safeguarding concerns. In some circumstances you have a legal entitlement to be told:

- if your relative is detained under the Mental Health Act and you have been identified as the nearest relative
- if your relative lacks the mental capacity to participate in any safeguarding processes and you have agreed to support them
- because it is good practice to involve you unless your relative has capacity and has stated otherwise
- if you have been appointed as a Deputy

Professional Independent Advocacy

If there is nobody available to support your relative then a Care Act Advocate will be appointed. Care Act advocacy is a statutory (legal) entitlement, including for safeguarding concerns.

Many advocates are trained in more than one type of advocacy, e.g. the Mental Capacity Act and the Care Act. It makes sense that if your relative needs an IMCA and a Care Act advocate for continuity of support the same advocate represents them. Read Carol and Julia's stories to see how Warrington Speak UP puts this into practice:



[Click here to read Carol's story](#)



[Click here to read Julia's story](#)

Professional independent advocates, like all of us, have a duty to report any safeguarding concerns they have. Safeguarding policies and procedures vary between organisations, e.g. some organisations will seek reassurance about safeguarding concerns, others will make an independent referral.

Case study

Mr A is 24 and has autism and a mild learning disability. He is a very friendly and sociable young man, who is prone to waving and talking to most people he comes across and sees everyone as a potential friend. However, he struggles to read the intentions of others and is easily led astray and manipulated.

He lives next door to a pub, where he knows the staff and the regulars and is able to access his most frequently visited places. He likes to walk into town to talk to people he meets out and about. On such occasions he has been repeatedly tricked into stealing items from a newsagent by a group of teenagers and has given large amounts of money away to strangers he strikes up conversations with. Due to his previous experiences, Mr A was identified during a needs assessment as being at risk of abuse and neglect and a safeguarding enquiry was triggered.

The council found that, although Mr A was not currently experiencing abuse or neglect, he remained highly vulnerable to abuse due to him being well-known in his area as someone as easy to manipulate.

To assure his safety in the future, a safeguarding plan was agreed between Mr A and a social worker. This focused on developing his social skills and understanding of relationships and boundaries. The social worker worked with Mr A to consider various support options such as having a buddy or [circle of support](#).

The social worker put Mr A in touch with an autism social group which provided sessions on skills for staying safe. As the group was based in town, Mr A's plan also included a support worker to accompany him. After the first 5 sessions Mr A was able to attend himself but continued to meet with his support worker on a monthly basis as part of the risk management strategy set out in his safeguarding plan.

Source: Department of Health and Social Care

[Read the full document here](#)



Further information

Read this information from Mencap about safeguarding adults:

[Click here to read the information](#)



Read Advonet's leaflet and Cloverleaf Advocacy's factsheet for more information about the Care Act and professional independent advocacy:

[Click here to read Advonet's leaflet](#)



[Click here to read Cloverleaf Advocacy's factsheet](#)



Making a legal challenge

Throughout this resource information has been provided about the laws which apply to your relative's and your rights (as a family carer) e.g. the Human Rights Act, the Equality Act. and the Care Act. These laws state what public authorities and organisations should do when involved in the care and support and/or treatment of your relative and you (as their family carer). However, there is plenty of evidence that this is routinely not happening. This section explains how you can take legal action if raising a concern or making a complaint does not result in an improvement.



Involving a solicitor

If providing feedback, raising a concern, or making a complaint has been unsuccessful in bringing about change or the law is not being followed, there may be a need to involve a solicitor to ensure your relative's and your (family carer) rights are met.

Instructing a solicitor

It is likely that your relative will qualify for free legal representation, which is funded by legal aid. Any

solicitor you instruct who is able to offer assistance should discuss this fully with you. Talking to a lawyer does not commit you to taking legal action.

A solicitor can only represent a person if they are instructed to do so. If your relative has been assessed as lacking the mental capacity to instruct a solicitor themselves, then a 'Litigation Friend' can do this on their behalf for a specific case. If there is no one suitable to act as Litigation Friend, the Official Solicitor (a Public Officer funded by the Government) may act as a Litigation Friend.

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Having a 'Litigation Friend' enables your relative to access the justice system and the legal solutions that are available, for example a court case relating to:

- a civil case, except a tribunal
- a family case
- a Court of Protection case

Who can be appointed a Litigation Friend

There are two groups of people who can be appointed as a Litigation Friend:

1. A person who has Deputyship
2. If there is no appointed Deputy, then an appropriate adult (this could be you) can put themselves forward as a Litigation Friend, if they meet certain criteria:
 - Can fairly and competently represent your relative
 - Have no conflict of interest and
 - Agree to pay any costs your relative may be ordered to pay in relation to the proceedings subject to any repayment they might be entitled to

Finding a suitable solicitor

Before agreeing to represent your relative or you (as a family carer) any solicitor will want to be confident that there is a strong case, e.g. they are likely to win. Legal firms that have expertise in areas of the law related to health and social care often have a high demand for their services. To help them work out whether they can take on your relative's or your case:

- Try to be clear about what issue you need legal advice about and tell the solicitor the most important things. You can provide more detailed information later, if required
- Think about what you are aiming to achieve, such as:
 - a decision to be prevented or overturned

- justice for a situation that you believe was unlawful, or
- to have your concerns taken seriously

Legal firms have varying areas of expertise, so you need to decide which one is the right firm for you.

Top tips for finding an appropriate solicitor

- Use the Law Society's [Find a Solicitor service](#)
- Look at the firm's website and read any examples of the kind of work they do
- Ask what similar cases they have had experience of
- Find out what their approach to the case would be

Funding legal advice

The main funding options are:

- Legal aid, which is based on income, so if the legal representation is for you (as a family carer) then your income will be assessed



[To find out whether you are eligible for legal aid, use this government legal aid checker](#)

- If the legal representation is for your relative and their only source of income is from benefits, they are likely to be entitled to legal aid
- For legal aid cases, solicitors must also have the necessary authority to do so in the relevant area of law
- You can contact Civil Legal Advice (on 0345 345 4345) who have a database of solicitors who work on a legal aid basis who they can transfer you to



[Click here to visit the Civil Legal Advice website](#)

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- Self-fund. Ask how much the solicitor's fees will be for each stage. Costs can quickly add up and if your case goes to court a barrister's time is an additional expensive cost
- A Conditional Fee Agreement can enable you to take a negligence (damages) case to court - this is often called 'no win, no fee'
- Use Legal Expenses Insurance (which may be part of your home or car insurance) or if you are a Union member, your union may cover the fees

Any solicitor who is willing to assist you should discuss funding options with you fully at the start and should not charge you for any work unless you have agreed this in advance. Many solicitors will offer to review your request for assistance free of charge.

Charities who offer legal advice and support:

Citizens Advice and Law Centres

To find out more about getting legal advice or representation you can go to the Citizens Advice website or find a local Law Centre:



[Click here to visit the Citizens Advice website](#)



[Click here to visit the Law Centres Network website](#)

Disability Law Service

The Disability Law Service provides free legal advice about community care and support, employment, housing, and welfare benefits to family carers. and their relatives to ensure that they have accurate information about their rights.



[Click here to read about some of the ways in which they have supported family carers and their relatives](#)



[Click here to watch a short video clip](#)

CASCAIDr

If you need legal advice or representation specifically related to the Care Act contact CASCAIDr. CASCAIDr is an online specialist charity who provide advice and support about the legal principles that say how adult social services operate in England and link with rights to NHS services.



[Click here to visit CASCAIDr's website](#)

Mencap

Mencap has a range of legal toolkits covering topics such as social care, education, housing, and advocacy:



[Click here to view a selection of resources and guides on the Mencap website](#)

Equality Advisory & Support Service

The Equality Advisory & Support Service has a helpline which offers advice about any issues relating to Equality and Human Rights and they also have a number of template letters which may be useful, e.g. a failure to make reasonable adjustments:



[Click here to go to the Equality Advisory & Support Service Website](#)