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My complaint about complaints

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Laura Mullarkey, lawyer, AIMS volunteer, and mum of three, compares her recent experiences of complaining about her NHS antenatal care, with making a regular consumer complaint. The juxtaposition highlights some reasons why the former can be so dissatisfying for service users, and she concludes with an idea for an alternative model for NHS complaints.



By Laura Mullarkey

I've made two complaints in the last year or so. In both cases, I had received refusals from a service provider to carry out the service that I was entitled to. In both cases, armed with my legal training to help me marshall my arguments, and buckets of determination, I called this out. And in both cases the service provider first tried to minimise and dismiss my complaint, but I persisted.

However, there the points of commonality end. Because whilst the first was a regular consumer complaint to a service provider, the second was a complaint to the NHS (in my case, my GP, who had repeatedly refused to listen to me or prescribe the medication I needed to combat my hyperemesis gravidarum[1] (HG)).

As a result, whilst in the consumer complaint case I ended up satisfied that my complaint had been heard and the right, fair and sensible outcome prevailed, in the NHS complaint case, I honestly don't even know what the outcome was. It was dissatisfying and disheartening and added a final sour note to what was already a deeply upsetting experience.

I fully appreciate that for some people, making a complaint about their maternity 'care' can make a really

positive difference to how they feel about their experience. The mere act of writing and sending a complaint can be cathartic, and receipt of a validating response and a commitment to change, even more so. Sharing my experience, therefore, is not intended as a general statement that NHS complaints are inevitably fruitless, but simply a personal account of my own recent frustrations with the system, which left me with the question: *why is complaining to the NHS so difficult, even for someone who is a pretty effective complainer?*

Lack of a clear contractual relationship

The first thing that makes life tricky is the absence of a single contract or other legal document that you can point to that expressly covers all the services to which you are entitled, and the manner in which they should be provided. Yes, I know we have protected legal rights in all medical settings – we have human rights protections, the wonderful Montgomery[2] ruling on consent, and the Health and Social Care Act 2012[3], plus other "soft law" we can reference like the NHS Constitution,[4] and the professional standards that doctors, nurses and midwives sign up to when they enter their professions.[5] However, the difference between trying to set out in an email the full factual matrix to prove how the conduct of a GP fell short of the standard of shared decision making, how that left you feeling, and what you think ought to have happened - and a simple, "you have not performed your obligations under clause 9; please now do so", is stark.

Lack of effective remedies

The next issue lies with the 'remedy', or solution, to the complaint. The first part of this problem is that, with a complaint to an NHS institution there is often a lack of clarity as to what the remedy can and should be (for this purpose I am talking about complaints that fall short of clear negligence and do not require a medical professional to be disciplined or struck off). You can, of course, suggest your own remedies, but there is generally no requirement for the body receiving the complaint to agree to what you have asked for, even if they are sympathetic to the complaint itself.

By contrast, with my consumer complaint, it was obvious – ask for the breach of contract to be rectified and, if it was not, I would have the right to pursue a damages claim for non-performance of the contract. This instantly meant my email of complaint carried weight.

And this brings me to the second part of the problem with successful resolution to NHS complaints – the difficulty in actually obtaining a remedy. As mentioned, with my consumer complaint, there was no way the company could simply fail to respond without serious risk of legal action. Furthermore, I had other weapons in my arsenal to help improve my chances of obtaining an appropriate remedy – when the company tried to minimise my concerns and argue I was not protected under the language of the contract, I had the ability to publicise their disingenuous behaviour, and/or go to the Consumer Ombudsman (or, at least, threaten that I might do so).

On the other hand, when I first wrote my complaint to my GP surgery, I did not even receive a response. It took me two and a half months of chasing, by phone and in person, before finally receiving a letter back,

which excused the behaviour of the GP, dismissed my concerns, and ignored all of my suggested solutions as to changes that could be made to improve procedures and care.

Lack of transparent follow through

Of course, I did not leave it there, and was in the end offered a meeting with a senior partner in the practice, the assistant practice manager and the GP concerned to discuss. I really believed at this point that, finally, there would be a chance for a meaningful discussion.

And then, on the day, with less than an hour before the meeting was due to be held, I received a text. The complained about GP could no longer attend – did I still wish to go ahead? We were now seven months on from the original GP appointment which started all this. The GP in question was apparently out of the country for "family reasons" and had no date set to return (it was implied that she might be away for some months). Did I really want to cancel today's meeting, which was fixed and certain and which I had fought for, in exchange for a possible future meeting on an unspecified date, which could happen only if and when the GP returned? Plus, there were questions of logistics - my mum had already travelled to support me for today's meeting, and I really wanted her there. She might not have been available when a new date finally arrived. And whilst I had been happy to bring my three-week-old into this meeting, I knew from experience that having to bring an active, older baby was likely to be distracting and difficult, making it harder for me to get my points across effectively.

So, for all these reasons, I went ahead with the meeting. The other, senior GP and the practice manager were both sympathetic, and they promised some long overdue changes to their appointment booking procedures for patients with conditions like HG, that home visits would be made available, and that the GP in question would be required to undertake some compulsory learning about HG, and would then be asked to present to the practice on what she had learned. Wonderful, I thought. Success.

However, I left that meeting, and that was that. No written follow up from them (not even a response to my email where I thanked them for their time, and set out what I had understood the outcomes to be), no timeline for carrying out what they had promised, nothing to evidence whether any procedures had changed, or whether the GP in question was ever even communicated with, let alone required to learn anything or present on it. And, of course, no one external to the practice, able to hold them to account. And so, I'm left wondering – was I an idiot to believe them? Am I being unreasonable to have expected more? Has anything at all changed for HG sufferers at that practice?

Compare that to my consumer complaint where, after some admittedly increasingly irate trading of emails, the company agreed to honour their contractual obligations and then actually did so. Job done, we could all move on.

And an alternative model?

I think it's clear from the above why writing a complaint about maternity care can be so dissatisfying, and that's if you're lucky enough to be starting from a position (as I was) where you aren't traumatised, you aren't continually gaslit during the complaints process, and you aren't targeted for your "audacity" with

threats of children's services referrals. And, sadly, things are more difficult still if you are simultaneously having to contend with other barriers: being black or an ethnic minority given the systemic racism in UK maternity services,[6] speaking English as a foreign language, being disabled, not having the education, confidence and/or time to make pursuing a complaint practicable, all compound the unfairness inherent in this system. I write this account in full awareness of all my privilege here.

And so, I am left pondering what alternatives to this ineffectual complaints system might be possible. Loath as I know most people are to hold the banking industry up as a role model for anything, I do wonder if the Financial Ombudsman Service (FOS) might offer a significantly better paradigm. The FOS is an independent body (established by parliament) which investigates consumer complaints against financial services firms. Consumers can apply to the FOS, free of charge, and ask them to resolve most types of complaints regarding financial services and products (provided certain time limits are complied with). Consumers are not required to have any legal counsel or advice in order to make such complaints and the FOS gathers information from the consumer using plain language and no jargon. If, having undertaken an independent investigation, with evidence requested from both parties, the FOS finds the financial institution has acted unfairly or unreasonably, it has the power to make legally binding decisions as to how the financial institution should provide redress to the consumer, including requiring the payment of compensation. If the FOS finds there was no unfairness or unreasonableness, it must provide reasons for this, so that the consumer can understand, and the consumer remains free to reject the FOS's findings altogether and pursue their complaint through the courts.

Furthermore, not only must a financial institution who is found to have acted unfairly take the steps required by the FOS to remedy the issue and apply lessons learned to avoid a repeat, but the FOS shares anonymised information about cases with all businesses under its remit, thereby ensuring that a single complaint can help to raise standards across the financial services industry as a whole.

It isn't all good news: the FOS is funded by a specific levy paid by financial institutions, whereas it's hard to see how an NHS equivalent would be funded by anyone other than the taxpayer. And, of course, not everyone who goes through a FOS complaint necessarily winds up happy with the outcome. Nonetheless, the potential of such a scheme to improve individual outcomes and to raise standards right across the NHS ought at least, in my view, to make such a scheme worthy of consideration.

But then again, I won't be holding my breath for impending change. If I feel that my complaint about my antenatal care was not really heard, then who is there to listen to my complaint about complaints?

Author's footnote: As this article goes to print, the failures of Jessica Cronshaw's GP and midwife to recognise the severity of her HG, and their incorrect assertion that she should reduce her medication as it could harm her baby, have made headlines. Her story is devastating and my thoughts are with her, baby Elsie, and their family. It will surprise no one familiar with this condition, that my complaint concerned extremely similar treatment from my own GP. I would urge anyone currently struggling with this illness, or who knows anyone who is, to contact Pregnancy Sickness Support.

Author Bio: Laura Mullarkey is a lawyer with over a decade of experience. She is a volunteer on the AIMS helpline, a peer supporter for Pregnancy Sickness Support (where she was shortlisted for their 2024 Rising Star award), and recently trained as a doula. In her spare time, she's also a mum of three.

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[1] Editor's note: Hyperemesis gravidarum is the medical term for severe nausea and vomiting during pregnancy, a condition that often requires hospital treatment.

[2] Montgomery v Lanarkshire Health Board [2015] UKSC 11 www.supremecourt.uk/cases/uksc-2013-0136.html

[3] Health and Social Care Act 2012 Fact Sheets www.gov.uk/government/publications/health-and-social-care-act-2012-fact-sheets

[4] NHS Constitution for England (2012) www.gov.uk/government/publications/the-nhs-constitution-for-england

[5] Professional standards: www.nmc.org.uk/standards/code and www.gmc-uk.org/professional-standards/professional-standards-for-doctors

[6] Birthrights (2022) Systemic Racism, Not Broken Bodies: An inquiry into racial injustice and human rights in UK maternity care. file:///tmp/mozilla_gwelfor0/Birthrights-inquiry-systemic-racism_exec-summary_May-22-web.pdf