

# NHS treatment - Your rights

This factsheet is about your rights when you use NHS services. It explains how NHS staff should act towards you, and what treatment you may get. This information is for adults affected by mental illness in England. It's also for their loved ones and carers and anyone interested in this subject.

## Key Points.

- The NHS should:
  - ask you if you agree to treatment,
  - give you information about treatment choices,
  - treat you with care and skill,
  - keep your personal information confidential,
  - let you see your health records, and
  - respect your human rights.
- NHS staff should follow codes of practice and guidance.
- If you think that the NHS has not acted properly, you can complain.
- You can take legal action against the NHS if they break the law.

### **This factsheet covers:**

1. [What are my rights when I use the NHS?](#)
2. [What treatment should I get from the NHS?](#)
3. [What can I do if I have a problem with NHS services?](#)
4. [Can I choose what treatment I get or which doctor I see?](#)

## 1. What are my rights when I use the NHS?

The NHS always has to respect your legal rights.

### Consent

You can refuse treatment, even life saving treatment.<sup>1</sup> This is the case even if other people disagree with your decision. But there are exceptions. Your doctor can treat you even if you don't want it if:<sup>2</sup>

- you are in hospital under the Mental Health Act 1983, or
- you cannot make decisions because you 'lack capacity'.

You can find more information about:

- Mental Health Act
- Mental capacity and mental illness - The Mental Capacity Act 2005
- Planning your future care - Advance statements and advance decisions

at [www.rethink.org](http://www.rethink.org). Or call our General Enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheet.

### Information

Your doctor should give you clear information about the risks, side effects and any other relevant information about your treatment. This is to make sure you have all the information you need to make decisions about your treatment.<sup>3</sup>

### Access to treatment

You have the right to use NHS services if they can help you. The services cannot refuse to help you without a good reason. If the waiting times for a service are too long you may be told about different places you can get the same or similar treatment.<sup>4</sup>

### Standard of care

Health professionals must use reasonable care and skill when they treat you. This means different things in different situations. Your doctor should follow trusted medical opinion and not do something that other doctors wouldn't do.<sup>5</sup> You should always get care and treatment that is appropriate for you and your needs. Your health professionals should also think about your preferences.<sup>6</sup>

You have a right to be cared for in somewhere safe, clean and suitable. You should be given suitable food and drink to keep you well while you are there.<sup>7</sup>

## Confidentiality

Health professionals must not tell other people about your diagnosis, condition, treatment or other personal information.<sup>8</sup> They can only tell other people if:<sup>9,10</sup>

- you tell them they can,
- they need to in an emergency, or
- a court orders them to.

You can find more information about:

- Confidentiality
- Confidentiality and Information Sharing - For Carers, Friends and Relatives

at [www.rethink.org](http://www.rethink.org). Or call our General Enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheet.

## Medical records

You have the right to see your medical records. Your medical records must be up-to-date, accurate and relevant.<sup>11</sup> It is possible to have some mistakes corrected in your records, although medical opinions are usually not removed.

You can find more information about '**Access to health records**' at [www.rethink.org](http://www.rethink.org). Or call our General Enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheet.

## Human rights

NHS services must respect your human rights. For example, they have to respect your private and family life.

Your human rights may be affected in the following situations.

- Being placed in a residential unit a long distance from your family.
- Keeping you secluded, alone in a room and supervising you, without good reasons that consider your rights.
- Refusing to allow family visits or contact when you are in hospital.
- Excessive force used to restrain you.

But some of your human rights, including your right to a private and family life, are not 'absolute'. This means that your rights can be restricted if the restriction is:

- lawful. This means that there must be a law allowing the restriction. Such as the Mental Health Act or Mental Capacity Act,
- for a legitimate reason. For example, the need to protect you or other people,
- necessary and proportionate. This means that the NHS must be able to show that they have thought about your rights. And that the restriction is as minimal as possible to achieve a legitimate aim.

The British Institute of Human Rights (BIHR) has published a human rights guide for people living with mental health and mental capacity problems. You can read this at: [www.bihr.org.uk/mental-health-advocacy-and-human-rights-your-guide](http://www.bihr.org.uk/mental-health-advocacy-and-human-rights-your-guide).

The Equality Human Rights Commission (EHRC) has many useful guides on their website. You can find more information about your rights when detained under the Mental Health Act at: [www.equalityhumanrights.com/en/publication-download/yourrights-when-detained-under-mental-health-act-england](http://www.equalityhumanrights.com/en/publication-download/yourrights-when-detained-under-mental-health-act-england)

### **Discrimination**

You have the right to use NHS services without being unlawfully discriminated against on the grounds of disability or other characteristics such as ethnicity and sexuality.<sup>12</sup> This protection is under the Equality Act 2010.

You can find more information about '**Discrimination and mental health**' at [www.rethink.org](http://www.rethink.org). Or call our General Enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheet.

### **Advocacy**

Advocates can help you to communicate with doctors and other professionals in the NHS or social services. They normally work for charities, so they are independent. They can help you to:

- get what you are entitled to,
- get your point of view across, and
- get the services you need.

Certain advocacy services are statutory. This means that they must be provided by law. Statutory advocacy includes:

- Independent mental health advocacy,
- Independent mental capacity advocacy, and
- NHS complaints advocacy.

You can find more information about '**Advocacy for mental health**' at [www.rethink.org](http://www.rethink.org). Or call our General Enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheet.

### **Complaints**

You also have a right to complain about any NHS service if you are unhappy. The NHS must acknowledge your complaint and investigate it properly.

You can read more about complaints in [Section 3](#) below.

You can find more information about:

- Complaining about the NHS and social services
- Clinical negligence

at [www.rethink.org](http://www.rethink.org). Or call our General Enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheet.

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## 2. What treatment should I get from the NHS?

The NHS offers different treatments depending on where you live. This means your doctor might not be able to offer you something that is available in another part of the country.

### **Clinical Commissioning Groups (CCGs)**

A Clinical Commissioning Group (CCG) is a part of the NHS. There are several different CCGs across the country. They are responsible for arranging some NHS services in their area.

A CCG is responsible for patients registered with a GP in their area, and for patients who do not have a GP but who are 'usually resident' in their area.<sup>13</sup> The rules around this can be complicated. For more advice you can call the Rethink Mental Illness Advice Service on 0300 5000 927.

A CCG is responsible for arranging mental health services including teams such as Community Mental Health Teams (CMHT) and Crisis Teams. They do not arrange any service provided by a GP.<sup>14</sup>

They also arrange:<sup>15</sup>

- urgent and emergency treatment, such as ambulances and accident and emergency departments,
- NHS 111 services,
- some out-of-hours GP services,
- pre-arranged care in hospital,
- community health services,
- rehabilitation services,
- services for people with learning disabilities, and
- NHS continuing healthcare.

The CCG is responsible for assessing the local population in its area. Based on this they will decide which services are needed, and which ones are not needed.<sup>16</sup> This means that there may be some services that are not available in your area but are available elsewhere.

This means that you may sometimes be able to access services outside your area. You might be able to get funding to do this. You can read more about this in [Section 4](#).

## **NHS England**

NHS England is another part of the NHS. They fund different services than the CCGs across England.

These services include the following.<sup>17</sup>

- Services delivered through a GP.
- Some out-of-hours GP services.
- Pharmaceutical services, such as community pharmacy services.
- Health services apart from emergency treatment.
- Health services for people in prisons and other similar places such as young offender institutions and immigration removal centres.
- Secondary health services for the armed forces and their families. This means the health services not arranged through a GP.
- Specialist services.

In mental health a specialist service might cover a certain condition, such as obsessive compulsive disorder (OCD).<sup>18</sup> Usually these services are for people with very severe symptoms. They have their own rules on who can and cannot go there.

Because specialist services are arranged by NHS England, this means that you may still go to one even if it is not in your area.<sup>19</sup> Services have their own rules about who can and cannot join.<sup>20</sup> Ask your doctor if you think they could help.

### **How can I find out what services are in my area?**

Below is some guidance that may help you to find out what you may get in your area.

#### NHS website

You can find information about the different types of mental health service available at:

[www.nhs.uk/nhs-services/mental-health-services/mental-health-services-for-young-people](http://www.nhs.uk/nhs-services/mental-health-services/mental-health-services-for-young-people)

And you can search for different local service providers at:

[www.nhs.uk/service-search/mental-health](http://www.nhs.uk/service-search/mental-health).

#### NICE Guidelines

The National Institute for Health and Care Excellence (NICE) write guidelines on what treatment should be given for different conditions. You can find them here:

[www.nice.org.uk/guidance](http://www.nice.org.uk/guidance)

#### The NHS Constitution

The NHS Constitution says what your rights are in the NHS. All NHS services have to follow the constitution. You can read it here:

[www.gov.uk/government/publications/the-nhs-constitution-for-england/the-nhs-constitution-for-england](http://www.gov.uk/government/publications/the-nhs-constitution-for-england/the-nhs-constitution-for-england)

### Local NHS Policies

You can look on your local CCG's website for more information about their services. You can read their policies on what services exist and who can access these. You can also look online for NHS England services and their policies.

If you don't think the NHS has followed the above guidance or local policies, you can complain. This can sometimes lead to changes in your treatment or an apology if things went wrong. There is more information about this in [Section 3](#).

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## **3. What can I do if I have a problem with NHS services?**

### **How can I complain?**

If you feel that the NHS has done something wrong, you can complain. A complaint might lead to the treatment that you wanted, or an apology.

You can contact your local Patient Advice and Liaison Service (PALS) about the issue. The NHS say that PALS can help you:

- with health-related questions,
- to resolve concerns or problems when you're using the NHS,
- by telling you how to get more involved in your own healthcare,
- understand the NHS complaints procedure,
- understand how to get independent help if you want to make a complaint,
- learn about support groups outside the NHS.

You can read more about PALS here: [www.nhs.uk/nhs-services/hospitals/what-is-pals-patient-advice-and-liaison-service](http://www.nhs.uk/nhs-services/hospitals/what-is-pals-patient-advice-and-liaison-service)

You can search for your local PALS service at [www.nhs.uk/service-search/other-services/Patient-advice-and-liaison-services-\(PALS\)/LocationSearch/363](http://www.nhs.uk/service-search/other-services/Patient-advice-and-liaison-services-(PALS)/LocationSearch/363)

Or you can make a complaint directly to the NHS service. This can be in person, in writing, or over the phone. If you are complaining, it is important to make it clear that this is what you are doing. If you want to complain about a GP surgery, you can also contact NHS England.

The NHS should acknowledge your complaint within 3 working days and then look at what happened. They will tell you when this is finished. If you are not happy with their response you can take your complaint higher to the Parliamentary and Health Service Ombudsman (PHSO).

If you need help making your complaint you can get the help of an Independent NHS Complaints Advocate. This is someone independent of the NHS, who can help you with making your complaint. You can find your local service online.

If your doctor has behaved unprofessionally, you can complain to the General Medical Council (GMC). The GMC can investigate and may remove a doctor from the medical register. This could be appropriate if the doctor:<sup>21</sup>

- has had a sexual relationship with a patient,
- has lied about their qualifications,
- can't understand English well enough to do the job,
- makes serious or repeated mistakes,
- has broken your confidentiality without good reason, or
- has put information on your medical records they knew was wrong.

You can find more about:

- Complaining about the NHS and social services
- Advocacy

at [www.rethink.org](http://www.rethink.org). Or call our General Enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheet.

### **Can I take legal action?**

If the NHS has breached your legal rights, you might be able to take legal action.

Below are some examples of legal action you can take but there might be others.

We aren't experts on taking legal action, so if you want to do this, we suggest you get legal advice.

You can find more about '**Legal advice – Finding a solicitor**' at [www.rethink.org](http://www.rethink.org). Or call our General Enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheet.

### Clinical negligence

Clinical negligence is when you have been physically or mentally hurt because of a poor standard of health care.

You can take legal action against the NHS or a member of staff and claim compensation. This can be complicated, and you should speak to a solicitor about this.

You can find more information about '**Clinical negligence**' at [www.rethink.org](http://www.rethink.org). Or call our General Enquiries team on 0121 522 7007 and ask them to send you a copy of or factsheet.

## Judicial Review<sup>22</sup>

Judicial review is a type of court proceeding in which a judge reviews the lawfulness of a decision made by a public body, such as the NHS.

Judicial reviews are a challenge to the way in which a decision has been made, rather than the rights and wrongs of the decision itself.

The court will look at the process of the decision and whether the right procedures have been followed by the NHS. The court won't substitute what it thinks is the 'correct' decision.

This may mean that the NHS might be able to make the same decision again, so long as it does so in a lawful way.

But the court might rule the way the decision was made was unlawful. If the NHS then follow the correct procedures it might lead to them making a different decision.

If you want to argue that a decision was incorrect, judicial review may not be best for you. There are alternative remedies, such as appealing against the decision to a higher court.

If you want to ask for a judicial review, you need to act as quickly as you can. There are time limits. You should start legal action within 3 months of the problem.<sup>23</sup>

Legal Aid may be available for judicial review cases. You can find out if you are eligible for legal aid at: [www.gov.uk/civil-legal-advice](http://www.gov.uk/civil-legal-advice).

## Can I take legal action about my human rights?<sup>24</sup>

You may be able to take legal action for a breach of your human rights. The law that says what human rights you have is the Human Rights Act 1998.

You can get legal advice about taking action under human rights law.

You might be in pain or be suffering when something could reasonably be done to help or make it better. That would be against human rights law.

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## **4. Can I choose what treatment I get or which doctor I see?**

### **Do I have the right to the treatment I want?**

Your doctor will offer you treatments that are available locally. They will choose treatment based on your diagnosis and guidelines. If there is more than one provider of the same treatment in your area, you may be able to choose between them.

If your doctor doesn't offer you what you want, ask them why. Some people might find it helpful to ask an advocate to help them talk to their doctor.

### Clinical Commissioning Group services

As we explained above, your local Clinical Commissioning Group (CCG) decides what treatments are available in your area. If your doctor thinks you need treatment that is not available locally, you may be able to get treatment under a different CCG.

### Individual Funding Request (IFR)

The NHS doesn't offer all possible treatments. If you want a treatment that it doesn't offer, you can ask the NHS to make an exception for you. This is called an 'Individual Funding Request' (IFR). When you make a request, the NHS will look at your case and decide if they will pay for your treatment.<sup>25,26</sup>

You can't make an IFR application yourself. Only your GP or specialist clinician can do this. You will need to speak to them about this. When they make an IFR application, your doctor needs to clearly show:<sup>27</sup>

- that the treatment they are asking for will help you,
- that other treatments have not worked, and
- that your circumstances are exceptional.

### NHS England specialist services

As we explained above, NHS England may arrange different specialist services across the country. These are usually for people who have more needs or worse symptoms. You may be expected to try local services first, if they are available. Each specialist service will have their own rules on referral. Ask your doctor for more information.

### **Do I have the right to see a psychiatrist?**

You should get treatment from a professional with the appropriate experience and qualifications.<sup>28</sup> You cannot demand to see a psychiatrist, but your GP should offer you a referral if they think you need to see one.

GPs can only usually diagnose conditions such as mild-moderate depression or anxiety. They are not trained to diagnose mental illnesses such as bipolar disorder and schizophrenia. They should refer you to a psychiatrist if they think that you need a specialist opinion.

### **Can I choose which mental health service I see?<sup>29</sup>**

You have the legal right to choose which provider and team you are referred to by your GP for your first appointment.

There are times when you do not have a legal right to choose. These times include when:

- you need urgent or emergency treatment,
- you already receive care and treatment for the condition you're being referred for,
- the organisation or clinical team does not provide clinically appropriate care for your condition,
- you're a prisoner, on temporary release from prison,

- you're detained in a secure hospital setting, or
- you're detained under the Mental Health Act.

If you are not offered a choice you should speak to your GP.

You can also raise concerns about your GP with NHS England. NHS England can provide advice about choice issues and may be able to resolve your issue. You can find their contact details in the Useful Information section of this factsheet.

### **Do I have the right to a second opinion?**

A second opinion means that you see another doctor to find out if they agree with your diagnosis or treatment.

You can ask for a second opinion if you do not agree with your doctor's opinion. But you do not have a right to a second opinion. You should ask your doctor about it and explain why you think it is important. If your doctor refuses, ask why. If you are unhappy with the reasons, you could complain through the NHS complaints procedure.

You can find more information about '**Second opinions - About your mental health diagnosis or treatment**' at [www.rethink.org](http://www.rethink.org). Or call our General Enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheet.

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## Useful Contacts

### **Equality Advisory and Support Service**

Advises and assists individuals on issues relating to equality and human rights across England, Scotland and Wales.

**Telephone:** 0808 800 0082 (Mon-Fri 9am-7pm and Sat 10am-2pm)

**Textphone:** 0808 800 0084

**Address:** FREEPOST EASS HELPLINE FPN6521

**Email:** Online form via website

**Website:** [www.equalityadvisoryservice.com](http://www.equalityadvisoryservice.com)

### **NHS England**

For issues relating to choosing where you go for your first appointment as an outpatient, you may wish to complain to NHS England.

**Telephone:** 0300 311 2233

**Email:** [england.contactus@nhs.net](mailto:england.contactus@nhs.net)

**Address:** NHS England, PO Box 16738, Redditch, B97 9PT

**Website:** [www.england.nhs.uk](http://www.england.nhs.uk)

## References

<sup>1</sup> Williamson v East London & City Health Authority [1998] 41 BMLR 85.

<sup>2</sup> s5, Mental Capacity Act 2005 c9.

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- <sup>3</sup> Chester v Afshar [2004] UKHL 41.
- <sup>4</sup> Department of Health. *The NHS Constitution*. London: Department of Health; 2015. Page 6.
- <sup>5</sup> Bolam v Friern Hospital Management Committee [1957] 1 WLR 583.
- <sup>6</sup> As note 4, page 9.
- <sup>7</sup> As note 4, page 7.
- <sup>8</sup> Hunter v Mann [1974] QB 767.
- <sup>9</sup> General Medical Council (GMC). *Confidentiality: good practice in handling patient information*. Manchester: GMC; 2017. Para 22-23.
- <sup>10</sup> Department of Health. *Confidentiality: NHS Code of Practice*. London: Department of Health; 2003. Annex B, para 50.
- <sup>11</sup> Article 5, Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation). <https://eur-lex.europa.eu/legalcontent/EN/TXT/?qid=1528874672298&uri=CELEX:02016R0679-20160504> (accessed 11th November 2020).
- <sup>12</sup> s4 Equality Act 2010 c.15.
- <sup>13</sup> NHS England. *Who pays? Determining responsibility for payments to providers*. London: NHS England; 2013. Pages 13, 65 and 66.
- <sup>14</sup> NHS Commissioning Board. *Commissioning fact sheet for clinical commissioning groups*. London: NHS Commissioning Board; 2012. Page 3.
- <sup>15</sup> As note 14, pages 3-4.
- <sup>16</sup> As note 13, para 9.2.
- <sup>17</sup> As note 14, page 4.
- <sup>18</sup> Schedule 4, *The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012*. SI 2012/2996. London: TSO; 2012.
- <sup>19</sup> s3, National Health Service Act 2006 c.41.
- <sup>20</sup> NHS England. *Specialised services*. [www.england.nhs.uk/commissioning/specialised-services/](http://www.england.nhs.uk/commissioning/specialised-services/) (accessed 29 September 2017).
- <sup>21</sup> General Medical Council. *What we can do and what we can't do*. [www.gmc-uk.org/concerns/making\\_a\\_complaint/30432.asp](http://www.gmc-uk.org/concerns/making_a_complaint/30432.asp) (accessed 12 September 2017).
- <sup>22</sup> Courts and Tribunals Judiciary. *Judicial reviews*. [www.judiciary.uk/you-and-the-judiciary/judicial-review/](http://www.judiciary.uk/you-and-the-judiciary/judicial-review/) (accessed 10 August 2021)
- <sup>23</sup> Ministry of Justice. *Civil Procedure Rules Part 54 Judicial Review and Statutory Review*. [www.justice.gov.uk/courts/procedure-rules/civil/rules/part54#54.5](http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part54#54.5). Para 54.5. (accessed 29 September 2017).
- <sup>24</sup> Citizens Advice. NHS problems – taking legal action. [www.citizensadvice.org.uk/health/nhs-and-social-care-complaints/complaining-about-the-nhs/taking-your-complaint-against-the-nhs-to-court/nhs-problems-taking-legal-action/](http://www.citizensadvice.org.uk/health/nhs-and-social-care-complaints/complaining-about-the-nhs/taking-your-complaint-against-the-nhs-to-court/nhs-problems-taking-legal-action/) (accessed 10 August 2021)
- <sup>25</sup> NHS England Individual funding requests for specialised services a guide for patients. [www.england.nhs.uk/wp-content/uploads/2017/11/ifr-patient-guide.pdf](http://www.england.nhs.uk/wp-content/uploads/2017/11/ifr-patient-guide.pdf) (accessed 17 May 2019).
- <sup>26</sup> NHS. *About NHS hospital services*. [www.nhs.uk/using-the-nhs/nhs-services/hospitals/about-nhs-hospital-services](http://www.nhs.uk/using-the-nhs/nhs-services/hospitals/about-nhs-hospital-services) (accessed 15th February 2019).
- <sup>27</sup> As note 25.
- <sup>28</sup> Department of Health. *The Handbook to the NHS Constitution*. London: Department of Health; 2015. Page 38.
- <sup>29</sup> Gov.UK. *The NHS Choice Framework: what choices are available to me in the NHS?* See 'Choosing where to go for your first appointment as an outpatient' [www.gov.uk/government/publications/the-nhs-choice-framework/the-nhs-choice-framework-what-choices-are-available-to-me-in-the-nhs](http://www.gov.uk/government/publications/the-nhs-choice-framework/the-nhs-choice-framework-what-choices-are-available-to-me-in-the-nhs) (accessed 7th January 2021).

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in large print.

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### Rethink Mental Illness Advice Service

Phone 0808 801 0525  
Monday to Friday, 9:30am to 4pm  
(excluding bank holidays)

Email [advice@rethink.org](mailto:advice@rethink.org)

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#### Did this help?

We'd love to know if this information helped you.

**Drop us a line at:** [feedback@rethink.org](mailto:feedback@rethink.org)

**or write to us at Rethink Mental Illness:**  
RAIS  
PO Box 17106  
Birmingham B9 9LL

**or call us on** 0808 801 0525

We're open 9:30am to 4pm  
Monday to Friday (excluding bank holidays)



Leading the way to a better  
quality of life for everyone  
affected by severe mental illness.

For further information  
on Rethink Mental Illness  
Phone 0121 522 7007  
Email [info@rethink.org](mailto:info@rethink.org)



Patient Information Forum

#### Need more help?

Go to [www.rethink.org](http://www.rethink.org) for information on symptoms, treatments, money and benefits and your rights.

#### Don't have access to the web?

Call us on 0121 522 7007. We are open Monday to Friday, 9am to 5pm, and we will send you the information you need in the post.

#### Need to talk to an adviser?

If you need practical advice, call us on 0808 801 0525 between 9:30am to 4pm, Monday to Friday. Our specialist advisers can help you with queries like how to apply for benefits, get access to care or make a complaint.

#### Can you help us to keep going?

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