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ORIGINAL ARTICLE

Webs within the web: the role of epistemic injustice in creating barriers to public legal information about rights in a digital age

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Abstract

Despite concerns over the ability of citizens to understand and act on their legal rights, there has been little debate about what the effective provision of public legal information about rights entails. Viewed through the lens of epistemic injustice, this article reveals the ways in which organizations with epistemic privilege can obfuscate the understanding of rights by resorting to displays of epistemic superiority and pre-emptive smothering of testimony. The article draws on the results of a critical discourse analysis of over 250 authoritative webpages that provide information on how to complain about healthcare provision. Focusing on tone, language, vocabulary, and format, the analysis looks at the role played by political design and fragmented discursive infrastructures, the characterization of information seekers as occupying liminal spaces, the use of professional and rarefied language in pre-emptively undermining the testimony of the laity, and the ways in which the internet and hyperlinks facilitate epistemic obfuscation.

1 | INTRODUCTION

As socio-legal scholars are aware, there is little substance to claims that access to justice is respected in mature democracies if rights and the means to invoke them are not made transparent to citizens. Despite the importance of this assumption, little in-depth socio-legal scholarship has focused on how information is provided to the public about their rights. In response to this gap, this article considers the content, tone, and format of information provided to the public across the four nations of the United Kingdom (UK) about their rights to complain about healthcare provision. We consider how organizations with considerable political, cultural, and social capital present information about complaints systems and in doing so render the complaints process opaque or transparent. To understand this process, we draw on the concept of epistemic injustice, which is enjoying growing attention within the socio-legal community.[1] This evolving concept, which originated in philosophical circles, seeks to explain why the voices of some members of the public are considered more credible than those of others, and the ways in which systems become hard wired to privilege certain ways of seeing over others. We argue that looking at information provision through an empirical lens adds nuance to existing scholarship on epistemic injustice and has the potential to provoke new interest in the ways in which the construction and communication of information about rights frequently leads to the further marginalization of the marginalized.

The provision of public legal information is explored through a critical discourse analysis of information supplied to the public on websites produced by four authoritative organizations responsible for managing complaints about healthcare. Our examination concentrates on two key dimensions of information that impact on epistemic injustice. The first of these is website content, or the what and the how of information provision, an analysis of which considers such issues as language, choice of vocabulary, characterization of complainants, and tone. The second is the format in which information is provided, an analysis of which considers the impact that the internet, and more particularly the hyperlink, has on the dynamics of information provision.

This article poses three key questions. How accessible and comprehensible is website content when viewed from the perspective of lay users? How are those lay users (re)constructed by content providers in public-facing information that explains complaints procedures? In what ways do internet-based platforms facilitate the navigation of the information that is available and address the needs of information seekers? The remainder of this article addresses these questions in four substantive sections. In Section 2, we consider how public legal information has been discussed. Section 3 goes on to consider the ways in which the notion of epistemic injustice offers up valuable new vocabularies for the critique of information produced about rights and administrative justice procedures. Section 4 discusses the methods employed in the study and the characteristics of healthcare complaints that make it, and the organizations that oversee them, an appropriate focus for empirical research. Section 5 presents the data gleaned from our analysis of content and format, concentrating on issues around clarity, defensive language, the othering of complainants, and the navigability of the online information provided.

We argue that the political design of the National Health Service (NHS) and the creation of silos of complaint handling renders it inherently complex to explain which organizations have

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[1] See for example M. Flear, 'Epistemic Injustice as a Basis for Failure? Health Research Regulation, Technological Risk and the Foundations of Harm and Its Prevention' (2019) 10 *European J. of Risk Regulation* 693; M. Flear et al., *Socio-Legal Studies on Epistemic Injustice and Spaces and Places* (2025); R. Saeed, '"So, What's Wrong with Colonialism?" Understanding Colonialism's Political, Territorial and Epistemic Injustice' (2025) 21 *International J. of Law in Context* 99.

responsibility for handling complaints about different practitioners in a range of healthcare settings. This inevitably creates a convoluted discursive infrastructure. This context encourages the production of narratives that create a sense of knowledge seekers at constant risk of being out of place in ways that suggest epistemic othering. The use of rarefied and specialist professional language also encourages a characterization of information seekers as unable to produce credible testimony. We also argue that the format of web-based public legal information creates further epistemic obfuscation by constructing a maze of hyperlinked information highways for information seekers in which the promise of clarity is always just one click away.

It is hoped that the data presented will be of value in teasing out how the notions of epistemic injustice manifest themselves in nuanced ways on a daily basis in the administrative justice arena. In doing so, we aim to contribute to the challenging agenda posed by Susan Silbey in which she has encouraged law and society scholars to move beyond questions of how individuals understand and experience law in order to pay more attention to the structural constraints on their agency or the ways in which they are encouraged to discipline their own testimony.[2]

2 | PUBLIC LEGAL INFORMATION AND THE CONCEPT OF EPISTEMIC INJUSTICE

The need for high-quality public legal information is an issue that has not received much in-depth scholarly consideration, but is now attracting some attention from policy makers and practitioners because of contemporary debates about active or participatory citizenship. It has, for example, been argued in the UK Parliament that those who understand their rights and how to enforce them are more likely to be fully participating citizens.[3] Writing in the context of the United States (US), James White has offered an ambitious explanation of what enhanced legal literacy might entail. Significantly, this goes beyond ideas of 'participation' in legal proceedings[4] towards a broader political vision of the informed citizen in a functioning democracy:

> The citizen who was ideally [legally] literate … would not be expected to know how to draft deeds and wills or to try cases or to manage the bureaucratic maze, but [they] would know when and how to call upon the specialists who can do these things. More important, in the rest of life [they] would be able to protect and advance [their] own interests: for example, in dealing with a landlord or a tenant, or in [their] interactions with the police, with the zoning commission, or with the Social Security Administration. [They] would be able not only to follow but to evaluate news reports and periodical literature dealing with legal matters, from Supreme Court decisions to House Committee Reports; to function effectively in positions of responsibility and leadership (say as an elected member of a school board, or as chairman of a neighborhood association, or as a member of a zoning board or police commission). The

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[2] S. Silbey, 'After Legal Consciousness' (2005) 1 *Annual Rev. of Law and Social Science* 323.

[3] 641 *HC Debs* cols 80WH–103WH (15 May 2018).

[4] In this context, see further the discussion of how the concepts of legal and political participation are complementary but different in G. McKeever, 'A Ladder of Legal Participation for Tribunal Users' (2013) *Public Law* 575.

> ideal is that of a fully competent and engaged citizen, and it is a wholly proper one to keep before us.[5]

In the UK, a commitment to enhanced public legal education has manifested itself in several ways. The Solicitor General has published a public legal education (PLE) vision statement[6] and set up a panel to drive PLE initiatives in order to promote the importance of teaching people about law and their basic rights. The National Curriculum Key Stages for schools, an initiative by Westminster that impacts English students, also requires that pupils should develop a sound knowledge and understanding of the role of law and the justice system.[7] Elsewhere, the Law Society has provided guidance for law firms in developing a PLE programme.[8] Bottom-up attempts to address legal literacy issues have a much longer history. The Plain English Campaign has been arguing against 'gobbledygook', jargon, and misleading public information since 1979. Law centres, Citizens Advice, and local advice centres also have decades of experience of disseminating information about rights to the public and providing guidance on effective communication strategies.

A considerable amount of attention has been given to the practicalities of how public legal information is most effectively conveyed to a broad range of people, including those with poor literacy skills. For example, government guidance on website content advises that information supplied to the general public should be simple and non-technical, avoiding jargon or terms of art.[9] Elsewhere, it has been argued that language should aim to cater for a wide variety of reading abilities,[10] with the Web Accessibility Initiative suggesting that websites should aim to produce content that can be understood by someone with the reading ability of a nine year old to ensure that it is understandable to most of the population.[11] The implications of this should not be underestimated. The National Literacy Trust has estimated that 7.1 million adults in England, out of a population of just under 58 million, do not have the literacy skills that they need to read a newspaper, understand a utility bill, make sense of the instructions that accompany their medication, fill out a job application form, or navigate the internet.[12] In a legal context, empirical research has shown that users of the administrative justice system often lack confidence in their literacy and communication skills and feel intimidated, overwhelmed, exhausted, frustrated, and disenchanted when presented with a lot of technical information.[13]

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[5] J. B. White, 'The Invisible Discourse of the Law: Reflections on Legal Literacy and General Education' (1983) 54 *University of Colorado Law Rev*. 143, at 144.

[6] Attorney General's Office, 'Our Vision for Legal Education' *Gov.uk*, 31 October 2018, at <https://www.gov.uk/government/news/our-vision-for-legal-education>.

[7] Department of Education, *National Curriculum in England: Citizenship Programmes of Study for Key Stages 3 and 4* (2013), at <https://assets.publishing.service.gov.uk/media/5f324f7ad3bf7f1b1ea28dca/SECONDARY_national_curriculum_-_Citizenship.pdf>.

[8] Law Society, 'Public Legal Education' *Law Society*, 27 May 2025, at <https://www.lawsociety.org.uk/campaigns/public-legal-education>.

[9] Cabinet Office, *Quality Framework for UK Government Website Design: Usability Issues for Government Websites* (2003), at <https://ntouk.wordpress.com/wp-content/uploads/2020/05/uk-government-website-design.pdf>.

[10] Web Accessibility Initiative, 'Understandable Content' *Web Accessibility Initiative*, 23 January 2019, at <https://www.w3.org/WAI/perspective-videos/understandable/>.

[11] Id.

[12] See further J. Douglas, 'Words Matter: The Role of Literacy in Combatting Social Exclusion' *National Literacy Trust*, 4 October 2019, at <https://literacytrust.org.uk/blog/words-matter-role-literacy-combatting-social-exclusion/>.

[13] See McKeever, op. cit., n. 4; M. Valverde and A. Moore, 'The Performance of Transparency in Public–Private Infrastructure Project Governance: The Politics of Documentary Practices' (2019) 56 *Urban Studies* 689.

Despite the range of policies and practical advice in existence, there is a considerable body of evidence that suggests that these initiatives fall short of comprehensively and reliably informing citizens about their rights.[14] Government departments are commonly given considerable discretion about whether, what, and how they communicate with rights holders, with the result that the provision of high-quality information is patchy. For example, one UK government webpage entitled 'Your Rights and Legal Support' provides useful information on such matters as consumer complaints, data protection, discrimination rights, problems at work, and neighbour disputes, but contains no information about the plethora of other issues experienced by citizens, such as dealing with problem landlords, the right to be housed, social security problems, personal injury, and human rights.[15] Citizen-facing government communications have also been found to be overly complex, tending to avoid easily accessible language and relying on complex and technical descriptions that exist at a reading level far above the average citizen's capabilities.[16] One might be forgiven for thinking that government departments did not want citizens to understand their rights. Indeed, Marcus Gilroy-Ware has gone so far as to contend that the structural conditions of market-dominated societies actually incentivize the production of a kind of political and social illiteracy in which the majority of the population are denied effective access to education or knowledge that would help them to understand the problems of society and take effective action to resolve them.[17]

Socio-legal research has added to our understanding of how these issues play out. The English and Welsh Civil and Social Justice Panel Survey found that only a quarter of the 1,382 respondents with a justiciable problem felt that they had a complete understanding of their rights. However, it was also discovered that those who claimed to have a full or partial grasp of their rights were not always able to articulate what those rights were when asked in interviews. The knowledge that they claimed to possess was sometimes erroneous, and in other instances reflected common-sense beliefs about what they thought their rights *should* be.[18] Research has also shown that many people do nothing when they experience a justiciable problem because they often think, wrongly, that there is nothing that they can do.[19]

These issues have a particular resonance when viewed from the perspectives of disadvantaged information seekers. Lack of 'legal confidence' is disproportionately present among marginalized

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[14] T. Cole and K. Fellows, 'Risk Communication Failure: A Case Study of New Orleans and Hurricane Katrina' (2008) 73 *Southern Communication J.* 211. See also M. Sauer et al., 'A Failure to Communicate? How Public Messaging Has Strained the COVID-19 Response in the United States' (2021) *19 Health Security* 65.

[15] *Gov.uk*, 'Your Rights and Legal Support' *Gov.uk*, at <https://www.gov.uk/browse/justice/your-rights-legal-support>. Information on some of these issues can be found elsewhere on the government website. See for example Ministry of Justice, 'Human Rights: The UK's International Human Rights Obligations' *Gov.uk*, 30 March 2022, at <https://www.gov.uk/government/collections/human-rights-the-uks-international-human-rights-obligations>; *Gov.uk*, 'Compensation after an Accident or Injury' *Gov.uk*, at <https://www.gov.uk/compensation-after-accident-or-injury>.

[16] A. Boholm, 'Lessons of Success and Failure: Practicing Risk Communication at Government Agencies' (2019) 118 *Safety Science* 158. See also R. Thomas, 'Analysing Systemic Administrative Justice Failures: Explanatory Factors and Prospects for Future Research' (2021) 43 *J. of Social Welfare & Family Law* 339.

[17] M. Gilroy-Ware, *After the Fact? The Truth about Fake News* (2020).

[18] N. Balmer, *English and Welsh Civil and Social Justice Panel Survey: Wave 2* (2013), at <https://discovery.ucl.ac.uk/id/eprint/1575457/1/Balmer_Civil_Justice_England_Wales_Wave2.pdf>. See also Law Society and Legal Services Board, *Legal Needs of Individuals in England and Wales: Technical Report 2019/20* (2022), at <https://legalservicesboard.org.uk/wp-content/uploads/2022/05/Legal-Needs-of-Individuals-Technical-Report-Final-May-2022.pdf>.

[19] H. Genn, *Paths to Justice: What People Do and Think about Going to Law* (1999).

and vulnerable groups and those in the 18 to 25 age bracket.[20] The disadvantaged are also much more likely to find it harder to understand and digest information provided to them, are less able to use information to favourable effect, and are more prone to dealing with compound disadvantages that impact on their ability to assert their rights.[21] For example, the disadvantaged often lack the necessary online skills to effectively use digital justice platforms and struggle to identify information that is either accurate or relevant to their own concerns.[22] The Legal Aid and Sentencing of Offenders Act 2010 has exacerbated the difficulties in accessing free legal advice because a large proportion of the problems faced by disadvantaged citizens, such as rented housing, benefits, debt, and employment, are now out of scope of government-funded legal aid.

In short, it has been argued that ongoing and significant gaps in legal knowledge among the UK population create substantial barriers to understanding rights and accessing justice, undermine the rule of law, prevent issues of social exclusion being addressed, rob people of their autonomy, and impact on the ability of the public to navigate everyday encounters with legal and administrative justice systems.[23] It is clear from this short review of the existing literature that there is no shortage of high-quality advice about how to communicate effectively with citizens, but that this exists alongside empirical evidence that many public legal information initiatives are ineffective. This raises questions as to why such authoritative advice is ignored by information providers.

3 | EPISTEMIC INJUSTICE AS A LENS THROUGH WHICH TO UNDERSTAND THE INACCESSIBILITY OF JUSTICE SYSTEMS

A key question that this article seeks to address is whether public legal information is being produced and structured in a way that obfuscates the right to complain and discourages information seekers from doing so by producing inaccessible explanations and unnavigable routes to knowledge guarded by those knowers with the power to explain and interpret. We argue that the concept of epistemic justice, first coined by philosopher Miranda Fricker,[24] is a particularly valuable theoretical tool to understand why justice systems overseen and run by social and political elites continue to be so difficult for the laity to understand, and why this issue has persisted across time and different sites. More specifically, it is suggested that concepts of epistemic injustice provide a valuable new vocabulary with which to analyse why effective communication between those overseeing complaints systems and the information seekers who attempt to use them is regularly thwarted. Theories of epistemic injustice identify a clear link between power and knowledge production. As Mark Flear and colleagues have argued, this allows us to interrogate a number of issues that are central to the operation of the legal system:

> What are the conditions of communication? For example, what terms, meanings and understandings predominate, and how do these come into being? How are people's

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[20] Youth Access, *A Travesty of Justice: Young People's Access to Legal Aid* (2018), at <https://www.youthaccess.org.uk/sites/default/files/uploads/files/a-travesty-of-justice-yp-access-to-legal-aid.pdf>.

[21] Balmer, op. cit., n. 18; Genn, op. cit., n. 19.

[22] P. Pleasence et al., 'Wrong about Rights: Public Knowledge of Key Areas of Consumer, Housing and Employment Law in England and Wales' (2017) 80 *Modern Law Rev*. 836.

[23] L. Wintersteiger, *Legal Needs, Legal Capability and the Role of Public Legal Education* (2015), at <https://asauk.org.uk/wp-content/uploads/2018/02/Legal-needs-Legal-capability-and-the-role-of-Public-Legal-Education.pdf>.

[24] M. Fricker, *Epistemic Injustice: Power and the Ethics of Knowing* (2007).

> experiences and lives understood by them and others? What are the implications of not being understood, particularly for the person so subject?[25]

As will become clear in the sections that follow, we argue that the information produced about complaints procedures for the public provides an excellent case study through which to explore the ways in which information asymmetries and epistemic hierarchies are produced and sustained across time.

Fricker has discussed the influence of feminist philosophy on the emergence of her framing of the concept, but it is important to acknowledge the ways in which other bodies of scholarship have also anticipated the power dynamics involved in acts of interpretation and explanation or the production of knower and knowledge seeker. A range of other forms of 'outsider' jurisprudence such as critical race theory, postcolonial theory, critical disability studies, queer theory, and intersectionality all speak to the harms done to people routinely denied a place in determining information needs or the content and format of authoritative information.[26] This draws attention to the ways in which such silencing and exclusion are often achieved through a complex matrix of domination.[27] In the context of this article, sociologists of the profession have also been interested in the ways in which professional groups such as doctors create the conditions of possibility that allow their cognitive and technological understanding of phenomena to dominate how sickness and mechanisms for calling to account are framed.[28] However, it could be argued that the concept also allows us to focus on a multitude of actants involved in the production of information about rights in a healthcare context, such as politicians, NHS managers, bureaucrats, engineers, lawyers, clinicians, documents, machines, and the internet. In short, our exploration of the range of ways in which epistemic injustice manifests itself in public-facing information provides us with the opportunity to see healthcare complaints as part of a broader universe of hegemonic structures and knowledge (re)construction.

Fricker's original articulation of the concept drew attention to two particular forms of epistemic injustice.[29] The first of these is testimonial injustice, which describes a situation in which the accounts of certain types of people are given less credibility than those of others. An example

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[25] M. L. Flear et al., 'Introduction' in *Socio-Legal Studies on Epistemic Injustice and Spaces and Places*, eds M. L. Flear et al. (2025) 1, at 2.

[26] K. Dotson, 'Tracking Epistemic Violence, Tracking Practices of Silencing' (2011) 26 *Hypatia* 236; A. Lorde, 'The Master's Tools Will Never Dismantle the Master's House' in *This Bridge Called My Back: Writings by Radical Women of Color*, eds C. Moraga and G. Anzaldúa (1981) 98; A. Cooper, *A Voice from the South* (1988); L. Anderson, 'Epistemic Injustice and the Philosophy of Race' in *The Routledge Handbook of Epistemic Injustice*, eds I. J. Kidd et al. (2017) 139. It has been argued that it is somewhat ironic that it took a white feminist to popularize these concerns when women of colour had been making the same arguments about structural inequality for some time. See for example I. J. Kidd et al., 'Introduction' in *The Routledge Handbook of Epistemic Injustice*, eds I. J. Kidd et al. (2017) 1; P. Collins, *Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment* (1999, 2nd edn).

[27] K. Crenshaw, 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics' (1989) 1 *University of Chicago Legal Forum* 139.

[28] See for example E. Freidson, *Professional Powers: A Study of the Institutionalization of Formal Knowledge* (1986); M. Larsen, *The Rise of Professionalism: A Sociological Analysis* (1977); M. Saks, *Professions and the Public Interest: Medical Power, Altruism and Alternative Medicine* (1995). Other work has focused on complaint making: R. Klein with the assistance of A. Howlett, *Complaints against Doctors: A Study in Professional Accountability* (1973); L. Mulcahy, 'From Fear to Fraternity: Doctors' Construction of Accounts of Complaints' (1996) 18 *J. of Social Welfare & Family Law* 397; L. Mulcahy, *Disputing Doctors: The Socio-Legal Dynamics of Complaints about Doctors* (2003); J. Allsop, 'Maintaining Professional Identity: Doctors' Responses to Complaints' (1998) 20 *Sociology of Health & Illness* 802.

[29] Fricker, op. cit., n. 24.

would be a situation in which information about a complaints procedure questions the credibility of patient testimony in comparison with that of a doctor. The second type of epistemic injustice is hermeneutic. This arises when the experiences or perspectives of a group are routinely not understood or recognized by others, with the result that they are not given an opportunity to contribute to the construction of dominant meanings. This could be said to be present when information about a complaints procedure is couched in technical language that clinical professionals might be familiar with but that is unlikely to be used by complainants.[30] At the heart of the theory of epistemic injustice is Fricker's claim that the powerful have an unfair advantage in constructing what counts as important, and that the marginalized live in a world structured by others. Such systemic failures to acknowledge or understand the epistemic 'truth' of marginalized voices go some way towards explaining why elite groups, such as government departments, clinician-led services, or professional bodies, fail to effectively respond to criticisms that healthcare complaints systems are not easily understood and to adequately listen to or learn from patient testimony.

As the concept of epistemic injustice has been taken up and evolved, Fricker has also been keen to reiterate that epistemic injustice can occur in the absence of deliberate or conscious manipulation on the part of the advantaged.[31] Every attempt may be made to understand the perspective of another, but this may fail where those communicating with each other lack a shared experience or vocabulary. That is not to ignore the role of agency in sustaining systems that marginalize, but rather to recognize that prejudice and unexamined bias are very ordinary and can occur even as we seek to remain impartial. Others have been less reticent about ascribing responsibility for unwarranted prejudice. Lani Watson, for example, has placed more emphasis on the importance of deliberate misinformation and contended that discriminatory behaviour sits on a spectrum from orchestrated misinformation campaigns, deliberately withholding accurate information, and failing to consider or investigate issues raised by others, through to careless information giving and practices in which testimonial or hermeneutic injustice is unthinkingly caused.[32]

These debates encourage us as socio-legal scholars to consider how cognitive authority in the articulation, interpretation, and provision of information about rights is exercised and to remain attentive to the ways in which the production of public legal information can result in the interpretive silencing, ignoring, distorting, or discrediting of certain voices. In the words of Fricker,

> one needs to ask about how power is affecting our functioning as rational subjects; for it eradicates, or at least obscures, the distinction between what we have a reason to think and what mere relations of power are doing to our thinking.[33]

In the sections that follow, we consider how the ways in which rights are explained can lead to the silencing of a complaint or the restriction of how a grievance is expressed. Kristie Dotson's

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[30] In a related vein on the gendered construction of medical 'problems', see A. Wardrope, 'Medicalization and Epistemic Injustice' (2015) 18 *Medicine, Health Care and Philosophy* 341. See also H. Carel and I. J. Kidd, 'Epistemic Injustice in Healthcare: A Philosophical Analysis' (2014) 17 *Medicine, Health Care and Philosophy* 529; A. Sanati and M. Kyratsous, 'Epistemic Injustice in Assessment of Delusions' (2015) 21 *J. of Evaluation in Clinical Practice* 479; M. Foucault. *The Birth of the Clinic* (2002).

[31] M. Fricker, 'Evolving Concepts of Epistemic Injustice' in *The Routledge Handbook of Epistemic Injustice*, eds I. J. Kidd et al. (2017) 94.

[32] L. Watson, *The Right to Know: Epistemic Rights and Why We Need Them* (2021).

[33] Fricker, op. cit., n. 24, p. 3.

work on the quieting or smothering of testimony has reflected this interest in the pre-emptive suppression of grievances.[34] This goes further than testimonial injustice to encompass a situation in which the right to offer testimony is denied altogether.

4 | METHODOLOGY AND METHODS

Complaints about healthcare provision were chosen as a case study to explore the ways in which official websites present information about rights to the laity, their accessibility, their (re)construction of complaints and complainants, and whether the web-based format facilitates complaining. Healthcare complaints were chosen as a case study for a number of reasons. The fact that there are several established official channels available for the resolution of healthcare complaints in England and Wales provides an excellent opportunity to compare approaches across administrative justice sites. Collectively, these bodies also manage a large number of complaints, which provides incentives to invest resources in the provision of accurate information. The most recent statistics for 2022–2023 and 2023–2024 shown in Table 1 demonstrate that organizations responsible for handling healthcare complaints label the voicing of grievances and approaches to complaint handlers in different ways but between them handle a significant number of interactions with the public every year. The numbers of people interested in making complaints who do not voice them is likely to be much larger, but our empirical study focused on an inductive analysis of the websites of the four most active grievance procedures outlined in Table 1 below. These were the NHS England website, which provides details of how to lodge a grievance in the formal NHS complaints procedure; the Parliamentary and Health Service Ombudsman (PHSO) website, which handles appeals from the English NHS system; and the websites of the two organizations that act as regulatory bodies for doctors and nurses across the UK, the General Medical Council (GMC) and the Nursing and Midwifery Council (NMC) respectively.[35] Together, the four grievance procedures selected account for 98 per cent of complaints about healthcare.[36]

The fact that the most comprehensive information about how to complain to the NHS, the PHSO, the GMC, and the NMC is available online provides opportunities to go beyond an analysis of content and tone to examine the impact of a digital format on the accessibility of this public legal information and the extent to which it is responsive to the needs of the laity.[37] The distinction between content and format can be a subtle one, but while content determines *what* we are told, format relates to *how* information is structured and presented.[38] For Mariana Valverde, the questions of format are closely related to the questions of epistemological authority discussed above, since certain formats have a built-in tendency to empower certain knowers and can displace other types of knowledge. She has argued that certain formats, such as the

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[34] Dotson, op. cit., n. 26.

[35] In 2023–2024, only 814 expressions of concern to the GMC (8.1 per cent) were investigated. In the same year, the NMC investigated 1,929 complaints (28 per cent).

[36] Patients can also bring medical negligence claims, present informal complaints at the service level to Patient Advice and Liaison Service (PALS) units, or use NHS-sponsored social media outlets such as NHS Review to express concerns.

[37] J. Donoghue, 'The Rise of Digital Justice: Courtroom Technology, Public Participation and Access to Justice' (2017) 80 *Modern Law Rev*. 995. See also K. Puddister and T. Small, 'Trial by Zoom? The Response to COVID-19 by Canada's Courts' (2020) 53 *Cdn J. of Political Science/Revue canadienne de science politique* 373.

[38] M. Valverde, *Law and Order: Images, Meanings, Myths* (2006).

TABLE 1 Levels of activity among the various healthcare complaint-handling organizations

Organization	2022–2023	2023–2024	Type of data
NHS England (complaints)	229,458	241,922	Written complaints
Parliamentary and Health Service Ombudsman (PHSO)	129,346	139,090	Total enquiries re concerns
NHS Resolution	10,678	12,629	Clinical negligence and incidents notification
General Medical Council (GMC)	8,893	10,031	Total enquiries re concerns
Nursing and Midwifery Council (NMC)	5,068	5,774	Total concerns raised
General Pharmaceutical Council (GPC)	4,178	5,477	Total concerns received
General Dental Council (GDC)	1,267	1,297	Total concerns raised
General Optical Council (GOC)	448	405	Total concerns
General Chiropractic Council (GCC)	53	66	Total complaints received

authoritative websites studied here, employ signs and narrative techniques such as non-sensationalist language that enhance their 'truth effect' or credibility.[39]

There is little doubt that digital formats are of increasing importance to information seekers, both in general and in a healthcare context. Numerous studies have demonstrated that patients frequently rely on the internet to obtain information about where to direct complaints about healthcare and other services.[40] However, there has been very little in-depth research on how digital platforms alter the dynamics of information provision.[41] The move from paper-based to web-based information is more than merely a replacement of one system for another. The internet provides new opportunities to link disparate sites and create a broader landscape of avenues for information gathering and the performance of governance and regulation by public bodies.[42] This means that the websites analysed need to be seen as part of a more sophisticated network of information provision in the public realm.

In addition, it is noticeable that examining information literacy in an administrative justice context is a relatively new avenue of inquiry, but one that is of increasing interest.[43] Of particular relevance in a healthcare context is the fact that complaints procedures are either run by the state about actors employed by it, or involve regulatory bodies mandated by Parliament

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[39] M. Valverde, *Chronotopes of Law: Jurisdiction, Scale and Governance* (2015).

[40] R. Millard and P. Fintak, 'Use of the Internet by Patients with Chronic Illness' (2002) 10 *Disease Management and Health Outcomes* 187; D. Foster, '"Keep Complaining til Someone Listens": Exchanges of Tacit Healthcare Knowledge in Online Illness Communities' (2016) 166 *Social Science & Medicine* 25; House of Commons Health Committee, *Complaints and Raising Concerns: Fourth Report of Session 2014–2015* (2015), at <https://publications.parliament.uk/pa/cm201415/cmselect/cmhealth/350/35002.htm>; GMC, *Why Do Many Public Concerns that Would Be Better Directed to Another Organisation Come to the GMC?* (2019), at <https://www.gmc-uk.org/cdn/documents/ftp-public-complainants-research-report_pdf-78629691.pdf>.

[41] For exceptions, see A. Boylan et al., 'Online Patient Feedback as a Measure of Quality in Primary Care: A Multimethod Study Using Correlation and Qualitative Analysis' (2020) 10 *BMJ Open* e031820; T. Bourne et al., 'The Impact of Complaints Procedures on the Welfare, Health and Clinical Practice of 7,926 Doctors in the UK: A Cross-Sectional Survey' (2015) 5 *BMJ Open* e006687.

[42] Valverde and Moore, op. cit., n. 13.

[43] D. Cowan and R. Harding, 'Legal Consciousness and Administrative Justice' in *The Oxford Handbook of Administrative Justice*, eds M. Hertogh et al. (2021) 437. See also S. Aidinlis, 'Defining the "Legal": Two Conceptions of Legal Consciousness and Legal Alienation in Administrative Justice Research' (2019) 41 *J. of Social Welfare & Family Law* 495; M. Hertogh, *Nobody's Law: Legal Consciousness and Legal Alienation in Everyday Life* (2018).

to investigate complaints about members of important professional groups.[44] The state and professional bodies are prime examples of the sort of knowledge producers who might be labelled epistemically privileged – in a position to mould and sustain certain conceptions and hegemonic strictures concerning rights and dispute resolution processes. All four organizations discussed below are high-profile bodies, act as gatekeepers to the systems that they operate, set sector standards, play a central role in the delivery of a public service, and have considerable resources, including ready access to clinical, legal, and financial expertise. A review of the websites of these bodies can reveal valuable information about the ways in which the accessibility and type of language, tone, and format can nudge people to behave or think in certain ways. In a healthcare context, scholars have drawn attention to the fact that unwarranted epistemic privilege is frequently afforded to clinicians and clinical institutions.[45] Those who are, or have been, ill are also particularly vulnerable to testimonial injustice because of the presumptive attribution of characteristics such as cognitive unreliability or emotional vulnerability that undermine their testimony in an arena in which standards of objectivity and scientific evidence prevail.[46]

Finally, there is a long history of concerns about the ways in which citizen grievances are managed in a UK healthcare setting. These relate to complexity, defensive organizational cultures, and a lack of support for patients and their carers.[47] This research offered the opportunity to look at whether and how four of the key organizations criticized in this literature had responded to the concerns raised.

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[44] There is a legal obligation for NHS organizations in England to provide information on how to complain, as outlined in the NHS Constitution. NHS providers must disseminate information to the public about their complaints procedures via websites, written materials, or staff at the front line or involved in the PALS. There is a general expectation that professional bodies such as the GMC and the NMC should promote and maintain confidence in the medical profession by being transparent and accountable, but they have also incorporated more detailed obligations about informing patients, relatives, and carers of their rights in charters. The GMC Charter for Patients, Relatives and Carers outlines a self-imposed obligation: 'We want to make it as easy as possible for you to understand the information we give you and the decisions we make.' See further GMC, 'Charter for Patients, Relatives and Carers' *GMC*, at <https://www.gmc-uk.org/about/what-we-do-and-why/charter-for-patients-relatives-and-carers>. See also the NHS Complaint Standards produced by the PHSO in consultation with the regulatory bodies, which require that organizations clearly publicize how people can raise complaints in a range of ways that suit them and meet their specific needs. PHSO, 'NHS Complaint Standards' *PHSO*, at <https://www.ombudsman.org.uk/organisations-we-investigate/complaint-standards/nhs-complaint-standards>.

[45] Wardrope, op. cit., n. 30.

[46] Carel and Kidd, op. cit., n. 30.

[47] See most recently Professional Standards Authority, *Barriers and Enablers to Making a Complaint to a Health or Social Care Professional Regulator: A Qualitative Study* (2025), at <https://www.professionalstandards.org.uk/sites/default/files/attachments/Barriers%20and%20enablers%20to%20making%20a%20complaint%20to%20a%20health%20or%20social%20care%20professional%20regulator%20-%20a%20qualitative%20study.pdf>. See also Healthwatch, *Suffering in Silence: Listening to Consumer Experiences of the Health and Social Care Complaints System – Executive Summary* (2014), at <www.healthwatch.co.uk/sites/healthwatch.co.uk/files/final_complaints_large_print.pdf>; A. Clwyd and T. Hart, *A Review of the NHS Hospitals Complaints System: Putting Patients back in the Picture* (2013), at <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/255615/NHS_complaints_accessible.pdf>; R. Francis, *Report of the Mid-Staffordshire NHS Foundation Trust Public Inquiry: Executive Summary* (2013), at <https://assets.publishing.service.gov.uk/media/5a7ba0faed915d13110607c8/0947.pdf>; Care Quality Commission, *Complaints Matter* (2014), at <https://www.cqc.org.uk/sites/default/files/20141208_complaints_matter_report.pdf>; M. Howard et al., 'Patients Do Not Always Complain When They Are Dissatisfied: Implications for Service Quality and Patient Safety' (2013) 9 *J. of Patient Safety* 224.

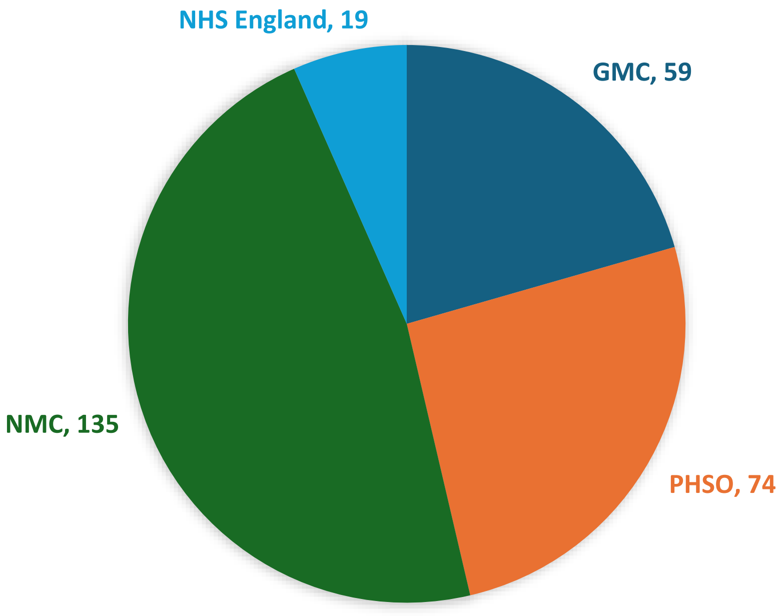

FIGURE 1 Number of webpages analysed by organization

A critical discourse analysis was undertaken of every webpage on the four websites that was relevant for a patient seeking information on how to make a complaint.[48] In addition to webpages dealing specifically with complaints, the analysis also included webpages on how to contact the organization, accessibility tools, and information about support for those with special needs. The websites varied considerably in how much information about complaints was presented to users. For example, the NHS England complaints section was largely contained on one webpage, which provided links to 17 other webpages. By contrast, the PHSO, GMC, and NMC websites had one central complaints section, which was then further divided into other smaller webpages. The vast majority of webpages were text based, but a small minority included non-textual content such as audio and video clips that were commonly supplements to, rather than replacements for, text. In total, data analysis resulted in an examination of 287 separate webpages. Figure 1 shows that the NMC site generated the most webpages for analysis and the NHS England complaints site the fewest.

The text that appeared on these webpages was analysed inductively to allow us to identify naturally occurring themes in the discussion of rights. We then looked at each theme in more depth in order to determine how meaning or affect were discursively constructed. This methodological approach allowed us to address the questions raised by epistemic injustice scholars by charting the ways in which language can be used to construct, maintain, and reinforce power dynamics or become a site for the reproduction of inequalities and silencing. In short, we looked at text to see what was written, how language was used to privilege particular meanings or interpretations, and how hyperlinks framed discursive practices. Looking at texts produced by different organizations also facilitated our understanding of the prevalence of common practice across sites in

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[48] For a discussion of critical discourse analysis, see for example N. Fairclough, *Critical Discourse Analysis: The Critical Study of Language* (2013); N. Fairclough, 'Critical Discourse Analysis as a Method in Social Scientific Research' in *Methods of Critical Discourse Analysis*, eds R. Wodak and M. Meyer (2001) 121; M. Foucault, *Archaeology of Knowledge* (2013).

related juridical fields and presented the opportunity to explore the extent to which instances of obfuscation were isolated exceptions or examples of widespread socio-cultural or hegemonic practice.

In the course of the analysis, we became particularly interested in the ways in which the presence of hyperlinks altered the dynamics of information-finding journeys. Following a further pilot study, in which we manually tracked where a selection of hyperlinks took users, we worked with a computer scientist to create code allowing a computer to undertake this work for us. Writing code was much easier if the analysis was restricted to journeys from one NHS webpage (the seed), and in the event this proved more than sufficient to evidence the potential for hyperlinks to render navigation more complex. Visualization of the data was difficult when attempting to trace *all* of the possible hyperlinks from the seed, so we also limited our analysis to webpages that could be accessed in six clicks or fewer. This process involved scraping the parts of the website that we were interested in, generating a list of nodes, converting the data to a grid of values, and cleaning it.

5 | EPISTEMIC INJUSTICE IN PRACTICE: DATA ANALYSIS

While philosophical debate on epistemic injustice constantly calls for attention to context, it less commonly provides it. Our empirical analysis revealed that the conditions of possibility facilitating or hindering legal literacy are much more complex than is anticipated in the existing literature, and that there is value in the social sciences fleshing out the nuanced ways in which epistemic injustice is facilitated and nurtured. Our findings illustrate that favourable conditions for the production of epistemic injustice involve a complex array of actants involved in producing information and structuring its format, all of which have divergent agendas, incentives, and interests.

It is important to note from the outset that, alongside the many examples of epistemic injustice discovered, there were also instances of epistemic virtue or attempts to facilitate an understanding of rights. Examples included the PHSO's 'complaints checker', which allows users to determine whether they are eligible to make a complaint using a short five-step procedure.[49] In a similar manner, the GMC has produced a short YouTube video that explains its complaints procedure clearly and guides the viewer through the process of determining whether the GMC can handle their complaint.[50] All of the websites analysed also provided specific provisions for individuals who may struggle to read or process audio information.

Despite these important attempts to promote understanding of rights, the overall impression generated by data analysis was what we have chosen to call epistemic obfuscation. In the sections that follow, we characterize problems as falling into four interrelated categories. Section 5.1 focuses on the political design of the healthcare sector by politicians and the convoluted discursive infrastructure that this creates. This section provides important social context about the difficulties of providing simple explanations of rights and obligations and suggests that the responsibility for epistemic obfuscation goes beyond content providers and website designers. Section 5.2 explores the ways in which information seekers frequently find themselves positioned in liminal spaces between the different complaints systems being researched. This renders them out of place in knowledge and information systems created by others over which they exercise little control.

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[49] PHSO, 'Making a Complaint' *PHSO*, at <https://www.ombudsman.org.uk/making-complaint#complaint-checker>.

[50] GMC, 'Raising a Concern' *YouTube*, 10 April 2018, at <https://youtu.be/kAX9eL066aM>.

Section 5.3 considers the ways in which the use of professional language anticipates that the testimony offered by a complainant will be less legitimate or credible than that of a professional conversant in rarefied discourses. Section 5.4 looks at the ways in which web-based information as a format creates further epistemic obfuscation by sending information seekers on haphazard journeys around the internet.

5.1 | Political infrastructures and hermeneutic epistemic injustice

While it is likely that the information seeker's own grievance narrative is at the forefront of their mind, they are immediately thrust into a complex panorama of service providers in a vast organization, which renders them unknowing and small in comparison. In his authoritative history of the NHS, Rudolf Klein has characterized it both as a political system in its own right, with its own actors, rules, and dynamics,[51] and as a laboratory for a whole range of social, institutional, and organizational experiments, from which the laity are regularly excluded.[52] However sensitive content providers and website engineers are to the need to present information in an accessible way, political decisions by successive governments about the design and redesign of the NHS force them into a situation in which they are destined to fail in their attempts to help users to navigate the many different systems in which complaints procedures are located. These political decisions and the discursive infrastructure of segmented responsibility reflect a form of hermeneutic injustice that renders information seekers unknowing in a vast system designed by others. The common-sense notions of obligation and responsibility with which they are likely to approach their information-seeking journey do not sit easily with a complex organizational structure that compartmentalizes the complaints system that one can use by reference to whether it is an initial complaint or a request for review, against a doctor or a nurse, or the responsibility of an organization primarily responsible for service delivery, accountability, or regulation.

Our discourse analysis discovered frequent use of NHS jargon about institutions, bodies, and procedures within the health service, and an unreasonable but implicit assumption that patients are familiar with the wide number of healthcare organizations and bodies that make up the sector. The NHS England website was found to be particularly problematic in this context, introducing new NHS groups and subgroups to the information seeker at a staggering pace. We can see an example of this in the screenshot in Box 1, from a webpage that attempts to instruct the information seeker about who they should contact if they wish to raise a complaint.

The term 'commissioner' can refer to a number of different bodies within the NHS that may, or may not, be relevant to a concern or complaint. The webpage shown in the screenshot in Box 2 goes on to explain this concept further, but in doing so introduces even more complexity through reference to primary and secondary care services, military health services, and integrated care boards (ICBs).

Another example, which appears later on the same webpage, advises patients how to complain about the use of the Mental Health Act, introducing the notions of guardianship and community treatment orders (see Box 3). The reference to the Care Quality Commission (CQC) makes little attempt to explain to the information seeker what this body is, what it does, or how it might be relevant to their complaint.

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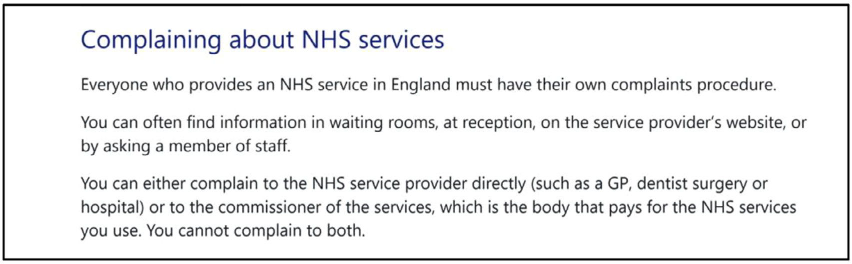
[51] R. Klein, *The New Politics of the NHS* (2019).

[52] Id. See also for example NHS England, 'An Introduction to the NHS' *NHS England*, at <https://www.england.nhs.uk/get-involved/nhs/>.



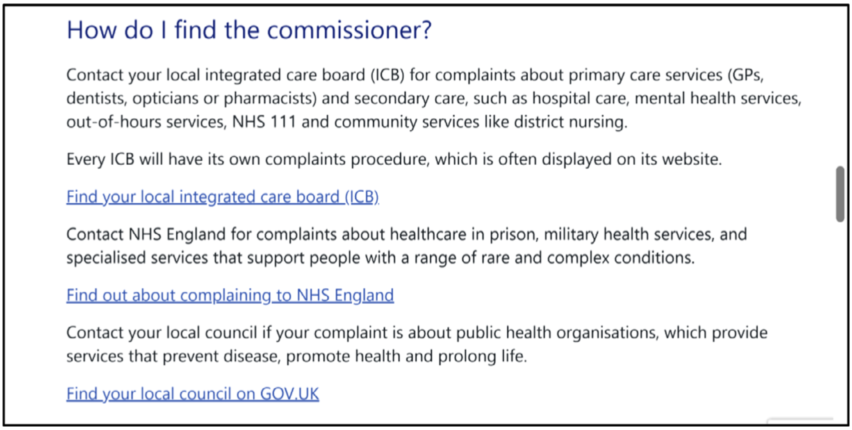
Complaining about NHS services

Everyone who provides an NHS service in England must have their own complaints procedure.

You can often find information in waiting rooms, at reception, on the service provider's website, or by asking a member of staff.

You can either complain to the NHS service provider directly (such as a GP, dentist surgery or hospital) or to the commissioner of the services, which is the body that pays for the NHS services you use. You cannot complain to both.

BOX 1 *Source*: NHS England, 'Feedback and Complaints about NHS Services' *NHS England*, at <https://www.england.nhs.uk/contact-us/feedback-and-complaints/complaint/>



How do I find the commissioner?

Contact your local integrated care board (ICB) for complaints about primary care services (GPs, dentists, opticians or pharmacists) and secondary care, such as hospital care, mental health services, out-of-hours services, NHS 111 and community services like district nursing.

Every ICB will have its own complaints procedure, which is often displayed on its website.

Find your local integrated care board (ICB)

Contact NHS England for complaints about healthcare in prison, military health services, and specialised services that support people with a range of rare and complex conditions.

Find out about complaining to NHS England

Contact your local council if your complaint is about public health organisations, which provide services that prevent disease, promote health and prolong life.

Find your local council on GOV.UK

BOX 2 *Source*: NHS England, 'Feedback and Complaints about NHS Services' *NHS England*, at <https://www.england.nhs.uk/contact-us/feedback-and-complaints/complaint/>

Complaining about the use of the Mental Health Act

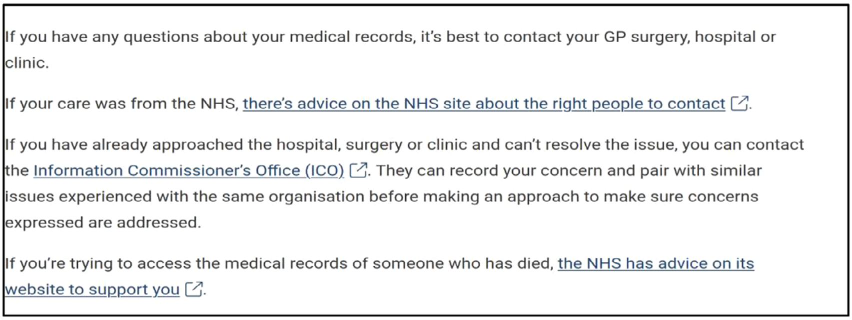
If you wish to make a complaint about a mental health service, you should either contact the service provider or the commissioner (who pays for the service) and this would usually be your local ICB.

But if you wish to complain about the use of the Mental Health Act on someone detained in hospital or put on a guardianship or under a community treatment order, complain to the Care Quality Commission (CQC).

Find out how to complain about the use of the Mental Health Act on the CQC website

BOX 3 *Source*: NHS England, 'Feedback and Complaints about NHS Services' *NHS England*, at <https://www.england.nhs.uk/contact-us/feedback-and-complaints/complaint/>

The GMC uses similar techniques in a section shown in the screenshot in Box 4, in which it attempts to guide users through the process of complaining about the use of their medical records. Information seekers are introduced to the Information Commissioner's Office (ICO) without further context about its role or position within the wider NHS. References of this kind are often cursory and constantly direct users elsewhere, the implication being that they will become a knower if only they follow this trail. In reality, texts of this kind seem likely to confuse users or to discourage the voicing of grievances by reinforcing the convoluted nature of the body about which



If you have any questions about your medical records, it's best to contact your GP surgery, hospital or clinic.

If your care was from the NHS, there's advice on the NHS site about the right people to contact.

If you have already approached the hospital, surgery or clinic and can't resolve the issue, you can contact the Information Commissioner's Office (ICO). They can record your concern and pair with similar issues experienced with the same organisation before making an approach to make sure concerns expressed are addressed.

If you're trying to access the medical records of someone who has died, the NHS has advice on its website to support you.

BOX 4 *Source*: GMC, 'Change or Access Medical Records' *GMC*, at <https://www.gmc-uk.org/concerns/supporting-you-with-your-concern/local-help-services/help-services-in-england/change-or-access-medical-records>

citizens are trying to lodge a complaint. In short, a system created with the goal of addressing universal need regardless of status or ability has been rendered impenetrable for many users.

5.2 | Out of place: the practice of epistemic othering

In addition to information seekers having to negotiate the complexity of the NHS, they soon discover that the design of complaints systems assigns responsibility for complaint handling across a number of actors. This forces content providers into convoluted accounts of what particular systems can and cannot do in an attempt to minimize the chances of out-of-jurisdiction cases coming their way. Each of the four grievance systems has its own history and logic pertaining to the need for both formal and informal procedures, internal and external review, the negotiation of shared responsibility for the quality of clinical work between the state and self-regulatory professional bodies, and the growing importance of risk and quality management in the healthcare sector. This landscape is further complicated by the variable scope of each procedure. For example, the NHS complaints procedure allows the public to make a complaint about *any* aspect of NHS care, while the GMC and the NMC only consider concerns pertaining to eligibility and 'fitness to practise'. The parallel nature of these complaints procedures, and the fact that some grievances might be heard by more than one organization, introduces considerable potential for complainants to 'bounce' around and between the systems while trying to work out on the basis of information provided which is the most appropriate for them to research and use. In her work on complaining, Sara Ahmed has drawn attention to the sort of communicative labour involved in constantly having to repeat a complaint that is not, or cannot be, heard.[53] As with all of the instances described in this part of the article, the likely outcome is not the quieting of testimony but the silencing of it.

Our discourse analysis found regular examples of accounts of the distinctions between complaint-handling jurisdictions likely to plant doubts in users' minds about whether they are in the right place and make them feel that they are occupying a liminal space between systems. This is illustrated in a section of the GMC website shown in the screenshot in Box 5, which outlines the types of concerns that it does *not* investigate. The meaning of 'minor clinical errors' will

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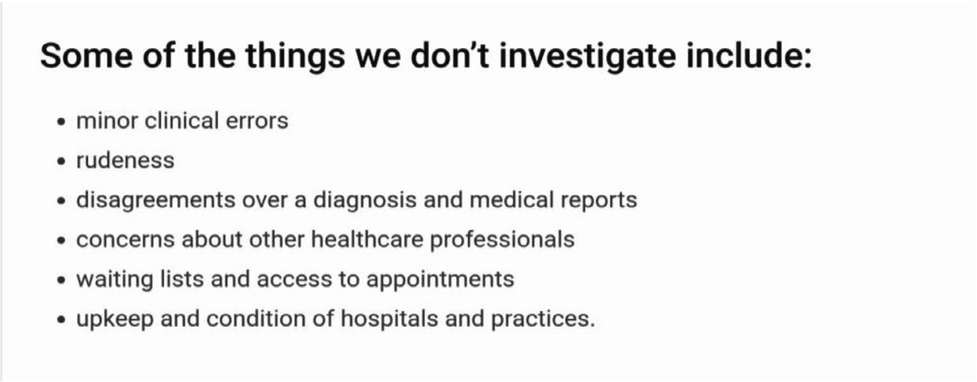
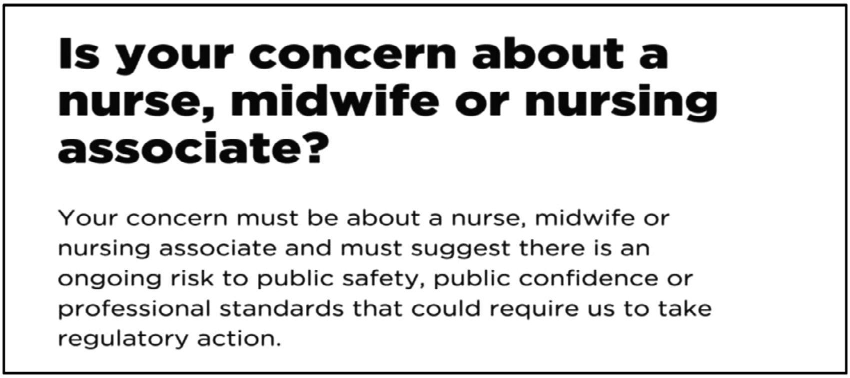
[53] S. Ahmed, *Complaint!* (2021).



Some of the things we don't investigate include:

- minor clinical errors
- rudeness
- disagreements over a diagnosis and medical reports
- concerns about other healthcare professionals
- waiting lists and access to appointments
- upkeep and condition of hospitals and practices.

BOX 5 *Source*: GMC, 'Can We Help with Your Concern?' *GMC*, at <https://www.gmc-uk.org/concerns/supporting-you-with-your-concern/can-we-help-with-your-concern>



Is your concern about a nurse, midwife or nursing associate?

Your concern must be about a nurse, midwife or nursing associate and must suggest there is an ongoing risk to public safety, public confidence or professional standards that could require us to take regulatory action.

BOX 6 *Source*: NMC, 'Is Your Concern about a Nurse, Midwife or Nursing Associate?' *NMC*, at <https://www.nmc.org.uk/concerns-nurses-midwives/raise-a-concern/raise-a-concern-as-a-member-of-the-public/is-your-concern-about-a-nurse-midwife-or-nursing-associate/>

not be immediately apparent to lay users without experience of the range of ailments on registers of severity.

Elsewhere, the NMC website makes reference to only being able to deal with specific issues (see Box 6), but it may not be immediately obvious to lay information seekers what constitutes 'an ongoing risk to public safety, public confidence or professional standards'. If we take the latter, there is a link to 'standards' in a footer at the bottom of the webpage, which takes information seekers through to a 26-page code on professional standards of practice produced by, and largely for, nurses, midwives, and nurse practitioners.[54] While the NMC does provide information on its website that explains in more detail what fitness to practise means for the purposes of a complaints investigation, these descriptions are highly technical and hidden much deeper within the architecture of the website.

A further example is the PHSO's attempt to define its role: 'As an independent decision-maker, we [examine complaints] fairly and without taking sides. We aren't a consumer champion, a

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[54] NMC, *The Code: Professional Standards of Practice and Behaviour for Nurses, Midwives and Nursing Associates* (2018), at <https://www.nmc.org.uk/globalassets/sitedocuments/nmc-publications/nmc-code.pdf>.

regulator or an advocacy organization.'[55] It seems likely that many users will not readily understand the distinction between the concepts of a 'consumer champion' and an 'advocacy organization', or the importance of the difference between grievance resolution and regulation.

Instead of sharing knowledge, information of this kind creates a state of hermeneutic or interpretive flux that obfuscates information about rights and is likely to create greater uncertainty. The examples given emphasize unequal power between citizens and these organizations. Information is presented in such a way that it constantly constructs and reconstructs the organizations as 'superior', expert, and credible knowers, making it extremely difficult for citizens to contribute to debates about what constitutes acceptable practice.

5.3 | Professional knowledge systems and pre-emptive epistemic injustice

Website content will likely have been produced, crafted, and reviewed by multiple actors including senior managers, administrators, computer engineers, and professionals, but it is the input of the latter that was frequently hinted at in our analysis. Specific legal and medical terms of art, positioning information seekers as less knowing or unable to converse in a language that would promote the credibility of their testimony, appear on a regular basis. These include references to such things as 'clinical error', 'guardianship', 'the Mental Health Act', and 'public health' in the extracts above, or elsewhere to 'fraud' and 'patient confidentiality', as well as other language in professional lexicons. Of the four websites, NHS England has a particular issue with this type of language, frequently including specialized terms of art or clinical language in what is intended to be a public-facing information service. A particularly noticeable example of legalese is the use of the phrase 'Gillick competence', which appeared in a section outlining when it is permissible to complain on another's behalf without their consent. This asserted that consent is not required if you are making a complaint in the name of a deceased person, someone who lacks capacity to make their own decisions, or a non-Gillick-competent child. Gillick competence is a highly specialized legal test deriving from a judgment of the House of Lords.[56] Significantly, during the course of our analysis, this section was reworded to remove the explicit reference to the term, but the phrasing that has replaced it still remains dependent on legal concepts of consent and mental capacity that are arguably just as opaque and impenetrable for the laity (see Box 7). Moreover, while the main NHS England website no longer uses the term 'Gillick competence', it retains the mantle of 'ghost text' on other websites, which appear to have copied the original wording.[57]

Similar issues arise on the GMC's website, where the types of issues that the organization can investigate are outlined (see Box 8). It will not be immediately obvious to someone who is not a medico-legal expert how an 'abuse of professional position' is determined or how it differs from the other types of concerns listed in the section. In addition, terms such as 'indecency', 'serious criminal offence', 'improper sexual relationship', 'fraud', and 'standard of treatment' could usefully be paraphrased, explained by reference to examples, or defined by using glossaries, inline definitions, or online dictionaries that automatically loop back to the original text.

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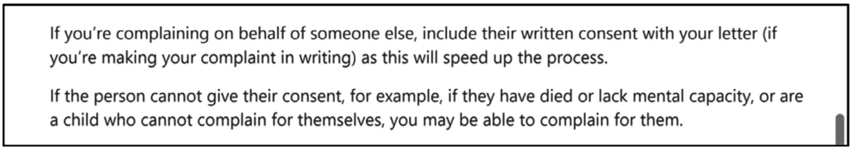
[55] PHSO, 'Complain to Us: Getting Started' *PHSO*, at <https://www.ombudsman.org.uk/making-complaint/complain-us-getting-started>.

[56] *Gillick* v. *West Norfolk and Wisbech Area Health Authority* [1986] AC 112.

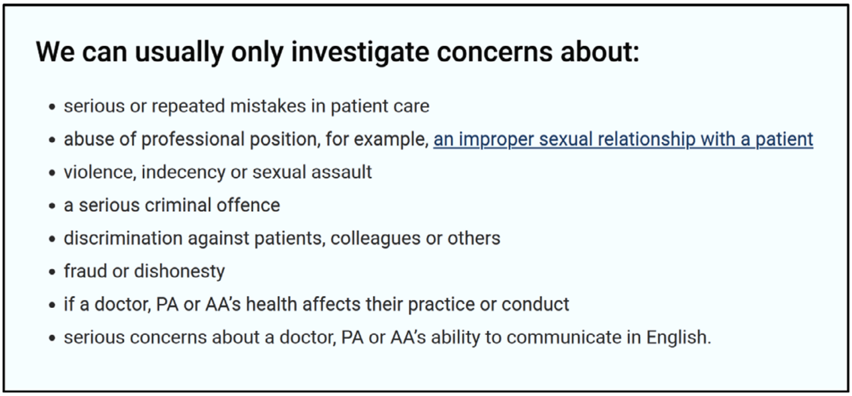
[57] See for example Central Surgery Rugby, 'Complaints Process' *Central Surgery Rugby*, at <https://www.centralsurgeryrugby.nhs.uk/complaints-process>.



If you're complaining on behalf of someone else, include their written consent with your letter (if you're making your complaint in writing) as this will speed up the process.

If the person cannot give their consent, for example, if they have died or lack mental capacity, or are a child who cannot complain for themselves, you may be able to complain for them.

BOX 7 *Source*: NHS England, 'Feedback and Complaints about NHS Services' *NHS England*, at <https://www.england.nhs.uk/contact-us/feedback-and-complaints/complaint>



We can usually only investigate concerns about:

- serious or repeated mistakes in patient care
- abuse of professional position, for example, an improper sexual relationship with a patient
- violence, indecency or sexual assault
- a serious criminal offence
- discrimination against patients, colleagues or others
- fraud or dishonesty
- if a doctor, PA or AA's health affects their practice or conduct
- serious concerns about a doctor, PA or AA's ability to communicate in English.

BOX 8 *Source*: GMC, 'Can We Help with Your Concern?' *GMC*, at <https://www.gmc-uk.org/concerns/supporting-you-with-your-concern/can-we-help-with-your-concern>

Defensive statements about potential liability or blame, made before the testimony has even been heard, are also apparent. These can be interpreted as pre-emptive forms of testimonial epistemic injustice – attempts to protect the interests of staff, structured in discouraging ways that conceive of complainants as abnormal. Such practices provide the setting for testimonial quieting or silencing, as potential complainants are encouraged to consider the limitations or unusual nature of their concerns. For Dotson, defensive language of this kind can cause people not to speak out because of fears of not being believed by a hostile audience.[58] Pre-emptive dismissals of the legitimacy or credibility of testimony are discernible in some of the examples given above, but other examples are more insidious, suggesting that users are unlikely to have a legitimate complaint at all.

Significantly, such practices are not limited to the websites of the two self-regulatory organizations, which both have an interest in protecting the standing of their profession. In the section of the PHSO's website that provides advice to staff on managing complaints, there is a smaller shaded text box addressed to potential complainants which makes clear that it only addresses the 'more serious complaints' (see Box 9). While this is not outwardly dismissive of the potential for patients to have genuine concerns, it still attempts to downplay patient expectations by suggesting that only the most serious of complaints are worthy of investigation, encouraging patients to feel unsure whether their concerns match this standard.

Our discourse analysis shows that the NMC website stands out in terms of its use of pre-emptively dismissive language (see Box 10). This sentiment is repeated in a later section that outlines when poor practice might be construed as professional misconduct (see Box 11). More

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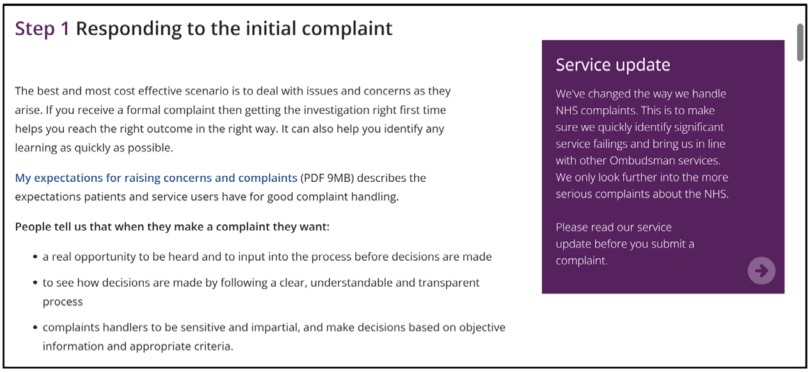
[58] Dotson, op. cit., n. 26.



Step 1 Responding to the initial complaint

The best and most cost effective scenario is to deal with issues and concerns as they arise. If you receive a formal complaint then getting the investigation right first time helps you reach the right outcome in the right way. It can also help you identify any learning as quickly as possible.

My expectations for raising concerns and complaints (PDF 9MB) describes the expectations patients and service users have for good complaint handling.

People tell us that when they make a complaint they want:

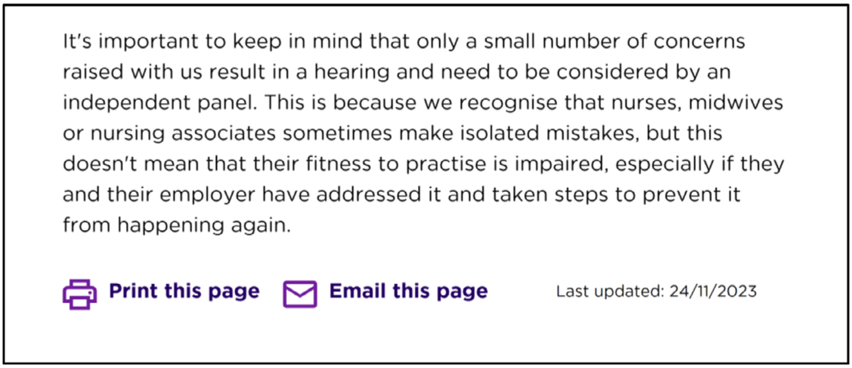
- a real opportunity to be heard and to input into the process before decisions are made
- to see how decisions are made by following a clear, understandable and transparent process
- complaints handlers to be sensitive and impartial, and make decisions based on objective information and appropriate criteria.

Service update

We've changed the way we handle NHS complaints. This is to make sure we quickly identify significant service failings and bring us in line with other Ombudsman services. We only look further into the more serious complaints about the NHS.

Please read our service update before you submit a complaint.

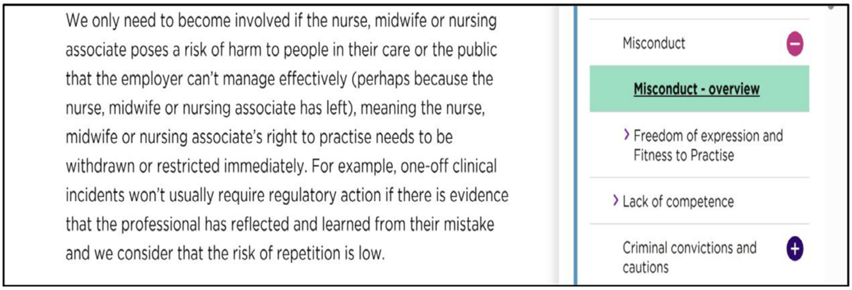
BOX 9 *Source*: PHSO, ‘Good Complaint Handling’ *PHSO*, at <https://www.ombudsman.org.uk/organisations-we-investigate/good-complaint-handling>



It's important to keep in mind that only a small number of concerns raised with us result in a hearing and need to be considered by an independent panel. This is because we recognise that nurses, midwives or nursing associates sometimes make isolated mistakes, but this doesn't mean that their fitness to practise is impaired, especially if they and their employer have addressed it and taken steps to prevent it from happening again.

Last updated: 24/11/2023

BOX 10 *Source*: NMC, ‘Investigating Your Concern’ *NMC*, at <https://www.nmc.org.uk/concerns-nurses-midwives/support-for-patients-families-and-public/investigating-your-concern/>



We only need to become involved if the nurse, midwife or nursing associate poses a risk of harm to people in their care or the public that the employer can't manage effectively (perhaps because the nurse, midwife or nursing associate has left), meaning the nurse, midwife or nursing associate's right to practise needs to be withdrawn or restricted immediately. For example, one-off clinical incidents won't usually require regulatory action if there is evidence that the professional has reflected and learned from their mistake and we consider that the risk of repetition is low.

BOX 11 *Source*: NMC, ‘Misconduct’ *NMC*, at <https://www.nmc.org.uk/ftp-library/understanding-fitness-to-practise/fitness-to-practise-allegations/misconduct/>

balanced phrasing might suggest that while making a mistake does not necessarily mean that someone should be stopped from working, neither does it render it unreasonable to make a complaint. Instead, NMC content providers cast doubt on the value of complaining and emphasize the superior power that the NMC has to determine whether the testimony contained in a complaint is credible and worth investigating. The effect of this is that a testimonial hierarchy is established before a complaint is even voiced. Moreover, circumstances that citizens might view as being worthy of complaint are characterized as frequently arising from 'isolated mistakes' rather than poor care or systemic issues. It might even be argued that the phrasing adopted characterizes complainants as lacking in compassion, unable to forgive a mistake made by an otherwise competent practitioner. Seen in this context, it is the complainant who becomes the source of the problem rather than the person about whom they seek to complain. As Ahmed has asserted, the creation of such discursive environments is often itself symptomatic of the system that is subject to complaint.[59]

5.4 | The architecture of the internet: an epistemic maze

The final way in which epistemic injustice is facilitated in the provision of information about complaints procedures is through the format used to convey it. The impact of the information being web based became increasingly evident as data analysis progressed. This made it clear that digital hypertextual discourse has profound implications for how we define and discuss legal literacy and understanding of rights,[60] which prompted us to investigate the negative influence of the machine on the provision of public legal information. It is frequently argued that the internet has made it possible for governments to introduce radically different ways of communicating information to citizens, which in turn bring the promise of facilitating more participatory forms of democracy.[61] The internet offers flexible and interactive digital formats, which both replicate and go beyond what is possible in traditional paper-based, telephone-based, or in-person public information interactions. Nearly 30 years ago, Stephen M. Johnson argued that the internet could revolutionize public legal information provision by rendering statutes, cases, and interpretation more visible in ways that would facilitate democratic participation in the making and rethinking of law.[62]

Despite these aspirations, research suggests that government websites often adopt communicative monologues that assume the existence of an active government and a passive public and that map onto concepts of hermeneutic injustice.[63] It has been argued that 'government-as-a-platform' discourse promoted by technology evangelicals often ignores the lack of resources available to the civil service[64] or disregards the fact that in the 'post-truth' era official websites are increasingly forced to compete with a wide range of other information sources and struggle to keep control

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[59] Ahmed, op. cit., n. 53.

[60] H. Thomas, 'The New Literacy? The Challenges of Hypertextual Discourse' (1997) 10 *Computer-Assisted Language Learning* 479.

[61] Y. Guo, 'E-Government: Definition, Goals, Benefits and Risks' (2010) *2010 International Conference on Management and Service Science* 1. See also G. Landow, *Hypertext 3.0: Critical Theory and New Media in an Era of Globalization* (2006).

[62] S. M. Johnson, 'The Internet Changes Everything: Revolutionizing Public Participation and Access to Government Information through the Internet' (1998) 50 *Administrative Law Rev*. 277.

[63] S. McMillan, 'A Four-Part Model of Cyber-Interactivity: Some Cyber-Places Are More Interactive than Others' (2002) 4 *New Media & Society* 271.

[64] D. Linders, 'From E-Government to We-Government: Defining a Typology for Citizen Coproduction in the Age of Social Media' (2012) 29 *Government Information Q*. 446. See also K. Desouza and A. Bhagwatwar, 'Technology-Enabled Participatory Platforms for Civic Engagement: The Case of US Cities' (2017) 21 *J. of Urban Technology* 25; E. Falco and R. Kleinhans, 'Beyond Information Sharing. A Typology of Government Challenges and Requirements for Two-Way Social Media Communication with Citizens' (2018) 16 *Electronic J. of e-Government*. 32.

of the narratives being produced.[65] These dynamics can cause particular problems in the context of public legal information, where official sources sit alongside other sources on the internet and citizens are steered around competing knowledge systems by search engines. Naomi Creutzfeldt has argued that the shift to online requires citizens to develop a different set of legal and digital capabilities in which they are restricted in their ability to ask questions or enter into discussion with institutions.[66] Seen in this way, websites do not necessarily aid the navigation of complex systems; on the contrary, they more often create new hurdles to be overcome.

Hyperlinks are particularly relevant in this context because of their potential to create haphazard information highways while suggesting the performance of greater transparency.[67] Computers facilitate and create social networks or hypertexts constructed by a range of actors or actants through the considered or arbitrary use of links between sites.[68] These can work to facilitate and distort public access to information about legal rights in both public and private law domains,[69] acting as both tools and barriers in the provision of legal information. Seen in this way, hyperlinks can create melting pots of information in the minds of internet users from fragments of information supplied across sites. Users can experience navigating these networks as highly disruptive, encouraging frequent movement and decentralizing knowledge.

In the current context, hyperlinks place a large cognitive load on those seeking to make complaints by requiring them to navigate a web of non-linear pathways and numerous nodes. The internet surfer is expected to understand the relationship between the hyperlinked information while also trying to remember the pathways between nodes.[70] As Catrina Denvir has argued, a citizen's use of digital justice platforms

> requires the ability to distinguish between reputable sources of information, understand the significance of jurisdiction, have awareness of legal processes, and access the appropriate action to take. In other words, resolving a problem online requires legal capability as much as digital capability.[71]

This raises important questions about the ways in which hyperlinks between disparate websites collectively promote the impression that understanding or asserting rights is impossibly complex.

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[65] Watson, op. cit., n. 32.

[66] N. Creutzfeldt, 'Towards a Digital Legal Consciousness?' (2021) 12 *European J. of Law and Technology* 123.

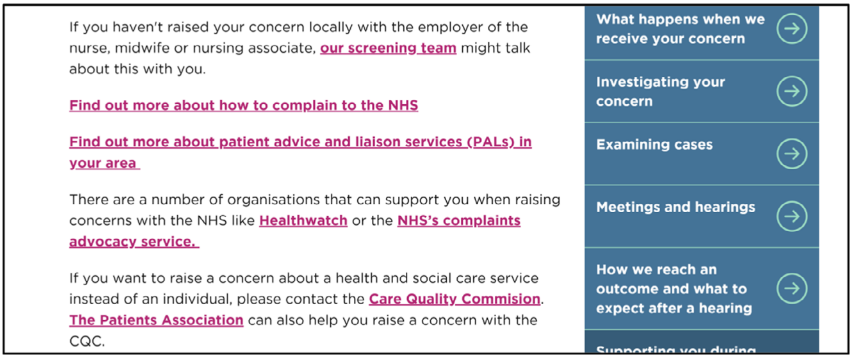
[67] Valverde and Moore, op. cit., n. 13.

[68] From a Latourian perspective, hyperlinks provide an excellent example of non-human actants creating and shaping a socio-legal process in a network that offers billions of potential links. B. Latour, 'On Actor–Network Theory: A Few Clarifications' (1996) 474 *Soziale Welt* 369. See also B. Latour, *The Making of Law: An Ethnography of the Conseil d'Etat* (2010). See also M. Shumate and L. Dewitt, 'The North/South Divide in NGO Hyperlink Networks' (2008) 13 *J. of Computer-Mediated Communication* 405. See also H. W. Park, 'Hyperlink Network Analysis: A New Method for the Study of Social Structure on the Web' (2003) 25 *Connections* 49; H. W. Park and M. Thelwall, 'Hyperlink Analyses of the World Wide Web: A Review' (2003) 8 *J. of Computer-Mediated Communication* 1.

[69] J. Long, 'Different Solutions for Similar Questions: Hyperlinks and the Right of Communication to the Public in China and the EU' (2018) 49 *IIC* 413; J. P. Quintais, 'Untangling the Hyperlinking Web: In Search of the Online Right of Communication to the Public' (2018) 21 *J. of World Intellectual Property* 385; C. Koolen, 'The Use of Hyperlinks in an Online Environment: Putting Links in Chains?' (2016) 11 *J. of Intellectual Property Law & Practice* 585.

[70] D. Miall and T. Dobson, 'Reading Hypertext and the Experience of Literature' (2001) 2 *J. of Digital Information* 1.

[71] C. Denvir, *Assisted Digital Support for Civil Justice System Users: Demand, Design and Implementation* (2018) 19, at <https://research.monash.edu/en/publications/assisted-digital-support-for-civil-justice-system-users-demand-de>.



If you haven't raised your concern locally with the employer of the nurse, midwife or nursing associate, our screening team might talk about this with you.

Find out more about how to complain to the NHS

Find out more about patient advice and liaison services (PALs) in your area

There are a number of organisations that can support you when raising concerns with the NHS like Healthwatch or the NHS's complaints advocacy service.

If you want to raise a concern about a health and social care service instead of an individual, please contact the Care Quality Commision. The Patients Association can also help you raise a concern with the CQC.

BOX 12 *Source*: NMC, 'Who You Should Raise a Concern with' *NMC*, at <https://www.nmc.org.uk/concerns-nurses-midwives/support-for-patients-families-and-public/who-you-should-raise-a-concern-with/>

Our analysis of websites demonstrated that the information needed to make a complaint is rarely contained in one place or site, with users funnelled into an internet maze that is hard to navigate and easy to get lost in. The use of hyperlinks may have been adopted with the best intention, to ensure that the information to which people are directed is up to date. However, it can also render journeys to the correct information more convoluted. For example, one 89-word section of text on the NMC website refers the information seeker to no fewer than six other organizations, as shown in the screenshot in Box 12. The PHSO adopts a similar strategy, with one webpage hosting links to the websites of no fewer than 14 other bodies.[72]

Of all of the websites that we examined, the NHS England complaints webpage best illustrates epistemic obfuscation by hyperlink. Its landing page presents the information seeker with no fewer than 15 links to other webpages that could help them with their complaint. These range from third-sector organizations such as Healthwatch to other government-related services such as the PALS, the CQC, or the PHSO. The impression created is of multiple texts that spiral out of the control of both the designer and the user, with neither being in control as to where links on external websites might lead.

Constantly directing users to other sites can be interpreted as shifting epistemic responsibility for the provision of accessible information to other organizations and people. This diffused responsibility approach is one in which no one organization takes responsibility for providing a full set of accessible information, translating information contained on other websites into accessible language, or even compiling a map. Each organization focuses on the information pertaining to its own role while simultaneously providing links to dozens of other (un)related webpages in ways that increase rather than reduce complexity. The result is webs within the web in which a full understanding is always somewhere else or just another click away.

In an attempt to understand of the role of the hyperlink and enmeshed networks of information, we undertook a more in-depth quantitative analysis of just one website. Using the NHS complaints webpage as a starting point, we plotted the places that users can go within the NHS website using the hyperlinks that appear. Our analysis showed that information seekers following hyperlinks are exposed to a vast range of other webpages and places, many of which are not at all relevant to

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[72] PHSO, 'What to Do before You Come to Us' *PHSO*, at <https://www.ombudsman.org.uk/making-complaint/before-you-come-to-us>.

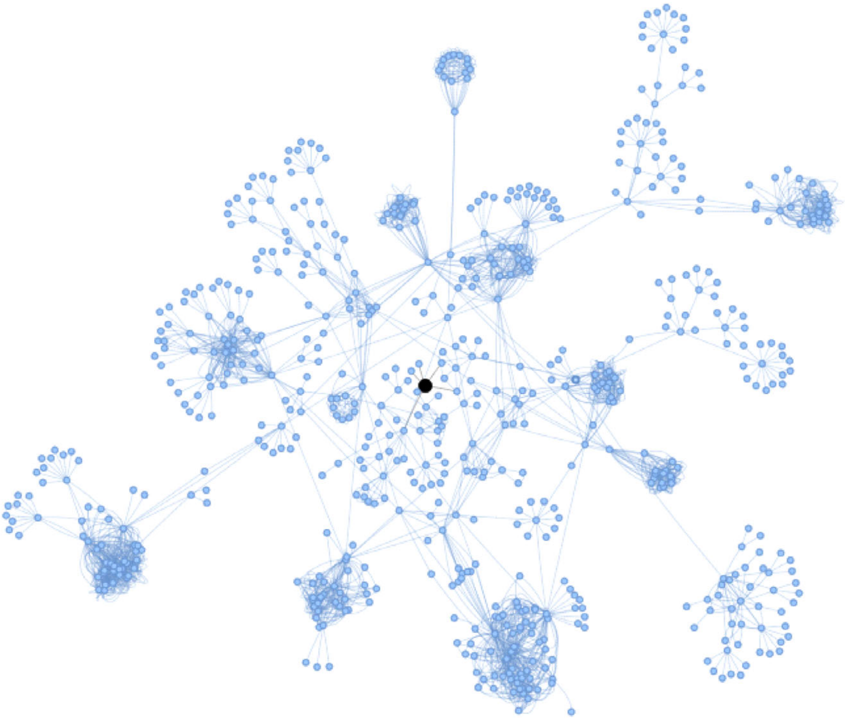

FIGURE 2 The NHS webpages that one can get to from the NHS complaints webpage in six clicks.
Note: Journeys could end in three ways: a PDF document, a site not controlled by the NHS, or a return back to a webpage already visited

a quest to find out how to make a complaint. Figure 2 provides a representation of the journeys to 681 other sites that citizens can make within the NHS website in six clicks.

Further analysis revealed how this hyperlink network has grown to absorb links to nodes that were not originally intended by the author of the landing page and that the highways created by hyperlinks often lead users to extremely complex policy documents. For example, two clicks from the landing page gets the web user to the NHS Constitution, a 4,751-word document that contains a short section 318-word section on complaints and redress. Two clicks from the landing page takes users to a PDF of the NHS complaints policy, a 4,782-word document that is written in legalese and appears to have NHS officials as its main audience. The document also contains a lengthy 10,296-word annex that outlines standard operating procedure when gaining consent to investigate complaints, the stated purpose of which is to standardize the consent-gathering process for complaint handling across NHS England and to ensure that the process is in line with relevant legislation and best practice guidelines. Four clicks from the landing page transport the user through to *Building the Right Support*, a national plan to develop community services, or supplementary information on the service model for commissioners of health and social care services. In other instances, users can journey to webpages created for staff or professionals, such as promotional material that staff can use in publicizing the 'Friends and Family' test or a one-slide PowerPoint presentation about it. Elsewhere, three clicks take users to the Local Government Association, a national membership body for local authorities that works on behalf of member councils to support, promote, and improve local government.

It becomes clear from this analysis that the risk posed by the internet is one of making available too much information that may be connected but is not necessarily holistically coherent. Viewed from the perspective of Watson's work on the obligations of those with epistemic privilege, this suggests a careless approach to information provision at best and a strategy of misinformation at worse.[73]

6 | CONCLUSION

This article has attempted to bring fresh insights into a longstanding debate about the gap between the understanding and the enjoyment of rights. Drawing on the ever-growing literature on epistemic injustice, it has sought to add empirical nuance to a scholarly discussion that has largely taken place in the abstract and outside of the legal academy. The data reported has made transparent the subtle but insidious ways in which hermeneutic and testimonial epistemic injustice manifest themselves in the everyday world of administrative justice. More specifically, it has drawn attention to the central role played by the assertion of expert or 'superior' knowledge in the interpretation and explication of rights. In some instances, this display of epistemic privilege draws on established cultural practices, but the article has also presented data that demonstrates the ways in which the dynamics of access to public legal information is changing and becoming more complex in the information age.[74] Our research suggests that, rather than improving communication between state and citizen, as many authors predicted, the use of the internet for information provision has actually fashioned new ways of obfuscating information about rights and access to justice.

It is impossible to know from the data presented whether the practices to which we have drawn attention are deliberate attempts to discourage and belittle potential complainants or are merely careless or unintentional. There is certainly no lack of good practice guidance on the provision of accessible information for the public, but it is the fact that this is often ignored that is of more interest. Regardless of intention, the behaviours that we have highlighted reflect a systemic failure to acknowledge the epistemic perspectives and needs of citizens in the construction of knowledge systems and claims to credibility. This can allow those with epistemic capital to discourage the voicing of grievances against them by explaining rights by reference to complex systems and in rarefied language, pre-empting negative evaluations of lay perspectives and rendering access to information difficult by constant rerouting of information-seeking journeys.[75] The fact that so many inquiries and reports have drawn attention to the problems that citizens have in navigating grievance procedures in the healthcare sector makes the lack of reflexivity indicated by our data even more concerning and suggests considerable normative closure among the epistemic elite.[76]

The issues raised in this article are also of relevance to a burgeoning discussion about epistemic obligations, which goes beyond considering formal law alone to encompass the social and moral expectations that citizens might have of knowers.[77] Watson's work is of particular value in this context because of her focus on the interconnected notion of epistemic *duties* that

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[73] Watson, op. cit., n. 32.

[74] E. Annandale and K. Hunt, 'Accounts of Disagreements with Doctors' (1998) 46 *Social Science & Medicine* 119.

[75] R. McKinnon, 'Epistemic Injustice' (2016) 11 *Philosophy Compass* 437.

[76] See for example Clwyd and Hart, op. cit., n. 47.

[77] See for example Flear, op. cit., n. 1.

information holders and providers have towards the bearers of formal rights.[78] Watson has drawn attention to the additional obligations of people and organizations such as the NHS, government ombuds, regulatory bodies, and professionals that are recognized as being accurate, dependable, and authoritative sources of information, or in a better position to know than others. She has called for further exploration of the ways in which such obligations are violated, and argued for the need for researchers to articulate and address abuses of power by knowers or authoritative tellers.[79]

We argue that any discussion of complaints in the healthcare sector and how we might respond to existing issues with them must consider the prevailing political economy of the modern NHS, which has been shaped by decades of neoliberal austerity measures.[80] These have worked, in part, to restructure healthcare as a consumer service rather than as a right. Within this context, the difficulties that we have identified in finding coherent paths to expressing a grievance could be seen as reflecting a move towards a neoliberal responsibilization of complainants, who are forced to navigate their own journeys as independent consumers acting out of self-interest rather than as claimants of a public healthcare system that should facilitate their grievances.[81] This connects our analysis to wider critiques of the political economy of NHS reform, particularly in England, where the process of commodification has been more intensive and has diverged from the efforts of other devolved jurisdictions, such as Wales, where attempts have been made to maintain a more patient-focused ethos in care.[82] Indeed, scholars such as Allyson M. Pollock worry that this move towards a consumer model might be a tool for further disciplining healthcare employees who are made to meet the demands of efficiency and cost-effectiveness.[83] As such, this research suggests that citizens are being prevented from formulating critical understandings of their ability to advocate for change, in this case through understanding how they can articulate complaints.

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[78] Watson, op. cit., n. 32.

[79] Id.

[80] K. Bayliss, 'Can England's National Health System Reforms Overcome the Neoliberal Legacy?' (2022) 52 *International J. of Health Services* 480.

[81] D. Sturgeon, 'The Business of the NHS: The Rise and Rise of Consumer Culture and Commodification in the Provision of Healthcare Services' (2014) 34 *Critical Social Policy* 405. See also C. Leys and S. Player, *The Plot against the NHS* (2011).

[82] J. Harrington et al., 'Towards a Welsh Health Law: Devolution, Divergence and Values' (2021) 72 *Northern Ireland Legal Q.* 385.

[83] A. M. Pollock, *NHS Plc: The Privatisation of Our Health Care* (2005).