

**THE HEALTH AND PERSONAL SOCIAL SERVICES
(SPECIAL AGENCIES) (NORTHERN IRELAND) ORDER
1990**

**THE HEALTH AND PERSONAL SOCIAL SERVICES
(NORTHERN IRELAND) ORDER 1991**

**THE HEALTH AND SOCIAL CARE (REFORM) ACT (NORTHERN
IRELAND) 2009**

**The Health and Social Care Complaints Procedure Directions
(Northern Ireland) 2009**

The Department of Health, Social Services and Public Safety, in exercise of the powers conferred by Section 8 (1) (b) of the Health and Social Care (Reform) Act (Northern Ireland) 2009 (a), Article 10 of, and paragraph 6 of Schedule 3 to, the Health and Personal Social Services (Northern Ireland) Order 1991 (b) and Article 4 of the Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990 (c), hereby direct as follows:

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PART I CITATION, COMMENCEMENT, INTERPRETATION AND APPLICATION

Citation and commencement

1. These Directions, which may be cited as the Health and Social Care Complaints Procedure Directions (Northern Ireland) 2009, shall come into operation on 1st April 2009.

Interpretation

2. In these Directions —

“the 2009 Act” means the Health and Social Care (Reform) Act (Northern Ireland) 2009;

“arrangements” means the arrangements which are required to be made under these Directions;

“care” (except in paragraph 9 (4)) means “health care” and “social care”, other than care provided under the Children (Northern Ireland) Order 1995(a);

(a) provided by a HSC body, or which it is a duty of a HSC body to provide; or

(b) provided in a hospital, regulated establishment or agency or other facility which is managed by a person (whether an individual or a body) who is not a HSC body, and with whom any such body has made arrangements for the provision of care;

“complaint” means a complaint about any matter connected with the provision of care by a HSC body, and “complainant” shall be construed accordingly;

(a) S.I. 1995/755 (N.I.2)

“complaints manager” means the person appointed under paragraph 6 (1) (b);

“disciplinary proceedings” means —

- (a) any procedure for disciplining employees adopted by a HSC body;
- (b) any reference of any matter to a representative body having disciplinary powers over members of a profession;
- (c) any reference of any matter to the police; and
- (d) any inquiry under the Inquiries Act 2005(a);

“former Directions” means the Directions specified in paragraph 21;

“healthcare” has the meaning given to it in section 2 (5) of the 2009 Act;

“HSC Board” means the Regional Health and Social Care Board established under section 7 of the 2009 Act;

“HSC body” means a Health and Social Care body which for the purposes of these Directions (except in paragraph 5 (1)(a)) are the HSC Board, HSC trusts and special agency;

“HSC trust” means a Health and Social Care trust established under Article 10 of the Health and Personal Social Services (Northern Ireland) Order 1991;

“independent provider” means a body who is not themselves a HSC body but with whom a HSC body has made arrangements for the provision of care;

“NI Commissioner for Complaints” means the NI Commissioner for Complaints appointed in accordance with the Commissioner for Complaints (Northern Ireland) Order 1996(b) ;

“Patient and Client Council” means the Patient and Client Council established under section 16 of the 2009 Act;

“patient or client” means a person who is receiving, or has received, care provided by, or on behalf of, a HSC body;

“person subject to complaint” means any person or persons against whom a complaint is made or, where the complaint does not identify a named person against whom the complaint is brought, a person who, in the opinion of the complaints manager, is best able to deal with the matters which are the subject of the complaint;

“RQIA” means the Health and Social Care Regulation and Quality Improvement Authority established under Article 3 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 (c);

“relevant person” means—

- (a) a patient or a client;
- (b) any person who has been refused any care;

(a) 2005 c.12
(b) S.I. 1996/1297 (N.I.7)
(c) S.I. 2003/431 (N.I.9)

(c) any person who is receiving, or has received, any care from, or is affected by any action, omission or decision of, a HSC body.

“relevant HSC body” means the HSC body which —

- (a) provides the care;
- (b) has the duty to provide the care;
- (c) takes the action, omission or decision, which is the subject of the complaint.

“social care” has the meaning given in section 2 (5) of the 2009 Act;

“special agency” means the following special health and social care agency established under Article 3 of the Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990 —

- (a) The Northern Ireland Blood Transfusion Service.

Application of Directions

3. These Directions apply to any complaint made on or after 1st April 2009 in respect of the HSC bodies specified above.

PART II

HANDLING AND CONSIDERATION OF COMPLAINTS BY HSC BODIES

Requirements to make arrangements

4.—(1) Each HSC body shall make arrangements in accordance with the provisions of these Directions for the handling and consideration of complaints.

(2) The arrangements must be such as to ensure—

- (a) that the complaints procedure is accessible;
- (b) that complaints are dealt with efficiently;
- (c) that complaints are properly investigated;
- (d) that complainants are treated with respect and courtesy;
- (e) that complainants receive, so far as reasonably practicable —
 - (i) assistance to enable them to understand the procedure in relation to complaints; or
 - (ii) advice on where they might obtain such assistance;
- (f) that complainants are, as far as possible, involved in decisions about how their complaint is handled and considered;
- (g) that complainants receive a timely and appropriate response;
- (h) that complainants are told of the outcome of their complaint; and
- (i) that action is taken in light of the outcome of a complaint.

(3) The arrangements shall be in writing and a copy of the arrangements shall be given, free of charge, to any person who makes a request for them.

(4) Where a HSC body makes arrangements for the provision of care with an independent provider, it must ensure that the independent provider has in place arrangements for the handling and consideration of complaints about any matter connected with its provision of care as if these Directions applied to it.

(5) Each HSC body shall make arrangements in accordance with Part IV (Monitoring and Publicity) of these Directions for monitoring the effectiveness of and for publicising the arrangements for dealing with complaints.

General duty to co-operate

5.—(1) The arrangements under these Directions must be such as to ensure that a full and comprehensive response is given to a complainant and to that end there is all necessary co-operation in the handling and consideration of complaints between —

- (a) different HSC bodies as defined in section 1(5) of the 2009 Act;
- (b) the RQIA; and
- (c) the NI Commissioner for Complaints.

(2) The general duty to co-operate required by sub-paragraph (1) includes in particular, a duty to —

- (a) answer questions reasonably put by the body carrying out the investigation;
- (b) provide any information relating to the complaint which is reasonably requested by the body carrying out the investigation; and
- (c) attend any meeting reasonably required to consider the complaint.

Responsibility for arrangements and complaints manager

6.—(1) Each HSC body must appoint—

- (a) a senior person within the organisation to take responsibility for ensuring compliance with the arrangements made under these Directions and for ensuring that action is taken in light of the outcome of any investigation; and
- (b) a person, in these Directions referred to as a complaints manager—
 - (i) to perform the functions of the complaints manager under the arrangements;
 - (ii) to perform such other functions relating to the investigation of complaints as the HSC body may direct; and
 - (iii) generally to co-ordinate and manage the operation of the procedures for dealing with complaints under the arrangements.

(2) The functions of the senior person appointed under sub-paragraph (1) (a) may be performed personally or by a person authorised by the HSC body to act on his behalf.

(3) The functions of the complaints manager appointed under sub-paragraph (1) (b) may be performed personally or by a person authorised by the HSC body to act on his behalf.

No investigation of complaint

7.—(1) The following complaints are excluded from the scope of the arrangements made under these Directions and shall not be investigated, or shall cease to be investigated—

- (a) a complaint made by a HSC body which relates to the exercise of its functions by another HSC body;

- (b) a complaint made by an employee of a HSC body about any matter relating to his contract of employment;
- (c) a complaint made by an independent provider about any matter relating to arrangements made by a HSC body with that independent provider;
- (d) a complaint arising out of a HSC body's alleged failure to comply with data subject requests made under the Data Protection Act 1998(a) or a request for information under the Freedom of Information Act 2000(b);
- (e) a complaint about which the complainant has stated that he intends to take legal proceedings;
- (f) a complaint about which a HSC body is taking or is proposing to take disciplinary proceedings in relation to the substance of the complaint against a person subject to complaint;
- (g) a complaint which has lead to the protection of vulnerable adults policy or procedures having been activated;
- (h) a complaint which is the subject matter of a Child Protection enquiry;
- (i) a complaint which has raised an independent inquiry and/or a criminal investigation;
- (j) a complaint which has resulted in a referral to a professional regulatory body;
- (k) a complaint which activates the Children Order Representation and Complaints Procedure;
- (l) a complaint the subject matter of which has previously been fully investigated under —
 - (i) these Directions; or
 - (ii) former Directions.
- (m) a complaint which is being or has been investigated by the NI Commissioner for Complaints.

(2) Where the investigation of a matter which is the subject of a complaint is not commenced, or has ceased, in accordance with sub-paragraph (1) (e), investigation shall be commenced, or resumed, where a complainant states in writing that he no longer intends to pursue a remedy by way of legal proceedings.

(3) Where the investigation of a matter which is the subject of a complaint is not commenced, or has ceased, in accordance with sub-paragraph (1) (f), investigation shall be commenced, or resumed in relation to any matter which has not been dealt with by disciplinary proceedings.

(4) Where the investigation of a matter which is the subject of a complaint is not commenced, or has ceased, in accordance with heads (g), (i) or (j) of sub-paragraph (1), investigation shall be commenced, or resumed in relation to any matter which has not been dealt with under the proceedings referred to in those heads.

(5) The Chief Executive of the relevant HSC body shall notify the complainant and any person subject to complaint of any decision not to investigate the complaint or to discontinue an investigation of a complaint under sub-paragraph (1) and of any start, or resumption, of an investigation.

(6) The notification to be given under sub-paragraph (5) shall be in writing and shall state the reason for any decision referred to in that sub-paragraph.

(a) 1998 c.29
 (b) 2000 c.36

PART III

THE INITIAL COMPLAINT

Requirement to deal with the complaint

8. Subject to paragraph 7, a complaint shall be dealt with in accordance with the arrangements if it is made —

- (a) by a person specified in paragraph 9;
- (b) in the manner specified in paragraph 10;
- (c) about any matter connected with the provision of care; and
- (d) within the period specified in paragraph 11.

Person who may make a complaint

9.—(1) A complaint may be made by —

- (a) a relevant person; or
- (b) a person (in these Directions referred to as a representative) acting on behalf of a relevant person in any case where the relevant person —
 - (i) has died;
 - (ii) is a child;
 - (iii) is unable by reason of physical or mental incapacity to make the complaint himself;
or
 - (iv) has requested the person to act on his behalf.

(2) In the case of a relevant person who has died or who is incapable, the representative must be a relative or other person, who, in the opinion of the complaints manager, had or has a sufficient interest in his welfare and is a suitable person to act as representative.

(3) If in any case the complaints manager is of the opinion that a representative does or did not have a sufficient interest in the person's welfare or is unsuitable to act as representative, he must notify that person in writing, stating his reasons. The complaints manager may then either refuse to deal with the complaint or nominate another person to act with respect to the complaint.

(4) In the case of a child, the representative must be either a parent, or in the absence of both parents, guardian or other adult person who has care of the child, or where the child is in the care of an authority or a voluntary organisation, the representative must be a person authorised by the authority or the voluntary organisation.

(5) In these Directions any reference to a complainant includes a reference to his representative.

Making a complaint

10.—(1) Where a person wishes to make a complaint under these Directions, he may make the complaint to the complaints manager or any other member of the staff of the relevant HSC body.

(2) Any person other than the complaints manager to whom a complaint is made, whether orally, in writing or electronically, shall refer the complaint to the complaints manager.

(3) A complaint may be made orally or in writing, including electronically, and —

- (a) where it is made orally, the complaints manager or other member of staff of the relevant HSC body shall make a written record of the complaint which includes the name of the complainant, the subject matter of the complaint and the date on which it was made, and provide a copy of the written record to the complainant; and
- (b) where it is made in writing, the complaints manager shall make a written record of the date on which it was received.

(4) For the purposes of these Directions where the complaint is made in writing it is treated as being made on the date on which it is received by the complaints manager or as the case may be, other member of the staff of the relevant HSC body.

Time limits

11.—(1) Subject to sub-paragraph (2), the period for making a complaint is—

- (a) six months from the date on which the matter which is the subject of the complaint occurred; or
- (b) where the complainant was not aware that there was cause for complaint, within—
 - (i) six months from the date on which the matter which is the subject of the complaint comes to the complainant's notice; or
 - (ii) twelve months from the date on which the matter which is the subject of the complaint occurred,whichever is the sooner.

(2) Where a complaint is received which was not made during the period specified in sub-paragraph (1) it shall be referred to the complaints manager and if he is of the opinion that —

- (a) having regard to all the circumstances of the case, it would be unreasonable to have expected the complainant to have made the complaint within that period; and
- (b) notwithstanding the time that has elapsed since the date on which the matter which is the subject of the complaint occurred, it is still possible to investigate the complaint properly, the complaint shall be treated as though it had been received during the period specified in sub-paragraph (1).

Acknowledgement and record of complaint

12.—(1) The complaints manager shall send to the complainant a written acknowledgement of the complaint within 2 working days of the date on which the complaint was made.

(2) Where a complaint was made orally, the acknowledgment shall be accompanied by the written record mentioned in paragraph 10 (3) (a) with an invitation to the complainant to sign and return it.

(3) The complaints manager shall send a copy of the complaint and its acknowledgement to any person subject to complaint unless he has reasonable grounds to believe that to do so would be detrimental to that person's health or wellbeing.

(4) The acknowledgement sent to the complainant under sub-paragraph (1) must include information about the right to assistance from the Patient and Client Council.

Investigation

13.—(1) A complaint must be investigated to the extent necessary and in a manner which appears most appropriate to an efficient and effective resolution.

(2) The complaints manager may, in any case where he thinks it would be appropriate to do so and with the agreement of the complainant, make arrangements for independent expert advice, conciliation or other assistance for the purposes of resolving the complaint.

(3) The complaints manager must take such steps as are reasonably practicable to keep the complainant informed about the progress of the investigation.

Response

14.—(1) The complaints manager must ensure a written response is prepared to the complaint which summarises the nature and substance of the complaint, describes the investigation and summarises its conclusions.

(2) The response must be signed off by the Chief Executive of the relevant HSC body. A copy shall be provided to the complainant and any person subject to complaint.

(3) The Chief Executive of the relevant HSC body can delegate responsibility for responding to a complaint, where in the interests of a prompt reply a designated executive director of the relevant HSC body undertakes this task on the Chief Executive's behalf.

(4) The response must be sent to the complainant within 20 working days beginning on the date on which the complaint was made or, where that is not possible, the complainant must be notified of the delay and the full response issued as soon as reasonably practicable.

(5) The response must notify the complainant of his right to refer the complaint to the NI Commissioner for Complaints should he remain dissatisfied with the outcome of the HSC complaints procedure.

(6) Copies of the response mentioned in sub-paragraph (1) must be sent to any other person to whom the complaint was sent under paragraph 12(3).

(7) Responses should not be made electronically.

PART IV MONITORING AND PUBLICITY

Monitoring

15.—(1) For the purposes of—

- (a) monitoring the arrangements made for the handling and consideration of complaints;
- (b) considering the nature, volume and outcome of complaints;
- (c) taking remedial action following investigation of complaints; and
- (d) organisational learning,

the relevant HSC body shall prepare reports at quarterly intervals for consideration by its board.

(2) The reports mentioned in sub-paragraph (1) must—

- (a) specify the number of complaints received;
- (b) identify the subject matter of those complaints;
- (c) summarise how they were handled including the outcome of the investigations;
- (d) specify the number of complaints that have been referred to the NI Commissioner for Complaints; and
- (e) identify any complaints where the recommendations of the NI Commissioner for Complaints were not acted upon, giving the reason why.

(3) For the purposes of ensuring the efficient use of resources HSC bodies will monitor the effectiveness and usage of independent experts, conciliation and lay person assistance.

(4) HSC trusts must provide the HSC Board with such information relating to complaints as the HSC Board reasonably requests for the purposes of monitoring and performance management, and only to the extent that it is not in contravention of the Data Protection Act 1998.

Learning

16.—(1) All HSC bodies are responsible for ensuring that arrangements are in place for the purposes of organisational and regional learning.

(2) The HSC Board is responsible for collating and sharing the learning arising from HSC trust complaints.

Annual Reports

17.—(1) Each HSC body shall publish a report annually on its handling and consideration of complaints under these Directions which shall be sent to—

- (a) the Department of Health, Social Services and Public Safety;
- (b) the Patient and Client Council;
- (c) the RQIA; and
- (d) the NI Commissioner for Complaints.

(2) HSC trusts' annual reports should also be sent to the HSC Board.

Publicity

18.—(1) Each HSC body shall take such steps as are necessary to ensure that—

- (a) any person connected with the provision of care by, or on behalf of that body;
- (b) staff working for that body;
- (c) the Patient and Client Council;

are fully informed of the arrangements for dealing with complaints and are informed of the name of the complaints manager and the address at which he can be contacted.

(2) The requirement to provide information specified in sub-paragraph (1) includes a requirement to provide information on the services which the Patient and Client Council offers to persons who wish to make complaints.

Training

19. Each HSC body must ensure that its staff are informed about and appropriately trained in the operation of the complaints arrangements.

PART V

TRANSITIONAL PROVISION AND REVOCATIONS

Transitional provision

20. Where, before 1st April 2009, a complaint has been made in accordance with any former Directions, it must be investigated, or in an appropriate case continue to be investigated, in accordance with the former Directions as if these Directions had not come into effect.

Revocations

21. The following Directions are revoked—

- (a) The Health and Personal Social Services Complaints Procedures Directions (Northern Ireland) 1996;

- (b) The Health and Personal Social Services (Special Agencies) Complaints Procedures Directions (Northern Ireland) 1996; and
- (c) The Miscellaneous Complaints Procedures Directions (Northern Ireland) 1996.

Sealed with the Official Seal of the Department of Health, Social Services and Public Safety on 1st April 2009

A handwritten signature in black ink, appearing to read 'John A. Wilson', written in a cursive style.

A senior officer of the
Department of Health, Social Services and Public Safety