

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

DIRECTIONS TO THE REGIONAL AGENCY FOR PUBLIC HEALTH AND SOCIAL WELL-BEING ON PROCEDURES FOR DEALING WITH HEALTH AND SOCIAL CARE COMPLAINTS

The Department of Health, Social Services and Public Safety, in exercise of the powers conferred by section 6(1)(b) of the Health and Social Care (Reform) Act (Northern Ireland) 2009^(a), and having consulted the Regional Agency for Public Health and Social Well-being, hereby directs as follows:

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(a) 2009 c.1 (N.I.)

PART I

CITATION, COMMENCEMENT, INTERPRETATION AND APPLICATION

Citation and commencement

1. These Directions, which may be cited as the Directions to the Regional Agency for Public Health and Social Well-Being on procedures for dealing with Health and Social Care complaints, shall come into operation on 26th July 2010.

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;

“complaint” means a complaint by a member of the public about any matter connected with the provision of services by the Public Health Agency, and “complainant” shall be construed accordingly;

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

“disciplinary proceedings” means —

- (a) any procedure for disciplining employees adopted by the Public Health Agency;
- (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);

“HSC body” means a health and social care body as specified in section 1(5) of the 2009 Act;

“independent provider” means a body who is not the Public Health Agency, but with whom the Public Health Agency has made arrangements for the provision of services;

“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, services provided by, or on behalf of, the Public Health Agency;

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

“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;

“Public Health Agency” means the Regional Agency for Public Health and Social Well-being established under section 12 of the 2009 Act;

“relevant person” means—

- (a) a patient or a client;
- (b) any person who has been refused any services;
- (c) any person who is receiving, or has received, any services from, or is affected by any action, omission or decision of, the Public Health Agency;

“services” means any service or services: -

- (a) provided by the Public Health Agency, or which it is a duty of the Public Health Agency to provide; or
- (b) provided by an independent provider.

Application of Directions

3. These Directions apply to any complaint made on or after 26th July 2010 in respect of the Public Health Agency.

PART II

HANDLING AND CONSIDERATION OF COMPLAINTS

Requirement to make arrangements

4.—(1) The Public Health Agency 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 is 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 the Public Health Agency makes arrangements for the provision of services 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 services as if these Directions applied to it.

(5) The Public Health Agency 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; and
- (b) 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) The Public Health Agency 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 Public Health Agency 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 Public Health Agency 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 Public Health Agency 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 the Public Health Agency;
- (b) a complaint made by an employee of the Public Health Agency 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 the Public Health Agency with that independent provider;
- (d) a complaint arising out of the Public Health Agency's alleged failure to comply with a data subject request 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 the Public Health Agency is taking or is proposing to take disciplinary proceedings in relation to the substance of the complaint against a person subject to the 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 Public Health Agency 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 services; 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 staff of the Public Health Agency.

(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 Public Health Agency 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;

- (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 staff of the Public Health Agency.

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 of 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 well-being.

(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 Public Health Agency. A copy shall be provided to the complainant and any person subject to complaint.

(3) The Chief Executive of the Public Health Agency can delegate responsibility for responding to a complaint, where in the interests of a prompt reply a designated Executive Director of the Public Health Agency 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 result 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 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 Public Health Agency shall prepare reports at such intervals as it may determine 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 accepted for investigation by 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 reasons why not.

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

Learning

16. The Public Health Agency is responsible for ensuring that arrangements are in place for the purposes of organisational learning.

Annual Reports

17. The Public Health Agency shall include within its annual report a report 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; and
- (b) the Patient and Client Council.

Publicity

18.—(1) The Public Health Agency shall take such steps as are necessary to ensure that —

- (a) the patient or client;
- (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. The Public Health Agency must ensure that its staff are informed about and appropriately trained in the operation of the complaints arrangements.

Sealed with the Official Seal of the Department of Health, Social Services and Public Safety on 23rd July 2010.



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