
WELSH STATUTORY INSTRUMENTS

2011 No. 704

**The National Health Service (Concerns, Complaints
and Redress Arrangements) (Wales) Regulations 2011**

PART 6

REDRESS

Duty to consider redress

25.—(1) Where an investigation of a concern is being undertaken in accordance with regulation 23 by a responsible body that is a Welsh NHS body and the Welsh NHS body determines that a qualifying liability exists or may exist, it must, in accordance with the provisions of this Part, determine whether or not an offer of redress should be made to the patient.

(2) An offer of redress may be made by a Welsh NHS body where it is established, in accordance with the provisions of these Regulations, that a qualifying liability exists.

Response to an investigation under regulation 23 where it is decided that there is or there may be a qualifying liability

26.—(1) Where following an investigation under regulation 23 a responsible body that is a Welsh NHS body is of the opinion that there is or there may be a qualifying liability, that Welsh NHS body must produce an interim report which—

- (a) summarises the nature and substance of the matter or matters notified in the concern;
- (b) describes the investigation undertaken in accordance with regulation 23;
- (c) describes why, in the opinion of the Welsh NHS body, there is or there may be a qualifying liability;
- (d) contains a copy of any relevant medical records;
- (e) explains the availability of access to legal advice without charge in accordance with the provisions of regulation 32;
- (f) explains the availability of advocacy and support services which may be of assistance;
- (g) explains the procedure which will be followed to determine whether or not a qualifying liability exists and the procedure for making an offer of redress if such a qualifying liability is found to exist;
- (h) confirms that, when prepared, a copy of the investigation report referred to in regulation 31 will be made available, in accordance with the provisions of that regulation, to the person who is seeking redress;
- (i) contains details of the right to notify the concern to the Public Services Ombudsman for Wales;
- (j) offers the person who is seeking redress the opportunity to discuss the contents of the interim report with the responsible officer or a person acting on his or her behalf; and

(k) is signed by the responsible officer or a person acting on his or her behalf.

(2) Save where paragraph (3) applies, a Welsh NHS body must take all reasonable steps to send an interim report to the person who notified the concern within thirty working days beginning with the day on which it received notification of the concern.

(3) If a Welsh NHS body is not able to provide an interim report in accordance with paragraph (2), it must—

- (a) notify the person who notified the concern accordingly and explain the reason why; and
- (b) send the interim report as soon as reasonably practicable and within six months beginning with the day upon which it received notification of the concern.

(4) If exceptional circumstances mean that the six month period cannot be adhered to, the Welsh NHS body must advise the person who notified the concern of the reasons for the delay and when the interim report may be expected.

(5) The investigation report referred to in regulation 31 must be provided to the person who notified the concern or his or her legal representative as soon as reasonably practicable and not later than twelve months from the date that the Welsh NHS body received notification of the concern.

(6) If exceptional circumstances mean that the twelve month period cannot be adhered to, the Welsh NHS body must advise the person who notified the concern or his or her legal representative of the reasons for the delay and when the investigation report may be expected.

Form of redress

27.—(1) Redress under this Part comprises—

- (a) the making of an offer of compensation in satisfaction of any right to bring civil proceedings in respect of a qualifying liability;
- (b) the giving of an explanation;
- (c) the making of a written apology; and
- (d) the giving of a report on the action which has been, or will be, taken to prevent similar cases arising.

(2) The compensation that may be offered in accordance with regulation 27(1)(a) can take the form of entry into a contract to provide care or treatment or of financial compensation, or both.

Availability of Redress

28.—(1) Redress is not available in relation to a liability that is or has been the subject of civil proceedings.

(2) If such civil proceedings are issued during the course of a Welsh NHS body's consideration of redress, the Welsh NHS body's consideration of redress in accordance with these Regulations must cease and the Welsh NHS body must advise the person who notified the concern accordingly.

Redress — financial compensation

29.—(1) A Welsh NHS body may make an offer of redress for a qualifying liability by way of financial compensation in which the sum does not exceed £25,000.

(2) Where a Welsh NHS body considers that the value to be attributed to the qualifying liability exceeds £25,000, redress in the form of financial compensation must not be offered in accordance with this Part.

(3) If, in accordance with paragraph (2), a Welsh NHS body considers that the financial limit set by these Regulations will be exceeded, if the investigation conducted by the Welsh NHS body

concludes that there is a qualifying liability, the Welsh NHS body may give consideration to making an offer of settlement outside the provisions of these Regulations.

(4) The assessment of damages for pain, suffering and loss of amenity is calculated on the common law basis. Welsh Ministers may from time to time issue a compensation tariff.

(5) If a tariff is issued in accordance with paragraph (4), it is to be used for the purpose of guidance by Welsh NHS bodies when considering the amount of financial compensation to be offered in accordance with this Part.

Suspension of the limitation period

30.—(1) During the period in which a liability is the subject of an application for redress under this Part, any limitation period for the bringing of civil proceedings in respect of that liability which is prescribed by or under the Limitation Act 1980(1) or any other enactment is suspended and time will not run for the purposes of calculating any time limits prescribed by these enactments.

(2) For the purposes of this Part, a liability is to be considered as being the subject of an application for redress—

- (a) for the period beginning with the date on which the initial concern which became an application for redress was received by a Welsh NHS body; and
- (b) subject to paragraphs (3), (4) and (5), up to and including the date when an offer of financial compensation made in accordance with regulation 33 is accepted by a patient or his or her representative by signing a formal agreement and legal waiver in accordance with regulation 33(e) or until such time as an offer of such compensation is rejected by a patient or his or her representative.

(3) A liability will no longer be considered as being the subject of an application for redress nine calendar months from the date upon which the Welsh NHS body makes an offer of financial compensation in respect of that liability.

(4) In cases where court approval of a settlement proposed by an offer is required, such as in circumstances outlined in regulation 33(f), limitation, if limitation is an issue, is suspended until the date upon which the court approves the settlement.

(5) In cases where a Welsh NHS body indicates, in accordance with regulation 33, that it is of the opinion that there is no qualifying liability and has decided not to make an offer of redress, a liability will not be considered to be the subject of an application for redress nine calendar months from the date on which the Welsh NHS body communicated its decision in accordance with regulation 33.

Investigation report

31.—(1) A Welsh NHS body must ensure that the findings of the investigation of a concern in which a person is seeking redress under this Part are recorded in an investigation report.

(2) An investigation report must contain the following—

- (a) a copy of any medical evidence that has been commissioned in accordance with this Part in order to determine whether or not there is a qualifying liability or which has been commissioned to determine condition and prognosis;
- (b) a statement by the Welsh NHS body confirming whether or not, in its opinion, there is a qualifying liability; and
- (c) an explanation for the opinion expressed in sub-paragraph (b).

(1) 1980 c. 58.

(3) Unless paragraph (4) applies, the Welsh NHS body must provide the person who is seeking redress under this Part, or his or her legal representative, with a copy of the investigation report within the time frame set out in regulation 26(5) and (6).

(4) No copy of the investigation report need be provided by the Welsh NHS body—

- (a) before an offer of redress under this Part is made;
- (b) before a decision not to make an offer of redress is communicated;
- (c) if the investigation of redress in accordance with this Part is for any reason terminated; or
- (d) where the report contains information likely to cause the patient or other applicant for redress significant harm or distress.

Legal advice and instruction of medical experts

32.—(1) Where a Welsh NHS body has determined that a qualifying liability exists, or may exist, in accordance with regulation 26 and this Part, the Welsh NHS body must ensure—

- (a) that legal advice is available to a person seeking redress under this Part in accordance with the following provisions of this regulation; and
- (b) if a medical expert or experts need to be instructed that such instruction is carried out jointly by the Welsh NHS body and the person who has notified the concern in accordance with regulation 11.

(2) Legal advice must only be sought from firms of solicitors who have a recognised expertise in the field of clinical negligence. Firms will be recognised as having the necessary expertise if they have at least one partner or employee who is a member of the Law Society Clinical Negligence Panel (2) or the Action Against Medical Accidents Clinical Negligence Panel (3).

(3) A Welsh NHS body must ensure that legal advice without charge is available to the person who notified the concern in relation to—

- (a) the joint instruction of medical experts, including the seeking of clarification from such experts of issues arising from their reports;
- (b) any offer that is made in accordance with this Part;
- (c) any refusal to make such an offer; and
- (d) any settlement agreement that is proposed.

(4) The cost of such legal advice and costs arising from the instruction of such medical experts must be borne in their entirety by the Welsh NHS body.

Redress — communication of a decision

33. Where a Welsh NHS body decides to make an offer of redress by way of financial compensation or entry into a contract to provide care or treatment or both or determines that it will not make an offer of redress on the basis that there is no qualifying liability, it must—

- (a) send the offer, or the notification of the decision not to make an offer, to the person who notified the concern within twelve months of the date on which the concern was notified to the Welsh NHS body. If exceptional circumstances mean that the twelve month

(2) The Law Society runs an accreditation scheme for solicitors and Fellows of the Institute of Legal Executives (FILEX) who specialise in clinical negligence cases. Solicitors and FILEX who are able to demonstrate, in accordance with the Law Society's published procedure, that they are sufficiently expert in clinical negligence matters are eligible to be listed as a member of the Law Society Clinical Negligence Panel.

(3) Action Against Medical Accidents (AVMA) is a charity established to promote patient safety. It runs an accreditation scheme for solicitors and Fellows of the Institute of Legal Executives (FILEX). Solicitors and FILEX who can demonstrate that they meet AVMA's published criteria for demonstrating expertise in the field of clinical negligence can become members of AVMA's Clinical Negligence Panel.

period cannot be adhered to, the Welsh NHS body must advise the person who notified the concern, or his or her, legal representative, of the reasons for the delay and when a decision in respect of the application for redress will be made;

- (b) advise that person or his or her legal representative that he or she must respond to the offer of settlement or a decision not to make an offer of settlement within six months of the date that it is notified;
- (c) subject to paragraph (d), advise that if, as a result of exceptional circumstances, it will not be possible to respond to the offer of settlement, or the decision not to make an offer of settlement, within six months of the date of the offer or decision not to make an offer, the Welsh NHS body must be advised by the person who notified the concern or his or her legal representative of the reasons for the delay in responding and when a response will be submitted;
- (d) advise a person or his or her legal representative that if an extension of time is sought to respond to an offer of settlement or a decision not to make an offer of settlement, a response is required within nine calendar months of the date of the offer or decision as that is the time when, in accordance with regulation 30(3) and (5), limitation starts to run;
- (e) advise, if an offer is made, that the settlement proposed by the offer will be by way of a formal agreement which must include a waiver of any right to bring civil proceedings in respect of the qualifying liability to which the settlement relates;
- (f) advise that, in appropriate circumstances, the settlement agreement proposed will be subject to approval by a court in cases such as those where the person to whom the qualifying liability relates—
 - (i) is a child; or
 - (ii) lacks capacity within the meaning of the Mental Capacity Act 2005(4); and
- (g) advise that where court approval of a settlement is required, that the Welsh NHS body must pay the reasonable legal costs associated with obtaining such approval.

(4) 2005 c. 9.