

SCHEDULE 5

OTHER CONTRACTUAL TERMS

PART 6

Complaints

Complaints procedure

82.—(1) The contractor shall establish and operate a complaints procedure to deal with any complaints in relation to any matter reasonably connected with the provision of services under the contract which shall comply with the requirements in paragraphs 83 to 86 and 88.

(2) The contractor shall take reasonable steps to ensure that patients are aware of—

- (a) the complaints procedure; and
- (b) the role of the Health Board and other bodies in relation to complaints about services under the contract.

(3) The contractor shall take reasonable steps to ensure that the complaints procedure is accessible to all patients.

Making of complaints

83. A complaint may be made by or, with the patient's consent, on behalf of a patient, or former patient, who is receiving or has received services under the contract or—

- (a) where a patient is a child—
 - (i) by either parent, or in the absence of both parents, the guardian or other adult who has care of the child,
 - (ii) by a person duly authorised by the local authority, where the child is in the care of that local authority under the Children (Scotland) Act 1995(1); or
 - (iii) by a person duly authorised by a voluntary organisation by which the child is being accommodated under the provisions of that Act;
- (b) where the patient is incapable of making a complaint, by a relative or other adult who has an interest in the patient's welfare.

Making of complaints

84. Where a patient has died, a complaint may be made by a relative or other adult who had an interest in the patient's welfare or, where the patient falls within paragraph 83(a)(ii) or (iii), by the authority or voluntary organisation.

Period for making complaints

85.—(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

(1) 1995 c. 36.

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- (b) six months from the date on which the matter which is the subject of the complaint comes to the complainant's notice provided that the complaint is made no later than twelve months after the date on which the matter which is the subject of the complaint occurred.
- (2) Where a complaint is not made during the period specified in sub-paragraph (1), it shall be referred to the person nominated under paragraph 86(2)(a) and if the person is of the opinion that—
 - (a) having regard to all the circumstances of the case, it would have been unreasonable for the complainant to make the complaint within that period; and
 - (b) notwithstanding the time that has elapsed since the date on which the matter which is the subject matter of the complaint occurred, it is still possible to investigate the complaint properly,the complaint shall be treated as if it had been received during the period specified in sub-paragraph (1).

Further requirements for complaints procedures

- 86.**—(1) A complaints procedure shall also comply with the requirements set out in sub-paragraphs (2) to (6).
- (2) The contractor must nominate—
 - (a) a person (who need not be connected with the contractor and who, in the case of an individual, may be specified by the person's job title) to be responsible for the operation of the complaints procedure and the investigation of complaints; and
 - (b) a partner, or senior person associated with the contractor, to be responsible for the effective management of the complaints procedure and for ensuring that action is taken in the light of the outcome of any investigation.
 - (3) All complaints must be—
 - (a) either made or recorded in writing;
 - (b) acknowledged in writing within the period of 3 working days beginning with the day on which the complaint was made or, where that is not possible, as soon as reasonably practicable; and
 - (c) properly investigated.
 - (4) Within the period of 10 working days beginning with the day on which the complaint was received by the person specified under sub-paragraph (2)(a) or, where that is not possible, as soon as reasonably practicable, the complainant must be given a written summary of the investigation and its conclusions.
 - (5) Where the investigation of the complaint requires consideration of the patient's medical records, the person specified under sub-paragraph (2)(a) must inform the patient or person acting on the patient's behalf if the investigation will involve disclosure of information contained in those records to a person other than the contractor or an employee of the contractor.
 - (6) The contractor must keep a record of all complaints and copies of all correspondence relating to complaints, but such records must be kept separate from patients' medical records.

Co-operation with investigations

- 87.**—(1) The contractor shall co-operate with—
 - (a) any investigation of a complaint in relation to any matter reasonably connected with the provision of services under the contract undertaken by—
 - (i) the Health Board; and

- (ii) the Scottish Public Services Ombudsman;
 - (b) any investigation of a complaint by a NHS body or local authority which relates to a patient or former patient of the contractor.
- (2) In sub-paragraph (1)—
- “NHS body” means, in Scotland, any Health Board, in England and Wales, a Primary Care trust, an NHS trust, an NHS foundation trust, a Strategic Health Authority, a Local Health Board, and, in Northern Ireland a Health and Social Services Board or a Health and Social Services trust;
- “local authority” means—
- (a) a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (constitution of councils)(2);
 - (b) any of the bodies listed in section 1 of the Local Authority Social Services Act 1970 (local authorities)(3); or
 - (c) the Council of the Isles of Scilly.
- (3) The co-operation required by sub-paragraph (1) includes—
- (a) answering questions reasonably put to the contractor by the Health Board;
 - (b) providing any information relating to the complaint reasonably required by the Health Board; and
 - (c) attending any meeting to consider the complaint (if held at a reasonably accessible place and at a reasonable hour, and due notice has been given) if the contractor’s presence at the meeting is reasonably required by the Health Board.

Provision of information about complaints

88. The contractor shall inform the Health Board, at such intervals as required, of the number of complaints it has received under the procedure established in accordance with this Part.

(2) 1994 c. 39.

(3) 1970 c. 42; section 1 was amended by the Local Government Act 1972 (c. 70), section 195 and by the Local Government (Wales) Act 1994 (c. 19), Schedule 10, paragraph 7.