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STATUTORY INSTRUMENTS

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**2004 No. 1768**

**The National Health Service (Complaints) Regulations 2004**

**PART II**

**HANDLING AND CONSIDERATION OF COMPLAINTS BY NHS BODIES**

**Arrangements for the handling and consideration of complaints**

**3.—**(1) Each NHS body must make arrangements in accordance with these Regulations for the handling and consideration of complaints.

(2) The arrangements must be accessible and such as to ensure that complaints are dealt with speedily and efficiently, and that complainants are treated courteously and sympathetically and as far as possible involved in decisions about how their complaints are handled and considered.

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

(4) Where an NHS trust or a Primary Care Trust 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 Regulations applied to it.

**Responsibility for complaints arrangements**

**4.** Each NHS body must designate one of its members, or in the case of an NHS trust a member of its board of directors, to take responsibility for ensuring compliance with the arrangements made under these Regulations and that action is taken in the light of the outcome of any investigation.

**Complaints manager**

**5.—**(1) Each NHS body must designate a person, in these Regulations referred to as a complaints manager, to manage the procedures for handling and considering complaints and in particular—

(a) to perform the functions of the complaints manager under this Part; and

(b) to perform such other functions in relation to complaints as the NHS body may require.

(2) The functions of the complaints manager may be performed by him or by any person authorised by the NHS body to act on his behalf.

**Complaints to NHS bodies**

**6.** Subject to regulation 7, a complaint to an NHS body may be about any matter reasonably connected with the exercise of its functions including in particular, in the case of an NHS trust or Primary Care Trust, any matter reasonably connected with—

(a) its provision of health care or any other services, including in the case of a Primary Care Trust, its provision of primary medical services under section 16CC of the 1977 Act; and

- (b) the function of commissioning health care or other services under an NHS contract or making arrangements for the provision of such care or other services with an independent provider or with an NHS foundation trust.

### **Matters excluded from consideration under the arrangements**

7. The following complaints are excluded from the scope of the arrangements required under this Part —

- (a) a complaint made by an NHS body which relates to the exercise of its functions by another NHS body;
- (b) a complaint made by a primary care provider which relates either to the exercise of its functions by an NHS body or to the contract or arrangements under which it provides primary care services;
- (c) a complaint made by an employee of an NHS body about any matter relating to his contract of employment;
- (d) a complaint made by an independent provider or an NHS foundation trust about any matter relating to arrangements made by an NHS body with that independent provider or NHS foundation trust;
- (e) a complaint which relates to the provision of primary medical services in accordance with arrangements made by a Primary Care Trust with a Strategic Health Authority under section 28C of the 1977 Act or under a transitional agreement;
- (f) a complaint which is being or has been investigated by the Health Service Commissioner;
- (g) a complaint arising out of an NHS body's alleged failure to comply with a data subject request under the Data Protection Act 1998(1) or a request for information under the Freedom of Information Act 2000((2))
- (h) a complaint about which the complainant has stated in writing that he intends to take legal proceedings; and
- (i) a complaint about which an NHS body is taking or is proposing to take disciplinary proceedings in relation to the substance of the complaint against a person who is the subject of the complaint.

### **Persons who may make complaints**

8.—(1) A complaint may be made by—

- (a) a patient; or
- (b) any person who is affected by or likely to be affected by the action, omission or decision of the NHS body which is the subject of the complaint.

(2) A complaint may be made by a person (in these Regulations referred to as a representative) acting on behalf of a person mentioned in paragraph (1) in any case where that person—

- (a) has died;
- (b) is a child;
- (c) is unable by reason of physical or mental incapacity to make the complaint himself; or
- (d) has requested the representative to act on his behalf.

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(1) 1998 c. 29  
(2) 2000 c. 36.

(3) In the case of a patient or person affected 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.

(4) 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 a representative, he must notify that person in writing, stating his reasons.

(5) In the case of a child, the representative must be a parent, guardian or other adult person who has care of the child and where the child is in the care of a local authority or a voluntary organisation, the representative must be a person authorised by the local authority or the voluntary organisation.

(6) In these Regulations any reference to a complainant includes a reference to his representative.

### **Making a complaint**

**9.—**(1) Where a person wishes to make a complaint under these Regulations, he may make the complaint to the complaints manager or any other member of the staff of the NHS body which is the subject of the complaint.

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

- (a) where it is made orally, the complaints manager must 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
- (b) where it is made in writing, the complaints manager must make a written record of the date on which it was received.

(3) For the purposes of these Regulations 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 NHS body.

### **Time limit for making a complaint**

**10.—**(1) Subject to paragraph (2) a complaint must be made within—

- (a) six months of the date on which the matter which is the subject of the complaint occurred; or
- (b) six months of the date on which the matter which is the subject of the complaint came to the notice of the complainant.

(2) Where a complaint is made after the expiry of the period mentioned in paragraph (1), the complaints manager may investigate it if he is of the opinion that—

- (a) having regard to all the circumstances, the complainant had good reasons for not making the complaint within that period; and
- (b) notwithstanding the time that has elapsed it is still possible to investigate the complaint effectively and efficiently.

### **Acknowledgement and record of complaint**

**11.—**(1) The complaints manager must 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 acknowledgement must be accompanied by the written record mentioned in regulation 9(2)(a) with an invitation to the complainant to sign and return it.

(3) The complaints manager must send a copy of the complaint and his acknowledgement to any person identified in the complaint as the subject of the complaint.

(4) The acknowledgement sent to the complainant under paragraph (1) must include information about the right to assistance from the independent advocacy services provided under section 19A of the 1977 Act.

### **Investigation**

**12.**—(1) The complaints manager must investigate the complaint to the extent necessary and in the manner which appears to him most appropriate to resolve it speedily and efficiently.

(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 conciliation, mediation or other assistance for the purposes of resolving the complaint, and in any such case the NHS body must ensure that appropriate conciliation or mediation services are available.

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

### **Response**

**13.**—(1) The complaints manager must prepare a written response to the complaint which summarises the nature and substance of the complaint, describes the investigation under regulation 12 and summarises its conclusions.

(2) The response must be signed by the chief executive of the NHS body except in cases where for good reason the chief executive is not himself able to sign it, in which case it may be signed by a person acting on his behalf.

(3) Subject to paragraph (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, as soon as reasonably practicable.

(4) The response must notify the complainant of his right to refer the complaint to the Healthcare Commission in accordance with regulation 14.

(5) Copies of the response mentioned in paragraph (1) must be sent to any other person to whom the complaint was sent under regulation 11(3).