
STATUTORY INSTRUMENTS

2004 No. 1768

The National Health Service (Complaints) Regulations 2004

PART III

**HANDLING AND CONSIDERATION OF
COMPLAINTS BY THE HEALTHCARE COMMISSION**

General complaints remit of the Healthcare Commission

14.—(1) In any case where—

- (a) a complainant is not satisfied with the result of an investigation—
 - (i) by an NHS body under regulation 12, or
 - (ii) by an independent provider, with whom an NHS trust or Primary Care Trust has made arrangements as mentioned in regulation 6, in accordance with its arrangements for the handling and consideration of complaints;
- (b) for any reason an investigation mentioned in paragraph (1)(a) has not been completed within 6 months of the date on which the complaint was made, or
- (c) a complaints manager has decided not to investigate a complaint on the grounds that it was not made within the time limit mentioned in regulation 10;

he may request the Healthcare Commission to consider the complaint in accordance with this Part.

(2) In any case where a person has made a complaint to a primary care provider and is not satisfied with the outcome of an investigation of his complaint by the primary care provider, in accordance with its procedures for the handling and investigation of complaints, he, or a person who acted as his representative in accordance with those procedures, may request the Healthcare Commission to consider the complaint in accordance with this Part(1).

(3) A request under paragraphs (1) or (2) may be made either orally or in writing (including electronically) and must be made within 2 months of, or where that is not possible, as soon as reasonably practicable after, the date on which the response mentioned in regulation 13, or, as the case may be, under the complaints arrangements of the primary care provider, was sent to the complainant.

(1) The complaints procedures which apply to primary care providers are contained either in regulations made under the appropriate provisions in the 1977 Act or in directions made under section 17 of the 1977 Act. See S.I.2004/291, Schedule 6, paragraphs 92 to 98 for general medical services contracts; S.I. 2004/433, article 13(4)(b) for default contracts; S.I. 2004/627, Schedule 5, paragraphs 86 to 92 for persons providing primary medical services; S.I.1992/661 Schedule 2, paragraphs 31A to 31C for general dental services; the Directions concerning the implementation of pilot schemes for personal dental services 10th August 1998, paragraph 18 and Schedule 2 for personal dental services; S.I. 1986/975, Schedule 1, paragraph 8A for general ophthalmic services; S.I. 1992/662, Schedule 2, paragraphs 10A, 10B, 14 and 15 for pharmaceutical services and the Primary Care Trusts Preparation of Proposals and Implementation of Pilot Schemes (Local Pharmaceutical Services) Directions 2003, paragraph 16 and Schedule 1 for persons providing local pharmaceutical services.

Remit of Healthcare Commission in relation to complaints about NHS foundation trusts

15.—(1) Subject to paragraphs (2) to (7), where a person has made a complaint to an NHS foundation trust and either—

- (a) he is not satisfied with the outcome of any investigation of that complaint by the NHS foundation trust in accordance with any procedures it may have; or
- (b) the NHS foundation trust has no complaints procedures,

he may request the Healthcare Commission to consider the complaint in accordance with this Part.

(2) The Healthcare Commission's remit in relation to NHS foundation trusts is limited to consideration only of a complaint which—

- (a) is made by a patient; and
- (b) is reasonably connected with the provision of health care or other services to patients by or for the NHS foundation trust.

(3) The Healthcare Commission may not consider a complaint made under this regulation where the complaint—

- (a) is one about which the complainant has stated in writing that he intends to take legal proceedings;
- (b) is one about which the NHS foundation trust has stated in writing that it is taking or is proposing to take disciplinary proceedings in relation the substance of the complaint against a person who is the subject of the complaint;
- (c) arises out of the NHS foundation trust's alleged failure to comply with a data subject request under the Data Protection Act 1998 or a request for information under the Freedom of Information Act 2000 ; or
- (d) which is being or has been investigated by the Health Service Commissioner.

(4) Where the Healthcare Commission consider that a complaint or any part of a complaint made under this regulation does not fall within paragraph (2), it must refer that complaint or part of a complaint to the Independent Regulator.

(5) The provisions in regulation 8 (2) to (6) (provision about representatives) apply to complaints made to the Healthcare Commission about NHS foundation trusts as if—

- (a) the reference in paragraph (2) to paragraph (1) of that regulation were a reference to paragraph (2) of this regulation; and
- (b) the references to the complaints manager in paragraphs (3) and (4) were references to the Healthcare Commission.

(6) A request under paragraph (1) must be made within 2 months of, or where that is not possible, as soon as reasonably practicable after, the date on which a response under the NHS foundation trust's complaints arrangements was sent to the complainant or, where there are no such arrangements, as soon as reasonably practicable.

(7) On receipt of a complaint about an NHS foundation trust, the Healthcare Commission must, within two working days and provided that it has the consent, which may be either express or implied, of the complainant, send a copy of the complaint to the Independent Regulator and invite his views on the complaint.

Decision on handling of complaint

16.—(1) On receipt of the complaint the Healthcare Commission must assess the nature and substance of the complaint and decide how it should be handled having regard to —

- (a) the views of the complainant;

- (b) the views of the body complained about;
 - (c) in the case of a complaint about an NHS foundation trust which falls within regulation 15(2), the views of the Independent Regulator;
 - (d) any investigation of the complaint, whether under Part II or otherwise, and any action taken as a result of such investigation; and
 - (e) any other relevant circumstances.
- (2) As soon as reasonably practicable the Healthcare Commission must notify the complainant as to whether it has decided—
- (a) to take no further action;
 - (b) to make recommendations to the body which is the subject of the complaint as to what action might be taken to resolve it;
 - (c) to investigate the complaint further in accordance with regulation 17, whether by establishing a panel to consider it or otherwise;
 - (d) to consider the subject matter of the complaint as part of or in conjunction with any other investigation or review which it is conducting or proposes to conduct in the exercise of its functions under the 2003 Act;
 - (e) to refer the complaint to a health regulatory body;
 - (f) in the case of a complaint about an NHS foundation trust which falls within regulation 15(2), to refer the complaint to the Independent Regulator; or
 - (g) to refer the complaint to the Health Service Commissioner in accordance with section 10 of the Health Service Commissioners Act 1993.
- (3) The notice of decision mentioned in paragraph (2)—
- (a) must be sent to any person who or body which is the subject of the complaint;
 - (b) may be sent to any other body which the Healthcare Commission considers has an interest in it;
 - (c) must include the Healthcare Commission's reasons for its decision; and
 - (d) in the case of a notification under paragraph (2)(a), must inform the complainant of his right to refer his complaint to the Health Service Commissioner.
- (4) For the purposes of its decision under this regulation, the Healthcare Commission may—
- (a) distinguish one part of a complaint from another and make different proposals in respect of those different parts; and
 - (b) take such advice as appears to it to be required.

Investigation by the Healthcare Commission

17.—(1) Where the Healthcare Commission proposes to investigate a complaint itself, it must, within 10 working days of the date on which it sent the notice mentioned in regulation 16(2), or where that is not possible, as soon as reasonably practicable, send to the complainant and any other person to whom the notice was sent its proposed terms of reference for its investigation.

(2) The complainant and any person or body to whom the terms of reference are sent as mentioned in paragraph (1) may comment in writing on the proposed terms of reference provided that they do so within 10 working days of the date on which they were sent.

(3) The Healthcare Commission may conduct its investigation in any manner which seems to it appropriate, may take such advice as appears to it to be required and, having regard in particular to the views of the complainant and any person who or body which is the subject of the complaint, may appoint a panel to hear and consider the complaint in accordance with regulation 18.

(4) The Healthcare Commission may request any person or body to produce such information and documents as it considers necessary to enable a complaint to be considered properly.

(5) A request under paragraph (4) must be in writing (which may be electronically), must specify what information is requested and state why it is relevant to the consideration of the complaint.

(6) The Healthcare Commission may not make a request under paragraph (4) for information which is confidential and relates to a living individual unless the individual to whom the information relates has consented, such consent may be either express or implied, to its disclosure and use for the purposes of the investigation of the complaint.

Panels

18.—(1) Subject to paragraph (2), the Healthcare Commission must prepare and keep up to date a list of people who, in its opinion, are suitable to be members of an independent lay panel to hear and consider complaints.

(2) The following persons are not eligible for membership of an independent lay panel—

- (a) a member or employee of an NHS body;
- (b) any person who is, or who has at any time been, a health care professional or an employee of a health care professional.

(3) Where the Healthcare Commission proposes to refer a complaint to a panel it must make arrangements for the complaint to be considered by a panel of three people selected from the list mentioned in paragraph (1), one of whom must be appointed to be the chairman.

(4) Subject to paragraphs (5) to (7), a panel may consider a complaint in any manner and adopt any procedure which appears to it to be appropriate to resolve the complaint, having regard to any representations to it which may be made by the complainant or by the person who is the subject of the complaint (in this regulation referred to as the participants).

(5) The panel must ensure that the participants are kept informed generally and in particular about—

- (a) the composition of the panel;
- (b) the date and time of any hearing; and
- (c) the names of any person whom the panel proposes to interview or from whom it proposes to take advice or evidence.

(6) A participant before a panel may be accompanied or represented by a friend or advocate but may not be represented by a legal representative acting as such.

(7) In the event of disagreement among members of the panel, the view of the majority shall prevail.

Report of investigation by the Healthcare Commission

19.—(1) Where the Healthcare Commission investigates a complaint it must, as soon as reasonably practicable, prepare a written report of its investigation which—

- (a) summarises the nature and substance of the complaint;
- (b) describes the investigation and summarises its conclusions including any findings of fact, the Healthcare Commission's opinion of those findings and its reasons for its opinion;
- (c) recommends what action should be taken and by whom to resolve the complaint; and
- (d) identifies what other action, if any, should be taken and by whom.

(2) The report may include suggestions which it considers would improve the services of an NHS body, an NHS foundation trust or a primary care provider, or which would otherwise be effective for the purpose of resolving the complaint.

(3) Subject to paragraph (4), the report must be sent to—

- (a) the complainant together with a letter explaining to him his right to take his complaint to the Health Service Commissioner;
- (b) the body which was the subject of the complaint and, in the case of a complaint arising out of services provided by an independent provider, the body which commissioned those services;
- (c) in the case of a complaint involving a primary care provider, to the relevant Primary Care Trust;
- (d) any relevant Strategic Health Authority; and
- (e) in the case of a complaint involving an NHS foundation trust to the Independent Regulator.

(4) The Healthcare Commission must adapt the report to ensure that confidential information from which the identity of a living individual can be ascertained is not disclosed without the express consent of the individual to whom it relates.