THE HEALTH AND PERSONAL SOCIAL SERVICES (NORTHERN IRELAND) ORDER 1972

DIRECTIONS TO HEALTH AND SOCIAL SERVICES BOARDS ON PROCEDURES FOR DEALING WITH COMPLAINTS ABOUT FAMILY HEALTH SERVICES PRACTITIONERS

The Department of Health and Social Services, in exercise of the powers conferred on it by Article 17(1) of the Health and Personal Social Services (Northern Ireland) Order 1972 (a), hereby directs as follows:-

ARRANGEMENT OF DIRECTIONS

PART I – COMMENCEMENT AND INTERPRETATION

Paragraph

PART II – GENERAL

PART III – CONCILIATION

(a) S.I. 1972/1265 (N.I.14)

PART IV - CONVENING

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PART VI – COMPLAINTS ABOUT USE OF THE ALLOTTED SUM

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PART I

COMMENCEMENT AND INTERPRETATION

Commencement

1. These Directions shall come into operation on 1st April 1996.

Interpretation

2. – (1) In these Directions –

"the 1972 Order" means the Health and Personal Social Services (Northern Ireland) Order 1972;

"the 1991 Order" means the Health and Personal Social Services (Northern Ireland) Order 1991 **(a)**;

"arrangements" means the arrangements which are required to be made under these Directions;

"Board" means a Health and Social Services Board established under Article 16 of the 1972 Order;

"complaint", except in paragraph 8(3) of these Directions, means a complaint made under a practice-based complaints procedure, and "complainant" shall be construed accordingly;

"complaints officer" means the person appointed under paragraph 6;

"conciliation services" means the services provided under Part III of these Directions;

"convenor" means a person appointed under paragraph 20;

"disciplinary proceedings" means any reference by a Board of any matter under regulation 4(1) of the Health and Personal Social Services (Services Committee) Regulations (Northern Ireland) 1973 **(b)**;

"family health services" means general medical services, general dental services, general ophthalmic services or pharmaceutical services provided in accordance with arrangements made under Part VI of the 1972 Order;

"family health services practitioner" means a person undertaking to provide family health service sin pursuance of arrangements made under Part VI of the 1972 Order;

(a) S.I. 1991/194 (N.I.4)
(b) S.R. 1973 No. 416

"panel" means a panel appointed in accordance with Part V of these Directions;

"patient" shall be construed in accordance with the definition of "patient" in the relevant terms of service except in respect of the provision of pharmaceutical services where "patient" means a person to whom a chemist has provided pharmaceutical services;

"person subject to complaint" means the family health services practitioner who has undertaken to provide the family health services which are the subject of the complaint;

"practice-based complaints procedure" means a complaints procedure established in accordance with either –

(a) the relevant terms of service; or

(b) the Health and Personal Social Services (Fundholding Practices) Regulations (Northern Ireland 1993 **(a)**;

"put in writing" means either written by or on behalf of the complainant and, in either case, signed by the complainant;

"recognised fundholding practice" shall be construed in accordance with Article 17 of the 1991 Order;

"relevant Board" means the Board on whose list a family health services practitioner's name appears;

"relevant local committee" means, in relation to a family health services practitioner, a local representative committee recognised for its locality under Article 55 of the 1972 Order **(b)** in relation to the category of family health services provided by that practitioner;

"relevant terms of service" means, in relation to a family health services practitioner, the terms of service set out in the Regulations specified in sub-paragraph (2) which apply to that practitioner;

"the Tribunal", means the tribunal established under Article 65 of, and Schedule 11 to, the 1972 Order.

(2) The Regulations referred to in the definition of "relevant terms of service" in sub-paragraph (1) are -

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(a) S.R. 1993 No. 142, as amended by S.R. 1996 No. 131
(b) A new Article 55(1) was substituted by Article 5 of the 1991 Order

(a) the General Medical and Pharmaceutical Services Regulations (Northern Ireland) 1973 **(a)**;

(b) the General Dental Services Regulations (Northern Ireland) 1993 **(b)**;

(c) the General Ophthalmic Services Regulations (Northern Ireland) 1986 **(c)**;

(3) In these Directions a family health services practitioner is on a Board's list if his name is included in that Board's medical, dental, ophthalmic or pharmaceutical list.

PART II

GENERAL

Application of Directions

3. These Directions apply to any complaint made on or after 1st April 1996.

Arrangements in writing

4. Any arrangements which are required to be made under these Directions 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.

No investigation of a complaint

5. A matter which is the subject of a complaint shall not be investigated or shall cease to be investigated in any case where in relation to that matter the complainant has stated or states, orally or in writing, that he intends to pursue a remedy by way of proceedings in a court of law.

Objectives

6. Arrangements shall be such as to ensure that complainants and practitioners are treated courteously and sympathetically by any person dealing with complaints and that complaints are properly addressed.

Complaints Officer

7. Each Board shall appoint a complaints officer to perform the functions of the complaints officer under the arrangements required to be made under Part III of these Directions.

(a) S.R. & O. (N.I.) 1973 No. 421
(b) S.R. 1993 No. 326
(c) S.R. 1986 No. 163

Person who may make a complaint

8. – (1) A complaint may be made by a patient or former patient of a family health services practitioner, or on such patient's behalf, with his consent, or –

(a) where the patient is a child –

(i) by either parent, or in the absence of both parents, the guardian or other adult person who has care of the child;

(ii) where the child is in the care of an authority to whose care he has been committed under the provisions of the Children and Young Persons Act (Northern Ireland) 1968 **(a)** or in the care of a voluntary organisation, by that authority or voluntary organisation; or

(b) where the patient is incapable of making a complaint, by a relative or other adult person who has an interest in his welfare.

(2) Where a patient has died a complaint may be made by a relative or other adult person who had an interest in his welfare or, where the patient was as described in sub-paragraph (1)(a)(ii), by the authority or voluntary organisation.

(3) A complaint may be made by a family health services practitioner about the behaviour of a person on his list of patients.

Handling of complaints under paragraph 8(3)

9. – (1) Where a family health services practitioner wishes to make a complaint under paragraph 8(3) he shall write to the complaints officer giving details of the complaints, and shall send a copy of his letter to the patient whose behaviour is the matter of the complaint.

(2) On receipt of the letter referred to in sub-paragraph (1), the complaints officer shall investigate the complaint and shall send a report of his investigations to –

(a) the patient whose behaviour is the matter of the complaint;

(b) the family health services practitioner who has made the complaint.

(a) 1968 c.34 (N.I.)

PART III

CONCILIATION

Requirement to provide conciliation

10. – (1) Subject to sub-paragraph (2), each Board shall make arrangements in accordance with the provisions of this Part of these Directions to provide, in any of the circumstances set out in paragraph 13, conciliation services to the persons specified in paragraph 8 and to persons subject to complaint.

(2) The requirement for a Board to make arrangements to provide conciliation services set out in sub-paragraph (1) shall not apply in relation to any complaint made by a family health services practitioner under paragraph 8(3).

Appointment of conciliators

11. – (1) Each Board shall, after consultation with the relevant local committee, appoint one or more persons to be known as conciliators for a period to be agreed between the Board and any conciliator of not more than one year, (but without prejudice to any re-appointment), to conduct the process of conciliation.

(2) A person who is or has been a registered medical practitioner, a registered dental practitioner, a registered optician, a registered pharmacist or a person who is or has been included in the register maintained by the United Kingdom Central Council for Nursing, Midwifery and Health Visiting under section 10 of Nurses, Midwives and Health Visitors Act 1979 **(a)** shall not be appointed as conciliator.

Nomination of professional advisers

12. – (1) Each Board shall, after consultation with the relevant local committee, establish and maintain a list of persons from among whom a conciliator may nominate a person to assist him, as necessary, in the process of conciliation in relation to any matter.

(2) A person nominated under sub-paragraph (1), to be called a professional adviser, shall be a member of the same profession as the practitioner who is the person subject to complaint.

Circumstances in which conciliation is to be provided

13. The circumstances referred to in paragraph 10 are that –

(a) 1979 c. 36

(a) a person wishes to make a complaint under a practice-based complaints procedure and, in the opinion of the Board, it would be unreasonable in the circumstances of the case to expect the person to make the complaint directly to the family health services practitioner about whom the person wishes to complain; or

(b) a complaint is in the course of investigation under a practice-based complaints procedure; or

(c) the investigation of a complaint under a practice-based complaints procedure has been completed and the complainant is dissatisfied with the result of that investigation; or

(d) the complainant has made a request to the convenor under paragraph 21(1) for a panel to be appointed and the convenor considers that the matter subject to complaint is suitable for and likely to be resolved by conciliation,

and in each case both the complainant and the person subject to complaint have agreed that conciliation services should be provided.

Request for conciliation

14. A request for conciliation services may be made, orally or in writing, by a person specified in paragraph 8 or by the person subject to complaint.

Reference of request to conciliator

15. Where a request for conciliation services has been made under paragraph 14, the complaints officer of the Board shall, as soon as practicable, refer the matter to the conciliator.

Conciliation procedure

16. The conciliator may adopt such procedures as he determines are most appropriate for conducting the conciliation process.

Reports on conciliation

17. – (1) The Board shall require the conciliator to submit to it, at such intervals as it shall determine, a report on all the matters referred to him under paragraph 15 during the period covered by the report.

(2) In relation to any matter reported on in accordance with sub-paragraph (1), the report –

(a) shall include a statement of the result of the conciliation process; and

(b) shall not identify the patient, or any person who made the request for conciliation services on behalf of the patient, or the person subject to complaint.

Conclusion of conciliation

18. On conclusion of a conciliation process, the conciliator shall notify the result of the process in writing to the complainant and to the family health services practitioner.

PART IV

CONVENING

Requirement to make arrangements for convenor

19. – (1) Subject to sub-paragraph (2), each Board shall make arrangements in accordance with the provisions of this Part of these Directions for the appointment of a convenor to consider whether a panel should be appointed to investigate a complaint further where the complainant is dissatisfied with the results of –

(a) an investigation under a practice-based complaints procedure; or

(b) a conciliation process carried out under Part III.

(2) The provisions of this Part of these Directions shall not apply to a complaint made by a family health services practitioner under paragraph 8(3).

The convenor

20. Each Board –

(a) shall appoint one of its non-executive directors; and

(b) may appoint any other person who is not an employee of the Board,

to carry out the functions of the convenor under the arrangements.

Request for a panel

21. – (1) A complainant who is dissatisfied with the result of an investigation of a complaint under a practice-based complaints procedure, whether or not a conciliation process has been carried out under Part III of these Directions before or during that investigation, may request the convenor, orally or in writing, within the period specified in sub-paragraph (3), to consider whether a panel should be appointed to investigate the complaint further, provided that the condition specified in sub-paragraph (4) is satisfied.

(2) The convenor shall acknowledge in writing the receipt of a request made under sub-paragraph (1).

(3) Subject to sub-paragraph (5), the period referred to in sub-paragraph (1) is twenty-eight days from the day on which the result –

(a) of the investigation of the complaint under the practice-based complaints procedure is sent to the complainant under the relevant terms of service; or

(b) of the conciliation is sent to the complainant under paragraph 18,

whichever is the later.

(4) Subject to sub-paragraph (5), the condition referred to in sub-paragraph (1) is that the complaint was made to the family health services practitioner not later than –

(a) six months from the date on which the matter which is the subject of the complaint occurred; or

(b) six months from the date on which the matter which is the subject of the complaint came to the complainant's notice provided that the complaint was made no later than twelve months after the date on which the matter which is the subject of the complaint occurred.

(5) Where the convenor is of the opinion that –

(a) having regard to all the circumstances of the case, it would have been unreasonable to have expected the complainant to have made a request within the period specified in sub-paragraph (4) or to make a request within the period specified in sub-paragraph (3); and

(b) notwithstanding the time that has elapsed since the date on which the matter which is the subject of the complaint occurred or came to the complainant's notice or since the day on which the result of the investigation or the conciliation was sent to the complainant, it is still possible to investigate the complaint properly;

the complaint shall be treated as having been made within the period specified in sub-paragraph (4) or the request shall be treated as having been received during the period specified in sub-paragraph (3).

(6) The convenor shall not take action with respect to the request until he has received a statement that has been put in writing setting out the complaint and why the complainant is dissatisfied with the result of the investigation or conciliation process referred to in sub-paragraph (1).

(7) Where the matter which is the subject of the complaint occurred before 1st January 1996, the convenor shall not take action with respect to a request made under sub-paragraph (1) unless she is of the opinion that, having regard to all the circumstances of the case, it would have been unreasonable to have required the complainant to make the complaint within thirteen weeks from the date on which the matter which is the subject of the complaint occurred.

(8) The convenor shall send a copy of any statement referred to in sub-paragraph (6) to the person subject to complaint and to any other person named in the complaint.

Action by convenor

22. – (1) On receipt of a request for a panel and the statement referred to in paragraph 21(5) a convenor shall –

(a) having regard to the criteria specified in sub-paragraph (4), determine that a panel should be appointed to investigate the complaint further; or

(b) ask the Board to consider whether the complaint discloses any matter which the Board considers should be referred to one or more of the following, namely, to the professional regulatory body of the family health services practitioner who is subject to complaint, to the Tribunal or to the police; or

(c) where he is of the opinion that further action by the family health services practitioner or in the form of conciliation may resolve the complaint, refer it back to the family health services practitioner for further investigation or to the conciliator; or

(d) determine that no further action be taken.

(2) The professional regulatory bodies referred to in sub-paragraph (1) are –

(a) the Council for Professions Supplementary to Medicine **(a)**;

(b) the Pharmaceutical Society of Northern Ireland **(b)**;

(c) the United Kingdom Central Council for Nursing, Midwifery and Health Visiting **(c)**;

(d) the General Medical Council **(d)**;

(e) the General Dental Council **(e)**;

(f) the General Optical Council **(f)**

(3) Where a complaint consists of more than one separate item of complaint the convenor may make different determinations, or take different actions, under sub-paragraph (1) in relation to the separate items.

(a) Section 1 of the Professions Supplementary to Medicine Act
(b) Article 3 of the Pharmacy (Northern Ireland) Order 1976
(c) Section 1 of the Nurses, Midwives and Health Visitors Act 1979
(d) Section 1 of the Medical Act 1983
(e) Section 1 of the Dentists Act 1984
(f) Section 1 of the Opticians Act 1989

(4) Subject to paragraph 23(1), a convenor shall not determine under sub-paragraph (1)(a) that a panel be appointed if he is of the opinion that –

(a) further action can be taken by the family health services practitioner or by the Board towards satisfying the complainant without appointing a panel to investigate the complaint; or

(b) the family health services practitioner or the Board has taken all the action which it is practicable to take towards satisfying the complainant and no further benefit would be achieved by appointing a panel.

(5) Where the convenor takes action under sub-paragraph (1)(b) and the Board determines that the matter should not be referred to the professional regulatory body, the Tribunal or the policy, a panel may be appointed.

(6) Where the convenor takes action under sub-paragraph (1)(b) and the Board determines that the matter should be referred to the professional regulatory body, the Tribunal or the police, the convenor shall cease to take any action in connection with any matter which is so referred but, as to any other matter which is a subject of the complaint, shall consider what action should be taken under sub-paragraph (1)(a), (c) or (d).

(7) Investigation of a matter which has ceased under sub-paragraph (6) may resume if it is decided by any body to which the matter has been referred that no action should be taken in connection with the matter.

(8) Where a complaint has been referred back to the family health services practitioner or the conciliator under sub-paragraph (1)(c) and, after the further action has been taken, the complainant remains dissatisfied he may make a request under paragraph 21(1) for the appointment of a panel.

Consultation by convenor

23. – (1) Before making a decision under paragraph 22(1) the convenor shall consult –

(a) in any case where he considers that the complaint concerns, wholly or partly, the exercise of clinical judgement, a person whose name is included in a list of persons kept by the Board for the purposes of this paragraph and who has been nominated by the relevant local committee in relation to the family health services practitioner who is the person subject to complaint; and

(b) in every case, a person nominated by the Board from a list of persons kept by the Board for the purposes of this paragraph.

(2) Before making a decision under paragraph 22(1) in any case which the convenor considers may not concern, wholly or partly, the exercise of clinical judgement, the convenor may consult a person referred to in sub-paragraph (1)(a).

Notification of convenor's decision

24. – (1) The decision of the convenor under paragraph 22(1) shall be notified in writing to –

(a) the complainant;

(b) the person subject to complaint;

(c) any person named in the complaint other than the person subject to complaint; and

(d) the Board.

(2) Where the convenor determines under paragraph 22(3) that any part of the complaint should be investigated by a panel, his decision under sub-paragraph (1) shall include a statement specifying –

(a) the matters to be investigated by a panel; and

(b) the matters which will not be investigated by a panel, and the reasons why they will not be so investigated.

(3) Where the convenor determines under paragraph 22(1)(d) that no further action should be taken he shall notify the persons referred to in sub-paragraph (1) of the reasons for his determination.

Commissioner for Complaints

25. – (1) A decision not to exercise the discretion in paragraph 21(5) (extension of time limits) or paragraph 22(1)(a) (appointment of panel) in a complainant's favour may be reconsidered and a complaint continue to be investigated in accordance with these Directions if the conditions in sub-paragraph (2) are satisfied.

(2) The conditions referred to in sub-paragraph (1) are that –

(a) a complaint has been made to the Commissioner for Complaints that the discretion in either paragraph 21(5) or paragraph 22(1)(a) has not been exercised in the complainant's flavour; and

(b) the Commissioner for Complaints has recommended that the decision not to exercise the discretion by reconsidered.

PART V

THE PANEL

Interpretation of Part V of these Directions

26. In this Part of these Directions –

(a) "the complaint" means either the statement of complaint referred to in paragraph 21(6), or the item of complaint specified in the statement referred to in paragraph 24(2), whichever is appropriate;

(b) "participant" means the complainant or a person subject to complaint.

Requirement to make arrangements for panel

27. – (1) Subject to sub-paragraph (2), each Board shall make arrangements in accordance with the provisions of this Part of these Directions for the appointment of a panel to investigate a complaint further where a convenor has determined that this should be done.

(2) this Part of these Directions shall not apply to any complaint made by a family health services practitioner under paragraph 8(3).

Appointment of Panel

28. – (1) Where the convenor has determined under paragraph 22(1)(a) that a panel should be appointed, the Board shall appoint a committee of the Board in accordance with paragraph 29 to perform the functions set out in paragraph 31.

(2) A committee appointed under this paragraph shall be known as a panel.

Members of panel

29. – (1) A panel shall consist of three members, of whom –

(a) one shall be a person whose name is included in a list of persons kept by the Board for the purposes of this paragraph;

(b) one shall be a person appointed by the Board to perform the functions of the convenor; and

(c) one shall be an independent person appointed by the Board.

(2) The member appointed under sub-paragraph (1)(a) shall be the chairman of the panel.

Assessors

30. – (1) Where the complaint concerns, wholly or partly, the exercise of clinical judgement, the Board shall appoint at least two assessors to perform the functions set out in paragraph 32.

(2) Where more than two assessors are appointed under sub-paragraph (1), at least two of the assessors shall be person nominated by the Board from a list kept by the Board for the purposes of this paragraph and who have been proposed by the relevant local committee.

Functions of the panel

31. The functions of the panel shall be to –

(a) investigate the complaint; and

(b) make a written report to the Board of the findings of its investigation.

Functions of the assessors

32. – (1) The functions of the assessors shall be to –

(a) advise the panel on matters relating to the exercise of clinical judgement by the person subject to complaint; and

(b) make a written report to the panel of their advice.

(2) The assessors may make a joint report under sub-paragraph (1) or each assessor may make a separate report.

Procedure of panels and assessors

33. – (1) Subject to sub-paragraph (3), in carrying out its investigation of the complaint under paragraph 31(a) the panel may adopt such procedures as it determines are most appropriate for dealing with the complaint and in particular may determine that –

(a) the participants be interviewed together or separately;

(b) the assessors should interview the participants and that the participants be interviewed jointly or separately.

(2) The panel shall ensure that participants are given an opportunity to present their cases orally or, if a participant so wishes, in writing.

(3) Before the panel determines to adopt a procedure for dealing with a complaint, it shall consult the assessors.

(4) Where the panel or a member of the panel interviews any of the participants for the purpose of discussing matters relating to the exercise of clinical judgement, at least one of the assessors shall be present at the interview.

(5) In the event of any disagreement as to the procedure that should be adopted for dealing with the complaint, the decision of the chairman of the panel shall prevail.

(6) The panel or a member of the panel may interview any person who is not a participant and whom the panel considers may be able to provide information relevant to the complaint.

(7) At any interview or meeting with a panel member or assessors, the complainant and any other person interviewed may each be accompanied by a person chosen by him, who may speak to the panel or the assessors, provided that, where such person is legally qualified, he does not act as an advocate for the person whom he accompanies.

(8) Any meeting of the panel or the assessors or of any member of the panel or individual assessor either with each other or with any of the participants shall be in private.

Report of the panel

34. – (1) The report of the panel shall include –

(a) findings of fact relevant to the complaint;

(b) the opinion of the panel on the complaint having regard to the findings of fact;

(c) the reasons for the panel's opinion;

(d) the report of the assessors; and

(e) where the panel disagrees with any matter included in the report of the assessors, the reason for its disagreement.

(2) The report of the panel may include suggestions which the panel considers, as a result of the findings of its investigation, would improve the services provided by the family health services practitioner who is the person subject to complaint.

(3) The report of the panel shall not suggest that disciplinary proceedings be taken against any person.

(4) Subject to sub-paragraph (5), the report of the panel shall be sent to the chief Executive of the Board who shall send a copy of the report to –

(a) the complainant;

(b) the family health services practitioner who is the person subject to complaint;

(c) any person interviewed under paragraph 33(6);

(d) the patient, where he is not the complainant;

(e) the assessors;

(f) the Chairman of the Board.

(5) the panel chairman may withhold any part of the panel's report where, in his opinion, this is necessary in the interests of –

(a) protecting the confidentiality of –

(i) a patient who is not the complainant;

(ii) any third party; or

(b) the health of the complainant or a patient who is not the complainant.

PART VI

COMPLAINTS ABOUT USE OF ALLOTTED SUM

Interpretation of Part VI of these Directions

35. In this Part of these Directions –

"allotted sum" shall be construed in accordance with Article 18 of the 1991 Order;

"complaint" means a complaint about the use of their allotted sum by the members of a recognised fundholding practice, and "complainant" shall be construed accordingly.

General

36. Part II of these Directions shall apply to a complaint about the use of their allotted sum by the members of a recognised fundholding practice.

Requirement to make arrangements for further investigation of complaints about use of allotted sum

37. Each Board shall make arrangements in accordance with the provisions of this Part of these Directions for the appointment of a convenor and a panel to investigate further complaints about the use of their allotted sum by the members of a recognised fundholding practice where the complainant is dissatisfied with the result of an investigation into the complaint under a practice-based complaints procedure.

Convening

38. Part IV of these Directions shall apply to a complaint about the use of their allotted sum by the members of a recognised fundholding practice as though for paragraph 23(1)(a) there were substituted the following –

"(a) a person whose name is included in a list of persons kept by the Board for the purposes of this paragraph and who has the qualifications and experience which, in the opinion of the Board, best qualify him to advise the convenor in the particular case;"

The panel

39. – (1) Part V of these Directions shall apply to a complaint about the use of their allotted sum by the members of a recognised fundholding practice with the modifications specified in sub-paragraph (2).

(2) The modifications referred to in sub-paragraph (1) are –

(a) for sub-paragraph (2) of paragraph 30 there shall be substituted the following sub-paragraph –

"(2) The assessors appointed under sub-paragraph (1) shall be persons whose names are included in a list of persons kept by the Board for the purposes of this paragraph and who have the qualifications and experience which, in the opinion of the Board, best qualify them to act as assessors in the particular case.";

(b) for sub-paragraph (3) of paragraph 34 there shall be substituted the following sub-paragraph –

"(3) The report of the panel shall not suggest that disciplinary proceedings be taken against any person or, where the use of the allotted sum complained of has been proper and reasonable, that any different use should be made of the sum."; and

(c) after sub-paragraph (4)(f) in paragraph 34 there shall be inserted the following –

"(g) the Director of Primary Care and Purchasing Development, HPSS Executive.".

PART VII

PUBLICITY

Publicity

40. Each Board shall take such steps as are necessary to ensure that patients of any family health services practitioner on its list and any relevant Health and social Services Council are fully informed of the arrangements for dealing with complaints about any such family health services practitioner and are informed of the name of the complaints officer and the address at which he can be contacted.

[Signed]

Sealed with the Official Seal of the Department of Health and Social Services on this 29th day of March 1996

THE HEALTH AND PERSONAL SOCIAL SERVICES (NORTHERN IRELAND) ORDER 1972
THE HEALTH AND PERSONAL SOCIAL SERVICES (NORTHERN IRELAND) ORDER 1991

THE HEALTH AND PERSONAL SOCIAL SERVICS COMPLAINTS PROCEDURES DIRECTIONS (NORTHERN IRELAND) 1996

The Department of Health and Social Services, in exercise of the powers conferred on it by Articles 17(1) and 27(1) of the Health and Personal Social Services (Northern Ireland) Order 1972 (a), and Article 10 of, and paragraph 6 of Schedule 3 to, the Health and Personal Social Services (Northern Ireland) Order 1991 (b), hereby directs as follows:-

ARRANGEMENT OF DIRECTIONS

PART I – COMMENCEMENT, INTERPRETATION AND APPLICATION

Paragraph

PART II – GENERAL

PART III – THE INITIAL COMPLAINT

(a) S.I. 1972/1265 (N.I.14)
(b) S>I> 1991/1991 (N.I.1)

PART IV INDEPENDENT REVIEW – CONVENING A PANEL

PART V – THE PANEL

PART VI – MONITORING AND PUBLICITY

PART I

CITATION, COMMENCEMENT, INTERPRETATION AND APPLICATION

Citation and commencement

1. These Directions, which may be cited as the Health and Personal Social Services Complaints Procedures Directions (Northern Ireland) 1996, shall come into operation on 1st April 1996.

Interpretation

2. In these Directions –

"the 1972 Order" means the Health and Personal Social Services (Northern Ireland) Order 1972;

"the 1991 Order" means the Health and Personal Social Services (Northern Ireland) Order 1991;

"arrangements" means the arrangements which are required to be made under these Directions;

"Board" means a Board established under Article 16 of the 1972 Order;

"the Central Services Agency" means the body established under Article 26 of the 1972 Order;

"complaint" means a complaint about any matter connected with the provision of services (but does not include complaints about any services provided under the Children and Young Persons Act (Northern Ireland) 1968(a)). Made by or on behalf of a relevant person, and, except in Part V of these Directions, "complainant" shall be construed accordingly;

"complaints officer" means the person appointed under paragraph 6;

"convenor" means a person appointed under paragraph 14;

"disciplinary proceedings" means –

(a) any procedure for disciplining employees adopted by a HSS body.

(b) any reference to any matter to a representative body having disciplinary powers over members of a profession;

(c) any reference of any matter to the police;

(**a**) 1968 c.34 (N.I.)

(d) any enquiry under Article 54 of the 1972 Order;

“HSS body” includes any Board or Trust and the Central Services Agency;

“panel” means a panel appointed in accordance with Part V of these Directions;

“patient or client” means a person who is receiving, or has received, services provided by, or on behalf of, a Trust;

“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 officer, is best able to deal with the matters which are the subject of the complaint;

“recognised fund-holding practice” shall be construed in accordance with Article 17 of the 1991 Order.

“relevant person” means –

(a) a patient or client;

(c) any person who has been refused any services;

(d) any person who is receiving, or has received, any services from, or is affected by any action of, the Central Services Agency.

“relevant HSS body” means the HSS Body which –

(a) provides the service; or

(b) has the duty to provide the service; or

(c) takes the action;

which is the subject of the complaint;

“services” means services, other than services provided under the Children and Young Persons Act (Northern Ireland) 1968, -

(a) provided by a HSS body, or which it is a duty of a HSS body to provide; or

(b) provided in a hospital or other facility which is managed by a person (whether an individual or a body) who is not a HSS body, and with whom any such body has made arrangements for the provision of services;

"Trust" means a HSS Trust established under Article 10 of the 1991 Order.

Application of these Directions

3. These Directions apply to any compliant made on or after 1st April 1996.

PART II – GENERAL

Requirement to make arrangements

4. – (1) Each HSS body shall make arrangements in accordance. With the provisions of these Directions for dealing with complaints from relevant persons.

(2) Each HSS body shall make arrangements in accordance with Part VI of these Directions for monitoring the effectiveness of and for publicising the arrangements for dealing with complaints.

Arrangements in writing

5. 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.

Complaints officer

6. – (1) Each HSS body shall appoint a complaints officer –

(a) to perform the functions of the complaints officer under the arrangements;

(b) to perform such other functions relating to the investigation of complaints as the HSS body may direct; and

(c) generally to manage the operation of the procedures for dealing with complaints under the arrangements.

(2) The functions of the complaints officer appointed under sub-paragraph (1) may be performed personally or by a person authorised buy the HSS body to act on his behalf.

No investigation of complaint

7 – (1) A matter which is the subject of a complaint shall not be investigated, or shall cease to be investigated, in any case where in relation to that matter either –

(a) the complainant has stated orally or in writing that he intends to pursue a remedy by way of proceedings in a court of law; or

(b) disciplinary proceedings are taken, or consideration is being given to the taking of disciplinary proceedings.

(2) An investigation of a complaint which has ceased under sub-paragraph (1) (b) shall resume in relation to any matter which, in the opinion of the complaints officer, the convenor or the chairman of a panel (depending on which stage the investigation of the complaint has reached) has not been dealt with by disciplinary proceedings.

(3) The complaints officer, the convenor or the chairman of a panel, as the case may be, 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 under sub-paragraph (2).

(4) The notification to be given under sub-paragraph (3) shall be in writing and shall state the reason for any decision referred to in that sub-paragraph.

(5) Where a decision is made under sub-paragraph (1) to discontinue the investigation of a complaint, the complaints officer, the convenor or the chairman of the panel, as the case may be, shall send to the complainant a report of the investigation up to the time when it was discontinued.

Objectives

8. Arrangements shall be such as to ensure that complainants are treated courteously and sympathetically by any person involved in providing services to whom they make their complaints and that their complaints are properly addressed.

PART III

THE INITIAL COMPLAINT

Requirement to deal with complaint

9. Subject to paragraph 7, a complaint shall be dealt with in accordance with the arrangements if it is made –

(a) orally or in writing to any person connected with the provision of services;

(b) about any matter connected with the provision of services;

(c) within the period specified in paragraph 10; and

(d) by a person specified in paragraph 11.

Time limits

10. – (1) Subject to sub-paragraph (2), the period for making a complaint is –

(a) six months form 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 for complaint, within –

(i) six months from the date on which the matter which is the subject of the complaint comes to the complaint'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 officer 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).

Person who may make a complaint

11. - (1) A complaint may be made by –

(a) a relevant person;

(b) subject to sub-paragraph (4), and with the consent of the relevant person, any person acting on his behalf.

(c) subject to sub-paragraph (4), any person in respect of a relevant person who has died.

(2) Where a complaint is made orally on behalf of a relevant person his consent is not required.

(3) Where a relevant person is unable to act, his consent shall not be required under sub-paragraph (1) (b).

(4) If the complaints officer is of the opinion that the person acting on behalf of a relevant person who is unable to act, or in respect of a relevant person who has died, is not a suitable person to pursue the complaint he may either refuse

to deal with the complaint or nominate another person to act with respect to the complaint.

Referral to complaints officer

12. – (1) A complaint may make a complaint orally in writing to the complaints officer.

(2) Any person other than the complaint officer to whom a complaint is made orally or in writing –

(a) may refer the complaint to the complaints officer; and

(b) shall refer it to the complaints officer if it appears that the circumstances specified in paragraph 7(1) might apply/

(3) Where a complaint has either been made orally directly to the complaints officer or to any other person and after a preliminary consideration of the complaint the complaint wishes to pursue the matter, the complaint shall be put in writing.

(4) Where a complaint has been put in writing, a copy of the complaint shall be sent to any person who is subject to complaint.

(5) In this paragraph “put in writing” means written –

(a) by, or behalf of, the complainant; or

(b) by an employee of the HSS body,

and in either case signed by the complainant.

Investigation and report

13. – (1) Any person to whom a complaint is made or referred shall cause the complaint to be investigated and, except where sub-paragraph (3) applies, shall inform the complainant of the result of the investigation.

(2) A complaint may be investigated in any matter which appears appropriate for resolving the complaint and may include a process of conciliation.

(3) Where a complaint has been put in writing under paragraph 12(3), the Chief Executive of the relevant HSS body shall inform the complaint and any person who is subject to complaint in writing of the result of the investigation.

PART IV

INDEPENDENT REVIEW – CONVENING A PANEL

The convenor

14. Each Board –

(a) shall appoint one of its non-executive Directors; and

(b) may appoint any other person who is not an employee of the Board,

to carry out the functions of the convenor under the arrangements.

Request for a panel

15. – (1) A complainant –

(a) whose complaint has been put in writing under paragraph 12(3); and

(b) who is dissatisfied with the result of the investigation of the complaint,

may, within the period specified in sub-paragraph (2), request the convenor, orally or in writing, to consider whether a panel should be appointed to investigate the complaint further, and the convenor shall acknowledge in writing the receipt of such request.

(2) Subject to sub-paragraphs (3) and (4), the period referred to in sub-paragraph (1) is twenty-eight days from the day on which the result of the investigation is sent to the complainant under paragraph 13(3).

(3) Where a complainant requests a member or employee of the relevant HSS body to consider whether a panel should be appointed, the member or employee shall inform the convenor of the request and the request shall be treated as having been made to the convenor.

(4) Where the convenor 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 a request within the period specified in sub-paragraph 92);

(b) notwithstanding the time that has elapsed since the day on which the result of the investigation was sent to the complainant, it is still possible to investigate the complaint properly,

the request shall be treated as having been received during the period specified in sub-paragraph (2).

(5) The convenor shall not take action with respect to the request until he has received a statement that has been put in writing setting out the complaint and why the complainant is dissatisfied with the investigation of the initial complaint.

(6) The convenor shall send a copy of any statement referred to in sub-paragraph (5) to any person who is subject to the complaint.

(7) In this paragraph, “put in writing” has the same meaning as in paragraph 12(5), but as though the words “or by the convenor” were inserted after the words “an employee of the HSS body”.

Action by convenor

(16). – (1) Subject to sub-paragraph (3), on receipt of a request for a panel and the statement referred to in paragraph 15(5) a convenor shall either –

(a) having regard to the criteria specified in sub-paragraph (3), determine that a panel should be appointed to investigate the complaint further; or

(b) ask the relevant HSS body to consider whether disciplinary proceedings shall be initiated in respect of any person against whom the complaint is made; or

(c) where he is of the opinion that further action by the complaints officer or the Chief Executive may resolve the complaint, refer to the complaints officer or the Chief Executive for further investigation; or

(d) determine that no further action be taken.

(2) Where a complaint consists of more than one separate item of complaint the convenor may make different determinations under sub-paragraph (1) in relation to the separate items.

(3) A convenor shall not determine under sub-paragraph (1)(a) that a panel be appointed if he is of the opinion that –

(a) further action can be taken by the relevant HSS body towards satisfying the complainant without appointing a panel to investigate the complaint; or

(b) the relevant HSS body has taken all the action which it is practicable for it to take towards satisfying the complainant and no further benefit would be achieved by appointing a panel.

(4) Where a convenor takes action under sub-paragraph (1) (b) and the relevant HSS body determines that disciplinary proceedings should not be initiated, a panel shall be appointed.

(5) Where the convenor takes action under sub-paragraph (1)(b) and the relevant HSS body determines that disciplinary proceedings should be initiated, the

convenor shall cease to take any action in connection with any matter which is the subject of the disciplinary proceedings but, as to any other matter which is the subject of the complaint, shall consider what action should be taken under sub-paragraph (1) (a), (c) or (d).

(6) Where a complaint has been referred back to the complaints officer or the Chief Executive under sub-paragraph (1) (c) and, after the further action has been taken, the complainant remains dissatisfied he may make a further request under paragraph 15.

Consultation by convenor

17. Before making a decision under paragraph 16(1) the convenor shall consult –

(a) in any case where the complaint concerns, wholly or partly, the exercise of clinical or professional social work judgement, a person who, in the opinion of the convenor, has the qualifications and experience necessary to advise on the particular complaint under consideration, and who has not been involved in any way with any matter which is the subject of the complaint and who has taken no part in the investigation of the initial complaint; and

(b) in every case, an independent lay chairman on the list maintained by the Board for these purposes.

Notification of convenor's decision

18. – (1) The decision of the convenor under paragraph 16(1) shall be notified in writing to –

(a) the complainant;

(b) any person subject to complaint; and

(c) the relevant HSS body.

(2) Where the convenor determines under paragraph 16(1) (a) that any part of the complaint should be investigated by a panel, the notification of his decision under sub-paragraph (1) shall include a statement specifying –

(a) the matters to be investigated by a panel; and

(b) the matters which will not be investigated by a panel, and the reasons why they will not be so investigated.

(3) Where the convenor determines under paragraph 16 (1) (b), (c) or (d) that no further action be taken he shall –

(a) notify the persons referred to in sub-paragraph (1) of the reasons for his determination and, in the case of a determination under paragraph 16(1) (c), specify in his notification any action which he considers could be taken by the relevant HSS body; and

(b) in the case of a determination under paragraph 16(1) (d), notify the complainant of his right to complain to the Commissioner for Complaints under the Commissioner for Complaints Act (Northern Ireland) 1969(**a**).

Commissioner for Complaints

19. – (1) A decision not to exercise the discretion in paragraph 10 (2) (extension of time limits) or paragraph 16(1) (a) (appointment of a panel) in a complainant's favour may be considered and a complaint may continue to be investigation in accordance with these Directions if the conditions in sub-paragraph (2) are satisfied.

(2) The conditions referred to in sub-paragraph (1) are that –

(a) a complaint has been made to the Commissioner for Complaints that the discretion in either paragraph 10(2) or paragraph 16 (1) (a) has not been exercised in the complainant's favour; and

(b) the Commissioner for Complaints has recommended that the decision not to exercise the discretion be reconsidered.

PART V

THE PANEL

Interpretation of Part V

20. In this Part of these Directions –

(a) "the complaint" means either the statement of complaint referred to in paragraph 15(5) or the item of complaint specified in the statement referred to in paragraph 18(2), whichever is appropriate;

(b) "participant" means the complainant or a person subject to complaint.

Appointment of panel

21. – (1) Where the convenor has determined under paragraph 16 that a panel should be appointed, the Board shall appoint a committee of the board in accordance with paragraph 22 to perform the functions set out in paragraph 24.

(**a**) 1969 c.25 (N.I.)

(2) A committee appointed under this paragraph shall be known as a panel.

Members of panel

22. – (1) A panel shall consist of three members, of whom –

(a) one shall be a person whose name is included in a list of persons kept by the Board for the purposes of this paragraph;

(b) one shall be a person appointed by the Board to perform the functions of convenor; and

(c) one shall be an independent person appointed by the Board.

(2) The member appointed under sub-paragraph (1)(a) shall be the chairman of the panel.

Assessors

23. – (1) Where the complaint concerns, wholly or partly, the exercise of –

(a) clinical judgement, or

(b) professional social work judgement,

the Board shall appoint at least two assessors to perform the functions set out in paragraph 25.

(2) The assessors appointed under sub-paragraph (1) shall be persons nominated by and whose manes are included in a list kept by the Board for the purposes of this paragraph and who have the qualifications and experience which, in the opinion of the Board, best qualifies them to act as assessors in the particular case.

Functions of the panel

24. The functions of the panel shall be to –

(a) investigate the complaint; and

(b) report to the relevant HSS body, in writing, the findings of its investigation.

Functions of the assessors

25. – (1) The functions of the assessors shall be to –

(a) advise the panel on matters relating to the exercise of clinical or professional social work judgement, as appropriate, by the person subject to complaint; and

(b) report their advice to the panel in writing.

(2) The assessors may make a joint report under sub-paragraph (1) or each assessor may make a separate report.

Procedures of panels and assessors

26. – (1) Subject to sub-paragraph (3), in carrying out its investigation of the complaint under paragraph 24 (a) the panel may adopt such procedures as it determines are most appropriate for dealing with the complaint and in particular may determine that –

(a) the participants be interviewed together or separately;

(b) both the assessors should interview the participants or that a single assessor should interview the participants and in either case that the participants be interviewed jointly or separately.

(2) The panel shall ensure that participants are given the opportunity to present their case orally or, if a participant so wishes, in writing.

(3) Before a panel determines to adopt a procedure for dealing with a complaint it shall consult the assessors.

(4) Where the panel or a member of the panel interviews any of the participants for the purpose of discussing matters relating to the exercise of clinical or professional social work judgement at least one of the assessors shall be present at the interview.

(5) In the event of any disagreement as to the procedure that should be adopted for dealing with the complaint, the decision of the chairman of the panel shall prevail.

(6) The panel or a member of the panel or an assessor may interview any person who is not a participant and who the panel considers may be able to provide information relevant to the complaint.

(7) At any interview or meeting with a panel member or assessor –

(a) the complainant may be accompanied by a relative or friend and by a person chosen by the complainant to act as his adviser; and

(b) any person subject to complaint may be accompanied by a person chosen by him to act as his adviser.

(8) A person accompanying a participant may speak to the panel or the assessors, providing that, where such person is legally qualified, he does not act as an advocate for the participant whom he accompanies.

(9) Any meeting of the panel or assessors or of any member of the panel or individual assessor either with each other or with any of the participants shall be in private.

Report of the panel

27. – (1) The report of the panel shall include –

(a) findings of fact relevant to the complaint;

(b) the opinion of the panel on the complaint having regard to the findings of fact;

(c) the reasons for the panel's opinion;

(d) the report of the assessors; and

(e) where the panel disagree with any matter included in the report of the assessors, the reason for its disagreement.

(2) The report of the panel may include suggestions which the panel considers, as a result of the findings of its investigation, -

(a) would improve –

(i) the services provided by the relevant HSS body;

(ii) the efficiency and effectiveness of that body; and

(b) the HSS body might take to satisfy the complainant.

(3) The report of the panel shall not suggest that disciplinary proceedings be taken against any person.

(4) Subject to sub-paragraph (5), the report of the panel shall be sent to –

(a) the complainant;

(b) any person subject to complaint and any person interviewed under paragraph 26 (6);

(c) the relevant person where he is not the complainant;

(d) the assessors;

(e) the Chairman and Chief Executive of the relevant HSS body;

(f) where the service which is the subject of the complaint was purchased by a HSS body, the Chairman and Chief Executive of that HSS body;

(g) where the service which is the subject of the complaint was purchased by the members of a recognised fund-holding practice, that practice;

(h) the Chairman and Chief Executive of the independent provider, where the complaint is about services provided by the independent sector; and

(i) the Director of Performance Review and Secondary Care, HPSS Executive.

(5) The panel chairman may withhold any part of the panel's report where, in his opinion, this is necessary in the interests of –

(a) protecting the confidentiality of –

(i) a relevant person;

(ii) any third party; or

(b) the health or social welfare of the complainant or a relevant person who is not the complainant.

Actions by relevant HSS body

28. – (1) A letter reporting the outcome of the relevant HSS body's consideration of the panel's report shall be sent to the complainant by the Chief Executive of that body within such time as is reasonable stating –

(a) any action which the relevant HSS body proposes to take in relation to any suggestions in the report; and

(b) where it is decided that no action should be taken on any suggestion, the reasons for that decision.

(2) The letter referred to in sub-paragraph (1) shall be accompanied by a notice explaining the right to complain to the Commissioner for Complaints under the Commissioner for Complaints Act (Northern Ireland) 1969.

PART VI

MONITORING AND PUBLICITY

Monitoring

29. – (1) For the purposes of –

(a) monitoring the arrangements made for dealing with complaints;

(b) considering the nature and volume of complaints; and

(c) taking remedial action following investigation of complaints,

The relevant HSS body shall prepare reports at quarterly intervals.

(2) Each HSS body shall publish a report annually on its dealing with complaints under these Directions which shall be sent to –

(a) the Chief executive of the HPSS Executive;

(b) any relevant Health and Social Services Council; and

(c) in the case of Trusts, the Board for the area within which –

(i) the hospital or other facility managed by the Trust is situated;

(ii) the Trust provides any services.

Publicity

30. – (1) Each HSS body shall take such steps as are necessary to ensure that –

(a) persons using services provided by, or on behalf of, that body;

(b) staff working for that body; and

(c) any relevant Health and Social Services Council,

are fully informed of the arrangements for dealing with complaints about any services provided by that body, and are informed of the name of the complaints officer 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 Health and Social Services Councils offer to persons who wish to make complaints

Sealed with the Official Seal of the Department of Health and Social Services on 19th day of March 1996.

L.S.

THE HEALTH AND PERSONAL SOCIAL SERVICES (NORTHERN IRELAND) ORDER 1972

THE MISCELLANEOUS COMPLAINTS PROCEDURES DIRECTIONS (NORTHERN IRELAND) 1996

The Department of Health and Social Services, in exercise of the powers conferred on it by Article 17(1) of the Health and Personal Social Services (northern Ireland) Order 1972 **(a)**, hereby directs as follows:

ARRANGEMENT OF DIRECTIONS

PART I – CITATION, COMMENCEMENT, INTERPRETATION AND APPLICATION

Paragraph

PART II – GENERAL

PART III – COMPLAINTS ABOUT THE ACTIONS OF BOARDS

PART IV INDEPENDENT REVIEW – CONVENING A PANEL

(a) S.I. 1972/1265 (N.I.14)

PART V – THE PANEL

PART VI – MONITORING AND PUBLICITY

PART VII – COMPLAINTS ABOUT INDEPENDENT PROVIDERS

PART 1

CITATION, COMMENCEMENT, INTERPRETATION AND APPLICATION

Citation and Commencement

1. These Directions, which may be cited as the Miscellaneous Complaints Procedures Directions (Northern Ireland) 1996, shall come into operation on 1st April 1996

Interpretation

2.-(1) Any reference in any Part of these Directions to "arrangements" is a reference to the arrangements which are required to be made under that Part.

(2) In these Directions -

"the 1972 Order" means the Health and Personal Social Services (Northern Ireland) Order 1972;

"the 1991 Order" means the Health and Personal Social Services (Northern Ireland) Order 1991**(a)**;

"Board" means a Health and Social Services Board established under Article 16 of the 1972 Order;

"complaints officer" means the person appointed under paragraph 6;

"Trust" means a HSS Trust established under Article 10 of the 1991 Order.

Application of these Directions

3. These Directions apply to any complaint made on or after 1st April 1996.

PART II – GENERAL

Arrangements in writing

4. Any arrangements which are required to be made under these Directions 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.

(a) S.I. 1991/194 (N.I.1)

Objectives

5. Arrangements made under Parts III and IV of these Directions shall be such as to ensure that complainants are treated courteously and sympathetically by any person to whom they make their complaint and their complaints are properly addressed.

Complaints Officer

6.-(1) Each Board shall appoint a complaints officer -

(a) to perform the functions of the complaints officer under the arrangements required to be made under these Directions;

(b) to provide assistance to complainants; and

(c) generally to manage the operation of the procedures for dealing with complaints made under the arrangements required to be made under these Directions.

(2) Different persons may be appointed to perform the functions of the complaints officer under different Parts of these Directions.

(3) The functions of the complaints officer appointed under sub-paragraph (1) may be performed personally or by a person authorised by the Board to act on his behalf.

PART III

COMPLAINTS ABOUT THE ACTIONS OF BOARDS

Interpretation of Part III

7. In Part III of these Directions -

"any action of the Board" includes any decision taken by a Board and any failure to act;

"complaint" means a complaint about any action of a Board and "complainant" shall be construed accordingly;

"convenor" means a person appointed under paragraph 15;

"disciplinary proceedings" means –

(a) any procedure for disciplining employees adopted by a Board;

(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;

(d) any enquiry under Article 54 of the 1972 Order;

"family health services practitioner" means a person who has entered into arrangements with a Board under Part VI of the 1972 Order to provide general health services;

"independent provider" has the same meaning as in Part VII of these Directions.

Requirement to make arrangements for dealing with complaints

8. Each Board shall make arrangements in accordance with the following provisions of this Part of these Directions for dealing with complaints about any action of the Board.

No investigation of complaint

9.-(1) A matter which is the subject of a complaint under this Part of these Directions shall not be investigated, or shall cease to be investigated, in any case where in relation to that matter either -

(a) the complainant has stated orally or in writing that he intends to pursue a remedy by way of proceedings in a court of law; or

(b) disciplinary proceedings are taken, or consideration is being given to the taking of disciplinary proceedings.

(2) An investigation of a complaint which has ceased under sub-paragraph (1)(b) shall resume in relation to any matter which, in the opinion of the complaints officer, the convenor or the chairman of a panel (depending on which stage the investigation of the complaint has reached) has not been dealt with by disciplinary proceedings.

(3) The complaints officer, the convenor or the chairman of a panel, as the case may be, 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 under sub-paragraph (2).

(4) The notification to be given under sub-paragraph (3) shall be in writing and shall state the reason for any decision referred to in that sub-paragraph.

(5) Where a decision is made under sub-paragraph (1) to discontinue the investigation of a complaint, the complaints officer, the convenor or the chairman of the panel, as the case may be, shall send to the complainant a report of the investigation up to the time when it was discontinued.

(6) A Board shall not deal with a complaint made under this Part of these Directions if the complaint is made by –

(a) an officer of the Board about any action of the Board relating to his contract of employment;

(b) a family health services practitioner about any action of the Board relating to arrangements made by the Board for the provision of services under Part VI of the 1972 Order;

(c) an independent provider about any action of the Board relating to arrangements made with the independent provider under Articles 15 or 36 of the 1972 Order.

Requirement to deal with complaint

10. A complaint shall be dealt with in accordance with the arrangements if it is made –

(a) on or after 1st April 1996;

(b) orally or in writing to any member or officer of the Board;

(c) by a person specified in paragraph 11; and

(d) within the period specified in paragraph 12.

Person who may make a complaint

11.–(1) Subject to sub-paragraphs (2) and (3), a complaint may be made –

(a) by a person who has been affected by, or is likely to be affected by, any action of the Board;

(b) by a person acting on behalf of a person who has been affected by, or is likely to be affected by, any action of the Board, with the consent of the person affected;

(c) by any person in respect of a person who has died, where the person who has died was affected by any action of the Board.

(2) Where a person is unable to act, his consent shall not be required under sub-paragraph (1)(b).

(3) If the complaints officer is of the opinion that the person acting on behalf of a person who is unable to act, or in respect of a person who has died, is not a suitable person to pursue the complaint he may either refuse to deal with the complaint or may nominate another person to act with respect to the complaint.

Time limits

12.-(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 for 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 officer and if he is of the opinion that –

(a) having regard to all the circumstances of the case, it would have been 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 if it had been received during the period specified in sub-paragraph (1).

Referral to complaints officer

13.-(1) A complaint may make a complaint orally or in writing to the complaints officer.

(2) Any person other than the complaints officer to whom a complaint is made orally or in writing –

(a) may refer the complaint to the complaints officer; and

(b) shall refer it to the complaints officer if it appears that the circumstances specified in paragraph 9(1) might apply.

(3) Where a complaint has either been made orally directly to the complaints officer or to any other person and after a preliminary consideration of the complaint the complainant wishes to pursue the matter, the complaint shall be put in writing.

(4) Where a complaint has been put in writing, a copy of the complaint shall be sent to any person who is subject to complaint.

(5) In this paragraph "put in writing" means written –

(a) by, or on behalf of, the complainant; or

(b) by an employee of the Board,

and in either case signed by the complainant.

Investigation and report

14.-(1) Any person to whom a complaint is made or referred shall cause the complaint to be investigated and, except where sub-paragraph (3) applies, shall inform the complainant of the result of the investigation.

(2) A complaint may be investigated in any manner which appears appropriate for resolving the complaint and may include a process of conciliation.

(3) Where a complaint has been put in writing under paragraph 13(3), THE CHIEF Executive of the Board shall inform the complainant and any person who is subject to complaint in writing of the result of the investigation.

PART IV

INDEPENDENT REVIEW – CONVENING A PANEL

The convenor

15. Each Board –

(a) shall appoint one of its non-executive directors; and

(b) may appoint any other person who is not an employee of the Board,

to carry out the functions of the convenor under the arrangements.

Request for a panel

16.-(1) A complainant –

(a) whose complaint has been put in writing under paragraph 13(3); and

(b) who is dissatisfied with the result of the investigation of the complaint,

may, within the period specified in sub-paragraph 92), request the convenor, orally or in writing, to consider whether a panel should be appointed to investigate the complaint further, and the convenor shall acknowledge in writing the receipt of such request.

(2) Subject to sub-paragraphs (3) and (4), the period referred to in sub-paragraph (1) is twenty-eight days from the day on which the result of the investigation is sent to the complainant under paragraph 14(3).

(3) Where a complainant requests a member or employee of the Board to consider whether a panel should be appointed, the member of employee shall inform the convenor of the request and the request shall be treated as having been made to the convenor.

(4) Where the convenor 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 a request within the period specified in sub-paragraph (2);

(b) notwithstanding the time that has elapsed since the day on which the result of the investigation was sent to the complainant, it is still possible to investigate the complaint properly,

the request shall be treated as having been received during the period specified in sub-paragraph (2).

(5) The convenor shall not take action with respect to the request until he has received a statement that has been put in writing setting out the complaint and why the complainant is dissatisfied with the investigation of the initial complaint.

(6) The convenor shall send a copy of any statement referred to in sub-paragraph (5) to any person who is subject to the complaint.

(7) In this paragraph, "put in writing" has the same meaning as in paragraph 13(5), but as though the words "or by the convenor" were inserted after the words "an employee of the Board".

Action by convenor

17.-(1) Subject to sub-paragraph (3) and paragraph 18, on receipt of a request for a panel and the statement referred to in paragraph 16(5) a convenor shall either –

(a) having regard to the criteria specified in sub-paragraph (3), determine that a panel should be appointed to investigate the complaint further; or

(b) ask the Board to consider whether disciplinary proceedings should be initiated in respect of any person against whom the complaint is made; or

(c) where he is of the opinion that further action by the complaints officer or the Chief Executive may resolve the complaint, refer it back to the complaints officer or the Chief Executive for further investigation; or

(d) determine that no further action be taken.

(2) Where a complaint consists of more than one separate item of complaint the convenor may make different determinations under sub-paragraph (1) in relation to the separate items.

(3) A convenor shall not determine under sub-paragraph (1)(a) that a panel be appointed if he is of the opinion that –

(a) further action can be taken by the Board towards satisfying the complainant without appointing a panel to investigate the complaint; or

(b) the Board has taken all the action which it is practicable for it to take toward satisfying the complainant and no further benefit would be achieved by appointing a panel.

(4) Where a convenor takes action under sub-paragraph (1)(b) and the Board determines that disciplinary proceedings should not be initiated, a panel shall be appointed.

(5) Where the convenor takes action under sub-paragraph (1)(b) and the Board determines that disciplinary proceeding should be initiated, the convenor shall cease to take any action in connection with any matter which is the subject of the disciplinary proceedings but, as to any other matter which is the subject of the complaint, shall consider what action should be taken under sub-paragraph (1)(a), (c) or (d).

(6) Where a complaint has been referred back to the complaints officer or the Chief Executive under sub-paragraph (1)(c) and, after the further action has been taken, the complainant remains dissatisfied he may make a further request under paragraph 16.

Consultation by convenor

18. Before making a decision under paragraph 17(1) the convenor shall consult –

(a) in any case where the complaint concerns, wholly or partly, the exercise of clinical or professional social work judgement, a person who, in the opinion of the convenor, has the qualifications and experience necessary to advise on the particular complaint under consideration, and who has not been involved in any way with any matter which is the subject of the complaint and who has taken no part in the investigation of the initial complaint; and

(b) in every case, an independent lay chairman on the list maintained by the Board for these purposes.

Notification of convenor's decision

19.-(1) The decision of the convenor under paragraph 17(1) shall be notified in writing to –

(a) the complainant;

(b) any person subject to complaint; and

(c) the Board.

(2) Where the convenor determines under paragraph 17(1)(a) that any part of the complaint should be investigated by a panel, the notification of his decision under sub-paragraph (1) shall include a statement specifying –

(a) the matters to be investigated by a panel; and

(b) the matters which will not be investigated by a panel, and the reasons why they will not be so investigated.

(3) Where the convenor determines under paragraph 17(1)(b), (c) or (d) that no further action be taken he shall –

(a) notify the persons referred to in sub-paragraph (1) of the reasons for his determination and, in the case of a determination under paragraph 17(1)(c), specify in his notification any action which he considers could be taken by the Board; and

(b) in the case of a determination under paragraph 17(1)(d), notify the complainant of his right to complain to the Commissioner for Complaints under the Commissioner for Complaints Act (Northern Ireland) 1969**(a)**.

Commissioner for Complaints

20.-(1) A decision not to exercise the discretion in paragraph 12(2) (extension of time limits) or paragraph 17(1)(a) (appointment of a panel) in a complainant's favour may be reconsidered and a complaint may continue to be investigated in accordance with these Directions of the conditions in sub-paragraph (2) are satisfied.

(2) The conditions referred to in sub-paragraph (1) are that –

(a) a complaint has been made to the Commissioner for Complaints that the discretion in either paragraph 12(2) or paragraph 17(1)(a) has not been exercised in the complainant's favour; and

(b) the Commissioner for Complaints has recommended that the decision not to exercise the discretion be reconsidered.

PART V

THE PANEL

Interpretation of Part V

21. In Part V of these Directions –

(a) "the complaint" means either the statement of complaint referred to in paragraph 16(5) or the item of complaint specified in the statement referred to in paragraph 19(2), whichever is appropriate;

(a) 1969 c.25 (N.I.)

(b) "participant" means the complainant or a person subject to complaint.

Appointment of panel

22.-(1) Where the convenor has determined under paragraph 17 that a panel should be appointed, the Board shall appoint a committee of the Board in accordance with paragraph 23 to perform the functions set out in paragraph 25.

(2) A committee appointed under this paragraph shall be known as a panel.

Members of panel

23.-(1) A panel shall consist of three members of whom –

(a) one shall be a person whose name is included in a list of persons kept by the Board for the purposes of this paragraph;

(b) one shall be a person appointed by the Board to perform the functions of convenor; and

(c) one shall be an independent person appointed by the Board.

(2) the member appointed under sub-paragraph (1)(a) shall be the chairman of the panel.

Assessors

24.-(1) Where the complaint concerns, wholly or partly, the exercise of –

(a) clinical judgement, or

(b) professional social work judgement.

the Board shall appoint at least two assessors to perform the functions set out in paragraph 26.

(2) The assessors appointed under sub-paragraph (1) shall be persons nominated by, and whose names are included in a list kept by, the Board for the purposes of this paragraph and who have the qualifications and experience which, in the opinion of the Board, best qualifies them to act as assessors in the particular case.

Functions of the panel

25. The functions of the panel shall be to –

(a) investigate the complaint; and

(b) report to the Board, in writing, the findings of its investigation.

Functions of the assessors

26.-(1) The functions of the assessors shall be to –

(a) advise the panel on matters relating to the exercise of clinical or professional social work judgement, as appropriate, by the person subject to complaint; and

(b) report their advice to the panel in writing.

(2) The assessors may make a joint report under sub-paragraph (1) or each assessor may make a separate report.

Procedure of panels and assessors

27.-(1) Subject to sub-paragraph (3), in carrying out its investigation of the complaint under paragraph 25(a) the panel may adopt such procedures as it determines are most appropriate for dealing with the complaint and in particular may determine that –

(a) the participants be interviewed together or separately;

(b) both the assessors should interview the participants or that a single assessor should interview the participants and in either case that the participants be interviewed jointly or separately.

(2) The panel shall ensure that participants are given the opportunity to present their case orally or, if a participant so wishes, in writing.

(3) Before a panel determines to adopt a procedure for dealing with a complaint it shall consult the assessors.

(4) Where the panel or a member of the panel interviews any of the participants for the purpose of discussing matters relating to the exercise of clinical or professional social work judgement at least one of the assessors shall be present at the interview.

(5) In the event of any disagreement as to the procedure that should be adopted for dealing with the complaint, the decision of the chairman of the panel shall prevail.

(6) The panel or a member of the panel or an assessor may interview any person who is not a participant and who the panel considers may be able to provide information relevant to the complaint.

(7) At any interview or meeting with a panel member or assessor –

(a) the complainant may be accompanied by a relative or friend and by a person chosen by the complainant to act as his adviser; and

(b) any person subject to complaint may be accompanied by a person chosen by him to act as his adviser.

(8) A person accompanying a participant may speak to the panel or the assessors, provided that, where such person is legally qualified, he does not act as an advocate for the participant whom he accompanies.

(9) Any meeting of the panel or assessors or of any member of the panel or individual assessor either with each other or with any of the participants shall be in private.

(10) The panel shall consider whether any action of the Board which is the subject of the complaint was properly taken, that is to say, whether in taking the action the Board had regard to all matters that were relevant to the making of the decision and disregarded all matters that were not relevant.

(11) Where the panel consider that the action which is the subject of the complaint was taken properly it shall not determine that a different decision should have been made.

Report of the panel

28.-(1) The report of the panel shall include –

(a) findings of fact relevant to the complaint;

(b) the opinion of the panel on the complaint having regard to the findings of fact; and

(c) the reasons for the panel's opinion.

(2) The report of the panel may include suggestions which the panel considers, as a result of the findings of its investigation, -

(a) would improve the efficiency and effectiveness of the Board;

(b) the Board might take to satisfy the complainant.

(3) The report of the panel shall not suggest that disciplinary proceedings be taken against any person.

(4) Subject to sub-paragraph (5), the report of the panel shall be sent to –

(a) the complainant;

(b) any person subject to complaint and any person interviewed under paragraph 27(6);

(c) any person on whose behalf a complaint is made;

(d) the assessors;

(e) the Chairman and Chief Executive of the Board;

(f) the Director of Performance Review and Secondary Care, HPSS Executive.

(5) The panel chairman may withhold any part of the panel's report where, in his opinion, this is necessary in the interests of –

(a) protecting the confidentiality of –

(i) a patient or client;
(ii) any third party; or

(b) the health or social welfare of the complainant or a relevant person who is not the complainant.

Action by Board

29.-(1) A letter reporting the outcome of the Board's consideration of the panel's report shall be sent to the complainant by the Chief Executive of the Board within such time as is reasonable stating –

(a) any action which the Board proposes to take in relation to any suggestions in the report; and

(b) where it is decided that no action should be taken on any suggestion, the reasons for that decision.

(2) The letter referred to in sub-paragraph (1) shall be accompanied by a notice explaining the right to complain to the Commissioner for Complaints under the Commissioner for Complaints Act (Northern Ireland) 1969.

PART VI

MONITORING AND PUBLICITY

Monitoring

30.-(1) For the purposes of –

(a) monitoring the arrangements made for dealing with complaints about the actions of the Boards;

(b) considering the nature and volume of complaints; and

(c) taking remedial action following investigation of complaints,

the Board shall prepare reports at quarterly intervals.

(2) Each Board shall publish a report annually on its dealing with complaints under these Directions which shall be sent to –

(a) the Chief Executive of the HPSS Executive;

(b) any relevant Health and Social Services Council.

Publicity

31.-(1) Each Board shall take such steps as are necessary to ensure that –

(a) staff working for the Board;

(b) any relevant Health and Social Services Council,

(c) any family health services practitioner with whom the Board has made arrangements under Part VI of the 1972 Order;

(d) every Trust with whom it has made a HSS contract; and

(e) every independent provider with whom the Board has made arrangements under Articles 15 or 36 of the 9172 Order,

are fully informed of the arrangements for dealing with complaints about the Board, and are informed of the name of the complaints officer 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 Health and Social Services Councils offer to persons who wish to make complaints.

PART VII – COMPLAINTS ABOUT INDEPENDENT PROVIDERS

Interpretation of Part VII

32. In Part VII of these Directions –

"complaint" means a complaint about services provided by an independent provider, and "complainant" shall be construed accordingly;

"the HPSS Complaint Directions" means the Health and Personal Social Services Complaints Procedures Directions (Northern Ireland) 1996, made on 19th March 1996;

"independent provider" means a person (whether an individual or a body) who is not a Board, Trust or recognised fundholding practice;

"recognised fundholding practice" shall be construed in accordance with Article 17 of the Health and Personal Social Services (Northern Ireland) Order 1991.

Requirement to make arrangements for dealing with complaints about independent providers

33.-(1) Each Board shall make arrangements in accordance with the following provisions of this Part of these Directions for dealing with complaints about independent providers who have provided services as a result of arrangements made –

(a) with the Board under Articles 15 or 36 of the 1972 Order; or

(b) with a recognised fundholding practice whose practice is in the area of the Board,

and in either case that the conditions specified in sub-paragraph (2) are satisfied.

(2) The conditions referred to in sub-paragraph (1) are that –

(a) a complaint has been made –

(i) by or on behalf of a person who has been provided with services under the arrangements referred to in sub-paragraph (1) or in respect of a person who has died and who was provided with such services;

(ii) on or after 1st April 1996;

(iii) to the independent provider concerned; and

(b) the complaint was made in writing or was written on the complainant's behalf and in either case signed by the complainant; and

(c) the independent provider has had a reasonable time to investigate the complaint and report the result of the investigation to the complainant; and

(d) paragraph 7 of the HPSS Complaints Directions shall apply to a complaint made under this Part of these Directions as though sub-paragraphs (1)(b) and (2) of that paragraph, and the words "and of any start, or resumption, of an investigation under sub-paragraph (2)" in sub-paragraph (3) of that paragraph, were omitted.

Convening

34.-(1) Part IV of the HPSS Complaints Directions shall apply to a complaint under this Part of these Directions with the modifications specified in sub-paragraph (2).

(2) The modifications referred to in sub-paragraph (1) are that –

(a) in paragraph 15 –

(i) sub-paragraph (1)(a) shall be omitted and for sub-paragraph (b) there shall be substituted the following sub-paragraph –

"(b) who is either dissatisfied with the result of the investigation by the independent provider or whose complaint has not been investigated by the independent provider;";

(ii) at the end of sub-paragraph (2) there shall be added the words "or, where no investigation of the complaint is carried out by the

independent provider, fifty-six days from the date on which the complaint was made to the independent provider;

(iii) after sub-paragraph (2) there shall be inserted the following sub-paragraphs –

"(2A) A convenor is not required to deal with a request under sub-paragraph (1) which is made on behalf of a person unless either that person is unable to act or the consent of that person to the making of the request has been given.

(2B) Where a complaint has been made either on behalf of a person who is unable to act or in respect of a person who has died and, in the opinion of the convenor, the complainant is not a suitable person to pursue the complaint he may either refuse to deal with the complaint or nominate another person to act with respect to the complaint.";

(iv) in sub-paragraph (3), for the words "relevant HSS body" there shall be substituted the word "Board";

(v) for sub-paragraph (7) there shall be substituted the following sub-paragraph –

"(7) In this paragraph, "put in writing" has the same meaning as in paragraph 12(5) but as though the words "Board or the convenor" were substituted for the words "HSS body";

(c) in paragraph 16 –

(i) sub-paragraphs (1)(b), (4) and (5) shall be omitted;

(ii) in sub-paragraph (1)(c) and (6), for the words "the complaints officer or the Chief Executive" there shall be substituted the words "the independent provider";

(iii) in sub-paragraph (3), for the words "relevant HSS body" in each place where those words occur, there shall be substituted the words "independent provider";

(d) in paragraph 18 –

(i) for sub-paragraph (1)(c) there shall be substituted the following –

"(c) the Board; and

(d) the independent provider.";

(ii) in sub-paragraph (3)(a), for the words "relevant HSS body" there shall be substituted the words "independent provider".

The Panel

35.-(1) Part V of the HPSS Complaints Directions shall apply to a complaint under this Part of these Directions with the modifications specified in sub-paragraph (2).

(2) The modifications referred to in sub-paragraph (1) are –

(a) except in paragraph 27(2), for the words "relevant HSS body" in each place where those words occur there shall be substituted the word "Board";

(b) in paragraph 27 –

(i) in sub-paragraph 2(a)(i), for the words "relevant HSS body" there shall be substituted the words "independent provider";

(ii) in sub-paragraph 2(a)(ii), for the words "that body" there shall be substituted the words "the independent provider";

(iii) in sub-paragraph 2(b), for the words "HSS body" there shall be substituted the words "independent provider, Board or recognised fundholding practice";

(iv) sub-paragraph (4)(f) shall be omitted and for sub-paragraph (4)(c) there shall be substituted the following –

"(c) the independent provider concerned;

(cc) any person on whose behalf a complaint is made;";

(v) after sub-paragraph (4) there shall be inserted the following sub-paragraph –

"(4A) When the report of the panel is sent to the persons referred to in sub-paragraph (4)(a), (b), (c) or (cc) it shall be accompanied by a notice explaining the right to complain to the Commissioner for Complaints under the Commissioner for Complaints (Northern Ireland) Act 1969.";

(d) paragraph 28 shall be omitted.

Monitoring and publicity

36.-(1) Part VI of the HPSS Complaints Directions shall apply to a complaint under this Part of these Directions with the modifications specified in sub-paragraph (2).

(2) The modifications referred to in sub-paragraph (1) are that –

(a) paragraph 29 shall be omitted;

(b) in paragraph 30, for sub-paragraph (1) there shall be substituted the following sub-paragraph –

"(1) Each Board shall take such steps as are necessary to ensure that –

(a) staff working for the Board;

(b) any recognised fundholding practice whose practice is situated in the area of the Board;

(c) any independent provider with whom the Board has made arrangements under Article 15 or 36 of the 1972 Order; and

(d) any relevant Health and Social Services Council,

are fully informed of the arrangements for dealing with complaints about independent providers and are informed of the name of the complaints officer and the address where he can be contacted.".

Sealed with the Official Seal of the Department of Health and Social Services on this 26th day of March 1996

(l.s.)

P Simpson

STATUTORY RULES OF NORTHERN IRELAND

1996 No. 136

HEALTH AND PERSONAL SOCIAL SERVICES

General Medical and Pharmaceutical Services (Amendment) Regulations (Northern Ireland) 1996

Made - - - -	*29th March 1996*
Coming into operation	*1st April 1996*

The Department of Health and Social Services, in exercise of the powers conferred on it by Articles 56, 63, 106, and 107(6) of, and paragraph 8E of Schedule 11 to, the Health and Personal Social Services (Northern Ireland) Order 1972(**1**), and Article 10 of the Health and Medicines (Northern Ireland) Order 1988(**2**) and of all other powers enabling it in that behalf, and in conjunction with the Department of Finance and Personnel and after consultation with such organisations as appeared to the Department to be representative of the Medical and Pharmaceutical professions, as required by Articles 56(5) and 63(3) of that Order, hereby makes the following regulations:

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the General Medical and Pharmaceutical Services (Amendment) Regulations (Northern Ireland) 1996 and shall come into operation on 1st April 1996.

(2) In these regulations, the "principal regulations" means the Health and Personal Social Services (General Medical and Pharmaceutical Services) Regulations (Northern Ireland) 1973(**3**).

Amendment of regulation 2 of the principal regulations

2. In regulation 2 of the principal regulations (interpretation), in paragraph (1), in the definition of "suspended by direction of the Tribunal" after "medical" there shall be inserted "and pharmaceutical".

Amendment of regulation 4 of the principal regulations

3. After paragraph (4)(1)(*b*) of regulation 4 of the principal regulations (medical list) there shall be inserted the following sub-paragraph—

(**1**) S.I. 1972/1265 (N.I. 14), as amended by S.I. 1978/1907 (N.I. 26), S.I. 1981/432, S.I. 1984/1158 (N.I. 8), S.I. 1986/2023 (N.I. 20), S.I. 1986/2229 (N.I. 24), S.I. 1991/194 (N.I. 1), and S.I. 1995/2704 (N.I. 14)
(**2**) S.I. 1988/2249 (N.I. 24)
(**3**) S.R. & O. (N.I.) 1973 No. 421; relevant amending regulations are S.R. 1975 No. 180, S.R. 1983 No. 182, S.R. 1987 No. 247, S.R. 1989 No. 454, S.R. 1991 Nos. 97 and 476, S.R. 1993 No. 158, and S.R. 1995 Nos. 56, 126 and 487

"(bb) if he has made an arrangement under paragraph 14BB(2) of the terms of service transferring responsibility for his patients at certain times to another doctor, and, if so, the name of the doctor to whom, and the times during which, he has so transferred responsibility;".

Amendment of regulation 36 of the principal regulations

4. In regulation 36 of the principal regulations (terms of service) sub-paragraphs (3)(*c*) and (4)(*b*)(ii) shall be omitted.

Amendment of regulation 36A of the principal regulations

5. In regulation 36A of the principal regulations (additional professional services) after sub-paragraph (*b*) of paragraph (2) there shall be inserted the following—

"(c) keeping records in connection with drugs supplied to any person—

(i) who claims exemption under regulation 15(1)(*b*) of the Health and Personal Social Services (Charges for Drugs and Appliances) Regulations (Northern Ireland) 1973(**4**) (which provides that those aged 60 or over are exempt from prescription charges), or

(ii) who, in the opinion of the pharmacist providing the drug, is likely to have difficulty understanding the nature and dosage of the drug provided and the times at which it is to be taken,

in circumstances where the nature of the drug is such that, in the opinion of the pharmacist providing it, the same or a similar drug is likely to be prescribed for that person regularly on future occasions.

(3) In paragraph (2)(*c*) "records" includes a record of—

(a) the name and address of the person to whom the drug is supplied,

(b) the name, quantity and dosage of the drug provided, and

(c) the date on which it is provided.".

Amendment of regulation 37A of the principal regulations

6. In regulation 37A of the principal regulations (removal from the pharmaceutical list), after paragraph (3) there shall be inserted the following—

"(4) A period during which the chemist was suspended by direction of the Tribunal does not count towards the period of 6 months referred to in paragraph (1).".

Insertion of regulation 40B in the principal regulations

7. After regulation 40A of the principal regulations there shall be inserted—

"**Payments to suspended chemists**

40B.—(1) The Board shall make payments to any chemist who is suspended by direction of the Tribunal in accordance with the Department's determination in relation to such payments.

(2) The Department shall make the determination in accordance with paragraph (3) after consultation with such organisations so recognised as representing chemists with whom

(**4**) S.R. 1973 No. 419; relevant amending regulations are S.R. 1995 No. 402

arrangements for the provision of pharmaceutical services exist, and it shall be published with the Drug Tariff.

(3) The determination may be amended from time to time by the Department, after consultation with the organisations referred to in paragraph (2), and any amendments shall also be published with the Drug Tariff.

(4) Subject to paragraphs (5) and (6), the Department's determination shall be such as to secure that, as far as reasonably practicable, and after making adjustments for any reduction in expenses, the suspended chemist receives payments at a rate corresponding to his remuneration under the Drug Tariff (but excluding any payments made by virtue of regulation 40(1)(*c*) and (*i*)) during the 12 months ending with the direction for suspension by the Tribunal.

(5) The Department's determination may include provision that payments in accordance with the determination are not to exceed a specified amount in any specified period.

(6) In a case to which paragraph 8B(3) of Schedule 11 to the Order applies, the determination shall provide for the payments to be reduced to take account of any payments which the suspended chemist receives for providing pharmaceutical services other than as a principal.".

Amendment of Schedule 1 to the principal regulations

8.—(1) Schedule 1 to the principal regulations (terms of service for doctors) shall be amended as follows.

(2) In paragraph 1, at the beginning, there shall be inserted the following definition—

""notice" means notice in writing;".

(3) In paragraph 3 (persons for whose treatment a doctor is responsible), in sub-paragraph (1)—

(a) at the end of head (*h*) there shall be inserted—

"and

(i) any person for whom he has accepted responsibility under an arrangement made under paragraph 14BB(2).".

(4) After sub-paragraph (5) of paragraph 11 there shall be inserted the following sub-paragraph—

"(6) A doctor who is authorised or required by a Board under regulation 41 to provide drugs or appliances to a patient or who otherwise provides pharmaceutical services shall secure that the practice based complaints procedure he has established and operates in accordance with paragraph 11B applies in relation to any matter reasonably connected with his provision of pharmaceutical services as it applies as respects his provision of general medical services. Accordingly, paragraph 11C also applies in relation to complaints about such matters.".

(5) After paragraph 11A (practice leaflet), there shall be inserted the following new paragraphs—

"**Complaints**

11B.—(1) Subject to sub-paragraph (2), a doctor shall establish, and operate in accordance with this paragraph, a procedure (in this paragraph and in paragraph 11C referred to as a "practice based complaints procedure") to deal with any complaints made by or on behalf of his patients and former patients.

(2) The practice based complaints procedure to be established by a doctor may be such that it also deals with complaints made in relation to one or more other doctors.

(3) A practice based complaints procedure shall apply to complaints made in relation to any matter reasonably connected with the doctor's provision of general medical services and within the responsibility or control of—

(a) the doctor;

(b) any other doctor either employed by him or engaged as his deputy;

(c) a former partner of the doctor;

(d) an employee of the doctor other than one falling within head (*b*),

and in this paragraph and paragraph 11C, references to complaints are to complaints falling within this sub-paragraph.

(4) A complaint may be made on behalf of a patient or former patient with his consent, or

(a) where the patient is a child—

(i) by either parent, or in the absence of both parents, the guardian or other adult person who has care of the child, or

(ii) where the child is in the care of a Board or HSS trust to whose care he has been committed under the provisions of the Children and Young Persons Act (Northern Ireland) 1968(**5**), by a person duly authorised by that Board or trust, or

(iii) where the child is in the care of a voluntary organisation, by that organisation or a person duly authorised by it, or

(iv) where the child is in a training school, by the Manager of that training school; or

(b) where the patient is incapable of making a complaint, by a relative or other adult person who has an interest in his welfare.

(5) Where a patient has died a complaint may be made by a relative or other adult person who had an interest in his welfare or, where the patient was as described in head (*a*) (ii), (iii) or (iv) of sub-paragraph (4), by the Board or HSS trust, or voluntary organisation, or the manager of the training school.

(6) A practice based complaints procedure shall comply with the following requirements—

(a) the doctor must specify a person (who need not be connected with the practice and who, in the case of an individual, may be specified by his job title) to be responsible for receiving and investigating all complaints;

(b) all complaints must be—

(i) recorded in writing,

(ii) acknowledged, either orally or in writing, within the period of 3 days (excluding Saturdays, Sundays, and Bank and Public Holidays) beginning with and including the day on which the complaint was made or, where that is not possible, as soon as reasonably practicable, and

(iii) properly investigated;

(c) within the period of 10 days (excluding Saturdays, Sundays, and Bank and Public Holidays) beginning with and including the day on which the complaint was received by the person specified under head (*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;

(d) where the investigation of the complaint requires consideration of the patient's medical records, the person specified under head (*a*) must inform the patient or

(**5**) 1968 c. 34

person acting on his behalf if the investigation will involve disclosure of information contained in those records to a person other than the doctor or a partner, a deputy or an employee of the doctor; and

(e) the doctor 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.

(7) A doctor shall inform his patients about the practice based complaints procedure which he operates and the name (or title) of the person specified under sub-paragraph (6)(*a*).

11C.—(1) A doctor shall co-operate with any investigation of a complaint by the Board in accordance with the procedures which it operates in accordance with directions given under Article 17(1) of the Order, whether the investigation follows one under the practice based complaints procedure or not.

(2) The co-operation required by sub-paragraph (1) includes—

(a) answering questions reasonably put to the doctor by the Board;

(b) providing any information relating to the complaint reasonably required by the 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 doctor's presence at the meeting is reasonably required by the Board.".

(6) In paragraph 14 (deputies, assistants and partners), in sub-paragraph (1), after "Subject to sub-paragraphs (1)(*a*), (2), (2A) and (2B)" there shall be inserted "and to any out of hours arrangement made under paragraph 14BB(2)".

(7) In paragraph 14B (duration of doctor's responsibility), at the beginning there shall be inserted "Subject to paragraph 14BB".

(8) After paragraph 14B (duration of doctor's responsibility) there shall be inserted the following paragraphs—

"**Out of hours arrangements**

14BB.—(1) In this paragraph and in paragraph 14BC—

(a) "out of hours period" means—

(i) the period beginning at 7 pm on Mondays to Fridays and ending at 8 am the following day,

(ii) the period between 1 pm on Saturday and 8 am on the following Monday, and

(iii) Bank and Public Holidays;

and "part of an out of hours period" means any part of any one or more of the periods described in sub-heads (i) to (iii);

(b) "out of hours arrangement" means an arrangement under sub-paragraph (2); and

(c) "transferee doctor" means a doctor who has undertaken to carry out the obligations of another doctor under these terms of service during part or all of the out of hours period in accordance with an out of hours arrangement.

(2) Subject to sub-paragraphs (3) to (15), a doctor may, with the approval of the Board, make an arrangement with a doctor who is on the medical list to transfer his obligations under the terms of service during part or all of the out of hours period to that other doctor.

(3) A doctor may make more than one out of hours arrangement; and may do so (for example) with different transferee doctors and in respect of different patients, different times and different parts of his practice area.

(4) A doctor may retain responsibility for or make separate out of hours arrangements in respect of the provision of maternity medical services to patients with whom he has made an arrangement under regulation 28.

(5) Nothing in this paragraph prevents a doctor from retaining or resuming his obligations in relation to named patients.

(6) Where a doctor is on the obstetric list, he shall not make an out of hours arrangement in respect of the provision of maternity medical services to patients with whom he has made an arrangement under regulation 28 unless the transferee doctor is also on the obstetric list.

(7) An application to the Board for approval shall be made in writing and shall state—

(a) the name and address of the proposed transferee doctor, and the number of patients on his list;

(b) the periods during which the doctor's obligations under these terms of service are to be transferred;

(c) how the proposed transferee doctor intends to meet the doctor's obligations during the periods specified under head (*b*);

(d) the arrangements for the transfer of the doctor's obligations under these terms of service to and from the transferee doctor at the beginning and end of the periods specified under head (*b*);

(e) whether the proposed arrangement includes the doctor's obligations in respect of maternity medical services;

(f) how long the proposed arrangements are intended to last and the circumstances in which the doctor's obligations under these terms of service during the periods specified under head (*b*) would revert to him;

(g) what arrangements are proposed to enable the doctor's patients to contact the proposed transferee doctor; and

(h) whether the proposed transferee doctor—

(i) has been notified under regulation 7(4) of the Tribunal Regulations (Northern Ireland) 1995(**6**) that the Tribunal intends to hold an inquiry under paragraph 1 of Schedule 11 to the Order as to representations made in relation to him; or

(ii) has been notified under section 42(5) of the Medical Act 1983(**7**) that the Preliminary Proceedings Committee of the General Medical Council has decided that he should be referred to the Professional Conduct Committee or to the Health Committee.

(8) A Board shall determine the application before the end of the period of 28 days beginning with and including the day on which the Board received it.

(9) A Board shall grant approval to a proposed out of hours arrangement if it is satisfied—

(a) having regard in particular to the interests of the doctor's patients, that the arrangement is reasonable;

(b) having regard in particular to all reasonably foreseeable circumstances, that the arrangement is practicable and will work satisfactorily;

(**6**) S.R. 1995 No. 493
(**7**) 1983 c. 54

(c) that it will be clear to the doctor's patients how to seek personal medical services during the out of hours period; and

(d) that if the arrangement comes to an end, the doctor has in place proper arrangements for the immediate resumption of his responsibilities;

and shall not refuse to grant approval without first consulting the Local Medical Committee.

(10) The Board shall give notice to the doctor of its determination and, where it refuses an application, it shall send the doctor a statement in writing of the reasons for its determination and of the doctor's right of appeal under sub-paragraph (11).

(11) A doctor may, before the end of the period of 30 days beginning with and including the day on which the Board's notification under sub-paragraph (10) was sent, appeal in writing to the Department against any refusal of an application under sub-paragraph (7).

(12) The Department may, when determining an appeal, either confirm the determination of the Board or substitute its own determination for that of the Board.

(13) The Department shall give notice to the doctor of its determination and shall in every case include with the notification a written statement of the reasons for the determination.

(14) Where the Board (or, on appeal, the Department) has approved an out of hours arrangement—

(a) the transferee doctor may himself employ or engage an assistant or deputy in respect of part or all of the period covered by the out of hours arrangement; and if he does so, paragraph 14 shall apply as if he were the doctor for the purposes of that paragraph; and

(b) a transferee doctor shall not enter into any other out of hours arrangement in respect of the patients for whom he has accepted responsibility under this paragraph.

14BC.—(1) Subject to paragraph 14BD, where it appears to the Board that it may no longer be satisfied with any of the matters referred to in sub-paragraphs (*a*) to (*d*) of paragraph 14BB(9), it may give notice in writing to the doctor that it proposes to review the approval.

(2) On any review under sub-paragraph (1), the Board shall allow the doctor a period of 30 days, beginning with and including the day on which it sent the notice, within which to make representations in writing to the Board.

(3) After considering any representations made in accordance with sub-paragraph (2), the Board may determine either to continue or to withdraw its approval but shall not withdraw its approval without first consulting the Local Medical Committee.

(4) The Board shall give notice to the doctor of a determination under sub-paragraph (3).

(5) Where the Board withdraws its approval, it shall include with the notice a statement in writing of the reasons for its determination and of the doctor's right of appeal under sub-paragraph (6).

(6) A doctor may, within the period of 30 days beginning with and including the day on which the notice referred to in sub-paragraph (4) was sent, appeal in writing to the Department against the withdrawal of approval and sub-paragraphs (12) and (13) of paragraph 14BB shall apply to any such appeal.

(7) Subject to paragraph 14BD(1), where the Board withdraws approval, the withdrawal shall not take effect until the end of the period of 2 months beginning with and including the date on which the notice referred to in sub-paragraph (4) was sent or where there is an appeal under sub-paragraph (6) and the appeal is dismissed, the date on which the doctor receives notice of the dismissal of the appeal, whichever is the later.

14BD.—(1) Where it appears to the Board, whether after a review under paragraph 14BC or not, that it is necessary in the interests of the doctor's patients to withdraw its approval immediately, it may withdraw its approval.

(2) The Board shall give notice to the doctor of a determination under sub-paragraph (1) and shall include with the notice a statement of the reasons for its determination and of the doctor's right of appeal under sub-paragraph (4).

(3) An immediate withdrawal of approval under sub-paragraph (1) shall take effect on the day on which the notice referred to in sub-paragraph (2) is received by the doctor.

(4) A doctor may, within the period of 30 days beginning with and including the day on which the notice referred to in sub-paragraph (2) was sent, appeal in writing to the Department against the withdrawal of approval and sub-paragraphs (12) and (13) of paragraph 14BB shall apply to any such appeal.".

Amendment of Schedule 1H to the principal regulations

9. In Schedule 1H to the principal regulations (information to be included in practice leaflets), after paragraph 9A there shall be inserted—

"**9B.** Where the doctor has made an out of hours arrangement under paragraph 14BB(2) of Schedule 1, the name and address of the doctor with whom the arrangement has been made, the times during which it applies and details of the arrangements whereby the doctor's patients may contact the doctor concerned.".

Amendment of Schedule 1I to the principal regulations

10. In Schedule 1I to the principal regulations (information to be provided in annual reports), at the end there shall be inserted—

"**5.** The number of complaints received in accordance with paragraph 11B of Schedule 1.".

Amendment of Schedule 4 to the principal regulations

11. In Schedule 4 to the principal regulations (terms of service for chemists)—

(a) in paragraph 3 after sub-paragraph (1)(*d*) there shall be inserted the following sub-paragraph—

"(e) if the person presenting the prescription form asks the chemist to do so—

(i) he shall give an estimate of the time when the drugs, medicines or appliances will be ready; and

(ii) if they are not ready by then, he shall give a revised estimate of the time when they will be ready and so on;";

(b) for paragraph 5 (dispensing of medicines) there shall be substituted the following paragraph—

"**Provision of drugs and fitting of appliances**

5.—(1) Drugs shall be provided either by or under the direct supervision of a pharmacist.

(2) Where the pharmacist referred to in sub-paragraph (1) is employed by a chemist, the pharmacist must not be one—

(a) who, having been disqualified under paragraph 3(*b*) of Schedule 11 to the Order (or any corresponding provision in force in England and

Wales or Scotland) from inclusion in the pharmaceutical list (or, in England and Wales, the pharmaceutical list of a Health Authority or, in Scotland, the pharmaceutical list of a Health Board), is also the subject of a declaration under paragraph 3(*c*) of Schedule 11 to the Order (or any corresponding provision in force in England and Wales or Scotland) that he is not fit to be engaged in any capacity in the provision of pharmaceutical services; or

(b) who is suspended by direction of the Tribunal, other than in a case falling within paragraph 8B(3) of Schedule 11 to the Order.

(3) Subject to paragraph 3(1)(*a*) a chemist shall make all necessary arrangements—

(a) for measuring a person who presents a prescription for a truss or other appliance of a type requiring measurement and fitting by the chemist; and

(b) for fitting the appliance;";

(c) in paragraph 8 after sub-paragraph (4)(*c*) there shall be inserted the following sub-paragraph—

"(d) a chemist who has undertaken to provide additional professional services within the meaning of regulation 36A shall on receipt of a written request from the Board make available to the Board all records kept in accordance with regulation 36A(2)(*c*) and shall permit the Board or another person on its behalf at any reasonable time to inspect the premises from which those services are provided for the purpose of satisfying itself that those services are being provided in accordance with the undertaking;";

(d) after paragraph 9 there shall be inserted the following paragraphs—

"**Complaints**

9A.—(1) Subject to sub-paragraph (2), a chemist shall establish and operate in accordance with this paragraph, a procedure (in this paragraph and in paragraph 9B referred to as a "complaints procedure") to deal with any complaints made by or on behalf of any person to whom he has provided pharmaceutical services.

(2) The complaints procedure to be established by a chemist may be such that it also deals with complaints made in relation to one or more other chemists.

(3) The complaints procedure to be established by a chemist who provides pharmaceutical services from more than one set of premises may be such that it relates to all those premises together.

(4) A complaints procedure shall apply to complaints made in relation to any matter reasonably connected with the chemist's provision of pharmaceutical services and within the responsibility or control of—

(a) the chemist;

(b) where the chemist is a body corporate, any of its directors or former directors;

(c) a former partner of the chemist;

(d) any pharmacist employed by the chemist;

(e) any employee of the chemist other than one falling within sub-paragraph (*d*);

and in this paragraph and paragraph 9B, references to complaints are to complaints falling within this sub-paragraph.

(5) A complaint may be made on behalf of any person with his consent, or—

(a) where he is under 16 years of age—

(i) by either parent, or in the absence of both parents, the guardian or other adult person who has care of the child; or

(ii) where the child is in the care of a Board or HSS trust to whose care he has been committed under the provisions of the Children and Young Persons Act (Northern Ireland) 1968 by a person duly authorised by that Board or trust; or

(iii) where the child is in the care of a voluntary organisation, by that organisation or a person duly authorised by it, or

(iv) where the child is in a training school, by the Manager of that training school; or

(b) where he is incapable of making a complaint, by a relative or other adult person who has an interest in his welfare.

(6) A complaint may be made as respects a person who has died by a relative or other adult person who had an interest in his welfare, or when he was as described in paragraph (*a*)(ii), (iii) or (iv) of sub-paragraph (5), by the Board or HSS trust, or voluntary organisation, or the manager of the training school.

(7) A complaints procedure shall comply with the following requirements—

(a) the chemist must specify a person (who need not be connected with the chemist and whom in the case of an individual, may be specified by his job title) to be responsible for receiving and investigating all complaints.

(b) all complaints must be—

(i) recorded in writing,

(ii) acknowledged, either orally or in writing, within the period of 3 days (excluding Saturdays, Sundays and Bank and Public Holidays) beginning with and including the day on which the complaint was received by the person specified under head (*a*) or, where that is not possible, as soon as reasonably practicable, and

(iii) properly investigated;

(c) within the period of 10 days (excluding Saturdays, Sundays and Bank and Public Holidays) beginning with and including the day on which the complaint was received by the person specified under head (*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;

(d) where the investigation of the complaint requires consideration of any records relating to the person as respects whom the complaint is made, the person specified under head (*a*) must inform him or the person acting on his behalf if the investigation will involve disclosure of information contained in those records to a person other than the chemist or a director, partner or employee of the chemist; and

(e) the chemist must keep a record of all complaints and copies of all correspondence relating to complaints, but such records must be kept

separate from any records relating to the person by whom the complaint was made.

(8) At each of the premises at which the chemist provides pharmaceutical services he must provide information about the complaints procedure, and give the name (or title) and address of the person specified under paragraph (3)(*a*); and where he provides supplemental services he must provide the same information to the person referred to in regulation 36(3)(*a*).

9B.—(1) A chemist must co-operate with any investigation of a complaint by the Board in accordance with the procedures which it operates in accordance with directions given under Article 17(1) of the Order, whether the investigation follows one under the chemist's complaints procedure or not.

(2) The co-operation required by sub-paragraph (1) includes—

(a) answering questions reasonably put to the chemist by the Board;

(b) providing any information relating to the complaint reasonably required by the 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 chemist's presence at the meeting is reasonably required by the Board.";

(e) after paragraph 9 there shall be inserted the following paragraph—

"**Professional standards**

10.—(1) A pharmacist whose name is on the pharmaceutical list shall provide pharmaceutical services and exercise any professional judgment in connection with the provision of such services in conformity with the standards generally accepted in the pharmaceutical profession.

(2) A chemist who employs a pharmacist in connection with the provision of pharmaceutical services shall secure that the pharmacist complies with the requirements set out in sub-paragraph (1).".

Sealed with the Official Seal of the Department of Health and Social Services on

L.S.

Joan Dixon
29th March 1996. Assistant Secretary

Sealed with the Official Seal of the Department of Finance and Personnel on

L.S.

J. G. Sullivan
29th March 1996 Assistant Secretary

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These regulations further amend the Health and Personal Social Services (General Medical and Pharmaceutical Services) Regulations (Northern Ireland) 1973 ("the principal regulations"), which regulate the terms on which general medical and pharmaceutical services are provided under the Health and Personal Social Services (Northern Ireland) Order 1972 ("the 1972 Order").

The regulations amend the principal regulations to reflect the power of the Tribunal to suspend a chemist or to declare a chemist not fit to be engaged in any capacity in the provision of pharmaceutical services. The Terms of Service for chemists are amended to prevent the employment of pharmacists in relation to whom such a declaration is in force. The amendments also provide for payments to suspended chemists. (Regulations 2, 6 and 7).

Regulation 4 contains minor and drafting amendments which are consequential on the substantive amendments contained in regulation 8.

Regulation 11 requires chemists to set up and operate (in accordance with the regulations) a complaints procedure and to co-operate with any investigation of a complaint by a Board in accordance with its procedures. Regulation 11 also amends the Terms of Service for chemists by requiring a chemist to give, on request, an estimate of the time it will take before any drugs, medicines or appliances prescribed will be ready; and to require pharmacists to provide pharmaceutical services and exercise their professional judgment to a standard generally accepted in the pharmaceutical profession.

Regulation 8 amends doctors' terms of service in 2 ways. First, provision is made to enable a doctor to transfer part or all of his obligations under the terms of service to another doctor at night, at weekends and on public holidays. Such an arrangement can only be made with the approval of the Board. The regulations require a doctor to provide the Board with details of the proposed arrangement and they require the Board to have regard to the interests of the doctor's patients as well as the practicability of the proposed arrangement in deciding whether to approve it. There is also provision for a doctor to appeal against the Board's refusal to approve a proposed arrangement, for the Board to review any approval and, where necessary in the interests of the doctor's patients, to withdraw its approval immediately.

Secondly, the terms of service are amended to require a doctor to establish and operate a system to deal with complaints. There is provision about who may complain, what they may complain about, how such complaints are to be dealt with and the publicity which a doctor must give to his complaints procedure. The terms of service changes also require a doctor to co-operate with complaints procedures which are operated by the Board.

The Terms of Service are also amended to include a definition of "notice" as "a notice in writing".

Regulation 5 alters the status of the keeping of records by a chemist in connection with the supply of drugs from that of a supplemental service to that of an additional professional service.

Regulation 9 requires doctors to include details of any new out of hours arrangements in their practice leaflets.

Regulation 10 requires doctors to include the number of complaints received under the new procedures in the annual reports which they must submit to their Board.

The Drug Tariff, referred to in the insertion made by regulation 7 is available to chemists and Boards from the Central Services Agency, 25 Adelaide Street, Belfast BT2 8FH.

Paragraph 8E of Schedule 11 to the 1972 Order, one of the enabling provisions under which these regulations are made, is inserted by Article 4 of the Health and Personal Social Services (Amendment) (Northern Ireland) Order 1995 ("the 1995 Order"). The provisions of the 1995 Order which amend the 1972 Order in relation to pharmacists are brought into operation on 29th March 1996 by virtue of the Health and Personal Social Services (Amendment) (Commencement No. 2) Order (Northern Ireland) (S.R. 1996 No. 123 (C. 6)).

STATUTORY RULES OF NORTHERN IRELAND

1996 No. 114

HEALTH AND PERSONAL SOCIAL SERVICES

General Dental Services (Amendment) Regulation z (Northern Ireland) 1996

Made - - - -	*22nd March 1996*
Coming into operation	*1st April 1996*

The Department of Health and Social Services, in exercise of the powers conferred on it by Articles 61(1), (2) and (2AA), 106 and 107(6) of, and paragraph 8E of Part I of Schedule II to, the Health and Personal Social Services (Northern Ireland) Order 1972(**1**) and of all other powers enabling it in that behalf, and in conjunction with the Department of Finance and Personnel and after consultation with such organisations as appeared to the Department to be representative of the dental profession as required by Article 61(4) of the said Order, hereby makes the following regulations:

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the General Dental Services (Amendment) Regulations (Northern Ireland) 1996 and shall come into operation on 1st April 1996.

(2) In these regulations, "the principal regulations" means the Health and Personal Social Services General Dental Services Regulations (Northern Ireland) 1993(**2**).

Amendment of Schedule 2 to the principal regulations

2. In Schedule 2 to the principal regulations (terms of service for dentists), after paragraph 31 there shall be inserted—

"**Complaints**

31A.—(1) Subject to sub-paragraph (2), a dentist shall establish, and operate in accordance with this paragraph, a procedure (in this paragraph and in paragraph 31B referred to as a "practice based complaints procedure") to deal with any complaints made by or on behalf of his patients and former patients.

(**1**) S.I.1972/1265 (N.I. 14) as amended by Article 13 of S.I. 1978/1907 (N.I. 26); Articles 30, 34 and 35 and Part I of Schedule 5 to, and Part I of Schedule 6 to, S.I. 1991/194 (N.I. 1); paragraph 8E of Part I of Schedule 11 was inserted by Article 4 of S.I. 1995/2704 (N.I. 14)

(**2**) S.R. 1993 No. 326 as amended by S.R. 1993 No. 401 and S.R. 1995 No. 488

(2) The practice based complaints procedure to be established by a dentist may be such that it also deals with complaints made in relation to one or more other dentists.

(3) A practice based complaints procedure shall apply to complaints made in relation to any matter reasonably connected with the dentist's provision of general dental services and within the responsibility or control of—

(a) the dentist;

(b) any other dentists either employed by him or engaged as a deputy;

(c) a former partner of the dentist;

(d) an employee of the dentist other than one falling within head (*b*),

and in this paragraph and paragraph 31B, references to complaints are to complaints falling within this sub-paragraph.

(4) A complaint may be made on behalf of a patient or former patient with his consent, or—

(a) where the patient is a child under 16—

(i) by either parent, or in the absence of both parents, the guardian or other adult person who has care of the child, or

(ii) where the child is in the care of a Board or HSS trust to whose care he has been committed under the provisions of the Children and Young Persons Act (Northern Ireland) 1968(**3**) or in the care of a voluntary organisation, by that Board or HSS trust or voluntary organisation; or

(b) where the patient is incapable of making a complaint, by a relative or other adult person who has an interest in his welfare.

(5) Where a patient has died a complaint may be made by a relative or other adult person who had an interest in his welfare or, where the patient was as described in head (*a*)(ii) of sub-paragraph (4), by the Board or HSS trust or voluntary organisation.

(6) A practice based complaints procedure shall comply with the following requirements—

(a) the dentist shall specify a person (who need not be connected with the dentist's practice and who in the case of an individual, may be specified by his job title) to be responsible for receiving and investigating all complaints;

(b) all complaints shall be—

(i) recorded in writing,

(ii) acknowledged, either orally or in writing, within the period of three days (excluding Saturdays, Sundays and Bank and Public Holidays) beginning with and including the day on which the complaint was received by the person specified under head (*a*), or where that is not possible as soon as reasonably practicable, and

(iii) properly investigated;

(b) within the period of 10 days (excluding Saturdays, Sundays and Bank and Public Holidays) beginning with and including the day on which the complaint was received by the person specified under head (*a*) or, where that is not possible as soon as reasonably practicable, the complainant shall be given a written summary of the investigation and its conclusions;

(d) where the investigation of the complaint requires consideration of the patient's dental records, the person specified under head (*a*) shall inform the patient or person acting on his behalf if the investigation will involve disclosure of information contained in

(**3**) 1968 c. 34

those records to a person other than the dentist or a partner, a deputy or an employee of the dentist; and

(e) the dentist shall keep a record of all complaints and copies of all correspondence relating to complaints, but such records shall be kept separate from patients' dental records.

(7) A dentist shall inform his patients about the practice based complaints procedure which he operates and give the name (or title) and address of the person specified under sub-paragraph (6)(*a*).

31B.—(1) A dentist shall co-operate with any investigation of a complaint by the Board in accordance with the procedures which it operates, whether the investigation follows one under the practice based complaints procedure or not.

(2) The co-operation required by sub-paragraph (1) includes—

(a) answering questions reasonably put to the dentist by the Board;

(b) providing any information relating to the complaint reasonably required by the 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 dentist's presence at the meeting is reasonably required by the Board.

Return

31C.—(1) A dentist whose name is included in the dental list shall provide to the Board by 30th June each year a return stating the number of complaints received in accordance with paragraph 31A in respect of the period of 12 months ending on 31st March of that year.

(2) In the case of a dentist who practises in partnership with one or more other dentists whose names are included in the dental list, the information referred to in sub-paragraph (1) shall be provided in respect of the partnership as a whole instead of by each dentist in the partnership individually.".

Amendment of Schedule 2 to the principal regulations

3.—(1) Schedule 2 to the principal regulations (terms of service for dentists) shall be amended as follows.

(2) In paragraph 27 (completion of an estimate)—

(a) in sub-paragraph (1), for "(2), (3)" there shall be substituted "(2)"; and

(b) sub-paragraph (3) shall be omitted.

(3) For paragraph 31 there shall be substituted—

"**Information about HS charges**

31. A dentist shall display in a prominent position at the practice premises information, in a form supplied or approved by the Agency, about charges for general dental services.".

Sealed with the Official Seal of the Department of Health and Social Services on

L.S.

D. A. Baker
22nd March 1996. Assistant Secretary

Sealed with the Official Seal of the Department of Finance and Personnel on.

L.S.

J. G. Sullivan
22nd March 1996 Assistant Secretary

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These regulations further amend the Health and Personal Social Services General Dental Services Regulations (Northern Ireland) 1993 ("the principal regulations").

Regulation 2 amends the dentist's terms of service contained in Schedule 2 to the principal regulations to require dentists to establish and operate a complaints procedure within their practice.

Regulation 3 makes minor amendments to the terms of service in Schedule 2 regarding computerised estimate forms and information to be displayed in practice premises.

STATUTORY RULES OF NORTHERN IRELAND

1996 No. 135

HEALTH AND PERSONAL SOCIAL SERVICES

General Ophthalmic Services (Amendment) Regulations (Northern Ireland) 1996

Made - - - -	*29th March 1996*
Coming into operation	*1st April 1996*

The Department of Health and Social Services, in exercise of the powers conferred on it by Articles 62, 106 and 107(6) of, and paragraph 8E of Schedule 11 to, the Health and Personal Social Services (Northern Ireland) Order 1972(**1**) and Article 10 of the Health and Medicines (Northern Ireland) Order 1988(**2**) and of all other powers enabling it in that behalf, and in conjunction with the Department of Finance and Personnel and after consultation with such organisations as appeared to the Department to be representative of medical practitioners practising as ophthalmic medical practitioners, and ophthalmic opticians, as required by Article 62(3) of the said Order, hereby makes the following regulations:

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the General Ophthalmic Services (Amendment) Regulations (Northern Ireland) 1996 and shall come into operation on 1st April 1996.

(2) In these regulations, the "principal regulations" means the General Ophthalmic Services Regulations (Northern Ireland) 1986(**3**).

Amendment of regulation 2 of the principal regulations

2. Regulation 2(1) of the principal regulations (interpretation) shall be amended as follows—

(a) after the definition of "the statement" there shall be inserted—

> ""suspended by direction of the Tribunal" means suspended as respects the provision of general ophthalmic services to patients by a direction of the Tribunal made pursuant to paragraph 8A(2) or paragraph 8B(1) of Schedule 11 to the

(**1**) S.I. 1972/1265 (N.I. 14) as amended by S.I. 1978/1907 (N.I. 26) Article 13; S.I. 1984/1158 (N.I. 8) Article 3(1) and (2), paragraph 1 of Schedule 1, Article 17 and Part 1 of Schedule 6; S.I. 1988/2249 (N.I. 24) Article 8(1) and (2); S.I. 1991/194 (N.I. 1) Part I of Schedule 5; and S.I. 1995/2704 (N.I. 14)
(**2**) S.I. 1988/2249 (N.I. 24)
(**3**) S.R. 1986 No. 163; relevant amending regulations are S.R. 1988 No. 110, and S.R. 1990 No. 191

Order(**4**) or to any provisions in force in England and Wales or Scotland corresponding to those provisions;"; and

(b) at the end there shall be inserted—

""training school" means a school approved by the Secretary of State under sections 137 and 138 of the Children and Young Persons Act (Northern Ireland) 1968(**5**);".

Amendment of regulation 8 of the principal regulations

3. In regulation 8 (ophthalmic list), at the end of paragraph (1) there shall be inserted "and who are not disqualified for inclusion by virtue of the provisions of paragraphs 5, 7, 8A(3), 8B(1) or 8D(2) of Schedule 11 to the Order(**6**)".

Amendment of regulation 9 of the principal regulations

4. In regulation 9 (application for inclusion in ophthalmic list), in paragraph (1)—

(a) at the end of sub-paragraph (*a*), "and" shall be omitted; and

(b) at the end of sub-paragraph (*b*), there shall be inserted—

"; and

(c) a declaration that he is not suspended by direction of the Tribunal.".

Amendment of regulation 11 of the principal regulations

5. In regulation 11 (removal from ophthalmic list), after paragraph (2) there shall be inserted the following new paragraph—

"(2A) In calculating the period of 6 months referred to in paragraph (2), a Board shall disregard any period during which the contractor provided no general ophthalmic services by reason only that he was suspended by direction of the Tribunal.".

Amendment of regulation 14 of the principal regulations

6. In regulation 14 (payment for services), in paragraph (2)(*b*) for "regulation 4(2) of the Health and Personal Social Services (Services Committee) Regulations (Northern Ireland) 1973" substitute "regulation 5(1) of the Health and Personal Social Services (Disciplinary Procedures) Regulations (Northern Ireland) 1996"(**7**).

Payments to suspended contractors

7. After regulation 14 of the principal regulations the following new regulation shall be inserted—

"**Payments to contractors suspended by direction of the Tribunal**

14A.—(1) The Agency shall make payments to any contractor who is suspended by direction of the Tribunal in accordance with the Department's determination for the time being in operation in relation to such payments.

(**4**) Paragraph 8A and 8B of Schedule 11 were inserted by Article 4 of S.I. 1995/2704 (N.I. 14)
(**5**) 1968 c. 34
(**6**) Paragraph 8D of Schedule II was inserted by Article 4 of S.I. 1995/2704 (N.I. 14)
(**7**) S.R. 1996 No. 137

(2) The Department shall make the determination in accordance with paragraphs (3) and (4) after consultation with the organisations referred to in regulation 12(1) and it shall be published with the Statement there referred to.

(3) Subject to paragraph (4), the Department's determination shall be such as to secure that, as far as reasonably practicable, the suspended contractor receives payments at a rate corresponding to his remuneration by virtue of regulation 12 during the 12 months ending with the direction for suspension by the Tribunal.

(4) The Department's determination may include provision that payments in accordance with the determination are not to exceed a specified amount in any specified period.

(5) In a case to which paragraph 8B(3) of Schedule 11 to the Order applies, the determination shall provide for the amount by which a suspended contractor's payments are to be reduced to take account of any payments which he receives for providing general ophthalmic services other than as a principal.

(6) Regulation 12(2) shall apply to determinations under this regulation as it applies to determinations under that regulation.

(7) Regulation 14(2) shall apply to payments made under this regulation as it applies to payments made under that regulation.".

Amendment of Schedule 1 to the principal regulations

8.—(1) Schedule 1 (terms of service for ophthalmic medical practitioners and opticians) shall be amended as follows.

(2) In paragraph 2 (incorporation of provisions), in sub-paragraph (*b*)—

(a) for "Health and Personal Social Services (Services Committee) Regulations (Northern Ireland) 1973" there shall be substituted "Health and Personal Social Services (Disciplinary Procedures) Regulations (Northern Ireland) 1996"; and

(b) in head (i), for "ophthalmic services committee" there shall be substituted "ophthalmic discipline committee".

(3) For paragraph 5 (notices) there shall be substituted—

"**5.** A contractor shall secure that at each place at which he provides general ophthalmic services there is prominently displayed a notice and leaflet supplied or approved by the Agency, indicating the services available under general ophthalmic services and indicating to which descriptions of his patients a payment may be made under the Optical Charges and Payments Regulations (Northern Ireland) 1989(**8**).".

(4) In paragraph 7 (deputies), in sub-paragraph (1), for "disqualified by the Tribunal from inclusion in the ophthalmic list" there shall be substituted—

"(a) who, having been disqualified under paragraph 3(*b*)(**9**) of Schedule 11 to the Order (or under any corresponding provision in force in England and Wales or Scotland) from inclusion in the ophthalmic list (or, in England and Wales, the ophthalmic list of a Health Authority, or, in Scotland, the ophthalmic list of a Health Board) is also the subject of a declaration under paragraph 3(*c*) of Schedule 11 to the Order (or any corresponding provision in force in England and Wales or Scotland) that he is not fit to be engaged in any capacity in the provision of general ophthalmic services; or

(b) who is suspended by direction of the Tribunal, other than in a case falling within paragraph 8B(3) of Schedule 11 to the Order.".

(**8**) S.R. 1989 No. 114
(**9**) Paragraph 3 of Schedule 11 was substituted by Article 3 of S.I. 1995/2704 (N.I. 14)

(5) In paragraph 8 (employees), for sub-paragraph (3) there shall be substituted—

"(3) A contractor shall not employ in the provision of general ophthalmic services any person—

(a) who, having been disqualified under paragraph 3(*b*) of Schedule 11 to the Order (or under any corresponding provision in force in England and Wales or Scotland) from inclusion in the ophthalmic list (or, in England and Wales, the ophthalmic list of a Health Authority, or, in Scotland, the ophthalmic list of a Health Board), is also the subject of a declaration under paragraph 3(*c*) of Schedule 11 to the Order (or any corresponding provision in force in England and Wales or Scotland) that he is not fit to be engaged in any capacity in the provision of general ophthalmic services; or

(b) who is suspended by direction of the Tribunal, other than in a case falling within paragraph 8B(3) of Schedule 11 to the Order.".

(6) After paragraph 8 (employees), the following new paragraphs shall be inserted—

"**Complaints**

8A.—(1) Subject to sub-paragraphs (2) and (3), a contractor shall establish, and operate in accordance with this paragraph, a procedure (in this paragraph and in paragraph 8B referred to as a "complaints procedure") to deal with any complaints made by or on behalf of his patients and former patients.

(2) The complaints procedure to be established by a contractor may be such that it also deals with complaints made in relation to one or more other contractors.

(3) The complaints procedure to be established by a contractor who provides general ophthalmic services from more than one set of premises may be such that it relates to all those premises together.

(4) A complaints procedure shall apply to complaints made in relation to any matter reasonably connected with the contractor's provision of general ophthalmic services and within the responsibility or control of—

(a) the contractor;

(b) where the contractor is a body corporate, any of its directors or former directors;

(c) a former partner of the contractor;

(d) any other person (being an optician, an ophthalmic medical practitioner or a person authorised to test sight by rules made under section 24(3) of the Opticians Act 1989)(**10**) who is either employed by the contractor or engaged as his deputy;

(e) any employee of the contractor other than one falling within head (*d*),

and in this paragraph and paragraph 8B, references to complaints are to complaints falling within this sub-paragraph.

(5) A complaint may be made on behalf of a patient or former patient with his consent, or—

(a) where the patient is a child under the age of 16 years—

(i) by either parent, or in the absence of both parents, the guardian or other adult person who has care of the child, or

(ii) where the child is in the care of a Board or HSS trust to whose care he has been committed under the provisions of the Children and Young Persons Act (Northern Ireland) 1968, by a person duly authorised by that Board or trust, or;

(**10**) S.I 1989 c. 44

(iii) where the child is in the care of a voluntary organisation, by that voluntary organisation or a person duly authorised by it, or

(iv) where the child is in a training school, by the Manager of that training school;

(b) where the patient is incapable of making a complaint, by a relative or other adult person who has an interest in his welfare.

(6) Where a patient has died, a complaint may be made by a relative or other adult person who had an interest in his welfare or, where the patient was as described in head (*a*)(ii), (iii), or (iv), of sub-paragraph (5), by the Board, HSS trust, voluntary organisation, or the Manager of the training school.

(7) A complaints procedure shall comply with the following requirements—

(a) the contractor must specify a person (who need not be connected with the contractor and who, in the case of an individual, may be specified by his job title) to be responsible for receiving and investigating all complaints;

(b) all complaints must be—

(i) recorded in writing,

(ii) acknowledged, either orally or in writing, within the period of three days (excluding Saturdays, Sundays, and Bank and Public Holidays) beginning with and including the day on which the complaint was received by the person specified under head (*a*) or where that is not possible, as soon as reasonably practicable, and

(iii) properly investigated;

(c) within the period of 10 days (excluding Saturdays, Sundays, and Bank and Public Holidays) beginning with and including the day on which the complaint was received by the person specified under head (*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;

(d) where the investigation of the complaint requires consideration of the patient's sight testing records, the person specified under head (*a*) must inform the patient or person acting on his behalf if the investigation will involve disclosure of information contained in those records to a person other than the contractor, or a director, partner, deputy or employee of the contractor; and

(e) 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' sight testing records.

(8) At each of the premises at which the contractor provides general ophthalmic services he must provide information about the complaints procedure which he operates and give the name (or title) and address of the person specified under paragraph (7)(*a*).

8B.—(1) A contractor shall co-operate with any investigation of a complaint by the Board in accordance with the procedures which it operates in accordance with directions given under Article 17(1) of the Order, whether the investigation follows one under the contractor's complaints procedure or not.

(2) The co-operation required by sub-paragraph (1) includes—

(a) answering questions reasonably put to the contractor by the Board;

(b) providing any information relating to the complaint reasonably required by the 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 Board.

Complaints against ophthalmic medical practitioners

8C.—(1) A contractor who, being an ophthalmic medical practitioner, also provides general medical services shall secure that the practice based complaints procedure he has established and operates in accordance with paragraph 11B of the doctor's terms of service applies in relation to any matter reasonably connected with his provision of general ophthalmic services as it applies as respects his provision of general medical services.

(2) Accordingly, paragraph 11C of those terms of service also applies in relation to complaints about such matters.".

(7) In paragraph 11 (use of disqualified name), in sub-paragraph (1), at the end there shall be inserted "by virtue of paragraph 5, 7, 8A(3), 8B(1) or 8B(2) of Schedule 11 to the Order.".

Sealed with the Official Seal of the Department of Health and Social Services on

L.S.

Joan Dixon
29th March 1996. Assistant Secretary

Sealed with the Official Seal of the Department of Finance and Personnel on

L.S.

J. G. Sullivan
29th March 1996 Assistant Secretary

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These regulations further amend the General Ophthalmic Services Regulations (Northern Ireland) 1986 ("the principal regulations") to make provision relating to ophthalmic medical practitioners and ophthalmic opticians ("contractors") who have been suspended from the provision of general ophthalmic services by the Tribunal or whom the Tribunal has declared not fit to be engaged in any capacity in the provision of those services.

The regulations also provide for payments to suspended contractors.

The regulations amend Schedule 1 to the principal regulations (contractors' terms of service) as follows:—

1. To prevent the employment, as an assistant or deputy, of any contractor suspended by the Tribunal who is also subject to a declaration by the Tribunal that he is not fit to be engaged in any capacity in the provision of general ophthalmic services;

2. To stipulate that a contractor must display, at each place where he provides general ophthalmic services a notice and leaflet (to be supplied or approved by the Central Services Agency) giving patients information about the optical voucher scheme whereby eligible persons can obtain help, by means of a voucher system, with costs incurred in connection with the supply, replacement and repair of optical appliances.

3. To require a contractor to establish and operate a system to deal with complaints. There is provision about who may complain, what they may complain about and how such complaints are to be dealt with and the publicity which a contractor must give to his complaints procedure. A contractor is also required to co-operate with complaints procedures which are operated by Boards.

The regulations also make other minor amendments.

A copy of the statement referred to in regulation 7 (which inserts a new regulation 14A into the principal regulations) can be obtained free of charge from the Central Services Agency, 25 Adelaide Street, BT12 8FH.

Paragraph 8E of Schedule 11 to the 1972 Order, one of the enabling provisions under which these regulations are made, is inserted by Article 4 of the Health and Personal Social Services (Amendment) (Northern Ireland) Order 1995 ("the 1995 Order"). The provisions of the 1995 Order, which amend the 1972 Order in relation to opticians and ophthalmic medical practitioners, are brought into operation on 29th March 1996 by virtue of the Health and Personal Social Services (Amendment) (1995 Order) (Commencement No. 2) Order (Northern Ireland) 1996 (S.R. 1996 No. 123 (C. 6)).

STATUTORY RULES OF NORTHERN IRELAND

1996 No. 131

HEALTH AND PERSONAL SOCIAL SERVICES

The Health and Personal Social Services (Fund-holding Practices) Amendment Regulations (Northern Ireland) 1996

Made - - - -	*29th March 1996*
Coming into operation	*1st April 1996*

The Department of Health and Social Services in exercise of the powers conferred on it by Articles 17(2) and (3), 18(4), 19 and 20 of the Health and Personal Social Services (Northern Ireland) Order 1991(**1**) and Article 90(7) of the Health and Personal Social Services (Northern Ireland) Order 1972(**2**) and of all other powers enabling it in that behalf, with the approval of the Department of Finance and Personnel in so far as regulation 15(8) is concerned, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Health and Personal Social Services (Fund-holding Practices) Amendment Regulations (Northern Ireland) 1996 and shall come into operation on 1st April 1996.

(2) In these Regulations, "the principal Regulations" means the Health and Personal Social Services (Fund-holding Practices) Regulations (Northern Ireland) 1993(**3**).

Amendment of regulation 1 of the principal Regulations

2. In regulation 1(2) of the principal Regulations (interpretation)—

(a) after the definition of "fund-holding practice" insert—

> ""list size" means the number of individuals on the list of patients of a medical practitioner who provides general medical services in accordance with arrangements under Article 56 of the principal Order(**4**);"; and

(b) after the definition of "recognised fund-holding practice" insert—

> ""savings" shall be construed in accordance with regulation 21;".

(**1**) S.I.1991/94 (N.I. 1)
(**2**) S.I. 1972/1265 (N.I. 14); Article 90(7) is substituted by S.I. 1991/194 (N.I. 1) Article 22
(**3**) S.R. 1993 No. 142
(**4**) Article 56 is amended by S.I. 1978/1907 (N.I. 26); S.I. 1981/432; S.I. 1986/2229 (N.I. 24); S.I. 1988/2249 (N.I. 24) and S.I. 1991/194 (N.I. 1)

Amendment of regulation 4 of the principal Regulations

3. In regulation 4 of the principal Regulations (grant of recognition as a fund-holding practice)—

(a) in paragraph (2), at the beginning insert "Subject to paragraph (3),"; and

(b) after paragraph (2), insert—

"(3) For the purposes only of the payment and application of the management allowance referred to in regulation 19A, recognition shall take effect on the date on which it was granted.".

Amendment of regulation 8 of the principal Regulations

4. For regulation 8 of the principal Regulations (withdrawal or death of a member of a fund-holding practice), substitute the following regulation—

"**8.**—(1) Where a member of a fund-holding practice retires or dies, the recognition of the remaining members of the fund-holding practice shall not be affected provided that the conditions specified in Schedule 2 in relation to the practice in question continue to be fulfilled in relation to the practice.

(2) Where a member of a fund-holding practice withdraws from the fund-holding practice in circumstances other than death or retirement—

(a) he shall give notice to the Health and Social Services Board stating the date on which the withdrawal is to take or took effect; and

(b) the Health and Social Services Board shall forward the notice to the Department and paragraphs (3) to (6) shall apply.

(3) Where the remaining members of the fund-holding practice or one or more members who withdrew from the fund-holding practice wish to continue as a recognised fund-holding practice, they shall apply to the Department for recognition as a fund-holding practice in accordance with regulation 2; and in those circumstances—

(a) regulations 3 and 4(2) shall not apply in the case of such an application;

(b) where all the medical practitioners making the application have been members of a recognised fund-holding practice for at least one year, paragraph 1 of Schedule 1 shall not apply;

(c) subject to regulation 13, they shall continue to be recognised or, as the case may be, shall be treated as recognised until the application is determined;

(d) if, as a result, there is more than one fund-holding practice treated as though it were recognised by virtue of sub-paragraph (*c*), the allotted sum payable in respect of the current financial year and, subject to paragraph (5), any accumulated savings of the original practice shall be divided between them in proportions calculated by reference to the respective list sizes of the members of the practices; and

(e) where any application under this paragraph is refused, regulation 15 shall apply as if the refusal to grant recognition had been a removal of recognition.

(4) A member of a fund-holding practice who is a partner of another member of the practice may not withdraw from the fund-holding practice unless he also ceases to be a partner of that other member.

(5) Where a member of a fund-holding practice (in this paragraph and in paragraph (6) referred to as "the former member") withdraws from the practice and—

(a) he continues to be included in the medical list of the Health and Social Services Board, and

(b) on the date on which the withdrawal takes effect, there are savings in the fund-holding account,

such proportion of those savings as the remaining members of the fund-holding practice and the former member may agree (or where they do not agree, a proportion calculated by reference to their respective list sizes) shall be transferred to the Health and Social Services Board.

(6) The Health and Social Services Board shall apply that part of the savings transferred to it as mentioned in paragraph (5) in accordance with regulation 21 for such purposes as the former member of the fund-holding practice may require, until such time as he ceases to retain responsibility for at least half the patients who were on his list at the time of his withdrawal from the fund-holding practice.".

Amendment of regulation 10 of the principal Regulations

5. In regulation 10 of the principal Regulations (consequences of renunciation of recognition)—

(a) after paragraph (2) insert—

"(2A) Where, on the date when the renunciation of recognition takes effect, the members of the fund-holding practice have any outstanding liabilities and the entire allotted sum payable in respect of the financial year ending on that date has been spent, such liabilities shall be met from any accumulated savings.";

(b) for paragraph (4) substitute the following—

"(4) Subject to paragraph 4(A), if, after a notice under paragraph (3) has been sent, part of the allotted sum remains in the fund-holding account, the former fund-holding practice shall apply that sum as specified in regulation 21 for the benefit of the patients of the members of the former fund-holding practice in such proportions as the members of the former fund-holding practice may agree or, where they do not agree, in proportion to the respective list sizes of the members of the former fund-holding practice.";

(c) after paragraph (4) insert—

"(4A) Where recognition is renounced before it has taken effect in accordance with regulation 4(2), the former fund-holding practice shall pay any part of the management allowance mentioned in regulation 19A which remains in the fund-holding account to the Health and Social Services Board.".

Amendment of regulation 16 of the principal Regulations

6. In regulation 16 of the principal Regulations (payment for drugs, medicines and listed appliances)—

(a) for paragraph (2)(*b*) substitute—

"(b) an amount representing a percentage of the total basic ingredient cost of the drugs, medicines or listed appliances, which percentage the Agency, in its calculation of the remuneration payable to pharmacists in accordance with the Drug Tariff, has determined is the total discount value applicable to the drugs, medicines or listed appliances supplied in the first half of the previous financial year, divided by the total basic ingredient cost of the drugs, medicines or listed appliances supplied in that period multiplied by 100; plus";

(b) for paragraph (2)(*c*) substitute—

"(c) an amount representing a percentage of the total basic ingredient cost of the drugs, medicines or listed appliances, which percentage the Agency, in its calculation of the remuneration payable to pharmacists in accordance with the Drug Tariff, has determined is the total cost of the containers or packaging in which the drugs, medicines or listed appliances were supplied in the first half of the previous financial year divided by the total basic ingredient cost of the drugs, medicines or listed appliances supplied in that period multiplied by 100;";

(c) delete paragraphs (5) and (6);

(d) in paragraph (8), after the definition of "manufacturer's list price" insert—

""Northern Ireland Central Services Agency" means the agency constituted by Article 26 of the Health and Personal Social Services (Northern Ireland) Order 1972.".

Amendment of regulation 18 of the principal Regulations

7. In regulation 18 of the principal Regulations (limit on provision of goods and services), substitute "£6,000" for "£5,000".

Amendment of regulation 19 of the principal Regulations

8. For regulation 19 of the principal Regulations (payment of salaries), substitute the following regulation—

"**Payments to staff**

19.—(1) Subject to paragraphs (2), (3) and (4), the members of a fund-holding practice may apply the allotted sum for the purpose of making payments to those employees of members of the practice who are employed—

(a) to provide treatment to the patients of the members of the practice; or

(b) in connection with the management or the administration of the practice.

(2) The payments referred to in paragraph (1) may include only those payments which could be made by a Health and Social Services Board in accordance with paragraph 52 of the Statement published in accordance with regulation 32 of the Health and Personal Social Services (General Medical and Pharmaceutical Services) Regulations (Northern Ireland) 1973(**5**) as it has effect on the date these Regulations are made.

(3) Where a Health and Social Services Board has, before the date on which the members of a fund-holding practice were granted recognition as a fund-holding practice, reimbursed a member of the practice in respect of a proportion of the expenses of employing a member of his staff, then the members of the fund-holding practice may apply the allotted sum for the purpose of paying, in respect of periods after that date, only that proportion of the same expenses of employing that person or of any other person employed in place of that employee to perform substantially the same functions.

(4) The members of a fund-holding practice may apply the allotted sum for the purpose of paying fees to persons for providing, on the practice premises, services which are necessary for the proper treatment of individuals who are on the lists of patients of the members of the practice.

(**5**) S.R. & O. (N.I.) 1973 No. 421; relevant amending regulations are S.R. 1975 No. 180, S.R. 1989 No. 454 and S.R. 1995 No. 487

(5) The members of a fund-holding practice shall not apply the allotted sum for the purpose of employing or engaging the services of a medical practitioner except—

(a) for the purpose of providing to individuals who are on the lists of patients of members of the practice such services as are included in the list mentioned in regulation 17(2); or

(b) as mentioned in regulation 19A(7)(*c*).

(6) The members of a fund-holding practice may apply the allotted sum for the purpose of training employees of members of the practice, provided that the training will be beneficial to the patients of the members of the practice and its cost represents value for money.".

Payment for management expenses

9. After regulation 19 (payments to staff), insert the following regulation—

"**Payment for management expenses**

19A.—(1) Where the allotted sum is determined wholly or partly by reference to the management expenses of the members of the fund-holding practice, the amount so determined (in this regulation referred to as the "management allowance") may be applied in accordance with this regulation.

(2) The amount applied out of the allotted sum for the purposes of management expenses shall not exceed the management allowance.

(3) Where the members of the practice propose to spend any part of the management allowance in accordance with sub-paragraph (7)(*d*) for the purpose of buying computers, or sub-paragraph (7)(*i*), they shall first obtain the written consent of the Health and Social Services Board.

(4) The Health and Social Services Board shall consent to the fund-holding practice's proposals to buy computers provided it is satisfied that the equipment proposed is suitable for the needs of the fund-holding practice and represents value for money.

(5) The Health and Social Services Board shall consent to the fund-holding practice's proposals to spend its management allowance on rent provided it is satisfied that existing premises are being properly used, the proposed office accommodation is suitable and that the proposed rent represents value for money.

(6) Where the cost of a computer is less than that agreed with the Health and Social Services Board, any savings shall be spent only in accordance with regulation 21.

(7) For the purposes of this regulation, "management expenses" are—

(a) the cost of employing staff in connection with the management of the allotted sum;

(b) the cost of training members of the practice or their staff in connection with the management of the allotted sum;

(c) the cost, not exceeding such sum as the Department, in its determination of the allotted sum payable to the members of the fund-holding practice under Article 18(1) of the Order, determined was expected to be required to meet the cost of either—

(i) employing or engaging (as an assistant or deputy) a registered medical practitioner to provide general medical services to the patients of a member of the practice who is engaged in the management of the allotted sum, or

(ii) paying a member of the practice for his time in connection with the management of the allotted sum;

(d) the cost of acquiring office equipment (including computers);

(e) the upkeep and running costs of office equipment required for the purposes of the management of the allotted sum, including computer hardware and software running costs;

(f) the cost of specialist advice required in connection with the management of the allotted sum;

(g) the cost of minor internal modifications to any premises from which the members of the practice carry on their practice which are required to provide office accommodation for staff employed in connection with the management of the allotted sum;

(h) office expenses, including postage, stationery and telephone charges, which are necessarily incurred in connection with the management of the allotted sum; and

(i) the rent payable on office accommodation used by staff employed in connection with the management of the allotted sum.".

Amendment of regulation 20 of the principal Regulations

10. For regulation 20 of the principal Regulations (payments to a member of a fund-holding practice), substitute the following regulation—

"**20.**—(1) The members of a fund-holding practice may apply the allotted sum for the purpose of paying a medical practitioner who is a member of the practice but only—

(a) in accordance with an arrangement made in pursuance of paragraph (2);

(b) pursuant to regulation 19A(7)(*c*)(ii); or

(c) pursuant to regulation 21(2)(*d*) or (*e*).

(2) Subject to paragraphs (3) and (4), the members of a fund-holding practice may, with the written consent of the Health and Social Services Board, enter into an arrangement with a medical practitioner who is a member of the practice for the provision by that medical practitioner of services which are included in Part 2 of the list mentioned in regulation 17(2) to patients who are on the lists of patients of members of the practice.

(3) The Health and Social Services Board shall not consent to an arrangement made under paragraph (2) unless it is satisfied that—

(a) the services to be provided are included in Part 2 of the list mentioned in regulation 17(2);

(b) the medical practitioner with whom the arrangement is to be made to provide those services is suitably qualified, competent and experienced;

(c) the facilities, including premises, for the provision of those services are suitable; and

(d) the payments which it is proposed shall be made in respect of the provision of those services—

(i) are reasonable,

(ii) represent value for money, and

(iii) are to be made directly to the medical practitioner who provides the services or to the partnership of which he is a member and not to any third party.

(4) Where the members of a practice have obtained the consent of the Health and Social Services Board under paragraph (2) they shall give notice to that Health and Social Services Board of any change in the matters specified in paragraph (3).

(5) Where a Health and Social Services Board receives notice as mentioned in paragraph (4), it shall either confirm or withdraw its consent.".

Amendment of regulation 21 of the principal Regulations

11.—(1) For regulation 21 of the principal Regulations (savings from the allotted sum), substitute the following regulation—

"**21.**—(1) The members of a fund-holding practice may discharge their obligations under regulations 16 and 17 and exercise their powers under regulations 19, 19A and 20 in such a way as to take into account any benefit to individuals on the lists of patients of the members of the practice which, in their opinion, would be derived from making savings to be applied in accordance with the following provisions of this regulation; and regulations 16, 17, 19, 19A and 20 shall be construed accordingly.

(2) Subject to paragraph (3), where the accounts for a financial year of members of a fund-holding practice have been audited, the members of a fund-holding practice may, within the period of four years after the end of that financial year, continue to apply any part of the allotted sum paid to them in respect of that financial year for the purposes specified in regulations 16, 17, 19 and 20 and, in addition, with the written consent of the Health and Social Services Board, for any one or more of the following purposes—

(a) the purchase of material or equipment which—

(i) can be used for the treatment of patients of the members of the practice, or

(ii) enhances the comfort or convenience of patients of the members of the practice, or

(iii) enables the practice to be managed more effectively and efficiently; or

(b) the purchase of material or equipment relating to health education; or

(c) in relation to any premises from which the members of the practice carry on their practice—

(i) improvements to the premises, including alterations to or decoration of the premises and the purchase of furniture and furnishings, and

(ii) building an extension provided that no acquisition of land is involved; or

(d) the purchase of services in connection with an audit of clinical practice which relates to any of the goods and services which are included in the list of goods and services mentioned in regulation 17(2); or

(e) commissioning research which relates to any of the goods and services included in the list mentioned in regulation 17(2); or

(f) training for members of the fund-holding practice which is required in connection with their membership of the fund-holding practice.

(3) The Health and Social Services Board shall consent to the application of any part of an allotted sum for any of the purposes specified in paragraph (2)(*a*) to (*f*) if it is satisfied that the expenditure would—

(a) be for the benefit of the patients of the members of the practice; and

(b) represent value for money.

(4) Where the Health and Social Services Board refuses its consent under paragraph (3), it shall send to the members of the fund-holding practice a notice stating the reasons for its refusal.".

Amendment of regulation 22 of the principal Regulations

12. In regulation 22(1) of the principal Regulations (recovery of misapplied amounts), after "19," insert "19A,".

Amendment of Part VI of the principal Regulations

13. In Part VI (Miscellaneous) of the principal Regulations, after regulation 23, insert the following regulation—

"**Transfer of functions**

24.—(1) With effect from 1st April 1996, the function of the Department under Article 18(1) of the Order of being liable to pay a sum to the members of a fund-holding practice shall become the function of a Health and Social Services Board.

(2) The Health and Social Services Board which is to exercise the function referred to in paragraph (1) in relation to the members of any existing fund-holding practice is the relevant Health and Social Services Board.

(3) Article 18 of the Order shall have effect subject to the following modification—

(a) in subsection (1), for the word "Department" where it first occurs substitute the words "Health and Social Services Board".".

Amendment of Schedule 1 to the principal Regulations

14.—(1) Schedule 1 to the principal Regulations (conditions for obtaining recognition as a fund-holding practice) is amended as follows.

(2) In paragraph 1 for "7,000" in each place where it occurs substitute "5,000".

(3) In paragraph 1 after "recognition would take effect" insert "in accordance with regulation 4(2)".

(4) Paragraph 3 is omitted.

(5) For paragraph 6 substitute—

"(6) Where the members of the practice are not partners in a single partnership, the members of the practice have entered into an agreement, approved by the Health and Social Services Board, which—

(a) provides that any act of a member of the practice with respect to the allotted sum binds the other members of the practice; and

(b) provides for the determination of how much of the allotted sum, including any savings, is to be allocated to each member of the practice.".

Amendment of Schedule 2 to the principal Regulations

15.—(1) Schedule 2 to the principal Regulations (conditions for continuing recognition as a fund-holding practice) is amended as follows.

(2) For paragraph 1 substitute—

"**1.** For the first year following 1st April on which recognition as a fund-holding practice took effect in accordance with regulation 4(2), there are at least 5,000 patients on the lists of patients of the members of the practice.".

(3) Paragraph 2 is omitted.

(4) In paragraph 4 after "19," insert "19A,".

(5) For paragraph 5 substitute—

"**5.** The members of the practice are, and in the opinion of the Department will continue to be, capable of managing the allotted sum effectively and efficiently.".

(6) In paragraph 10—

(a) for "before the end of each month," substitute "within six weeks following the end of each month,";

(b) for "the preceding" substitute "that";

(c) in sub-paragraph (ii) for "preceding month," substitute "month in question,".

(7) After paragraph 10 insert—

"**10A.** The members of the practice send to the Health and Social Services Board—

(a) before the beginning of each financial year, a practice plan outlining how the practice proposes to spend its allotted sum; and

(b) by 30th June in each year, an annual report summarising how its allotted sum has been spent in the most recent financial year.".

(8) In paragraph 11 for "within six weeks of the end of the financial year" substitute "within two months of the end of the financial year".

(9) After paragraph 12 insert—

"**13.** The members of a fund-holding practice shall secure that the procedure to investigate complaints established and operated under paragraph 11B of Schedule 1 to the Health and Personal Social Services (General Medical and Pharmaceutical Services) Regulations (Northern Ireland) 1973(**6**) applies in relation to complaints about their use of the allotted sum and they shall cooperate as required by paragraph 11C of those terms of service with the investigation of such complaints by Health and Social Services Boards.".

Revocation of Schedule 3 to the principal Regulations

16. Schedule 3 to the principal Regulations (services in respect of which a member of a fund-holding practice may receive payment) is hereby revoked.

Sealed with the Official Seal of the Department of Health and Social Services on

29th March 1996.

J. Dixon
Assistant Secretary

(**6**) Paragraphs 11B and 11C are inserted by S.R. 1996 No. 136

The Department of Finance and Personnel hereby approves the amendment to paragraph 11 of Schedule 2 as contained in regulation 15(8).
Sealed with the Official Seal of the Department of Finance and Personnel on

29th March 1996.

C. P. Moore
Assistant Secretary

EXPLANATORY NOTE

(This note is not part of the Regulations).

These Regulations amend the Health and Personal Social Services (Fund-holding Practices) Regulations (Northern Ireland) 1993, which regulate the recognition and operation of fund-holding practices.

Regulation 4 amends regulation 8 of the principal Regulations to provide that where a member of a fund-holding practice withdraws from the practice, a part of any savings accumulated by the fund-holding practice may be applied by the Health and Social Services Board for the benefit of his patients.

Regulation 5 amends regulation 10 of the principal Regulations to require a former fund-holding practice to apply any accumulated savings to discharge its outstanding liabilities. It also provides that where such liabilities have been discharged and any money remains in the fund-holding account, the former fund-holding practice shall apply that money as if it were savings.

Regulation 7 amends regulation 18 of the principal Regulations to increase from £5,000 to £6,000 the amount which a fund-holding practice may spend on the provision of goods and services to any one individual in any financial year.

Regulation 8 amends regulation 19 of the principal Regulations to make it clear that the allotted sum can be used for employment costs other than salaries. It can be used for the same costs which Health and Social Services Boards can pay to doctors in connection with the provision of general medical services. These are set out in the Statement referred to in regulation 19(2).

Regulation 9 provides for the payment of a management allowance to be spent on certain management expenses.

Regulation 10 amends regulation 20 of the principal Regulations to extend the purposes for which members of a fund-holding practice may make payments to themselves out of their allotted sum.

Regulation 11 amends regulation 21 of the principal Regulations to extend the purposes on which a fund-holding practice may spend savings and introduces a requirement that the Health and Social Services Board consent to such expenditure.

Regulation 13 provides for the transfer to the Health and Social Services Boards of the Department's function under Article 18(1) of the 1991 Order of being liable to pay a sum to the members of a fund-holding practice.

Regulations 14 and 15 amend the Schedules to the principal Regulations to reduce the list size requirement for recognition as a fund-holding practice from 7,000 to 5,000, and to remove the requirement that a fund-holding practice may not include two members who practise in partnerships whose list size exceeds 7,000. Schedule 2 to the principal Regulations is also amended to require the members of a fund-holding practice to send Health and Social Services Boards information about proposed and past expenditure of their allotted sums. Schedule 3 to the principal Regulations is revoked.

The Regulations also make a number of amendments which are minor in nature or are consequential drafting amendments.

HSS(GEN1) 1/96

Management Executive

Trusts & Human Resources Directorate

To: The General Manager/Chief Executive of each Health and Social Services Board, the Chief Executive of each HSS Trust, the Chief Executive of each Special Agency and the Human Resources Director of each HSS Board, Trust and Agency

Our Ref: BP 3050/95

Date: 12 February 1996

Dear Colleague

GUIDANCE FOR STAFF ON RELATIONS WITH THE PUBLIC AND THE MEDIA

1. In line with a document issued earlier throughout the Health Service in Great Britain I now enclose a copy of the advice *"Guidance for staff on relations with the public and the media"*. I should be grateful if you would please ensure that your Chairman and Board, managers and all your staff are made aware of the guidance and are able to have access to a copy.

2. It is important that we encourage a climate of openness and dialogue within the HPSS where the free expression by staff of their concerns are welcomed by their managers as a contribution towards improving services. However, this must be done reasonably and with proper regard to principles of confidentiality, which the guidance explains. The guidance provides a framework within which local procedures to resolve differences can be developed. It is important that managers are able to address these issues locally, and develop mechanisms for dealing with staff concerns appropriate to local circumstances.

3. If cases can be handled in accordance with the principles laid out in the guidance, I believe that members of staff should be able to have their concerns effectively resolved without the need to go outside the HPSS. I am sure that most people will regard the guidance as a reasonable and sensible way to resolve issues of concern.

4. Please address any enquiries to Mr T McNeill, Trusts and Human Resources Directorate, Room D4.27, Castle Buildings, Upper Newtownards Road, Belfast BT4 3SL.
Telephone: [redacted]

Distribution 7/2/96 (McGomley)
Gamls
Executive Directors
Steve Lindsay
Ivan Thompson
ISM - McGomley
Registry

Yours sincerely

J HUNTER
Chief Executive

[redacted] [redacted]

GUIDANCE FOR STAFF ON RELATIONS WITH THE PUBLIC AND THE MEDIA

TRUSTS AND HUMAN RESOURCES DIRECTORATE

[redacted]

[redacted]

Guidance for staff on relations with the public and the media

Introduction

1. This guidance sets out the rights and responsibilities of staff when raising issues of concern about health and personal social services matters. The guidance does not affect existing guidance on statutory complaints procedures and it does not change or replace any nationally agreed terms and conditions of employment which give particular groups of employees freedom to speak and write.

2. The guidance complements professional or ethical rules, guidelines and codes of conduct on freedom of speech, such as, for example the UKCC Code of Professional Conduct, A Midwife's Code of Practice, and the GMC Guidance on Contractual Arrangements in Health Care. It is not intended to restrict the publication of clinical or scientific research findings or Annual Reports from Directors of Public Health and Directors of Social Services.

Purpose of guidance

3. This guidance aims to make plain that:

   i. Individual members of staff in the HPSS have a right and a duty to raise with their employer any matters of concern they may have about health and personal social service issues concerned with the delivery of care or services to a patient or client in their Board, Trust or Unit.

   ii. Every HPSS manager has a duty to ensure that staff are easily able to express their concerns. Managers must ensure that any staff concerns are dealt with thoroughly and fairly.

   iii. HPSS employers should ensure that local policies and procedures are introduced to allow these rights and duties to be fully and properly met.

   iv. Individual members of staff in the HPSS have an obligation to safeguard all confidential information to which they have access: particularly information about individual patients or clients, which is under all circumstances strictly confidential.

Key principles - putting patients/clients first

4. The HPSS exists to meet the needs of patients and clients. The key principle of this guidance is that their individual interests must be paramount. Of course consultants have ultimate responsibility for the care of patients, but all HPSS employees have a duty to draw to the attention of their managers any matter they consider to be damaging to the interests of a patient or client and to put forward suggestions which may improve their care. In the case of a mentally disordered patient or client who may or may not be detained under the Mental Health (NI) Order 1986, staff can also raise concerns with the Mental Health Commission for Northern Ireland.

[redacted] [redacted]

5. So the normal working culture of the HPSS should foster openness. Staff should be encouraged freely to contribute their views on all aspects of health and personal social services activities, especially about delivery of care and services to patients or clients. Free expression of these views can contribute to improving services for patients or clients in the future. Managers are therefore expected to ensure that all staff are given every opportunity to make their contribution. Moreover, they must feel that their legitimate views will be welcomed, appreciated and, where appropriate, acted on positively.

6. *Under no circumstances are employees who express their views about health and personal social services issues in accordance with this guidance to be penalised in any way for doing so.*

7. An important principle of this guidance is that it should be for local management in consultation with all staff and local staff representatives to implement it in a way that is appropriate to local circumstances. They will wish to consider how best to promote a culture of openness and dialogue which at the same time upholds patient confidentiality, does not unreasonably undermine confidence in the service and meets the obligations of staff to their employer.

Confidentiality to patients and employers - the responsibilities of staff

8. All staff have a duty of confidentiality to patients and clients. Unauthorised disclosure of personal information about any patient or client will be regarded as a most serious matter which will always warrant disciplinary action. This applies even where a member of staff believes that he or she is acting in the best interests of a patient or client by disclosing personal information.

9. Employees also have an implied duty of confidentiality and loyalty to their employer. Breach of this duty may result in disciplinary action, whether or not there is a clause in their contract of employment expressly addressing the question of confidentiality.

10. The duty of confidence to an employer is not absolute. However, in any case involving disclosure of confidential information, it may be claimed that the disclosure was made in the public interest. Such a justification might, in a disputed case, need to be defended and so should be soundly based. As a matter of prudence then, any employee who is considering making a disclosure of confidential information because they consider it to be in the pubic interest, should first seek specialist advice. This could be, for example, from one of the representative or regulatory organisations mentioned in paragraph 20 et seq.

11. Any explicit confidentiality provision in an individual staff employment contract must be expressed in a way that does not conflict in any way with the principles and advice set out in this guidance.

Establishing local procedures for dealing with staff concerns

12. All HPSS employers should establish procedures locally - after full consultation with staff and local staff representatives - for handling staff concerns about health and

[redacted] [redacted]

personal social services issues, other than those to which the statutory complaints procedures apply, or which fall to established grievance procedures.

13. The local procedures may address in more detail any aspect of this guidance, provided that, in doing so, they do not conflict with the principles and advice set out in it. Procedures should include clear time limits for dealing with staff concerns.

Informal procedures

14. Of course, the aim should always be for staff concerns about health and personal social services issues to be resolved informally - between the individual and his or her line or professional managers. Managers should always:

- take concerns seriously; and
- consider them fully and sympathetically; and
- recognise that raising a concern can be a difficult experience for some staff; and
- seek advice from health care professionals where appropriate.

15. Staff who are not in a formal line management relationship (eg consultants) should discuss their concerns with relevant colleagues and then, if necessary, take them up directly with the General Manager or Chief Executive.

16. Where a staff concern can be acted upon, action should be taken promptly and the member of staff notified quickly of the action taken. Where action is not considered practicable or appropriate, the individual member of staff should be given a prompt and thorough explanation of the reasons for this. They should also be told what further action is available under local procedures.

Formal Procedures - the designated officer

17. Where his informal approach proves ineffective, employers in consultation with staff and local staff representatives should designate a senior officer to whom matters unresolved by immediate line managers could be referred directly by the member of staff concerned. This could, though need not, be the officer designated to receive formal complaints under statutory procedures.

18. In a case where this procedure has been followed and the individual member of staff remains dissatisfied, the matter will need to be referred to the Chairman of the Board or Trust for action.

19. If an issue raised concerns the improper use of public funds then the designated officer should have direct access to the Chairman of the Audit Committee of the Employing Authority.

[redacted] [redacted]

Reference to other bodies

Representative and regulatory organisations

20. All staff must retain the right to consult, seek guidance and support from their professional organisation or trade union, and from statutory bodies such as the United Kingdom Central Council for Nursing, Midwifery and Health Visiting, the General Medical Council and the boards of the Council for Professions Supplementary to Medicine.

21. Managers should encourage staff to consult with representative bodies particularly if an issue seems likely to remain unresolved without reference to the Chairman of the employing body.

The Mental Health Commission for Northern Ireland

22. Where an employee has a concern about the care of a mentally disordered patient or client regardless of whether or not he/she is detained under the Mental Health (NI) Order 1986, he or she may be able to refer the matter to the Mental Health Commission for Northern Ireland, if the concern remains unresolved after pursuing it through local procedures.

The NI Parliamentary Commissioner for Administration and the Commissioner for Complaints

23. All staff should be made aware that the Ombudsman may look into complaints by staff on behalf of a patient, provided that he is satisfied that there is no-one more appropriate, such as an immediate relative, to act on the patient's behalf. Adequate supplies of information leaflets about the Ombudsman's role and the procedures for reference to him should be readily accessible to all staff, as well as patients.

Reference to members of Parliament and the media

24. An employee who has exhausted all the locally established procedures, including reference to the Chairman of the employing body, and who has taken account of advice which may have been given, might wish to consult his or her Member of Parliament in confidence. He or she might also, as a last resort, contemplate the possibility of disclosing his or her concern to the media. Such action, if entered into unjustifiably, could result in disciplinary action and might unreasonably undermine public confidence in the Service.

25. In view of these considerations, any employee contemplating making a disclosure to the media is advised to first seek further specialist guidance from professional or other representative bodies and to discuss matters further with his or her colleagues and, where appropriate, line and professional managers. In the light of the principles set out in this guidance, however, and the fact that local procedures will have been determined in consultation with local staff and staff representatives, it is expected that proper mechanisms will exist to ensure that staff concerns can be addressed and dealt with without reference to the media.

[redacted] [redacted]

Complaints

Listening ……..…Acting ……. Improving ……

THE HPSS COMPLAINTS PROCEDURE

GUIDANCE

ON HANDLING

HPSS COMPLAINTS: HOSPITAL AND

COMMUNITY HEALTH AND SOCIAL SERVICES

April 2000

CONTENTS

INTRODUCTION

The HPSS does all that it can to make sure its patients and clients are treated properly and promptly. But sometimes things can go wrong. The complaints procedure set out in this guidance is intended to ensure that patients and clients who are dissatisfied with the service or treatment provided have their concerns dealt with fully.

The key objectives of the complaints procedure include – ease of access, with rapid, open processes; an approach that is fair, honest, and aims to resolve the problem and satisfy the concerns of complainants; and learning from complaints. It aims to provide a quick but thorough response that answers the concerns raised. Where possible, this is done by those directly involved in the care of the individual concerned. The guidance should be read **in conjunction with** the 'Guidance on Implementation of the HPSS Complaints Procedure', issued March 1996.

This guidance deals with complaints about hospital and community health and social services. The target audience is those dealing directly with the complaints process at Board and Trust levels. It is not designed to be all-embracing and Boards and Trusts are expected to operate the complaints procedure within the spirit of the Guidance, while adhering to the legal requirements of the appropriate Directions and Regulations.

The guidance issued to general medical and dental practitioners, pharmacists and opticians in 1996 remains current.

Complaints in relation to the provision of personnel social services for children are not incorporated within the HPSS complaints procedure and should be handled through the procedures put in place under the Children's (NI) Order 1995. See paragraph 4.21.

SECTION 1

LOCAL RESOLUTION

- What is a Complaint?
- Who Can Complain?
- Patient/Client Consent
- Role of Front-line Staff and their Manager
- Time Limits for making Complaints
- Immediate Response
- Responding to Complaints
- Complaints Officer
- Concluding Local Resolution
- Summary of Target Timescales
- Summary: Local Resolution

- Annex 1A Role of Health and Social Services Councils
- Annex 1B Advocacy
- Annex 1C Conciliation
- Annex 1D Patients with Mental Health Problems

SECTION ONE – LOCAL RESOLUTION

What is a Complaint?

1.1 A complaint is ***"an expression of dissatisfaction"***. Patients/clients may not always use the word "complaint". They may offer a comment or suggestion that can be extremely helpful. It is important to recognise those comments which are really complaints and need to be handled as such.

1.2 The aim should be to resolve most complaints at local level. Each HPSS body dealing with the public must establish and publicise its complaints procedure. The first stage of that procedure is local resolution.

1.3 The objective of local resolution is to provide the fullest opportunity for investigation and resolution of the complaint, as quickly as is sensible in the circumstances, aiming to satisfy the complainant while being scrupulously fair to staff.

1.4 Local resolution should not be seen as a 'run-up' to independent review: its primary purpose is to give a comprehensive response that fully addresses the complainant's concerns. The process should provide different ways of responding to the complainant. **Rigid bureaucratic and legalistic approaches should be avoided at all stages of the procedure, particularly during local resolution.**

Who can complain?

1.5 Complaints may be made by:

- a patient or client
- former patients, clients or visitors using HPSS services and facilities;
- someone acting on behalf of existing or former patients/clients providing they have obtained the patient's/client's consent;
- any appropriate person in respect of a patient/client who has died, e.g. the next of kin or their agent.

Patient/Client Consent

1.6 Complaints by a third party should be made with the written consent of the affected individual. Exceptions are if that individual is a child, is incapable, (for example, rendered unconscious due to an accident, judgement impaired by learning disability, mental illness, dementia, or brain injury, serious communication problems) or where the subject of the complaint is deceased.

1.7 Where a person is unable to act for him/herself, his/her consent shall not be required. Where a complaint is made on behalf of an individual, it is good

practice to explain to the person making the complaint that information from an individual's health and social services records may need to be disclosed to those investigating the complaint[1].

1.8 A person with parental responsibilities (e.g. a parent or guardian) can pursue a complaint on behalf of a child. Where the child is of sufficient maturity and understanding[2], they can either pursue a complaint themselves or be expected to consent to the complaint being pursued on their behalf by a parent or other third party. The position should be explained to the child in simple language, with sensitivity given to the child's condition. It may also be a good practice to obtain the child's consent in writing to information being released, where this is possible.

1.9 The complaints officer may refuse to deal with a complaint if he/she decides that the person making the complaint – on behalf of a patient/client who is unable to act for him/herself, or in respect of a patient who has died – is not a suitable person to pursue the complaint. The complaints officer can then arrange for a suitable/acceptable person to act with respect to the complaint. The refusal to deal with a complaint should only be used in **exceptional** circumstances and should not be used indiscriminately. The situation where a person may be deemed to be unsuitable to represent an incapacitated person might include:

- where the person has a serious conflict of interest; or
- where the person has no legitimate interest in the welfare of the patient/client.

1.10 Staff handling a complaint, which is clearly arising from a patient's mental disorder, should deal with it in a way that does not leave the patient feeling disregarded. It should be remembered that to the patient concerned their complaint is real and valid and that any distress they are experiencing could be increased if he/she believes that their concerns are being minimised by staff. Further guidance is set out in Annex 1D.

Role of Front-line Staff and their Manager

1.11 Complaints may be made to any member of staff, for example receptionists, auxiliaries, nurses and doctors. Staff need to be trained and empowered to deal with complaints on the spot. Front-line staff should seek assistance and advice

[1] Access to Health Records (Northern Ireland) Order 1993
[2] The Protection and Use of Patient and Client Information – Children and young people, paragraph 4.10, HSSE, March 1996

from senior staff as necessary. Senior staff must also ensure that there are procedures in place to use the information gained from these complaints to improve service quality.

1.12 The first responsibility of a recipient of a complaint is to ensure that, where applicable, the patient's/client's immediate health and social care needs are being met before taking action on the complaint. Thereafter, the complainant's concerns should be dealt with rapidly and in an informal, sensitive and confidential manner.

1.13 Some complainants may prefer to make their initial complaint to someone who has not been involved in the care provided. In these circumstances, the complaint should be dealt with by an appropriate senior officer, a patient liaison officer, or the complaints officer. The complaints officer is also available to support and advise front-line staff on the handling of complaints.

1.14 Where a complainant raises a clinical matter, the response should be discussed with the clinician or other relevant professional officer concerned.

Time Limits for making Complaints

1.15 A complaint should be made as soon as possible after the action giving rise to it, normally within **six months** of the event.

1.16 If a complainant was not aware that there was cause for complaint, the complaint should normally be made within **six months** of their becoming aware of the cause for complaint, or **twelve months** of the date of the event, whichever is the earlier.

1.17 There is discretion for the complaints officer to extend this time limit where it would be unreasonable in the circumstances of a particular case for the complaint to have been made earlier and where it is still possible to investigate the facts of the case. This discretion should be used with sensitivity.

1.18 If the discretionary extension of the time limit is rejected by the complaints officer then the procedure will be as follows:-

- the complainant may complain about the refusal to exercise discretion to waive the time limits;
- if the refusal is maintained, the complainant may request the convenor to consider setting up a panel for Independent Review of the complaint about refusal to waive the time limit: the normal requirements as to convening decisions will apply – including a time limit for a convening request;
- the convenor may then decide to take no further action; or
- to refer the complaint back for Local Resolution; or
- to set up a panel to consider a complaint.

1.19 If the convenor decides to refer the complaint about the time limit back to the Trust/Board, the Complaints Officer – or Chief Executive, if it is referred specifically to him/her – should review very carefully the decision not to accept the complaint in the light of the convenor's conclusion that further action through Local Resolution is possible.

1.20 If the Convenor rejects the request, then the complainant has the right to complain to the Commissioner for Complaints.

Immediate Response

1.21 In many cases, complaints are made orally. It is important that front-line staff are trained and confident in dealing with comments and concerns expressed by patients, clients and their relatives. Staff should encourage complainants to speak openly and freely about their concerns and reassure them whatever they say will be treated with appropriate confidence and sensitivity. It may be appropriate for the entire process of local resolution to be conducted orally. The complaints officer, or a patient liaison officer, should be available to support staff in the local resolution of concerns or complaints.

1.22 All oral complaints should receive an honest and objective full response. The response should:

- show that the complainant's concerns have been considered;
- offer an explanation and an apology, if appropriate;
- give an explanation of what further steps can be taken in the complaints process if not satisfied; and
- give an indication of remedial action that is to follow.

1.23 Best practice suggests that local resolution should normally be rounded off with a letter. If it is considered that a complaint can be resolved by discussion, then there should be a clear record made of that discussion. If a letter is considered appropriate, it should confirm the oral response given. Trusts should endeavour to issue this letter within five working days from receipt of the complaint. See Summary of Target Timescale.

1.24 **The complainant should be asked or assisted to put the complaint in writing, if he/she wishes to pursue the matter after consideration of the oral complaint, by the complaints officer or other relevant person.** Consideration should be given to collecting data on oral complaints, even when they are not confirmed in writing, so that lessons can be learnt which may help to improve service delivery.

Responding to Complaints

1.25 A written complaint should be acknowledged within **two working days.** This includes complaints that are received orally or by telephone which are considered sufficiently serious or difficult to resolve that they need to be recorded in writing.

1.26 The acknowledgement letter should always thank the complainant for drawing the matter to the attention of the Trust. For example:

- *"Thank you for bringing this matter to my attention. I understand that you are concerned about …".*
- *"Further to our telephone conversation of … I would like to thank you for bringing this matter relating to … to my attention".*

1.27 There should be a statement expressing sympathy or concern over the incident. This is a statement of common courtesy, not an admission of guilt. For example:

- *"I regret the discomfort experienced …."*
- *"I regret the anxiety this incident has caused you and your family".*

1.28 An outline of the proposed course of action to be taken or of investigations being conducted should be included.

1.29 A full investigation of a complaint should normally be completed **within twenty working days**. The complainant must be informed of any delay where this target is not being met.

1.30 All written complaints should receive a written response that is honest, factual, and addresses all the issues raised.

Complaints Officer

1.31 The Trust must designate a 'complaints officer', who is readily accessible to the public and front-line staff. The complaints officer's role is to oversee the complaints procedure on behalf of the Chief Executive to whom he/she is accountable.

1.32 The complaints officer should:

- deal with complaints referred by front-line staff;
- provide support and help staff to respond to complaints;
- have access to all the relevant records (including personal medical records) which are essential for the investigation of any complaint referred to him/her;
- take account of any corroborative evidence available relating to the complaint, e.g. witness to a particular event;

- identify training needs associated with the complaints procedure and ensures that these are met[3];
- be aware of the availability of, and advise complainants about, the support available from the health and social services councils (see Annex 1A) or through advocacy (see Annex 1B);
- be aware of the role and availability of conciliation services (see Annex 1C);
- be aware of the role and availability of the Medical and Dental Defence Union to assist staff.

Concluding Local Resolution

1.33 The Chief Executive should 'sign-off' all formal complaints. However, there may be some circumstances (for example a major Trust with multiple sites) where, in the interests of a speedy reply a designated executive director of the Trust undertakes this task on the Chief Executive's behalf. In such circumstances, the arrangements for clinical governance must ensure that the Chief Executive maintains an overview of complainants' concerns and the organisation's ability to deal with those concerns.

1.34 The response should:

- address the concerns expressed by the complainant and show that each element has been fully and fairly investigated;
- include an apology where things have gone wrong;
- report the action taken to prevent a recurrence;
- inform the complainant of their right to seek advice from the health and social services councils;
- include the right to request an independent review of the complaint within **28 days** of the date of the letter if the complainant remains dissatisfied with any aspect of the response, and ask the complainant to clearly state the points on which he/she remains dissatisfied.

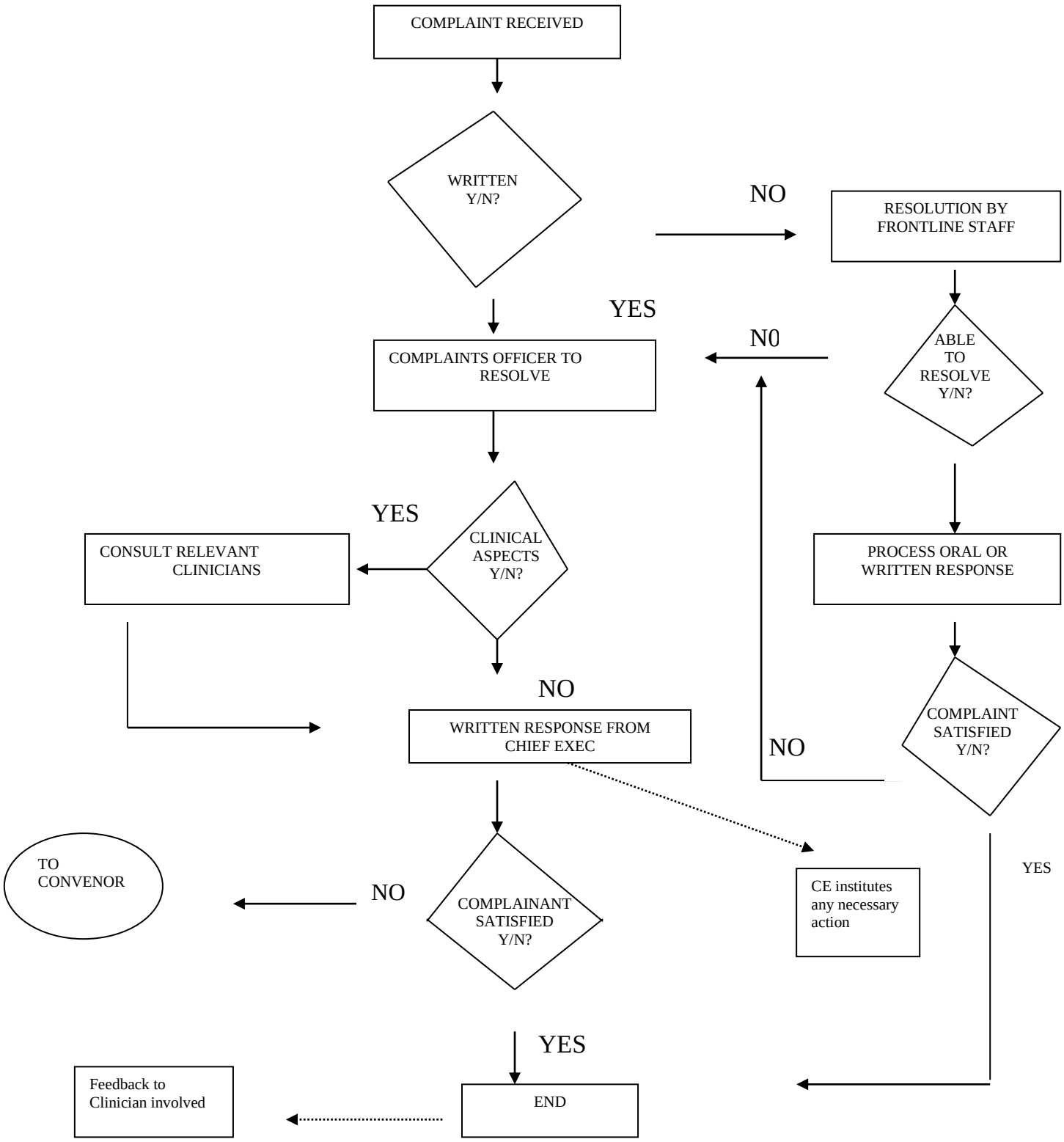
[3]Acting, Listening, Improving: A Training Manual on Effective Complaints Handling within the HPSS, HSS Executive, April 1996, under cover of PRSC (PR) 2/96

SUMMARY OF TARGET TIMESCALES

EVENT	TIME ALLOWED
Original complaint	**6 months from event,** *or* **6 months of becoming aware** of a cause for complaint, but no longer than 12 months from event: discretion to extend
Local Resolution:	
Verbal complaint	Dealt with on the spot or referred
Acknowledgement	**2 working days** of receipt unless full response issued within 5 working days
Full response	**20 working day** of receipt
Apply for Independent Review	**28 calendar days** of the date of response to Local Resolution

NB: A working day is any weekday (Monday to Friday) which is not a local or normal public holiday.

SUMMARY: LOCAL RESOLUTION



ANNEX 1A

ROLE OF HEALTH AND SOCIAL SERVICES COUNCILS

1. Health and social services councils are independent bodies established by statute to represent the public interest in the HPSS.

2. The main duties of the health and social services councils are to:

   - monitor the quality of local services;
   - represent the public's interest in health and social services issues;
   - provide information, advice and support on health and social services issues;
   - offer advice, information and help to people who want to complain about a service.

3. If a person feels unable to deal with the complaint alone, the staff of the health and social services councils can offer a wide range of assistance and support at any stage of the complaints procedure. This assistance may take the form of:

   - information on the procedure and advice on how to make a complaint;
   - help in accessing medical/social services records;
   - discussing the substance of the complaint and drafting letters;
   - making telephone calls;
   - support in preparing for meetings;
   - support at meetings and independent reviews;
   - referral to other agencies, for example advocacy services;
   - preparing a request for an independent review; and
   - preparing a complaint to the Commissioner for Complaints.

4. All advice, information and assistance with complaints are provided free of charge and are confidential.

ANNEX 1B

ADVOCACY

1. Advocacy is recognised as an important way of giving people a stronger voice by helping them to make informed choices about, and to remain in control of, their own health and social care. Advocacy helps people gain access to information they need to understand the options open to them, and to make their views and wishes known.

2. Advocacy is not new. People do it every day for their children, for their elderly or disabled relatives, and for their friends. Concerned individuals do it for people who are particularly vulnerable or undervalue.

3. In the HPSS, advocacy has been available mainly for vulnerable groups, such as people with mental health problems, learning disabilities, and older people (including those with dementia). However, people who are normally confident and articulate can feel less able to cope because of illness, anxiety, and lack of knowledge and be intimated by professional attitudes that may seem paternalistic and authoritarian.

4. Boards and Trusts should encourage the use of advocacy services, including those provided by health and social services councils, to facilitate access to the complaints procedure.

ANNEX 1C

CONCILIATION

1. Conciliation is a voluntary process that seeks to resolve difficulties by examining and reviewing a complaint with the help of an outside person who is qualified, trained and experienced as a conciliator. Conciliation can be especially useful in resolving difficulties arising from a breakdown in the relationship between a health service professional and his/her patient/client. Boards and Trusts should offer to make a conciliation service available to the staff and the patient/client as early in the complaints resolution process as possible.

2. The aim of conciliation is to enable both parties to address the issues in a non-confrontational manner with the aim of reaching an agreement that both can accept. It is best used at an early stage in the handling of the complaint. The function of the conciliator is to assist the process, **not to impose a solution.** Any resolution of the complaint must come from the parties concerned. The conciliator seeks to clarify the issues and to help explore the options. Essentially, the conciliator works to ensure that good communication takes place between the parties.

3. Confidentiality is vital in the conciliation process. The conciliator should encourage the participants to explore the issues involved in the complaint in an open manner. The content of the conciliation process remains confidential and neither the conciliator nor the participants should provide information from the process to any other person. The conciliator should advise the Board/Trust when conciliation has ceased and whether a resolution was reached. No further details should be provided.

4. Conciliation can also be a useful means of resolving complaints where the complainant has requested an independent review but the convenor believes further local resolution would be appropriate, for example where the complaint involves a difficulty in a relationship with a member of staff. Boards should ensure that their induction training for convenors makes them aware of conciliation, its usefulness and limitations, and equips them to consider its use as a means of resolving appropriate complaints.

5. Serving members of health and social services councils are ineligible to take up posts as lay conciliators as there may be conflicting interests involved. It is not recommended that those engaged in advocacy take up posts as conciliators for the reasons outlined above. A helpful introduction to good practice in the use of conciliation is *Conciliation and Mediation in the NHS – a practical guide,* Bob Debell, Radcliffe Medical Press, 1997.

ANNEX 1D

PATIENTS WITH MENTAL HEALTH PROBLEMS

1. Making a complaint about health and social care can be intimidating, especially for people with mental health problems or learning disabilities. Complainants should not be deterred from using the HPSS complaints procedures because clinical staff believe their complaints to be based on mental disorder.

2. Complaints made by people with learning disabilities, who are not mentally ill, should be treated in exactly the same way as complaints made by other patients. Special care must be taken to help all patients who have difficulties with communication.

3. There should be explicit arrangements for advising and supporting complainants with mental health problems or with learning disabilities. People suffering mental health problems are very vulnerable members of society and care needs to be taken to ensure that this is not an excuse not to investigate legitimate complaints.

4. If a patient makes a complaint during an acute illness, the complaints officer should register the complaint and consider advising the patient that inquiries into it should be delayed until the patient's condition has improved. The complaints officer will want to take medical advice on this matter. When the patient is feeling better, he/she should be asked whether he/she wishes to proceed with the complaint. A delay such as this will need either the agreement of the patient or someone who is able to act on behalf of the patient and who is independent of the complaints officer. The decision about whether a patient is well enough to proceed with the complaint should be made by a muti-disciplinary team, and the complaints officer should refer regularly to this team to establish when this point has been reached.

5. Where the complaints officer believes that a complaint should not be investigated because it appears that it is a manifestation of the patient's mental illness, a full report on the patient's mental state should be sought.

6. If the report confirms the complaints officer's view, a system should be set up whereby the current and any subsequent recurrent complaints are scrutinised by an independent assessor, such as a senior clinician or manager who is entirely independent of the patient's current clinical team. Each episode of complaining should be treated as a fresh complaint.

7. Where a complainant is alleging physical injury, a physical examination should be carried out without delay in each case by medical staff and clearly reported. If a patient refuses a physical examination, or if his or her mental state (for example, degree of agitation) makes this impossible, this should be clearly documented. A further physical examination should be attempted as soon as possible.

8. Very careful consideration must be given to complaints alleging offences that could be reportable to the police, and there should be explicit policies about the arrangements for such reporting. Staff need to be aware that a decision not to report an alleged offence is a serious decision, while the reporting of trivial or clearly delusional matters is unlikely to be in the patient's best interests.

9. Particular attention should be paid to any suggestion of corroboration of the complaint from other patients, visitors, or staff. Such corroboration should be precisely recorded and careful consideration given to its relevance to any decision about delaying investigation of the complaint.

SECTION 2

INDEPENDENT REVIEW

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- The Role of the Convenor
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SECTION 2 – INDEPENDENT REVIEW

2.1 Complainants who are dissatisfied with the result of local resolution may request an independent review. This request should be made within **twenty-eight days** of the date of the letter concluding local resolution. Any request for an independent review received orally or in writing by any member of/or employee of the Trust/Board should be passed to the convenor immediately through the convenor's office. **A complainant does not have an automatic right to an independent review.**

Appointment of Convenors

2.2 HSS Boards are required to appoint one of their non-executive directors as a convenor. The workload in some Boards may require the appointment of more than one convenor and the Board may wish to consider appointing other people to this role who are not employees of the Board but who have received appropriate training. It is suggested that any such appointments are initially short term and, if successful, they can be extended. Appointments should be staggered where more than one convenor is appointed. Any person appointed in this way may carry out the full role of a convenor, including serving on a panel. All such convenors should be indemnified as if they were non-executive directors.

The Role of the Convenor

2.3 The role of the convenor is crucial in deciding whether there should be an independent review. It also provides complainants with an independent and informed view on whether any more can be done to resolve their complaint. The convenor must decide whether to:

- refer the complaint back for further local resolution (possibly suggesting that both parties might be offered conciliation);
- set up a panel to consider the complaint; or
- take no further action.

2.4 **It is not the convenor's role to seek a view on the merits or otherwise of the complaint or to investigate it.** The convenor should be fully apprised of guidance and issues relating to his/her role.

The Convenor's Office

2.5 Boards should provide any administrative support that the convenor needs. However, it is important that the convenor acts, and is seen to act, independently of the Board. Boards therefore should consider establishing a convenor's office. For further information see Annex 2A.

Action by the Convenor

2.6 The convenor is responsible for ensuring the complainant's request for an independent review is acknowledged in writing within **two working days.** The acknowledgement should:

- indicate how the independent review process request will be activated;
- request that the complainant or their representative set out their concerns in writing, stating why they are dissatisfied with the outcome of local resolution, if they have not already done so;
- indicate how to seek independent help and support from the health and social services councils and/or patient advocacy services.

2.7 The convenor is also responsible for ensuring that:

- the complained against is advised in writing as soon as possible of what the complainant has stated are his/her concerns;
- a full picture of the events relating to the complaint is obtained, including relevant medical records;
- appropriate clinical advice is taken when a complaint relates to the exercise of clinical judgement (see Annex 2B);
- the complaint is dealt with impartially;
- all opportunities for resolving the complaint during local resolution have been explored and fully exhausted.

2.8. In reaching a decision, the convenor must:

- consult an independent review panel lay chairman;
- take appropriate clinical or professional advice where the complaint relates in whole or part to action taken in consequence of the exercise of clinical judgement.

This process must be completed within **twenty working days** of the date of receipt of the complainant's request by the convenor.

2.9 In considering the request for an independent review, the convenor must **not**:

- re-run the action taken during local resolution;
- investigate or attempt to resolve the complaint on his/her own;
- try to defend either those complained against or the complainant.

Consulting a Lay Chairman

2.10 A lay chairman will assist the convenor in making an independent assessment of the complaint. However, deciding whether to establish a panel is the convenor's sole responsibility. The convenor must explain in writing his/her decision to the complainant, and any person alleged in the complaint to have taken any part in the action complained off. (See Annex 2C – role of independent lay chairman.)

Clinical Complaints

2.11 **The convenor must seek appropriate clinical advice where a complaint relates in whole or in part to action taken as a consequence of the exercise of clinical judgement.** Clinical advice initially should be sought from the medical director of the Board, or equivalent professional officer. Where these officers are the subject of the complaint, or where possible conflict of interest arises (for example, if this person has already been involved in the handling of the complaint) then the convenor should seek the advice of an independent professional person. This may be one of the Department's professional officers, or someone from the list of clinical assessors for panels. See Annex 2B.

2.12 **Clinical advice should relate to whether the response already made to the clinical aspects of the complaint at local resolution has been thorough, correct and fair, and in terms the complainant can understand.** If not, whether further local resolution or a panel would be an appropriate next step. In reaching a view on this, the clinical adviser may need to consider whether appropriate care or treatment was provided. Clinical advice should **not** be given to the convenor in the form of a report passing judgement on the quality or adequacy of the clinical care given to the patient. Clinical advice **must** be restricted to answering the question asked.

Social Services Complaints

2.13 Where the convenor considers that a complaint relates in whole or in part to action taken in consequence of the exercise of professional social work judgement (i.e. any judgement that is made by a member of the social work profession in the HPSS by virtue of their knowledge and skill, which a layman could not make), he/she must take appropriate professional advice in deciding whether to convene a panel.

2.14 Advice should be sought in the first instance from the Board's Director of Social Services who may in turn suggest someone else who is qualified to advise. Where the Director is the subject of the complaint, or where possible conflict of interest arises, some other appropriate independent opinion should be sought. This may be the Department's Chief Inspector of Social Services, or someone from the list of clinical assessors for panels.

Decisions of the Convenor

2.15 After seeking appropriate advice, the convenor must decide whether to:

- take no further action;
- refer the complaint back for further local resolution (perhaps involving conciliation – see Annex 1C); or
- set up a panel to consider the complaint.

2.16 **The reason for any decision to refuse a panel or to refer back to local resolution should be clearly stated and the Chief Executive of the Trust/Board informed accordingly.**

2.17 The convenor may decide that local resolution has been adequately pursued – in that the complaint has been properly investigated and an appropriate explanation given – and that nothing further can be done, even thought the complainant remains dissatisfied. The complainant should be advised in writing of the reason for this decision and informed of their right to put their case directly to the Commissioner for Complaints. See Section 3.

2.18 The letter should refer to the following:

- consultation with the independent lay chair;
- the fact that clinical advice has been sought where the complaint is of a clinical nature;
- each of the complainant's concerns having been fully addressed.

Referral for Local Resolution

2.19 Where, having taken any appropriate clinical advice, the convenor feels that local resolution has not adequately addressed a complainant's concerns, the case should be passed back to the service provider for further local consideration, perhaps involving conciliation. The complainant should be informed in writing of the reason for this decision.

2.20 If the complainant remains dissatisfied following the referral he/she may ask the convenor to reconsider whether an independent review panel should be convened.

Convening a Panel

2.21 When the convenor feels, for whatever reason, that further local resolution would not be appropriate and that there are grounds for the complainant's continued dissatisfaction, he/she may decide to convene an independent review panel. The cost of instituting an independent review panel is not a reason for refusing to convene a panel.

2.22 Convenors should not set up an independent review panel where:

- the complainant has stated orally or in writing that he/she intends to pursue a remedy by way of proceeding in a court of law; or
- he/she considers there may be a case for a disciplinary investigation. See Section 4 Useful Information.

2.23 In either of these cases, the papers should be referred immediately to the person in the Board who deals with these matters.

2.24 Consideration of whether to set up an independent review panel should follow automatically if disciplinary action is not pursued. Should a complainant decide against proceeding with litigation, they can ask for their request for an independent review to be re-considered.

2.25 The convenor's decision to establish a panel must be given in writing to:

- the complainant;
- any person alleged in the complaint to have taken any part in the action complained about;
- the Chief Executive of the relevant Trust/Board/independent provider;
- senor partner for FHS complaints.

Terms of Reference

2.26 Having decided to establish a panel, the convenor must define its terms of reference drawing on the complainant's written statement of complaint. Terms of reference set out what the panel is to investigate, for example:

- *'What information was made available to Mrs X about her husband's condition."*
- *'How was Mr 'X's' discharge from hospital managed.'*

2.27 The convenor must inform those listed at para 2.25 and the nominated panel members of the terms of reference. If the complainant disagrees with the terms of reference he/she may ask the convenor to reconsider them. While the convenor's decision is final, the complainant should be advised of their right to take the matter up with the Ombudsman if they remain dissatisfied.

2.28 In order to avoid delay, Boards are advised to give delegated powers to the Chief Executive and an alternate executive director to establish a panel as a committee of the Board as soon as the decision of its convenor becomes known.

Appointment of Panel Members

2.29 The Convenors Office is responsible for communicating with, ascertaining availability of, and formally appointing the chosen panel members.

2.30 Independent review panels must be composed of three members:

- independent lay chairman (from the Board list);
- the convenor (non-executive of the Board or appointed person); and
- a third independent lay panel member (from the Board list).

2.31 Where, having taken appropriate clinical advice, the convenor decides that the complaint has clinical elements, the panel must be advised by at least two independent clinical assessors. See Annex 2D. See Annex 2C for Role of Panel Members.

2.32 In considering a complaint from, or on behalf of, a person suffering from mental disorder, the convenor should consider co-opting a member of the Mental Health Commission onto a panel.

2.33 In order to avoid accusations of bias members or officers of health and social services councils will be excluded from panel membership.

2.34 The convenor's office should arrange for panel members and clinical assessors to:

- be told the composition of the panel and its assessors;
- have indemnity cover. In the most unlikely event of legal proceedings, no financial risk would be taken by the panel member or clinical assessor, assuming they acted in good faith;
- have appropriate background and briefing papers.

Role of Assessors

2.35 The role of the clinical assessors is to advise the panel, as and when required, on those aspects of the complaint involving clinical judgement having regard to this guidance and the advice of their professional body, e.g. the appropriate Royal College. Ideally, the assessors should provide an agreed report. This report should be in two parts:

- a summary report that excludes all personal clinical information relative to the patient/client being examined; and
- a confidential annex that incorporates any personal, clinical information that the clinical assessors feel is essential to enable the panel to make sense of the complaint.

2.36 **The confidential annex will only be made available to the panel members, the complainant, the patient/client, if a different person from the complainant and alive and competent to receive it, and the complained against but to no-one else (see Annex 2D).**

Role of Independent Lay Chairman

2.37 The role of independent lay chairman is to:

- provide independent advice and support during the convening period;
- chair panels when established;
- promptly issue the report of the panel.

2.38 The responsibility for leading the organisation of the panel's business rests with its chairman. See Annex 2C.

The Panel's Remit

2.39 The panel is established to:

- consider a complaint whose terms of reference have been clearly defined;
- investigate the facts of the case, taking into account all the evidence;
- investigate the complainant's concerns in a conciliatory way;
- provide a written report setting out its conclusions with appropriate comments and suggestions.

Conduct of Panel

2.40 The Chairman, I consultation with the other members of the panel, will decide how to consider the complaint keeping in mind the Directions and this guidance. However, the general rules of conduct for the panel are:

- the process should be informal, flexible, and not confrontational, adversarial, legalistic or tribunal-like;
- its proceedings must be held in private;
- it has a right of access to all the records relating to the handling of the complaint;
- it must be able to see the relevant parts of the patient's health or social services records when dealing with a clinical/social services complaint;
- the complainant, and any person complained against, must have a reasonable opportunity to express their views;
- advice may be taken from appropriately appointed assessors if the complaint is a clinical one;
- the complainant, the complained against or any other person invited to give information to the panel, may be accompanied by a person or persons of

their choosing to provide support, for example a friend, relative or health and social services council representative;

- if the person supporting the complainant or the complained against has a legal background or qualification he/she cannot act in a legal capacity;
- only with the approval of the chairman may those accompanying the complainant and the complained against contribute to the panel's proceedings;
- the needs of the complainant, including the specific needs of those from ethnic minority communities and those with physical and other disabilities, should be considered fully. For example, people with mental health problems may find it hard to concentrate and require regular breaks from the proceedings;
- reasonable records of the panel's proceedings should be kept to facilitate the preparation of its report. Tape recording panel proceedings or using stenographic or shorthand notewriters to provide a verbatim record of the discussion is not recommended.

Concluding the Investigation

2.41 The panel chairman may find it appropriate to meet the complainant as a way of rounding off resolution of the complaint. This may be particularly helpful in a complex case to ensure that the two parties understand the outcomes. If the complaint relates to clinical matters, at least one assessor should be present to give a personal explanation to the complainant of any clinical findings. Where there are assessors from different disciplines, each should be present.

Report of the Panel

2.42 At the conclusion of the panel's work, a report will be produced. The chairman is responsible for issuing the report within the target timescale of **sixty working days** from the date of the formal appointment of the panel and assessors. The Chairman may delegate the writing of sections of the draft to panel members and, subsequently, edit the report into a final draft. **However, the final report remains the responsibility of the Chairman.**

2.43 The panel should provide the complainant and the complained against with the opportunity to check its draft report (which might not include the final conclusions of the panel) for factual accuracy within, say, a period of **fourteen days** before it is formally issued in its final form. The assessors' report should be made available in time, for its circulation with the panel's draft. Those receiving the draft should be reminded that the report is confidential to them and the panel members.

Report Structure

2.44 There is no right or wrong way of framing and structuring a panel report. The report of the panel **must** include:

- findings of fact relevant to the complaint;
- the opinion of the panel on the complaint, having regard to the findings of fact;
- the reasons for the panel's opinion;
- the report of the assessors and
- where the panel disagree with any matter included in the report of the assessors, the reason for its disagreement.

2.45 The panel may include in its report:

- action the service provider might take to satisfy the complainant and
- suggestions arising from its investigation that it considers would improve the services provided or the provider's efficiency and effectiveness.

2.46 **The report of the panel must not suggest that disciplinary proceedings be taken against any person.**

2.47 **Panel chairmen have the right to withhold any part of the panel's report and all or part of the assessors' report in order to ensure confidentiality of clinical information.** Panel chairs should judge each case on its own merits. In exceptional cases, the chairman may decide that the complainant should not see the full report. This may be because the chairman considers that it would be detrimental to the complainant's health. Or because the chairman judges it to contain information by or about a third party which, if the complainant was allowed to see it, would constitute a breach of confidentiality (for further guidance see Section 4, Useful Information).

2.48 For further good practice on Report Structure, see Annex 2E.

Report Circulation

2.49 Unless the chairman decides otherwise, the panel's final report, including the assessors' summary report and the confidential annex, should be sent to the:

- complainant;
- patient/client, if a different person from the complainant and alive and competent to receive it;
- panel members;
- complained against;
- clinical assessors.

2.50 Unless the chairman decides otherwise, the panel's final report including the assessor's summary report, **but not the confidential annex**, will have a restricted circulation. It should be sent to:

- any person interviewed by the panel (other than the complainant or the complained against);
- the Trust/Board Chairman and Chief Executive;
- the senior partner in the case of FHS complaints;
- the Chairman and Chief Executive of the independent provider, where the complaint involves services provided by the independent sector and
- the service commissioner.

2.51 The panel shall not send the report to any other person or body. The complainant may wish to show the report to a representative of the health and social services council or other appropriate adviser.

Completion of the Complaints Procedure

2.52 Following receipt of the panel's report, the Trust Chief Executive/Independent Provider Chief Executive may need to show the report, or sections of it, to his/her board so that it can consider the action needed to implement its recommendation(s). Any such arrangement must protect the overall confidentiality of the report.

2.53 The Chief Executive is responsible for ensuring the board's decisions are communicated quickly and clearly to the complainant. The Chief Executive or a designated senior Director (see para 1.29) should send a letter to the complainant, within **twenty working days** from the receipt of the panel's report. This should inform the complainant of:

- any matters such as a formal apology or approval of an ex-gratia payment;
- action being taken as a result of the panel's deliberations and an indication of the timescale for its implementation;
- his/her right to refer the complaint to the Commissioner for Complaints.

2.54 The issue of this letter completes the HPSS complaints process. If, following this action, the board takes further decisions relating to the outcome of the case, then the complainant should be informed by the Chief Executive.

Administrative Support, Fees and Expenses

2.55 The panel and its assessors should be provided with appropriate administrative support.

2.56 The Board establishing the panel will meet all the expenses arising out of the independent review process, including any allowances paid to panel members and

any payments and expenses paid to assessors. Assessors who find it more convenient to make their own arrangements for, say, typing their reports, will need to agree a rate of payment with the Board in advance.

2.57 The Board should speak to assessors to estimate the likely time commitment in individual cases before work begins and, where appropriate, to authorise additional work. Payment will be for work done (ie there is no four day minimum payment). While the amount to be paid in an individual case is a matter for local decision, it would be understandable if assessors were not willing to contract for less than half a day.

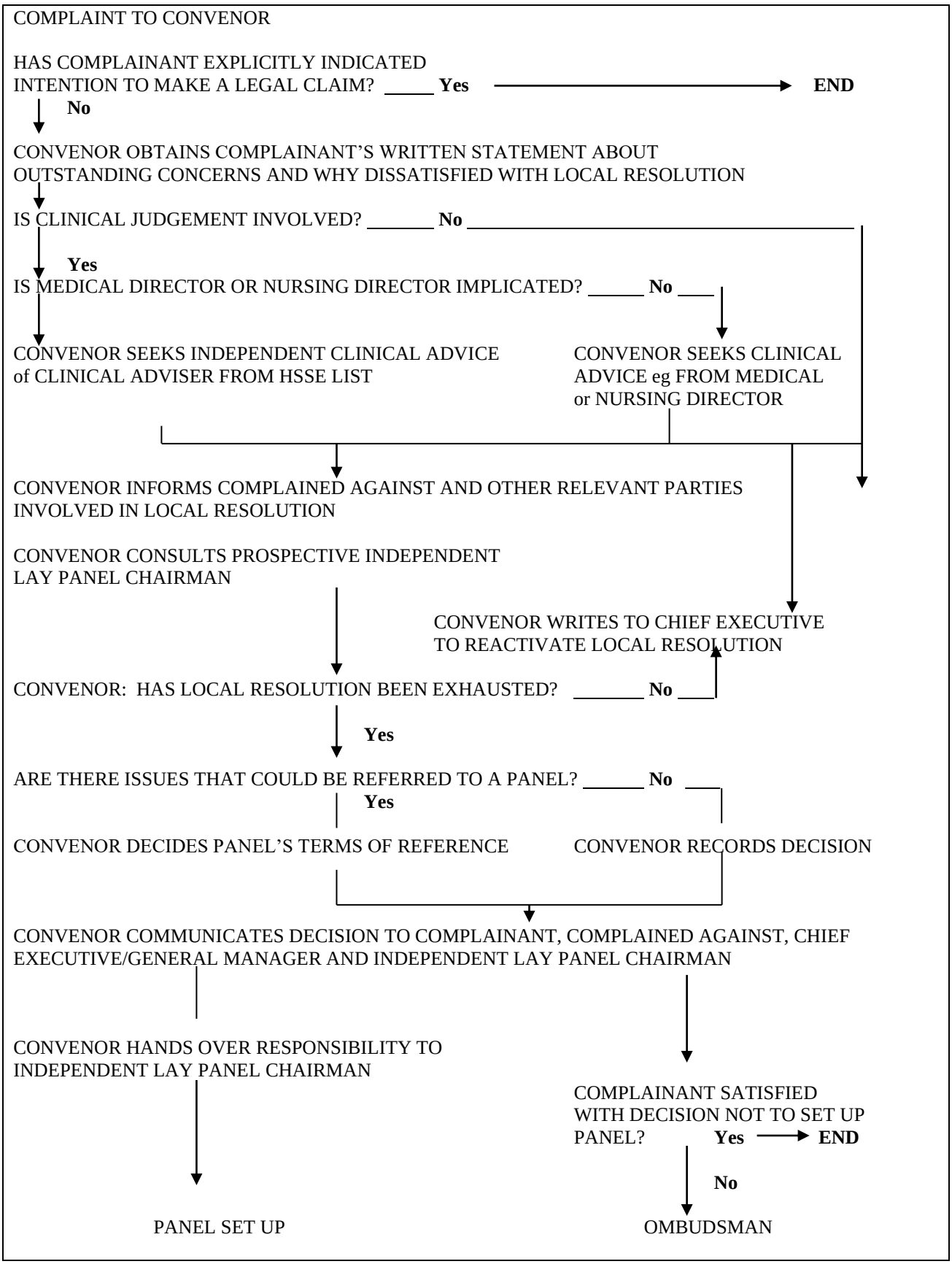
2.58 Panel members, including convenors, are eligible for travel expenses and subsistence and loss of earnings allowances[4]. Boards should indicate in appointment letters that the particular panel chairman and the third panel member will be appropriately indemnified.

[4] Current rates are set out in HSS Executive circular PRSC (PR) 1/96

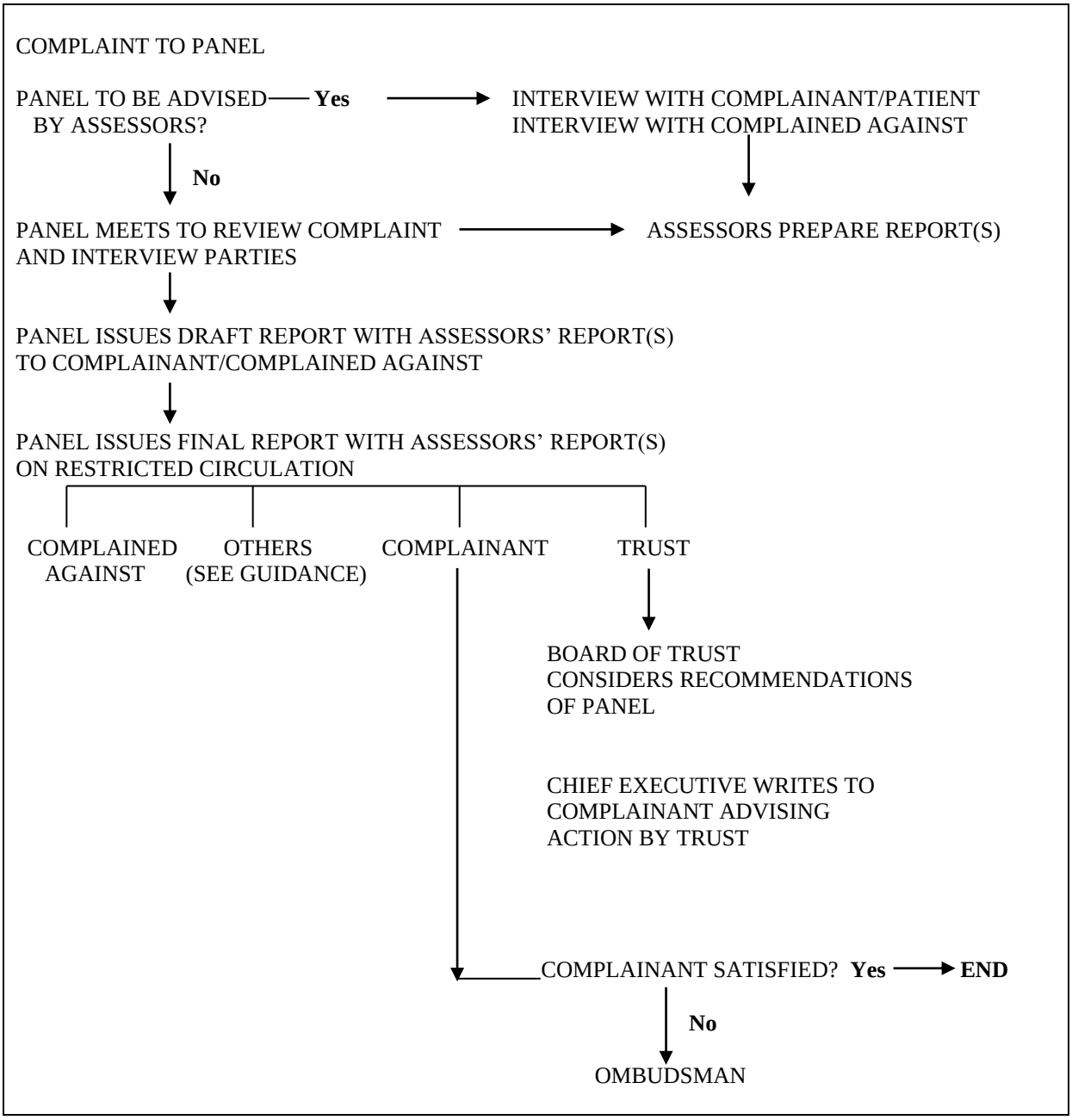
TARGET TIMESCALES: A SUMMARY

EVENT	TIME ALLOWED
Acknowledgement by convenor of request for independent review	**2 working days** of receipt
Decision by convenor to set up panel, or not	**20 working days** of receipt of request
Appointment of panel members	**20 working days** of decision by convenor to establish a panel
Draft report of panel	**50 working days** of formal appointment of panel and assessors
Final report of panel	**10 further working days**
Response to complainant by Trust	**20 working days** of receipt of panel's report

CONVENING - A SUMMARY



INDEPENDENT REVIEW - A SUMMARY



ANNEX 2A

CHECKLIST FOR CONVENOR'S OFFICE

1. It is important that the convenor acts, and is seen to act, independently of the Board. The office therefore should use its own letterhead paper headed 'Office of the Independent Lay Convenor'. The use of a PO Box address may reinforce independence of the convenor. A senior member of staff should manage the convenor's office.

2. Responsibility for the following action rests with the convenor supported by administrative staff as appropriate.

Initial Action

3. The convenor should:

- acknowledge the oral or written request for an independent review within 2 working days;
- ask the complainant to provide a written statement of why he/she remains dissatisfied, if not already provided;
- immediately obtain the name of a person held on the list of independent lay panel chairmen;
- call for all papers and documents relating to the local resolution;
- advise anyone who is complained against;
- advise the complainant that help is available from the health and social services council or other source of patients' support;
- seek appropriate independent clinical advice where there is a clinical element to the complaint;
- consult an independent lay panel chairman, and decide whether or not a panel should be set up; and
- liaise with other convenors if the complaint involves more than one body.

Independent Review refused

4. The following must be informed in writing of the reasons for the decision, and whether local resolution should be reactivated:

- the complainant, who should be advised of the right to approach the Ombudsman;
- the Trust Chief Executive/senior FHS partner/Independent Provider Chief Executive;
- any person who is complained against;
- the independent lay panel chairman, and anyone else who was consulted.

Panel is to be convened

5. The following must be informed in writing of the decision, the agreed terms of reference for the panel, any issues excluded from its consideration and why, and when the panel is likely to be set up:

    - the complainant;
    - any person who is complained against;
    - the independent lay panel chairman consulted;
    - the Trust Chief Executive/Senior FHS partner/independent provider Chief Executive.

6. The Board should provide:

    - the lay panel chairman;
    - the third panel member;
    - the names of clinical assessors required to assist the panel.

7. The convenor's office should:

    - formally appoint clinical assessors;
    - provide the panel members and the clinical assessors with all necessary papers, including the complainant's written statement of concern;
    - provide indemnity cover for the panel and its assessors;
    - inform the complainant of the names of the appointed panel members and assessors.

ANNEX 2B

ROLE OF THE CLINICAL ADVISER AT CONVENING STAGE

1. Convenors are reminded of the need to obtain appropriate clinical advice when necessary. Such **clinical advice should relate to whether the response already made to the clinical aspects of the complaint has been thorough, correct and fair and in terms the complainant can understand; and if not, whether further local resolution or a panel would be an appropriate next step.**

2. At the convening stage, the clinical adviser is being asked for their opinion on whether the clinical aspects of the complaint have been fully and fairly addressed at local resolution. They are not being asked to give an opinion on, or a report on the clinical aspects of the care. This is the clinical assessor's task whenever a panel is convened.

3. there will be cases where the clinical adviser needs to form an opinion on the clinical care given, but this should only be used to give advice on whether the clinical aspects of the case have been fully and fairly addressed at local resolution. Any opinion on the clinical care received should **NOT** be passed to the convenor.

ANNEX 2C

ROLE OF INDEPENDENT LAY CHAIRMAN AND THIRD PANEL MEMBER

The Board's Role

1. Boards are responsible for putting in place arrangements for holding lists of independent chairmen and lay panel members. Boards must organise access to and training of chairmen and panel members.[5]

2. Boards should assist each other in finding an appropriate chairman and panel members where circumstances demand a wider trawl. Boards should organise the allocation of chairmen and members in a balanced independent way, so that no one person becomes regularly linked with a particular Trust or particular type of complaint.

The Chairman's Role

3. At the convening stage, the lay chairman should:

   - provide the convenor with support and advice; and
   - keep a record of the part he/she played at this stage.

4. When appointed to a panel, the lay chairman, with appropriate administrative support, will be responsible for ensuring that:

   - all panel members have a clear understanding of the panel's terms of reference;
   - arranging and chairing all meetings of the panel;
   - ensuring that members and assessors have all necessary documents;
   - ensuring reasonable records of the panel proceedings are kept.

5. The Chairman is responsible, in consultation with the other panel members, for:

   - deciding how the panel will conduct its business;
   - arranging meetings with the complainant and complained against and ensuring that, if appropriate, at least one assessor is present;
   - discussing the required format of their report with assessors;
   - leading the panel in drafting its report.
   - setting out the agreed conclusions and finings; and any comments recommendations; and
   - ensuring no recommendation relates to disciplinary matters;

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[5] Independent Review – A Training and Information Pack for Independent Review Panel Members. HSS Executive, 1996

- circulating the draft report to the complainant and complained against to check factual accuracy.

6. The Chairman is responsible for finalising the report and ensuring the final report (including the clinical assessors' summary report and the confidential annex) is sent to:

- the complainant;
- the patient/client if a different person from the complainant and alive and competent to receive it;
- the complained against;
- the panel members;
- the clinical assessors.

7. A copy of the final report, (including the assessors' summary report but not the confidential annex) should also be sent to:

- any person named in the complaint;
- any person interviewed by the panel at the Chairman's discretion;
- the Trust/Board Chairman and Chief Executive;
- senior FHS partner;
- the Chairman and Chief Executive of the independent provider where the complaint is about services provided by the independent sector;
- Service commissioner.

8. **Where there is disagreement within the panel, the chairman's decision will be final.**

9. A sample checklist that may help chairmen to 'sign-off' the final report is given at Annex 2F.

The panel member's role

10. The third panel member must:

- seek to resolve the complaint in a fair and impartial manner;
- work under the terms of reference laid down for the panel;
- consider the information gleaned form reports and interviews in a fair and unbiased way;
- consider the assessors' advice on clinical matters;
- contribute to the development of appropriate ways of working to gain information from interviewees;
- contribute with the other panel members to the completion of the report.

ANNEX 2D

ROLE OF CLINICAL ASSESSORS

Appointment of Clinical Assessors

1. Where the complaint is wholly or partly related to clinical matters, independent review panels must be advised by at least two independent clinical assessors on relevant matters. Assessors are not formally part of the panel; their role is to advise on clinical issues and, wherever possible, make a joint report, to the panel. The assessors should decide, I consultation with the panel, how to exercise their responsibilities having regard to guidance issued by the Department and their professional bodies. Assessors should not act independently to resolve a complaint.

Nomination of Assessors

2. On receipt of a request for assessors to advise a panel, the Board should take advice from the professional body on the selection of appropriate assessors from the list held centrally by the Department.

3. Where a complaint raises issues about more than one medical discipline or health and social care profession, at least one assessor from each relevant discipline or profession should be appointed to advise the panel. In cases where only one discipline is under scrutiny, two assessors should be appointed from that discipline. In some cases it may be appropriate for there to be more than two assessors and it will be for the panel chairman to make this decision.

4. The Department holds the UK-wide lists of assessors for all types of complaints. Professional organisations are involved in ensuring lists are kept up to date.

5. Clinical assessors for hospital and community health and social services should be selected from outside the Board area. The Board's convenor's office will check availability and issue a formal letter of appointment, provide indemnity cover and copies of all necessary documents.

Gathering Information

6. One assessor in each discipline must be present when the panel, or a member delegated by it, interviews either or both of the parties about matters of clinical judgement.

7. The assessors must have access to all of the patient's/client's health or social services records relating to the handling of the complaint held by the Trust. They will need to acquaint themselves with any circumstances where the patient/client

might have been denied access to information in the record, or where the patient/client might have been denied access to information in the record, or where the patient/client has expressed the wish for information to be withheld from other parties.

8. The assessors may interview the patient/client who is the subject of the complaint with their consent. The patient/client may have someone of their choosing present. These interviews may be held before the day the panel is due to meet or on the same day. The Assessors may also interview any person complied against, who may also have a person of their choosing present. Assessors must take care not to break any third-party confidence. Assessors should not normally explain their findings to either the patient/client or complainant before advising the panel of their views.

9. Where a patient's/client's health or social services record is no longer in the possession of the complained against, the Trust or FHS practitioner should make every effort to provide them with access to it for the purpose of framing a response.

The Assessor's Report

10. The assessors' report/s should be divided into two parts:

- a summary report that excludes all personal clinical information relative to the patient/client being examined; and
- a confidential annex that incorporates any personal, clinical information that the clinical assessors feel is essential to enable the panel to make sense of the complaint.

11. The assessors' summary report will be attached to the panel's final report when it is issued. **The confidential annex will only be made available to the panel, the complainant and the complained against.**

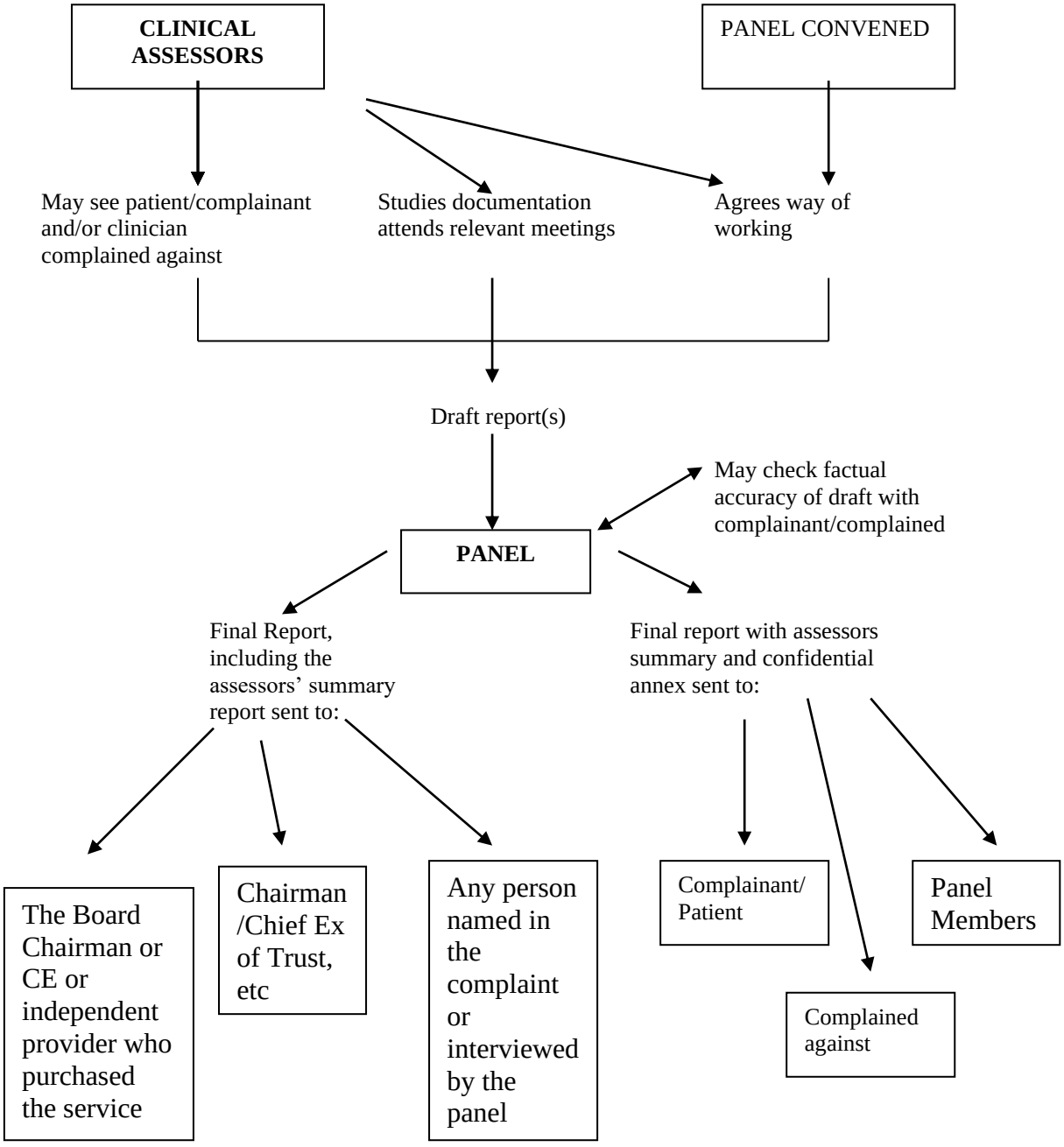
12. The assessors' report should not be made available to the complainant or the complained against before it is made available to panel members. The panel may decide, in consultation with the assessors, to release the report to the complainant and the complained against if they believe this might aid resolution of the complaint. Otherwise the assessors' report will only be made available to them when the panel's draft report is issued for checking its factual accuracy.

13. Assessors should remember that their report may be made available at a later date to other than panel members and ensure that neither it, nor the confidential annex contains information that might cause serious harm to the physical or mental health of the patient/client or of any individual. They should also ensure that it does not contain information about, or provided by a third party (other than a

health professional involved in the patient's care) who could be identified from that information, unless he/she has consented to such a disclosure.

14. **If the panel disagrees with the assessors' report, it must discuss this with them and, if the matter cannot be resolved, state in its report its reason for doing so.**

ROLE OF CLINICAL ASSESSORS



ANNEX 2E

REPORT STRUCTURE

1. There is no right or wrong way of framing and structuring the panel report. However, experience suggests the report should:

   - address each issue in the terms of reference;
   - include a brief summary of the background, identifying the complaints considered. It is not necessary to include a case history;
   - summarise all the oral evidence given to the panel for each aspect of the complaint, referring, as necessary, to documentary evidence from the contemporaneous records and from correspondence or other sources;
   - explain the findings for each aspect of the complaint clearly;
   - consider whether any matters could have been handled better and whether a recommendation would be appropriate; (Recommendations should not relate to issues of a disciplinary nature.)
   - provide clear explanations of meaning if it is necessary to use abbreviations and HPSS terminology;
   - be short and focused on the main concerns of the complainant;
   - be circulated to the complainant and complained against in its draft form to check for factual accuracy.

2. When circulating the draft report:

   - fourteen days can be considered a reasonable consultation period;
   - remind those receiving the draft that the report is confidential to them and the panel members;
   - ask the complainant, and anyone complained against, to inform the panel, if he/she wishes to consult on the content of the draft report with an adviser who has not been previously involved in the complaint, eg the health and social services council.

3. The panel may decide to feed the report back in person to the complainant and complained against.

ANNEX 2F

CHECKLIST FOR INDEPENDENT REVIEW PANEL REPORTS

A. DOES THE PANEL'S REPORT MEET THE REQUIRED STANDARD?

Compulsory Elements – ***covers points which the guidance[1] and directions[2] stipulate must be covered.***

Tick for Yes

1.	Does the report include all relevant findings of fact?	☐
2.	Has the panel expressed its opinion with regard to the facts?	☐
3.	Has the panel given reasons for its opinions?	☐
4.	If the complaint is clinical, is the assessors' report appended?	☐
5.	If the panel disagrees with the assessors have they given reasons?	☐
6.	The report must not suggest disciplinary proceedings against anyone. Has it complied with this?	☐

Discretionary Elements – ***covers points, which the guidance suggests, may be included in the report but which are not compulsory.***

7.	Does the report include suggestions on ways to improve services?	☐
8.	Does the report include suggestions on ways to improve efficiency/effectiveness?	☐
9.	Does the report suggest action which the HSS Trust/Board/FHS practitioner/independent provider might take to satisfy the complainant?	☐

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1 *Complaints – Listening…Acting …Improving: Guidance on implementation of the HPSS Complaints Procedure*
issued 25 March 1996 under cover of HSSE circular PRSC (PR) 1/96.

2 The HPSS Complaints Procedures Directions (NI) 1996
- articles 25(1)(b) assessors' report, 27 (1-5) report of panel;

Miscellaneous Complaints Procedures Directions (NI) 1996
- articles 26(1)(b) assessors' report, 28 (1-5) report of panel;

The HPSS (Special Agencies) Complaints Procedures Directions (NI) 1996
- articles 25(1)(b) assessors' report, 27 (1-5) report of panel;

Directions to HSS Boards for Dealing with Complaints about FHS Practitioners
- articles 32(1)(b) assessors' report, 34 (1-5) report of panel;

Good Practice – ***covers general points of good practice.***

10.	Is the report dated?	☐
11.	Is it signed?	☐
12.	Are the names and status of panel members given? (eg: chairman, convenor, independent lay member)?	☐
13.	Is there information on the qualifications and speciality of each assessor?	☐
14.	Does the report make clear what use the panel has made of the assessors' advice?	☐
15.	Is clinical evidence presented so that a lay person can understand it?	☐
16.	Does the report contain the necessary background information to make sense of the complaint?	☐
17.	Are the terms of reference (TOR) stated clearly at the beginning of the report?	☐
18.	Does it say whether the TOR was agreed with the complainant?	☐
19.	Have all the terms of reference been fully addressed in the report?	☐
20.	Does the report include information on how the review was conducted?	☐
21.	Does it say who gave oral and/or written evidence?	☐
22.	If the complaint is clinical, have all relevant clinicians given evidence?	☐
23.	Does the report refer to all the oral and documentary evidence needed to support the findings of fact and opinions?	☐
24.	Is it clear in the report which type of evidence is being referred to (eg: oral/written)?	☐
25.	If suggestions/recommendations are given, are they clear and unambiguous?	☐
26.	Do they follow logically from the findings?	☐
27.	Does the report say whether the complainant saw all or part of the report in draft?	☐
28.	Is the report factually accurate?	☐

B. ASSESSORS' REPORT

29.	Have the assessors provided a written report as required to under the directions?	☐
30.	Is it dated?	☐
31.	Is it signed?	☐
32.	Are the assessors' qualifications given?	☐
33.	Do the assessors have appropriate qualifications/experience?	☐

34. Is it clear on what issues the assessors were asked to advise? ☐

35. Is it clear what written or oral evidence they had in giving their advice? ☐

36. Does the assessors' report express the views of both/all assessors? ☐

37. If the assessors reported separately, are both reports attached?

38. If a joint report, is it clear where they agree and/or disagree? ☐

39. Does the report explain clinical terms? ☐

40. Does it reach clear conclusions supported by evidence/expert opinion? ☐

C: CIRCULATION OF THE PANEL'S DRAFT REPORT

The guidance says that the panel <u>may</u> circulate the draft report so that it can be checked for factual accuracy. Circulation should be <u>restricted</u> to those who <u>need</u> to see it.

41. Was the draft report circulated to:

(a) the complainant? ☐

(b) any person complained against? ☐

42. Was the assessors' report issued with the draft report? ☐

D: CIRCULATION OF THE PANEL'S FINAL REPORT

See question 47 for reports about FHS practitioners.

43. Was the report issued to:

(a) the complainant? ☐

(b) the patient/client, if he/she is not the complainant? ☐

(c) the person subject to the complaint? ☐

(d) anyone else who was interviewed by the panel (*only where appropriate – see 46a)*? ☐

(e) the assessors (*only where appropriate – see 46b)*? ☐

(f) the Chairman of the HSS Trust/Board? ☐

(g) the Chief Executive of the HSS Trust/Board/independent provider/FHS practitioner? ☐

Withholding the Panel Report – *chairs have the right to withhold any part of the report where it is necessary to protect a person's confidentiality or health and welfare.*

44. In order to protect confidentiality was the report/part of the report withheld from:

(a) a relevant person? ☐

(b) any third party? ☐

45. Was the report/part of the report withheld to protect the health and social welfare of:

(a) the complainant? ☐

(b) a relevant person? ☐

(c) a third party? ☐

Extracts from the Report – ***in order to protect confidentiality, chairs have discretion to only send extracts from the report to interested parties. This could include sections referring to named individuals, .i.e interviewees, while assessors may only need to see the summary of findings and recommendations.***

46. Were relevant extracts (*where appropriate)* sent to:

(a) anyone else who was interviewed by the panel? ☐

(b) the assessors? ☐

Complaints about FHS Practitioners – ***the guidance and FHS directions outline arrangements for issuing reports about FHS practitioners. Chairs must make any circulation requirements clear to HSS Board CEs when issuing the final report on a FHS complaint. See also questions 47-49 on protecting confidentiality.***

47. Was the report issued to the Chief Executive of the HSS Board? ☐

48. Was the Chief Executive instructed to forward the report, as required, to:

(a) the complainant? ☐

(b) the FHS practitioner complained about? ☐

(c) any person who is not a participant but who was interviewed by the panel (*only where appropriate – see 46a*)? ☐

(d) the patient if he/she is not the complainant? ☐

(e) the assessors (*only where appropriate – see 46b)*? ☐

(f) the chairman of the HSS Board? ☐

Commissioner for Complaints – ***chairs must ensure that complainants are aware of their right to contact the NI Commissioner for Complaints.***

49. Did the copy sent to the complainant include a notice explaining their right to approach the Commissioner for Complaints if they are not content with the outcome of the review? ☐

SECTION 3

ROLE OF THE COMMISSIONER FOR COMPLAINTS (THE OMBUDSMAN)

- The Ombudsman's Jurisdiction
- What can the Ombudsman investigate?
- Is there anything the Ombudsman can't investigate?
- What can the Ombudsman do for the complainant?
- The Ombudsman's Initial Investigation
- Good Practice for Trusts
- Professional Advisers

SECTION 3 – ROLE OF THE COMMISSIONER FOR COMPLAINTS (THE OMBUDSMAN)

The Ombudsman's Jurisdiction

3.1 The Ombudsman deals with complaints from people who claim to have suffered injustice because of maladministration by government departments and public bodies in Northern Ireland.

3.2 The Northern Ireland Ombudsman's Office was established in 1969. Current powers and responsibilities are laid down in the Ombudsman (Northern Ireland) Order 1996 and the Commissioner for Complaints (Northern Ireland) Order 1996. From 1 December 1997 these powers were extended, by the Commissioner for Complaints (Amendment) (Northern Ireland) Order 1997, to include all complaints by, or on behalf of, HPSS patients.

3.3 The legislation, for the first time, brought within the Ombudsman's jurisdiction complaints about:

- HPSS services provided by primary care services practitioners, their staff, or their deputy or locums;
- actions taken wholly or partly as the result of the exercise of clinical judgement.

3.4 The legislation also made other changes:

- to clarify the Ombudsman's powers to investigate complaints about independent sector providers where they have contracted to provide HPSS services;
- to give staff employed by Trusts, Boards, FHS practitioners; independent providers and those working for them, a right to complain to the Ombudsman if they consider that they have suffered injustice as a result of complaints procedures operated by HPSS bodies. Staff would be expected to have gone through established local grievance procedures before approaching the Ombudsman.

3.5 The legislation allows the Ombudsman to pass information discovered in the course of an investigation to a professional regulatory body (for example, the General Medical Council) and/or to an employing authority, if he believes that to be necessary to protect the health or safety of patients or the public.

What can the Ombudsman investigate?

3.6 The Ombudsman can consider complaints from people who claim to have suffered injustice because of maladministration by any body within the Ombudsman's jurisdiction.

3.7 The term 'maladministration' is not defined in the Ombudsman's legislation but is taken to mean poor administration or the wrong application of rules. Some examples, which the Ombudsman may regard as maladministration, include:

- avoidable delay;
- faulty procedures or failing to follow correct procedures;
- not telling complainants about any rights of appeal they have;
- unfairness, bias or prejudice;
- giving advice which is misleading or inadequate;
- refusing to answer reasonable questions;
- discourtesy and failure to apologise properly for errors;
- mistakes in handling claims;
- not offering an adequate remedy where one is due.

3.8 The main stages at which complaints may be made to the Ombudsman are where:

- the responsible HPSS body, primary care services practitioner, or independent provider, has refused to investigate a complaint because it fell outside the HPSS time limits, and the relevant convenor has upheld that decision;

- a complainant is dissatisfied following local resolution and the convenor has refused his request for an independent review;

- the complainant is dissatisfied with the process or the outcome of the independent review.

3.9 Where a complaint falls into one or other of the first two of these categories, the Ombudsman may, if he considers the complaint warrants it, recommend that the decision of the convenor should be reconsidered, in preference to an Ombudsman investigation of the substance of the original complaint. This reflects the Ombudsman's view that the HPSS complaints procedure should be fully exhausted before he investigates, and that such investigations should be a local HPSS responsible wherever possible. Similarly, when a complaint falls into the third category, he may recommend that the panel reconsider it, or that a fresh panel is set up.

3.10 When the Ombudsman decides to investigate a complaint, HPSS Trusts and Boards should appoint a liaison officer who has suitable seniority and authority. The Ombudsman provides advice on the functions of liaison officers when a Statement of Complaint is sent to the Trust/Board.

Is there anything the Ombudsman can't investigate?

3.11 The Ombudsman generally will not investigate a complaint if:

- the action complained of took place more than 12 months ago;
- a person can appeal to a tribunal;
- a person could go to court;
- the organisation has not done anything wrong;
- it is about government policy or the content of legislation; or
- the Ombudsman thinks the action or decision being complained about is reasonable.

3.12 A number of the decisions taken by government and public bodies are left to the discretion of the individual body, ie the decision is one which depends on the judgement of the decision maker(s) rather than, for example, on satisfying any stated conditions. The Ombudsman can only investigate such a discretionary decision if there is evidence that there has been maladministration in the way the decision is made, or if the decision is clearly unreasonable.

What can the Ombudsman do for the complainant?

3.13 Following an investigation, the Ombudsman may conclude that a complaint was wholly or partly justified, or that it was not justified. If it is found that the complain it justified, the Ombudsman can recommend that the body complained about should provide a remedy. Although the Ombudsman has no power to enforce the recommendations the bodies almost always accept them. Where a recommendation is made under the Commissioner for Complaints legislation, the complainant may seek damages in the County Court if a public body fails to provide the recommended remedy.

3.14 It is not the Ombudsman's role to obtain compensation for individuals. However, if it is decided that a person has suffered because of something an organisation done wrong, the Ombudsman will try to get the organisation to put the person in the position he/she would have been if they had been treated fairly in the first place. This may involve recommending a consolatory payment, but often the Ombudsman may consider that an apology is sufficient and will also tell the organisation to improve its procedures so that no-one else suffers in the same way.

The Ombudsman's Initial Investigation

3.15 In deciding whether to investigate a complaint the Ombudsman will have access to all papers relating to any local resolution and independent review investigations. Where a case has been the subject of an independent review, these papers will include the report of the panel and the associated independent assessors' reports. In deciding whether to take on a case, the Ombudsman will wish to satisfy himself that there are sufficient grounds for an investigation by him. He will obtain independent professional advice as necessary to help him with cases involving clinical issues.

Good Practice for Trusts

3.16 The possibility of an investigation by the Ombudsman reinforces the need to ensure that complainants are always given clear and specific reasons why any request for local resolution or independent review is not accepted. Panel reports and subsequent letters from Chief Executives to complainants about the action to be taken, should clearly address the concerns of the complainants. Similarly, where complaints are not upheld following local resolution or independent review, there should always be well-reasoned explanations, demonstrably grounded wherever possible, on verified facts. Where action is being taken, for example to change procedures or improve services, the complainant should always receive a specific indication of what those are.

3.17 Trusts/Boards should ensure that appropriate references are made to the role of the Ombudsman when publicising their complaints procedure, and in the responses they make to individual complainants. **It is important that all complainants know when and how they can complain to the Ombudsman,** and understand that Ombudsman has discretion, case-by-case, on whether he investigates complaints within his jurisdiction, and that he will determine whether there are adequate grounds for any investigation.

3.18 The Ombudsman has published a leaflet for the general public to explain his new powers. Copies are sent to Trusts. As a matter of good practice, complaints officers and convenors may wish to enclose a copy of the Ombudsman's leaflet with any letter referring to the complainant's rights to take their concerns to the Ombudsman.

Professional Advisers

3.19 The Ombudsman has access to independent medical, dental, nursing, PAMs, and pharmaceutical advisers, to help him on a case-by-case basis. While independent of the HPSS complaints procedure, the Ombudsman is a key component of it. The prompt release by Trusts and other employers of professional staff invited by the Ombudsman to advise on particular cases is essential in ensuring that he is

able to discharge his new responsibilities effectively. Releasing staff to advise the Ombudsman must be regarded as of equal priority to the release of staff to advise independent review panels.

SECTION 4

USEFUL INFORMATION

- Legal Framework
- Key Objectives of Complaints Procedure
- Patient/Client Confidentiality
- Third Party Confidence
- Use of Anonymised Information
- Distribution of Statement of Complaint and Independent Review Panel Reports
- Role of Chief Executives
- Access to Health or Social Services Records
- Code of Practice on Openness in the HPSS
- Complaints under the Children Order
- Role of Registration and Inspection Units
- Complaints affecting more than one HPSS Body
- Continual/Vexatious Complainants
- Staff Grievance Procedures
- Disciplinary Action
- Investigation by a Professional Body
- Independent Inquiries and Criminal Investigation
- Possible Claims for Negligence
- Complaints about services commissioned by Boards
- Complaints against Independent Providers
- HPSS Private Pay Beds
- Training
- Monitoring

Annex 4A: Definition of a Habitual/Vexatious Complainant

SECTION 4 – USEFUL INFORMATION

Legal Framework

4.1 The following Directions provide the legal framework for the complaints procedure:

- The Health and Personal Social Services Complaints Procedures Directions (NI) 1996, issued 1996;
- Directions to Health and Social Services Boards on procedures for dealing with complaints about family health services practitioners, issued 1996;
- The Miscellaneous Complaints Procedures Directions (NI) 1996, issued 1996;
- The Health and Personal Social Services (Special Agencies) Complaints Procedures Directions (NI) 1996, issued 1996;
- Directions to Health and Social Services Boards on Procedures for Dealing with Complaints about Family Health Services Practitioners and Providers of Personal Medical Services, issued 1998; and
- Directions to Health and Social Services Boards Concerning the Implementation of Pilot Schemes (Personal Medical Services), issued 1998.

4.2 The following Regulations affect the complaints procedure:

- The General Medical Services Regulations (NI) 1997;
- The General Dental Services Regulations (NI) 1993;
- The General Ophthalmic Services Regulations (NI) 1986;
- The Pharmaceutical Services Regulations (NI) 1997;
- The Health and Social Services (Fundholding Practices) Regulations (NI) 1993.

Key Objectives of Complaints Procedure

4.3 The key objectives of the HPSS complaints procedure, introduced on 1 April 1996, are:

- ease of access for patients and complainants
- a simplified procedure, with common features for complaints about any of the services provided as part of the HPSS
- separation of complaints from disciplinary procedures

- making it easier to extract lessons on quality from complaints to improve services for patients
- fairness for staff and complainants alike
- more rapid, open processes
- an approach that is honest, thorough, with the prime aim of resolving the problems and satisfying the concerns of the complainant.

4.4 The Department remains committed to achieving all these objectives. They are a key part of action flowing from the Charter for Patients and Clients and Well into 2000, the agenda for improving health and well-being[7].

Patient/Client Confidentiality

4.5 Advice on patient/clients confidentiality is given in a code of practice[8] and Trusts must follow this advice in its use and handling of personal health information connected with a complaint.

4.6 It is not necessary to obtain the patient's/client's express consent to the use of their personal information to investigate a complaint. Even so, it is good practice to explain to the patient/client that information from his/her health or social services records may need to be disclosed to the complaints officer, to clinical assessors, and possible to the convenor and panel members, but only if they have a demonstrable need to know, for the purposes of investigating the complaint. If the patient/client objects to this, it should be explained to him/her that this could compromise the investigation and his/her hopes of a satisfactory outcome to the complaint. The patient's/client's wishes should always be respected, unless there is an overriding public interest in continuing with the matter.

4.7 Where a complaint is made on behalf of a patient/client who has not authorised someone to act for him/her, care must be taken not to disclose health or social services information to the complainant, unless the patient/client has expressly consented to its disclosure.

Third Party Confidence

4.8 The duty of confidence applies equally to third parties who have given information or who are referred to in the patient's/client's records. Particular care must be taken where the patient's/client's records contain information provided in confidence, by, or about, a third party who is not a health or social services professional. Only that information which is relevant to the complaint should be considered for disclosure, and then only to those *within* the HPSS who have a demonstrable need to know in connection with the complaint investigation. Third

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7 Well into 2000 – A Positive Agenda for Health and Well-being, DHSS, 1997

8 The Protection and Use of Patient and Client Information – Guidance for the HPSS, HSS Executive, March 1996

part information must not be disclosed to the patient/client unless the person who provided the information has expressly consented to the disclosure.

4.9 Disclosure of information provided by a third party outside the HPSS also requires the express consent of the third party. If the third party objects then it can only be disclosed where there is an overriding public interest in doing so.

Use of Anonymised Information

4.10 Where anonymised information about patient/client and/or third parties would suffice, identifiable information should be omitted. Anonymising information does not of itself remove the legal duty of confidence but, where all reasonable steps are taken to ensure that the recipient is unable to trace the patient/client or third party identity, it may be passed on where justified by the complaint investigation. Where a patient/client or third party has expressly refused permission to use information, then it can only be used where there is an overriding public interest in so doing.

Distribution of Statement of Complaint and Independent Review Panel Reports

4.11 The statement of complaint should be sent to any person who is subject to a complaint about a Trust, Board, or independent provider. For complaints about family health services the statement must go to the person subject to the complaint and to any other person named in the complaint. Convenors may also need to give a copy of the lay chairman with whom they consult, or to any advisors in respect of clinical issues. Only exceptionally should it be necessary to circulate the statement more widely at the convening stage. If a panel is established further limited circulation to panel members and assessors will be necessary.

4.12 The distribution of the final report of an independent review panel is set out in paragraph 2.42. Panel chairmen have authority to withhold any part of the report from any person or organisation if they consider it necessary to protect the confidentiality of the patient/client or third party, or the health of the patient/client or complainant.

4.13 Lay chairmen need to ensure that the covering letter to Chief Executives of Trusts/Boards/independent providers/FHS practitioners enclosing their copy of the report explains that the report should be circulated only to those officers and professionals who need to see the report. Others, for example those who are not themselves the subject of the complaints should receive only those parts of the report that relate to the information given by them.

Role of Chief Executives

4.14 The circulation of final reports on FHS complaints is not the responsibility of panel chairmen. The chairman is only required to send a copy to the Chief

Executive of the Board that established the panel. It is the duty of the Chief Executive to arrange for distribution. The Chief Executive however does **not** have authority to decide if any part of the report should be withheld from any of those to whom he is required to send it. That authority lies with the panel chairman. The Chief Executive should abide by a chairman's decision to withhold any part of a report.

Access to Health or Social Services Records

4.15 The complaints procedure may be used to investigate a complaint about any aspect of an application to obtain access to health or social services records as an alternative to making an application to the courts. This does not affect the patient's/client's right to take the matter to a court if he/she remains dissatisfied with the outcome of an investigation.

4.16 Where the complaint relates to a decision to withhold access to all or part of the record, the role of an independent review panel is to advise the record holder of their opinion. It remains the responsibility of the record holder to decide whether access should be granted. Care must be taken to ensure that in reporting the outcome of an investigation into a complaint about access to health or social services records, the patient/client does not obtain information to which he/she is not entitled. This is particularly important in the following circumstances:

- when access has been denied on the grounds that it would cause serious harm to the physical or mental health of the patient or any other individual;

- where information relates to or was provided by a third party who could be identified from that information and who had not consented to its disclosure; or

4.17 Access to health records compiled before 30 May 1994 is at the discretion of the record holder, having regard to the fact that such records were not compiled in the expectation that they would be disclosed to the patient. This is an additional factor to be borne in mind when considering whether to grant access to such records.

4.18 It remains current policy that patient's/client's should be allowed to see what is written about them in their health or social services records whenever possible.

4.19 Complaints records should normally be kept separate from health or social services records, subject to the need to record any information that is strictly relevant within the patient's/client's health or social services records.

Code of Practice Openness in the HPSS

4.20 Complaints about non-disclosure of other information under the Code[9]can be considered under the HPSS complaints procedure.

Complaints under the Children Order

4.21 Complaints made in relation to personal social services for children should always be considered under the Representations and Complaints Procedures established under the Children (NI) Order 1995.

4.22 The Children Order Representations and Complaints Procedures apply to services provided under Part IV of the Order and to Schedule 5, paragraph 6 (matters regarding the "usual fostering limit"). The effect of Part IV is that the Children Order procedure applies to all personal social services provided to children and their families under the order. Complaints from those providing services for children (day care, child minding, residential care) which relate to registration requirements do not fall within the Representations and Complaints Procedures and should be addressed under the specific procedures set out in the Order.

4.23 Some personal social services for children fall outside the scope of Part IV of the Children Order, for example, adoption, matters relating to the work of the Area Child Protection Committees, and the production of welfare reports in private law cases. Guidance already issued under the Children Order urges Trusts to adopt a flexible approach and to consider all matters relating to personal social services for children under the procedures for Children Order cases. Particular regard should be given to Volume 3 (Chapter II) in the Children Order Guidance and Regulations. **It is most important that in the event of any uncertainty as to the procedure to be adopted in a particular case that the matter is resolved speedily.**

The Role of Registration and Inspection Units

4.24 Independent and statutory residential and nursing homes that provide services under contract to the HPSS must operate a complaints procedure that meets the requirements of the HPSS complaints procedure. Complainants should normally be encouraged to complain to the service provider under local resolution, but retain the right to complain directly to the local registration and inspection unit, if they so wish.

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9 Code of Practice an Openness in the HPSS, HSS Executive, October 1996

4.25 Registration and inspection units have a statutory duty to investigate any complaint that they receive about the care and well-being of residents. Complaints handled by units will normally be investigated in line with the requirements of the HPSS complaints procedure[10]. The unit will seek to resolve complaints under local resolution, with residents having the right to seek independent review if they remain dissatisfied. Exceptions will be those of a serious nature that indicate a breach of registration requirements, including the fitness of those working in or responsible for the home that may lead to cancellation of registration. These will be handled separately under the statutory duty imposed by The Residential Homes (NI) Order 1992.

Complaints affecting more than one HPSS body

4.26 Where an HPSS body receives a complaint which is solely concerned with services provided by another health body or a body outside the HPSS, the complaints officer, in consultation with the complainant, should arrange that it is passed immediately to the correct body. This action should be confirmed in writing to the complainant and the body concerned.

4.27 Where a complaint relates to the actions of two or more HPSS bodies – for example, two Trusts, or a family health services practitioner and a Trust, there should be full co-operation between the complaints staff of these bodies to resolve the complaint. Where a complainant wishes to pursue such related complaints to independent review, the convenors involved should liaise with the aim of establishing close co-operation with the respective bodies. Good practice suggests that a final draft response should be shared prior to being sent. Legally, separate panels need to be established, but they might nevertheless comprise the same panel chairman and, in some cases, the same third panel member. It may also be possible in these circumstances for the same assessors to be used.

4.28 The chairman might also wish to establish close working arrangements between the panels – possibly meeting on the same day, in the same place – and ensuring that between them they deal with all issues. While each panel must make its own separate report, this could help the chairman ensure commonality of findings and also that each HPSS body received appropriate advice.

Continual/vexatious complainants

4.29 Habitual and/or vexatious complainants can be a problem for HPSS staff. The difficulty in handling such complaints can cause undue stress for staff and placing a strain on time and resources. HPSS staff are trained to respond with patient and sympathy to the needs of all complainants but there are times when there is

10 Registration and Inspection Unit Complaints Procedure, Eastern HSS Board, November 1997

nothing further, which can reasonably be done to assist them or to rectify a real or perceived problem.

4.30 There are two key considerations when determining how to handle such complaints. The first is to ensure that the complaints procedure has been **correctly implemented** so far as possible; that **no material element of a complaint has been overlooked or inadequately addressed;** and to appreciate that even habitual or vexatious complaints may have aspects that contain some substance. The need to ensure an equitable approach is crucial.

4.31 The second is to identify the stage at which a complaint has been habitual or vexatious. One approach is to develop an approved policy that is formally incorporated into the complaints procedure. Implementation of such a policy should only occur in **exceptional circumstances**. Information of habitual and vexatious complaints could also be made available the public as part of the material on the complaints process as a whole.

4.32 **A vexatious complaints policy should only be used as a last resort after all reasonable measures have been taken to resolve the complaint using the HPSS complaints procedure, for example through local resolution, conciliation, or involvement of the health and social services council as appropriate**. Judgement and discretion must be used in applying the criteria to identify potential habitual or vexatious complainants and in deciding the action to be taken in specific cases. The policy should only be implemented following careful consideration by, and with the authorisation of, the Chairman and Chief Executive of the Trust or their deputies in their absence.

4.33 Where complainants have been identified as habitual or vexatious in accordance with the criteria in Annex 4A, the Chief Executive and Chairman (or appropriate deputies in their absence) will determine what action to take. The Chief Executive (or deputy) will implement such action and will notify the complainant in writing of the reasons why he/she has been classified as habitual or vexatious complainants and the action to be taken. This notification may be copied for the information of others who may be involved, for example conciliator, health and social services council, Member of Legislative Assembly, Member of Parliament. A written record must be kept of the reasons why a complainant has been classified as habitual or vexatious.

4.34 The Chief Executive and Chairman may decide to deal with complaints in one or more ways, for example:

- Try to resolve matters, before invoking this policy, by drawing up a signed ‘agreement’ with the complainant (and if appropriate involving the relevant practitioner in a two-way agreement) which sets out a code of behaviour for the parties involved if the Board is to continue processing the

complaint. If these terms are contravened, consideration would then be given to implementing other action as indicated in this section.

- Decline contact with the complainants either in person, by telephone, by fax, by letter or any combination of these, provided that one form of contact is maintained.

- Notify the complainant in writing that the Chief Executive has responded fully to the points raised and has tried to resolve the complaint but there is nothing more to add and continuing contact on this matter will serve no useful purpose. The complainants should also be notified that the correspondence is at an end and that further letters received will be acknowledged but not answered.

- Inform the complainant that in extreme circumstances the Trust reserves the right to pass unreasonable or vexatious complaints to its solicitors.

- Temporarily suspend all contact with the complainant or investigation of a complaint whilst seeking legal advice or guidance from the HSS Executive, or other relevant agencies.

4.35 Once complainants have been determined as 'habitual or vexatious' there needs to be a mechanism for withdrawing this status at a later date if, for example, complainants subsequently demonstrate a more reasonable approach or if they submit a further complaint for which normal complaints procedures would appear appropriate. Staff should previously have used discretion in recommending 'habitual or vexatious' status at the outset and discretion should similarly be used in recommending that this status be withdrawn when appropriate. Where this appears to be the case, discussion will be held with the Chief Executive and/or the Chairman (or their deputies). Subject to their approval, normal contact with the complainants and application of the HPSS complaints procedure will then be resumed. See Annex 4A for further guidance on the definition of a vexatious complainant.

Staff Grievance Procedures

4.36 It is important to recognise that the HPSS complaints procedure is designed to address the concerns of patients and clients, not those of staff. Trusts and other HPSS bodies have separate procedures for handling staff grievances. Local procedures will also cover more general grievances. Disputes about contractual matters between Boards and primary care services practitioners should not be handled through the complaints procedures. Staff may complain about the way they have been dealt with under the HPSS complaints procedure and provided they have exhausted the local grievance procedure, may take the matter up with the Ombudsman. FHS practitioners may also complain to the Ombudsman about the way they been dealt with under the complaints procedure.

4.37 If any complaint received by a member or employee appears to raise matters normally dealt with by:

- an investigation under the disciplinary procedure;
- one of the professional regulatory bodies;
- an independent inquiry into a serious incident; or
- an investigation of a criminal offence.

The person in receipt of the complaint should <u>immediately</u> advise the complaints officer. The complaints officer (or the convenor) must not initiate any action on these matters, but must <u>immediately</u> refer them to the person appointed to deal with such matters.

Disciplinary Action

4.38 When a decision is made to embark upon a disciplinary investigation, action under the complaints procedure on any matter which is the subject of that investigation must cease. Where there are aspects of the complaint not covered by the disciplinary investigation, they should continue to be dealt with under the complaints procedure. The Chief Executive must advise the complainant in writing that a disciplinary investigation us under way; that they may be asked to take part in that process; and how any outstanding aspects of their complaint not affected by the disciplinary investigation will be taken forward.

4.39 If there are not outstanding issues from the complaint requiring investigation, the complainant should be advised in writing by the Chief Executive that no further action will be taken other than through the disciplinary procedure.

4.40 If referral for disciplinary investigation is made during local resolution, then this part of the procedure should be completed by a letter from the Chief Executive setting out the action taken by the Trust. When referral occurs during the independent review process, a similar letter should be issued on completion of that process. In drafting these letters, the overall consideration must be to ensure that when the investigation has moved into the disciplinary procedure, the complainant is not left feeling that their grievance has only been partly dealt with.

4.41 If the complainant asks to be informed of the outcome of the disciplinary investigation, the Trust's response must balance the need to reassure the complainant that their grievance has been dealt with seriously and satisfactorily, with the need to protect the right of confidentiality of its staff. The guiding principle should be that the complainant should receive the same consideration and information as if the matter had been dealt with under the complaints procedure. They therefore have a right to know what happened; why it happened; and what action has been taken to prevent it happening again. They can also be

told, in general terms that disciplinary action may be imposed as a result of the complaint.

Investigation by a Professional Body

4.42 A similar approach should be adopted in a case referred to a statutory regulatory body, for example the UKCC for nurses, midwives and health visitors. The Chief Executive must inform the complainant in writing of the referral to the regulatory body, and explain that: the Trust now has no control over what happens or over what period; giving as full a response as possible on the matter; and indicating that the information may need to be passed to the regulatory body. The letter should also explain how any other aspect of their complaint not covered by the referral to the regulatory body will be investigated under the complaints procedure.

Independent Inquiries and Criminal Investigation

4.43 Where an independent inquiry into a serious incident or a criminal investigation is initiated, the Chief Executive should immediately advise the complainant of this in writing. As the complaints procedure cannot deal with matters subject to any such investigation, consideration of those parts of the original complaint must be suspended until the other investigation is concluded. When this happens before the investigation of the complaint has been completed, a full report of the investigation thus far should be made available to the complainant.

4.44 When the independent inquiry or criminal investigation has concluded, consideration of that part of the original complaint on which action was suspended can recommence if there are outstanding matters which remain to be dealt with.

Possible Claims for Negligence

4.45 In the early part of the process it may not be clear whether the complainant simply wants an explanation and apology, with assurances that any failures in service will be rectified for the future, or whether they are in fact seeking information with litigation in mind. It may be that an open and sympathetic approach will satisfy the complainant. **However, if the complainant indicates an intention to instigate or instigates legal action about a matter that is the subject of a complaint, the complaints procedure should be immediately brought to an end.** The Chief Executive should advise the complainant and the complained against in writing of this decision.

4.46 At the first indication of a possible claim for negligence, or where the complainant has initiated legal proceedings, the principles of good claims management and risk management should be applied. There should be a full and thorough

investigation of the events. In any case where negligence has been accepted, a speedy settlement should be sought.

4.47 It is not the intention of the complaints procedure to deny someone the opportunity to pursue a complaint if the person subsequently decides **not to take legal action.** If he/she then wishes to pursue their complaint through the complaints process the investigation of their complaint should commence or resume.

Complaints about services commissioned by Boards

4.48 Complaints about commissioning decisions made by Boards may be made by or on behalf of any individual personally affected by a commissioning decision taken by the Board. Of course health and social services councils may wish to raise general concerns about commissioning issues with the Board. They should receive a full explanation of the Board's policy. These issues should not, however, be dealt with under the complaints procedure. Panels may criticise the way in which a commissioning decision has been reached – for example on the grounds that the Board did not consult properly or take appropriate clinical advice – but where a purchasing decision has been taken properly and reasonably, panels will not be able to suggest an alternative decision.

4.49 Where a complaint concerns the exercise of clinical judgement, the Board will nominate at least two clinical assessors to the panel with experience of exercising clinical judgement in a commissioning context. If the complainant wishes to pursue a complaint both about the actual services and the commissioning decision involved, the assessors will need to represent between them the appropriate clinical experience for both aspects.

Complaints against independent providers

4.50 The complaints procedure applies equally to services provided for HPSS patients and clients by the independent sector. Complaints about the actual services purchased from the independent sector must be treated as such as and not as complaints about commissioning decisions. If a complainant wishes to complain about the related commissioning decision at the same time this should be pursued through the same procedure in parallel.

4.51 Boards should specify in their contracts with independent providers that the provider must set up and run a local resolution process as far as possible as identical to and as good as local resolution that HPSS providers are required to provide, and that they must co-operate with the independent review procedure. Contracts made by Boards and Trusts should include a requirement on the independent provider and its staff to co-operate with any independent review process that is set up, and to indemnify them for the costs of setting up and running the arrangements.

4.52 Where a Board has commissioned the service concerned, the convening and panel stages of the independent review process will be organised by the Board in the same way as for review of complaints against other commissioning decisions. However, the questions to be addressed will be about the service concerned. Complaints may be pursued in this way by, or on behalf of, existing or former HPSS users of services purchased from the independent sector by the Board. Such complaints must relate to the services in question.

4.53 A complaint under the procedures of the Registered Homes (NI) Order 1992 (through the Inspection Unit Manager of the Board and if the independent provider is registered under the Order) does not preclude a complainant pursuing a separate complaint under the HPSS complaints procedure.

4.54 If a complaint against an independent provider registered under the Order is not resolved locally the convenor may, with the complainant's consent, delay the instigation of independent review until the Inspection Unit Manager (of the Board registering the independent provider) has had the opportunity to attempt to resolve the complaint.

HPSS Private Pay Beds

4.55 The complaints procedure covers any complaint made about the Trust's staff or facilities relating to care in private pay beds, but not to the private medical care provided by the consultant outside his HPSS contract.

Training

4.56 Training is the key to making the complaints procedure work effectively. Training materials have been provided for Trusts and Boards, who have a responsibility to ensure that staff are competent and confident in dealing with expressions of concern or complaint. The improvement of these skills continues to be a high priority of the Chief Executives and their boards. Boards should also consider the scope for joint training of staff, convenors, lay chairmen and panel members. Convenors and other staff should not be asked to undertake their role without appropriate training.

4.57 Good practice suggests that key players will benefit from regular informal discussion of matters of common interests. The annual publication of the Ombudsman's Report offers useful points for such discussions. The Department will consider holding seminars on matters of regional interest, and is in regular touch with complaints officers and convenors on such matters.

Monitoring

4.58 The boards of Boards and Trusts should receive quarterly reports on complaints, in order to:

- monitor arrangements for local complaints handling;
- consider trends in complaints; and
- consider any lessons that can be learned from complaints, particularly for service improvement.

4.59 Trusts/Boards* must publish annually (in their Annual Report) a report on complaints handling and send copies to relevant health and social services councils. These reports must not breach patient confidentiality.

Only relevant to complaints about Boards themselves. Complaints against FHS Practitioners, GP Fundholders, and Independent Providers will not be included

4.60 Directions require Boards to monitor arrangements for dealing with complaints. Patient's and Client's Charter guidance reinforces this and requires Trusts to keep the relevant commissioning authorities informed of progress in dealing with complaints. An increase in the number of complaints is not in itself a reason for thinking the service is deteriorating. It might mean the organisation is becoming more responsive to complaints. The important point is to handle complaints well and to feed the lessons into quality improvement.

4.61 Consideration should be given to collection of local data on:

- oral complaints not recorded in writing;
- patients' comments and suggestions;
- changes in practice and procedure as a consequence of complaints handling.

4.62 Complaints handling should be monitored on a regular basis through, for example patient satisfaction surveys. Such information will enable providers to improve the quality of their services, and help to inform purchasers in the contracting process.

4.63 The Department will continue to monitor the number and type of complaints, and action taken to improve the quality of services as a result of complaints. Hospital and community health and social services statistical collection will continue to be through the completion by Trusts and Boards of the CH8 and CHB returns.

ANNEX 4A

DEFINITION OF A HABITUAL OR VEXATIOUS COMPLAINANT

1. Complainants (and/or anyone acting on their behalf) may be deemed to be habitual or vexatious complainants where previous or current contact with them shows that they meet **TWO OR MORE** of the following criteria:

2. Where complainants:

- **Persist in pursuing a complaint** where the HPSS complaints procedure has been fully and properly implemented and exhausted (eg where investigation has been denied as 'out of time', where a convenor has declined a request for independent review).

- **Change the substance** of a complaint or **continually raise new issues** or seek to prolong contact by **continually raising further concerns or questions** upon receipt of a response whilst the complaint is being addressed. (Care must be taken not to discard new issues that are significantly different from the original complaint. These might need to be addressed as separate complaints).

- Are **unwilling to accept documented evidence** of treatment given as being factual, e.g. drug records, nursing records or deny receipt of an adequate response in spite of correspondence specifically answering their questions; or **do not accept that facts can sometimes be difficult to verify** when a long period of time has elapsed.

- **Do not clearly identify the precise issues** which they wish to have investigated, despite reasonable efforts of staff and, where appropriate, the local health and social services council to help them specify their concerns; **and/or where the concerns identified are not within the remit** of the Trust or Board to investigate.

- **Focus on a trivial matter** to an extent that is out of proportion to its significance and continue to focus on this point. It is recognised that determining what is a 'trivial' matter can be subjective and careful judgement must be used in applying this criterion.

- Have **threatened or used actual physical violence** towards staff at any time – this will in itself cause personal contact with the complainant and/or their representatives to be discontinued and the complaint will, thereafter, only be pursued through written communication. (All such incidences should be documented).

- Have in the course of addressing a registered complaint had an **excessive number of contacts** with the Board placing unreasonable demands on staff. (A contact may be in person or by telephone, letter or fax). Discretion must be used in determining the precise number of 'excessive contacts' applicable under this section, using judgement based on the specific circumstances of each individual case).

- Have **harassed** or been personally **abusive or verbally aggressive** on more than one occasion towards staff dealing with their complaint. (Staff must recognise that complainants may sometimes act out of character at times of stress, anxiety, or distress and should make reasonable allowances for this. They should document all incidents of harassment).

- Are known to have **recorded** meetings or face-to-face/telephone **conversations without** the prior knowledge and consent of other parties involved.

- **Display unreasonable demands or patient/complainant expectations and fail to accept that these may be unreasonable** (eg insist on responses to complaints or enquiries being provided more urgently than is reasonable or normal recognised practice).

Report on Good Practice Review of Complaints Procedures in the HPSS

led by Southern Area
on behalf of DHSSPS

February 2003

CONTENTS

1.0 Acknowledgements

The review group wish to thank all those who participated in the work of this Good Practice Review.

In particular, the Review Group are grateful to the many consultees who took the time to meet with them, to attend consultation events or to complete questionnaires.

The Review Group are also grateful to the very many members of staff who again gave of their time to engage in this work.

2.0 Introduction

The Southern Area on behalf of the Department of Health and Personal Social Services (DHPSS) family of organisations undertook to conduct a best practice review of complaints management within the Health and Personal Social Services. This report sets out the findings of this review along with best practice principles for future complaints management.

The concept of best practice reviews arose out of the statutory requirement placed on designated public authorities (which includes the HPSS family of organisations) to screen their policies to determine any inherent inequalities - see section 4 policy and legislative framework below for further detail of these statutory requirements.

It became apparent during the policy screening process (which was conducted collaboratively by the HPSS family) that there were a number of cross cutting themes which arose irrespective of which policy was being subjected to scrutiny. Such recurring themes included:

- Staff attitudes and training
- User involvement
- Access to services
- Access to information
- Complaint procedures.

With the endorsement of consultees it was decided to conduct a number of "Good Practice Reviews" to compliment the on-going work of Equality Impact Assessments. Further, good practice reviews were viewed as having the potential to produce both an immediate and positive impact in terms of promoting equality of opportunity and good relations for the affected groups.

The Department of Health, Social Services & Public Safety, in collaboration with Health & Social Services Boards, Trusts, Councils and Agencies, submitted to the NI Equality Commission in June 2001, details of 5 Good Practice Reviews along with their proposed programme of Equality Impact Assessments. The Equality Commission for NI agreed to these proposals.

It was agreed that Good Practice Reviews would be conducted on the following areas:-

- Access to Information
- Access to Services
- User Involvement
- Staff Attitudes/Training
- Complaints Procedures

3.0 Membership of the Review Group

The Complaints Procedures Good Practice Review has been undertaken by the Southern Area Complaints Forum. In addition, Mrs Lynda Gordon, Head of the Equality Assurance Unit at Craigavon and Banbridge Community HSS Trust joined the group. We are grateful to Lynda for her advice, assistance and valuable input during this process.

The following are the members of the group:

Karen Braithwaite, Southern Health & Social Services Board
Edel Corr, Craigavon Area Hospital Group Trust
Lynda Gordon, Craigavon and Banbridge Comm HSS Trust
Jacky Kingsmill, Craigavon and Banbridge Comm HSS Trust
Irene Knox, Armagh & Dungannon HSS Trust
Marian Fitzsimons, Newry & Mourne HSS Trust
Colette Hart, Southern Health and Social Services Council
Daphne Doran, Registration and Inspection Unit
Kenny McMahon, Northern Ireland Ambulance Service
Sharon Fulton, Association of Doctors on Call
Richard Graham, Dental Practice Adviser

4.0 Policy and Legislative Framework

Section 75 of NI Act 1998

Under Section 75 of the Northern Ireland Act 1998, public authorities , in carrying out their functions, are required to have due regard to the need to promote equality of opportunity between:-

- persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation
- men and women generally
- persons with a disability and persons without, and
- persons with dependants and persons without.

A public authority is also required to have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.

There are various requirements under the Act to be fulfilled by public authorities. One of these is the requirement to consider the possible equality implications of a policy and where one or more are identified, to consider what measures might lessen any adverse impact the policy may have on the promotion of equality of opportunity. Public authorities must also consider how any alternative policies might better achieve the promotion of equality of opportunity.

This review considered both duties under section 75 of the NI Act 1998, ie the promotion of equality and good relations. Standards have been drawn up for good complaints handling in the health and personal social services.

Complaints Procedures

Within the HPSS there are two main complaints procedures in operation:-

- HPSS Complaints Procedure
- Children (NI) Order Representation and Complaints Procedure

(i) HPSS Complaints Procedures

The HPSS Complaints Procedure was established in April 1996 as a result of the Wilson report 'Being Heard'. This complaints procedure covers complaints arising in the health and personal social services, including Family Health Services Complaints, with the exception of complaints under the Children (NI) Order 1995.

During the period January 1999 – December 2000 a 2 year national review of the NHS Complaints Procedure was undertaken by independent consultants. The results of the review were published in September 2001, with a period of pre-consultation and full consultation to follow. At the time of compiling this review the N Ireland consultation document is awaited.

(ii) Children (NI) Order Representation & Complaints Procedure

This procedure promotes the consideration of representations including complaints concerning the service provided to children in an open and non-defensive manner. This procedure is only to be used where it concerns a representation or complaint about a service that a child is, or should be receiving under part IV of the Children (NI) Order 1995 and for representations or complaints arising under schedule 5, paragraph 6 (matters regarding the exemptions to the "usual fostering limit").

Whilst these two procedures constitute the formal complaints mechanisms in the HPSS, cognisance must also be taken of the fact that the Registration and Inspection Unit has powers of investigation under its own legislation.

5.0 Methodology

In undertaking this review, the following methodology was adopted.

- Review of Stage I and Stage II of the Screening and Prioritisation of policies for Equality Impact Assessment
- Initial contact with key Section 75 groups to establish if there were key aspects in relation to complaints management which should be a focus of the work in this review
- Consultation with Convenors and Lay Chairpersons involved in the Complaints Procedure – 25 March 2002
- Compilation and issue of a questionnaire to approximately 600 consultees
- Two public consultation events on 27 June 2002 – Craigavon Civic Centre and Ballybot House, Newry
- Individual face to face meetings with various Section 75 groups
- Consultation events for staff in November 2002 – one event in each Board area.

The appendices attached to this report show the results of each of these aspects of consultation

Appendix 1	Results of analysis of Stage I and Stage II of equality consultations in relation to complaints management
Appendix 2	Summary of initial views from key section 75 groups
Appendix 3	Summary of consultation workshop with Convenors and Lay Chairs
Appendix 4	Questionnaire
Appendix 5	Results of questionnaire
Appendix 6	Report of public consultation events in June

	2002
Appendix 7	Summary of Issues arising from face to face meetings
Appendix 8	Summary of issues raised at consultations with staff
Appendix 9	Recommended standards: Good Practice Principles for Front Line Staff Good Practice Principles for Staff undertaking Complaints Investigations Good Practice Principles for Staff undertaking Complaints Management Sample Complaints Leaflet
Appendix 10	Implementation of Good Practice Principles

6.0 Aim of the Good Practice Review

The aim of this review was to assess the current mechanisms within the health and personal social services for complaints management. It appraised issues such as the accessibility and user friendliness of current procedures. It also considered how lessons learned from complaints could be applied throughout the service. Good practice standards have been be drawn up for adoption throughout the health and personal social services.

Objectives were:

1 To conduct a review of the operation of current complaints procedures.
2 To involve in the process all relevant stakeholders, Boards, Trusts, Health and Social Services Councils, Registration and Inspection Units, Family Health Services practitioners.
3 To engage Section 75 representative groups in discussions about complaints management and best practice principles which should be adopted.
4 To further analyse the evidence already provided by consultees throughout Stage I and Stage II of the equality consultation.
5 To take cognisance of the national review of the complaints procedure and the recommendations contained therein.
6 To produce a practical document which describes good practice and effectiveness.
7 To suggest mechanisms for the monitoring and review of these standards.

7.0 Principles for Good Practice

The good practice principles proposed in this review are detailed in the boxes at the end of each sub-paragraph.

7.1 Complaints in Context

Not everyone wants to make a complaint. A process should be available to allow a suggestion or comment or compliment to be made and followed up as appropriate.

> *"There needs to be further development of a system for recording compliments because we always dwell on the negative"*

- Complaints leaflet should be drafted to allow for comments, suggestions or compliments as well as complaints.

7.2 Training

Training was cited by consultees – both from section 75 representatives and from staff as a major issue. It was evident from our consultations with staff that in some areas training was provided regularly and in other areas training was never provided.

It was found that in areas where facilities consisted of a smaller number of staff, eg General Practice and the Independent sector. there tended to be less training available to staff.

Capacity to attend training, even if provided, varied and depended on the availability of resources to provide cover for staff during their absence while attending training.

There is a lack of training for complaints managers in a Northern Ireland context.

In addition to training specifically on complaints, it was highlighted that training on customer awareness, which may include training on aspects such as cultural diversity, anti-racism would be worthwhile.

> *"Staff at the first point of contact with patients/clients should be appropriately trained in how to deal with minority groups ..."*

> *"There is a big need for ongoing training for practice staff – this could be undertaken by Board or Trusts"*

- General complaints awareness training should be given to all staff
- Training should also include cultural diversity, disability awareness and customer care principles
- More specialised training should be provided to staff in line with their area of responsibility

7.3 Confidentiality

Most consultees cited the area of confidentiality as key to any complaints investigation. Complainants wish to be assured that their complaint will be treated confidentially and details shared only with those who need to be informed.

Linked to the area of confidentiality is the area of consent. Legislation such as the Data Protection Act 1998 requires explicit informed consent for the release of records.

It was discussed during one consultation that the giving of consent versus the ability to make an anonymous complaint or have a complaint taken forward on an individual's behalf by a representative organisation would be a barrier to certain communities in making a complaint.

> *"Confidentiality and support throughout the process are important to me"*

"Anonymity for persons from the gay community is needed, along with an assurance of confidentiality"

- Patient and Client confidentiality must be observed at all times.
- Ensure compliance with consent requirements and other relevant legislation.

7.4 Fear of Repercussions

Many consultees stated that the fear of repercussions had or would prevent them from making a complaint. Examples were given of particularly vulnerable people e.g. the elderly, disabled persons, persons availing of general practice services, minority ethnic groups.

"As a person with a disability, I would be afraid to complain due to the fear of loosing services .."

"Young people are particularly vulnerable and very dependent groups such as those with mental health problems and women with children with disabilities – feelings of fear that their services will be withdrawn if they complain"

"Elderly people feel they cannot raise their voice and complain, for fear of being victimised in the future."

"What is important to me is being dealt with confidentially, with less bureaucracy and with no repercussions".

- Ensure on-going health and social care needs are met.

7.5 Alternative Formats

The availability of appropriate information on making a complaint and the actual making of a complaint may be a barrier to persons making a complaint.

Organisations should ensure that they have adequate procedures in place to ensure that language, sensory disability, learning disability, physical disability, etc are not barriers to making a complaint.

It will be important to take account of the good practice review on accessible information.

> *"The availability of information in alternative formats is needed if people are to have access to the complaints procedure"*
>
> *"It was suggested that a video is made on how to complain so that people with a hearing problem can access the information"*

- Provide complainant with leaflet/information on complaints procedure.
- Be mindful of requirements for information in alternative formats and facilitate where required.
- Ensure compliance with the Good Practice Review on Accessible Information.

7.6 Communication

Closely linked to alternative formats is the important area of communication. Care needs to be exercised in understanding a complainant's communication needs and meeting these effectively. Care should be taken in the use of appropriate means of communicating, using jargon free language, or an interpreting service.

"Effective communication is key – often a simple explanation that the GP is running late would negate a complaint."

"Within the travelling community problems of literacy exist, however, communication networks within the travelling community are effective, once one knows, all know"

"Deaf (sign language users) need to be aware that they have the right to make a complaint and know who to make a complaint"

- Consider most appropriate method of response to complainant, eg letter or meeting.
- Use jargon free language and advise complainant and if unfamiliar terminology or abbreviations are used ensure that they are explained.
- During investigation keep line of communication open with complainant – use most appropriate method, eg phone, face to face meeting, etc.
- Consider venue arrangements and timing of meeting and be sensitive to personal circumstances of complainant and staff in arranging meetings.

7.7 Timescales

There was a general consensus that the current timescales are in the main unrealistic and unobtainable. Consultees from section 75 groups discussed the length of time it can/should take to respond to a complaint. There was a general feeling that adhering to timescales should not be at the expense of providing a full and complete response to a complaint. What was cited as important in this instance was that complainants were advised if there was a delay in providing a response and when the response can be expected.

to

"The 20 day deadline for responding *s should be*
complaints Is unreasonable" *sible a*
ainant"

"As a patient I believe that timescale
adhered to and where this is not pos
reason should be given to the compl

- Comply with internal timescales.
- Advise complainant of any delay.

ey would rate a full
esponse within
r concerns.

7.8 Undertaking the investigation

Many consultees expressed a view that th */s to respond*
and thorough investigation higher than a r *concentrate*
timescales which did not fully address the

"The emphasis should not be on da *d during the*
– there is a need to dig deeper and
on the quality of the response"

"It is important to keep staff informe luded in the
investigation of a complaint"

- Provide response on every aspect inc included in complaint es plaint.
- Ensure that information provided and the response to the complainant relat ure that it is specifically and is relevant to the com
- Check information in response to ens accurate and verified against relevant es. documentation.
- Avoid impersonal or standard respons

7.9 Support for Staff

It was recognised that a complaint investigation can be very stressful for staff. It was also recognised that a complaints investigation can last for many months and that staff need to be supported throughout the process.

> "The process is very unfair to staff – it is always loaded in favour of the complainant"
>
> *"Levels of support for staff is different in different practices – it seems to depend on the individual GP and how s/he handles the issue"*

- Identify and meet staff support needs
- Provide staff with up-to-date information on the progress of the complaint and the outcome.

7.10 Support for Complainants

It was identified through the consultations that many individuals did not have a knowledge about the complaints procedures in operation throughout the health and personal social services, nor did they know where to access help should they require it.

> *"It is important to have someone to understand my perspective and who is able to listen and take action .."*
>
> *"Confidentiality and support throughout the process are important"*

- Make complainant aware of assistance available to them, eg Patient Advocacy Service, Health and Social Services Councils, Citizens Advice Bureau, Elected Representatives, Voluntary/ Support Groups, etc.

7.11 Monitoring

It was acknowledged that complaints can be an extremely valuable source of information which indicates the quality of service/practice and identifies areas where changes in service/practice can lead to improvement and benefits for all. It was therefore highlighted that complaints and the implementation of changes resulting from a complaints investigation should be monitored and reviewed.

> *"Staff would like feedback regarding patient expectations so these can be matched with staff expectations/capabilities."*

> *"There is a need to have effective mechanisms in place to report outcomes of complaints … ie improvements & changes made as a consequence of a complaint".*

- Identify and report on trends and information in accordance with internal arrangements.
- Sharing of learning from complaints across organisations.

8.0 IMPLEMENTATION PLAN

The Good Practice Principles, as contained in Appendix 9, have been developed out of this review. It is recommended that the implementation plan is adopted by the Regional Equality Steering Group. These principles could then be circulated throughout the service for implementation by all health and social care, including family health service, organisations.

DRAFT IMPLEMENTATION PLAN

	PROGRESS	TARGET DATES
1.	Initial draft of the Good Practice Principles for Complaints Management report distributed to members of the Southern area group for comments and discussion .	**February 2003**
2.	Further to amendments members signed off Good Practice Principles for Complaints Management report.	**19 February 2003**
3.	Document forwarded to Regional Equality Steering Group for consideration and approval to undertake regional consultation for a period of 8 weeks.	
3.	Consultation opened for 8 weeks.	
4.	Consultation document to be made available on the DHSSPS website.	
5.	Consultation closes.	
6.	Southern area group to be reconvened to take account of outcome of consultation and make amendments as appropriate to the Good Practice Principles.	
7.	Final report to be signed off and issued to the Regional Equality Steering Group.	
9.	Regional Equality Steering Group to issue guidance document to HPSS organisations for implementation.	

AUDIT OF ISSUES WHICH CONSULTEES RAISED AT PAST EQUALITY CONSULTATION EVENTS IN RESPECT OF COMPLAINTS PROCEDURES

Information trawled through:-

- Summary & analysis of Stage 1 consultation exercise (March 2001)
- Outcome of meetings held during June 2001 on Stage 2 consultation
- Summary & analysis of Stage 2 Consultation exercise (June 2001)

(It should be noted that no consultation was specifically designed to debate complaints procedures, therefore the issues noted below were raised by consultees when discussing equality issues).

Issues raised in relation to complaints procedures:

- Does the service use complaints process as a guide for any inequality issues?
- Ease of access) for people with disabilities,
- Accessible language) for people from minority ethnic groups, the elderly
- Don't assume that lack of complaints from minority ethnic communities means that there aren't any problems – language barriers may create this.
- Simplified processes should be used
- Need for user-friendliness in procedures
- Publication of complaints procedures

APPENDIX 2

Office of the Chief Executive
Equality Unit
Direct Line: 028 3741 4603

25 April 2002

Dear

Good Practice Review of Health and Social Services (HSS) Complaints Procedures

Under the Equality Statutory Duty (Section 75 of the NI Act 1998) HSS Boards are leading various Good Practice Reviews. The Southern Board is undertaking a Good Practice Review of Complaints Procedures.

Presently we are planning to hold consultation workshops at the end of June. In order to make the consultation as meaningful and interesting we are intending to structure these around various case studies. I would therefore be interested if you could advise me of any key issues or themes which are particularly pertinent to the individual or groups you represent which could be built into case studies.

We also intend to issue a questionnaire to consultees as an additional means of gathering information about developing good practice in complaints management. I attach a first draft of questions which may be used - I would welcome your views on amendments or additions to this.

In order to hold the consultation workshops before the summer break I would welcome your response by **8 May 2002** at the latest so that the necessary preparations can be made.

Thank you for your assistance in this matter.

Should you wish to discuss this matter with me please contact me on 028 [redacted]

Yours sincerely

K. Braithwaite.

Karen Braithwaite
Equality Unit Manager

GOOD PRACTICE REVIEW – COMPLAINTS PROCEDURES

Possible questions for Questionnaire/Consultation Events – Brainstorm

1. Have you ever felt like making a complaint?

2. If you have used a complaints procedure, what were the good and bad aspects?

3. What puts you off making a complaint/using a complaints procedure?

4. What factors are important to you in a complaints procedure?

5. What would make a complaints procedure easier for you to use?

6. Do you know how to make a complaint about your GP / local hospital / community services?

7. What would you expect as an outcome from a complaints procedure – explanation / apology / things put right? Other .....

8. What difficulties are experienced by, or do you consider are experienced by the 9 equality groups?

Above letter sent to the following:

Community Relations Council
Equality Commission
Committee on Administration of Justice
NI Commissioner for Complaints
NI Human Rights Commission
Citizen's Advice Bureau, Belfast
Citizen's Advice Bureau, Banbridge
Citizen's Advice Bureau, Dungannon
Citizen's Advice Bureau, Newry

Religious Belief	Political Opinion	Racial Group
Most Rev & Rt Hon Lord Eames, Church of Ireland Archbishop	Mr J Wells	Al Nur Assoc
Rev H Good, Methodist Church	Mr P Berry	Craigavon Travellers Support Comm
Dr I Paisley, Free Presbyterian Church	Mr M Carrick	Mr Paul Yam
Rt Rev D Morrow, Presbyterian Church	Ms J Carson	Multi-Cultural Resource Centre
Most Rev S Brady, Roman Catholic Church	Mr J Fee	NI Council for Ethnic Minorities
Quakers Society	Ms M Gildernew	Travellers Movement, Belfast
	Mr D Haughey	
	Mr D Kennedy	
	Mr F Molloy	
	Mr M Morrow	
	Mr M Murphy	
	Mrs B Rodgers	
	Mr D Trimble	

Age	Marital Status	Sexual Orientation
Age Concern, Dungannon Age Sector Reference Group Help the Aged Lurgan Carers Assoc N&M Carers Assoc Portadown Carers Concern Barnardos, Belfast Children's Law Centre First Key NI NSPCC, Belfast NSPCC, Craigavon Putting Children First VOYPIC Youth Council for NI		Coalition on Sexual Orientation Gay & Lesbian Youth NI Rainbow Project

Men & Women generally	Persons with/without a disability	Persons with/without dependants
Women's Aid, Newry Women's Aid, Belfast Women's Aid, C'avon Press for Change	Mencap, Belfast Mencap, Armagh Mencap, Dungannon Mencap, Newry Disability Action, Belfast Disability Action, Dungannon Disability Action, Newry RNIB RNID Equality 2000	

Responses were received from:-

- Ombudsman's Office
- Councillor Paul Berry, MLA
- Mr Mervyn Carrick, MLA
- Ms Theresa Gerrity, Children's Law Centre
- Mr Chambers, Presbyterian Church
- Mr Daniel Holder, MCRC
- Equality Commission (acknowledgement only)

APPENDIX 3

REGIONAL COMPLAINTS WORKSHOP – 25 MARCH 2002

Outcome of Afternoon Workshop Discussions
Response of Workshop Group 2

Question for Discussion

In terms of equality what 'best practice principles' would you suggest to improve the current procedures in terms of accessibility, user friendliness, improved effectiveness and increased satisfaction?

In terms of promoting equality of opportunity for all those listed under the categories covered in the legislation the group said that:

- there should be adequate consultation on the procedures;
- they should be user friendly,
- staff should have appropriate training for dealing with minority groups, and
- the procedures should be monitored and tested to prove their credibility and effectiveness in relation to the various categories covered in the Act.

Consultation
Equal representation and a balanced view of all the groups must be ensured by public bodies who must allow for the fact that some minority groups have highly skilled representatives while other have none.

Consideration must be given to how general awareness of the procedures among minority groups can be raised and how all relevant information can best be disseminated.

Apart from a written document inviting comments, consultation should include workshops, meetings with the groups and their representatives, inserts in relevant publications or other appropriate public relations methods.

Language should be user friendly. Jargon and difficult words should be avoided. Positive language and words should be used where possible – for example 'complaints procedures' might be replaced with 'process of redress'.

User Friendly
There should be a balance between written communication and the use of the telephone or meetings. Explanations should be clear and free of jargon.

Staff Training
Staff at the first point of contact should be appropriately trained in how to deal with minority groups and in how to draft letters correctly. A culture of awareness or equality issues should be fostered by all organisations.

APPENDIX 4

GOOD PRACTICE REVIEW

of

COMPLAINTS PROCEDURE

QUESTIONNAIRE

Responses should be sent by 28 June 2002 to:

Karen Braithwaite
Equality Unit Manager
Southern Health and Social Services Board
Tower Hill
ARMAGH BT61 9DR

Department of
Health, Social Services and Public Safety
www.dhsspsni.gov.uk

AN ROINN
Sláinte, Seirbhísí Sóisialta agus Sábháilteachta Poiblí

MÄNNYSTRIE O
Poustie, Resydènter Heisin an Fowk Siccar

COMPLAINTS
IN
HEALTH AND SOCIAL CARE

Standards & Guidelines for Resolution & Learning

1 April 2009

SUMMARY

Complaints in Health and Social Care: Standards and Guidelines for Resolution and Learning replaces the existing HPSS Complaints Procedure 1996 and provides a streamlined process that applies equally to all health and social care (HSC) organisations. As such it provides a simple, consistent approach for staff who handle complaints and for people raising complaints across all health and social care services.

The standards and guidelines have been developed in conjunction with HSC organisations, following public consultation. They reflect the changing culture across health and social care with an increasing emphasis on the promotion of safety and quality and the need to be open, to learn and take action in order to reduce the risk of recurrence.

The changes to the new HSC complaints procedure include:

- the removal of Independent Review;
- the introduction of Standards for Complaints Handling;
- the introduction of an “Unacceptable Actions” policy for handling unreasonable, vexatious or abusive complainants; and
- clarity on the application of the Children Order Representations and Complaints Procedure.

This new single tier process also aims to provide:

- a strengthened, more robust, local resolution stage;
- an enhanced role for commissioners in monitoring, performance management and learning; and
- improved arrangements for driving forward quality improvements across the HSC.

The new process recognises that there will be times when local resolution will fail. Where this happens the complainant will be advised of their right to refer their complaint to the NI Commissioner of Complaints (the Ombudsman).

The guidelines for resolution and learning provide HSC organisations with detailed, yet flexible, complaints handling arrangements designed to:

- provide effective local resolution;
- improve accessibility;
- clarify the options for pursuing a complaint;
- promote the use and availability of support services, including advocacy;
- provide a well defined process of investigation;
- promote the use of a range of investigative techniques;
- promote the use of a range of options for successful resolution, such as the use of independent experts, lay persons and conciliation;
- resolve complaints more quickly;
- provide flexibility in relation to target response times;
- provide an appropriate and proportionate response;
- provide clear lines of responsibility and accountability;
- improve record keeping, reporting and monitoring; and
- increase opportunities for shared learning.

The standards for complaints handling are designed to assist HSC organisations in monitoring the effectiveness of their complaints handling arrangements locally and build public confidence in the process.

These new arrangements are effective from 1 April 2009.

Definitions of Key Terms

Throughout the standards and guidelines the following terms have the meanings set out below:

complaint	means “an expression of dissatisfaction that requires a response”
complainant	means an existing or former patient, client, resident, family, representative or carer (or whoever has raised the complaint)
Chief Executive	means the Chief Executive of the HSC organisation
Complaints Manager	means the person nominated by an HSC organisation to handle complaints
Family Practitioner Service (FPS)	means family doctors, dentists, pharmacists and opticians
honest broker	this is the term used to describe HSC Board’s role in FPS complaints
HSC Board	means the Health and Social Care Board
HSC organisation	means a HSC organisation which commissions or provides health and social care services and for the purpose of this guidance includes the HSC Board, HSC Trusts, the Northern Ireland Ambulance Service (NIAS), Family Practitioner Services, Out-of Hours Services, pilot scheme providers
the Ombudsman	The NI Commissioner for Complaints

out-of hours services	means immediate necessary treatment provided by FPS 6.00 pm to 8.00 am Monday – Friday, weekends and local holidays
PCC	means the Patient and Client Council
pilot scheme	refers to personal dental services provided by an HSC Trust
pilot scheme complaints procedure	means a complaint s procedure established by the pilot scheme
practice-based complaints procedure	means a FPS complaints procedure established within the terms of the relevant regulations
registered provider	person carrying on or managing the establishment or agency
RQIA	means the Regulation, Quality & Improvement Authority: the regulatory body responsible for regulating, inspecting and monitoring the standard and quality of health and social care services provision provided by independent and statutory bodies in Northern Ireland
registered establishments and agencies	for example, residential care homes, nursing homes, children's homes, independent clinics/ hospitals, nursing agencies, etc. registered with and regulated by RQIA
regulated sector	means registered establishments and agencies
senior person (designated)	means the person designated to take responsibility for delivering the organisation's complaints process e.g. a Director in the HSC

	Trust
service user	means a patient, client, resident, carer, visitor or any other person accessing HSC services
special agency	means the NI Blood Transfusion Agency

SECTION 1 - INTRODUCTION

Purpose of the Guidance

1.1 This guidance sets out how HSC organisations should deal with complaints raised by people who use or are waiting to use their services. It replaces existing guidance and provides a streamlined complaints process which applies equally to all HSC organisations, including the HSC Board, HSC Trusts, the NI Blood Transfusion Service, Family Practitioner Services (FPS), Out of Hours services, pilot schemes and HSC prison healthcare. As such, it provides a simple, consistent approach for staff who handle complaints and for people raising complaints across all health and social care services.

1.2 This guidance aims to promote an organisational culture in health and social care that fosters openness and transparency for the benefit of all who use it or work in it. It is designed to provide ease of access, simplicity and a supportive and open process which results in a speedy, fair and, where possible, local resolution. The procedure provides the opportunity to put things right for service users as well as improving services. Dealing with those who have made complaints provides an opportunity to re-establish a positive relationship with the complainant and to develop an understanding of their concerns and needs.

Local resolution

1.3 The purpose of local resolution is to provide an opportunity for the complainant and the organisation to attempt a prompt and fair resolution of the complaint.

1.4 HSC organisations should work closely with service users to find an early resolution to complaints. Every opportunity should be taken to resolve complaints as close to the source as possible, through discussion and

negotiation. Where possible, complaints should be dealt with immediately. Where this is not possible, local resolution should be completed within 20 working days of receipt of a complaint (10 working days within FPS settings).

1.5 Local procedures should be easily accessible, open, fair, flexible and conciliatory and should encourage communication on all sides. They should include a well-defined process for investigating and resolving complaints. Complainants must be advised of their right to refer their complaint to the NI Commissioner for Complaints (the Ombudsman) if they remain dissatisfied with the outcome of the complaints procedure.

Principles of an effective complaints procedure

1.6 *Complaints in HSC* has been developed around four key principles:

- openness and accessibility – flexible options for pursuing a complaint and effective support for those wishing to do so;
- responsiveness – providing an appropriate and proportionate response;
- fairness and independence – emphasising early resolution in order to minimise strain and distress for all; and
- learning and improvement – ensuring complaints are viewed as a positive opportunity to learn and improve services.

Learning

1.7 Effective complaints handling is an important aspect of clinical and social care governance arrangements and, as such, will help organisations to continue to improve the quality of their services and safeguard high standards of care and treatment. Increased efforts should be made to promote a more positive culture of complaints handling by highlighting the added value of complaints within health and social care and making the process more acceptable/amenable to all.

1.8 Complaints are seen as a significant source of learning within health and social care and provide opportunities to improve:

- outcomes for services users;
- the quality of services; and
- service user experiences.

1.9 How HSC organisations handle complaints is an indicator of how responsive they are to the concerns of service users. An increase in the number of complaints is not in itself a reason for thinking the service is deteriorating. The important point is to handle complaints well, take appropriate action and feed the lessons learnt into quality improvement.

What the guidance covers

1.10 *Complaints in HSC* deals with complaints about care or treatment, or about issues relating to the provision of health and social care. Complaints may, therefore, be raised about services provided by, for example:

- The Health and Social Care Board (HSC Board)
    - commissioning and purchasing decisions (for individuals)
- Family Practitioner Services
- Health and Social Care (HSC) Trusts
    - hospital and community services
    - registered establishments and agencies where the care is funded by the HSC
    - HSC funded staff or facilities in private pay beds
    - HSC prison healthcare
- the Northern Ireland Blood Transfusion Service (NIBTS)

1.11 *Complaints in HSC* may be used to investigate a complaint about any aspect of an application to obtain access to health or social care records for deceased persons under the Access to Health Records (NI) Order 1993 as an alternative to making an application to the courts.

What the guidance does not cover

1.12 *Complaints in HSC* does **not** deal with complaints about:

- private care and treatment or services including private dental care[1] or privately supplied spectacles; or
- services not provided or funded by the HSC, for example, provision of private medical reports.

1.13 Complaints may be raised within an organisation which that organisation needs to address, but which do not fall within the scope of the HSC Complaints Procedure. When this occurs, the HSC organisation should ensure that there are other processes in place to deal with these concerns. For example:

- staff grievances;
- an investigation under the disciplinary procedure;
- an investigation by one of the professional regulatory bodies;
- services commissioned by the HSC Board ;
- a request for information under Freedom of Information;
- access to records under the Data Protection Act 1998;
- an independent inquiry;
- a criminal investigation;
- the Children Order Representations and Complaints Procedure;
- protection of vulnerable adults ;
- child protection procedures;
- coroner's cases;
- legal action.

1.14 Complaints received that appear to indicate the need for referral under any of the processes listed above should be immediately passed to the

[1] The Dental Complaints Service deals with private dental and mixed health service and private dental complaints and can be contacted via the General Dental Council at http://www.gdc-uk.org/

Complaints Manager for onward transmission to the appropriate department. If any aspect of the complaint is not covered by the referral it will be investigated under the HSC Complaints Procedure. In these circumstances, investigation under the HSC Complaints Procedure will only be taken forward if it does not, or will not, compromise or prejudice the matter under investigation under any other process. The complainant must be informed of the need for referral.

Staff Grievances

1.15 HSC organisations should have separate procedures for handling staff grievances. Staff may, however, complain about the way they have been dealt with under the HSC Complaints Procedure and provided they have exhausted the local grievance procedure, may take the matter up with the Ombudsman. Family practitioners may also complain to the Ombudsman about the way they have been dealt with under the complaints procedure.

Disciplinary Procedure

1.16 The HSC Complaints Procedure is concerned only with resolving complaints and learning lessons for improving services. It is not for investigating disciplinary matters though these can be investigated by the HSC organisation and may be referred to a professional regulatory body (see paragraph 1.20 below). The purpose of the complaints procedure is not to apportion blame, but to investigate complaints with the aim of satisfying complainants whilst being fair to staff.

1.17 Where a decision is made to embark upon a disciplinary investigation, action under the complaints procedure on any matter which is the subject of that investigation must cease. Where there are aspects of the complaint not covered by the disciplinary investigation, they may continue to be dealt with under the complaints procedure.

1.18 The Chief Executive (or designated senior person) must advise the complainant in writing that a disciplinary investigation is under way, that they may be asked to take part in that process and that any aspect of the complaint not covered by the referral will be investigated under the HSC Complaints Procedure.

1.19 In drafting these letters, the overall consideration must be to ensure that when the investigation has moved into the disciplinary procedure, the complainant is not left feeling that their complaint has only been partially dealt with.

Investigation by a Professional Regulatory Body

1.20 A similar approach to that outlined above should be adopted in a case referred to a professional regulatory body (Annexe 3). The Chief Executive (or designated senior person) must inform the complainant in writing of the referral. This should include an indication that any information obtained during the complaints investigation may need to be passed to the regulatory body. The letter should also explain how any other aspect of the complaint not covered by the referral to the regulatory body will be investigated under the HSC Complaints Procedure.

Services Commissioned by the HSC Board

1.21 Complaints about the HSC Board's purchasing decisions may be made by, or on behalf of any individual personally affected by a purchasing decision taken by the HSC Board. The HSC Complaints Procedure may not deal with complaints about the merits of a decision where the HSC Board has acted properly and within its legal responsibilities. Where general concerns about commissioning issues are raised with the HSC Board a full explanation of the

HSC Board's policy should be provided. These issues should not, however, be dealt with under the HSC Complaints Procedure.

Access to Information

1.22 Although use and disclosure of service user information may be necessary in the course of handling a complaint, the complainant, or indeed any other person, may at any time make a request for information which may, or may not, be related to the complaint. Such requests should be dealt with separately under the procedures set down by the relevant HSC organisation for dealing with requests for information under the Freedom of Information Act 2000 and requests for access to health or social care records under the Data Protection Act 1998.

Independent Inquiries and Criminal Investigation

1.23 Where an independent inquiry into a serious incident or a criminal investigation is initiated, the Chief Executive (or designated senior person) should immediately advise the complainant of this in writing. As the HSC Complaints Procedure cannot deal with matters subject to any such investigation, consideration of those parts of the original complaint must cease until the other investigation is concluded.

1.24 When the independent inquiry or criminal investigation has concluded, consideration of that part of the original complaint on which action was suspended can recommence if there are outstanding matters which remain to be dealt with.

Children Order Representations and Complaints Procedure

1.25 Arrangements for complaints raised under the Children Order Representations and Complaints Procedure are outlined in Annexe 15. The

HSC Board and HSC Trusts should familiarise themselves with Part IV of, and paragraph 6 of Schedule 5 to, the Children (NI) Order 1995.

Protection of Vulnerable Adults

1.26 Where it is apparent that a complaint relates to abuse, exploitation or neglect of a vulnerable adult then the regional *Safeguarding Vulnerable Adults – Regional Adult Protection Policy and Procedural Guidance*[2] (*Sept 2006*) and the associated *Protocol for Joint Investigation of Alleged or Suspected Cases of Abuse of Vulnerable Adults* should be activated by contacting the Adult Protection Co-ordinator at the relevant HSC Trust[3]. The HSC Complaints Procedure should be suspended pending the outcome of the safeguarding vulnerable adults' investigation and the complainant advised accordingly. When the safeguarding vulnerable adults' investigation has concluded, consideration of that part of the original complaint on which action was suspended can recommence if there are outstanding matters which remain to be dealt with.

Child Protection Procedures

1.27 Dissatisfaction with the process or about decisions made in relation to a Child Protection enquiry should be dealt with through the Child Protection Registration Appeals Process. *The Area Child Protection Committees' (ACPC) Regional Policy and Procedure (April 2005)*[4] outlines the criteria for appeal under that procedure. These include:

- ACPC procedures in respect of the case conference were not followed;
- information presented at the case conference was inaccurate; incomplete or inadequately considered in the decision making process;
- the threshold for registration/deregistration was not met;

[2] http://www.dhsspsni.gov.uk/ssi/safeguarding_vulnerable_adults.pdf
[3] Information about and contact details for HSC Trusts can be accessed at: http://www.hscni.net/index.php?link=services
[4] http://www.dhsspsni.gov.uk/acpcregionalstrategy.pdf

- the category for registration was not correct.

Coroner's Cases

1.28 With the agreement of the Coroner's Office, where there are aspects of the complaint not covered by the Coroner's investigation they will continue to be dealt with under the complaints procedure. Once the Coroner's investigation has concluded, any issues that are outstanding in relation to the matters considered by the Coroner can then be dealt with under the complaints procedure.

Legal Action

1.29 Even if a complainant's initial communication is through a solicitor's letter it should not be inferred that the complainant has decided to take formal legal action.

1.30 If the complainant has either instigated formal legal action, or advised that he or she intends to do so, the complaints process should cease. The Chief Executive (or designated senior person) should advise the complainant and any person named in the complaint of this decision in writing.

1.31 It is not the intention of the HSC Complaints Procedure to deny someone the opportunity to pursue a complaint if the person subsequently decides **not to take legal action**. If he/she then wishes to pursue their complaint through the complaints process the investigation of their complaint should commence or resume. However, any matter that has been through the legal process to completion cannot then be investigated under the HSC complaints procedure.

SECTION 2 - MAKING A COMPLAINT

What is a complaint?

2.1 A complaint is "**an expression of dissatisfaction that requires a response**". Complainants may not always use the word "complaint". They may offer a comment or suggestion that can be extremely helpful. It is important to recognise those comments that are really complaints and need to be handled as such.

Promoting access

2.2 Service users should be made aware of their right to complain and given the opportunity to understand all possible options for pursuing a complaint. Complainants must, where appropriate, have the support they need to articulate their concerns and successfully navigate the system. They must also be advised on the types of help available through front-line staff, the Complaints Manager and the Patient and Client Council (PCC). HSC organisations should promote and encourage more open and flexible access to the complaints procedure and other less formal avenues in an effort to address barriers to access. Standard 2: *Accessibility* provides the criteria by which organisations should operate (Annexe 1 refers).

Who can complain?

2.3 Any person can complain about any matter connected with the provision of HSC services. Complaints may be made by:

- a patient or client;
- former patients, clients or visitors using HSC services and facilities;
- someone acting on behalf of existing or former patients or clients, providing they have obtained the patient's or client's consent;
- parents (or persons with parental responsibility) on behalf of a child; and

- any appropriate person in respect of a patient or client unable by reason of physical or mental capacity to make the complaint himself or who has died e.g. the next of kin.

Consent

2.4 Complaints by a third party should be made with the written consent of the individual concerned. There will be situations where it is not possible to obtain consent, such as:

- where the individual is a child and not of sufficient age or understanding to make a complaint on their own behalf;
- where the individual is incapable (for example, rendered unconscious due to an accident; judgement impaired by learning disability, mental illness, brain injury or serious communication problems);
- where the subject of the complaint is deceased.

2.5 Where a person is unable to act for him/herself, his/her consent shall not be required.

2.6 The Complaints Manager, in discussion with the Chief Executive (or senior person), will determine whether the complainant has sufficient interest to act as a representative. The question of whether a complainant is suitable to make representation depends, in particular, on the need to respect the confidentiality of the patient or client. If it is determined that a person is not suitable to act as a representative, the Chief Executive (or senior person) must provide information in writing to the person outlining the reasons the decision has been taken. More information on consent can be found in the DHSSPS' good practice in consent guidance[5].

[5] http://www.dhsspsni.gov.uk/public_health_consent

2.7 Third party complainants who wish to pursue their own concerns can bring these to the HSC organisation without compromising the identity of the patient/ client. The HSC organisation must consider the matter, investigate and address, as fully as possible, any identified concerns. A response will be provided to the third party on any issues which it is possible to address without breaching the patient's/ client's confidentiality.

Confidentiality

2.8 HSC staff should be aware of their legal and ethical duty to protect the confidentiality of the service user's information. The legal requirements are set out in the Data Protection Act 1998 and the Human Rights Act 1998. The common law duty of confidence must also be observed. Ethical guidance is provided by the respective professional bodies. A service user's consent is required if their personal information is to be disclosed but more detailed information can be found in the HSC guidance entitled *Code of Practice on Protecting the Confidentiality of Service User Information*.[6]

2.9 It is not necessary to obtain the service user's express consent to the use of their personal information to investigate a complaint. Even so, it is good practice to explain to the service user that information from his/her health or social services records may need to be disclosed to the people investigating the complaint, but only if they have a demonstrable need to know and for the purposes of investigating. If the service user objects to this, it should be explained to him/her that this could compromise the investigation and his/her hopes of a satisfactory outcome to the complaint. The service user's wishes should always be respected, unless there is an overriding public interest in continuing with the matter.

[6] http://www.dhsspsni.gov.uk/confidentiality-consultation-cop.pdf

Third Party Confidence

2.10 The duty of confidence applies equally to third parties who have given information or who are referred to in the service user's records. Particular care must be taken where the service user's records contain information provided in confidence, by, or about, a third party who is not a health or social services professional. Only that information which is relevant to the complaint should be considered for disclosure, and then only to those *within* the HSC who have a demonstrable need to know in connection with the complaint investigation. Third party information must not be disclosed to the service user unless the person who provided the information has expressly consented to the disclosure.

2.11 Disclosure of information provided by a third party outside the HSC also requires the express consent of the third party. If the third party objects, then it can only be disclosed where there is an overriding public interest in doing so.

Use of Anonymised Information

2.12 Where anonymised information about a patient/client and/or third parties would suffice, identifiable information should be omitted. Anonymising information does not of itself remove the legal duty of confidence but, where all reasonable steps are taken to ensure that the recipient is unable to trace the patient/client or third party identity, it may be passed on where justified by the complaint investigation. Where a patient/client or third party has expressly refused permission to use information, then it can only be used where there is an overriding public interest in doing so.

How can complaints be made?

2.13 Complaints may be made verbally or in writing and should also be accepted via any other method, for example, the telephone or electronically. The complainant should be asked to put the complaint in writing, or assisted to do so. It is helpful to establish at the outset what the complainant wants to achieve to avoid confusion or dissatisfaction and subsequent letters of complaint. HSC organisations should be mindful of technological advances and consider local arrangements to ensure there is no breach of patient/client confidentiality.

2.14 Complaints may be made to any member of staff - for example receptionists, clinical or care staff. In many cases complaints are made orally and front-line staff may either resolve the complaint "on the spot" or pass it to the Complaints Manager. It is important that front-line staff are trained and supported to respond sensitively to the comments and concerns raised and are able to distinguish those issues which would be better referred elsewhere. Front line staff should familiarise themselves with the Equality Good Practice Reviews' principles for dealing with and managing complaints[7].

Options for pursuing a complaint

2.15 Some complainants may prefer to make their initial complaint to someone within the relevant organisation who has not been involved in the care provided. In these circumstances, they should be advised to address their complaint to the Complaints Manager, an appropriate senior person or, if they prefer, in writing to the Chief Executive. All HSC organisations have

[7] Guidance Note – Implementing the Equality Good Practice Reviews (January 2004) http://www.dhsspsni.gov.uk/eq-gprs-circ-hssps-29jan04.pdf

named Complaints Managers. The following paragraphs outline the options available to complainants who want to raise complaints in relation to:

- Family Practitioner Services; and
- Registered Establishments and Agencies.

Family Practitioner Services (family doctors, dentists, pharmacists, opticians)

2.16 All Family Practitioner Services (FPS) are required to have in place a practice-based complaints procedure for handling complaints. The practice-based complaints procedure forms part of the local resolution mechanism for settling complaints. A patient may approach any member of staff with a complaint about the service or treatment he/she has received.

2.17 Alternatively, the complainant has the right to lodge his/her complaint with the HSC Board's Complaints Manager if he/she does not feel able to approach immediate staff.

2.18 Where requested, the HSC Board will act as "honest broker" in the resolution of a complaint. The objective for the HSC Board should be, wherever possible, to restore the trust between the patient and the practitioner/practice staff. This will involve an element of mediation on the part of the HSC Board or the offer of conciliation services where they are appropriate. The HSC Board's Complaints Manager should seek - with the complainant's agreement - to involve the FPS Complaints Manager as much as possible in resolving the issues. The HSC Board's Complaints Manager is also available to practice staff for support and advice.

2.19 The HSC Board has a responsibility to record and monitor the outcome of those complaints lodged with them.

2.20 The HSC Board will provide support and advice to FPS in relation to the resolution of complaints. It will also appoint independent experts, lay persons or conciliation services, where appropriate.

2.21 Complainants must be advised of their right to refer their complaint to the Ombudsman if they remain dissatisfied with the outcome of the practice-based complaints procedure.

Regulated Establishments and Agencies

2.22 All regulated establishments and agencies must operate a complaints procedure that meets the requirements of applicable Regulations, relevant Minimum Standards and the HSC Complaints Procedure. This includes, publicising the arrangements for dealing with complaints, ensuring that any complaint made under the complaints procedure is investigated, making sure that time limits for investigation are adhered to and complainants are advised of outcomes of the investigation. Complainants must also be advised of their right to refer their complaint to the Ombudsman if they remain dissatisfied with the HSC Complaints Procedure.

2.23 Complaints may be made by service users or by persons acting on their behalf providing they have obtained the service user's consent. Complainants should be encouraged to raise their concerns, at the outset, with the registered provider. The registered provider is required by legislation to ensure the complaint is fully investigated.

2.24 Individuals placed in a regulated establishment or who have their service provided by a regulated agency may, if they prefer, raise their concerns through the HSC Trust that has commissioned the care on their behalf. The HSC Trust that has commissioned the care has a

continuing duty of care to the service user and should participate in local resolution as necessary.

2.25 Where complaints are raised with the HSC Trust, the Trust must establish the nature of the complaint and consider how best to proceed. For example, the complaint may be about an aspect of the "care plan" and can, therefore, only be fully dealt with by the Trust. The complaint may also trigger the need for an investigation under child protection or protection of vulnerable adults procedures or indeed, might highlight non-compliance with statutory requirements. It is not the intention to operate parallel complaints procedures, however, if the RQIA is notified of a breach of regulations or associated standards it will review the matter and take whatever appropriate action is required. It is important, therefore, that Trusts work closely with the registered providers, other professionals and the RQIA to enable appropriate decisions to be made.

2.26 HSC Trusts must assure themselves that regulated establishments and agencies which deliver care on their behalf are effective and responsive in their handling of complaints. Service users may approach the Ombudsman if they remain dissatisfied. It is possible that referrals to the Ombudsman where complaints are dealt with directly by the registered provider without HSC Trust participation in local resolution will be referred to the HSC Trust by the Ombudsman for action.

2.27 Copies of all correspondence relating to regulated sector complaints should be retained. RQIA will use this information to monitor all regulated services including those services commissioned by the HSC Trust.

2.28 In due course, these arrangements will also apply to other services which will be regulated by RQIA, including Fostering Agencies and Voluntary Adoption Agencies.

What information should be included in the complaint?

2.29 A complaint need not be long or detailed, but it should include:

- contact details;
- who or what is being complained about, including the names of staff if known;
- where and when the events of the complaint happened; and
- where possible, what remedy is being sought – e.g. an apology or an explanation or changes to services.

Supporting complainants and staff

2.30 Advice and assistance is available to complainants and staff at any stage in the complaints process from the Complaints Manager. Independent advice and support for complainants is available from the PCC (Annexe 6 refers). Independent advocacy and specialist advocacy services are also available (Annexe 7 refers). Standard 4: *Supporting complainants and staff* provides the criteria by which organisations should operate (Annexe 1 refers).

What are the timescales for making a complaint?

2.31 A complaint should be made as soon as possible after the action giving rise to it, normally within six months of the event. HSC organisations should encourage those who wish to complain to do so as soon as possible after the event. Investigation is likely to be most effective when memories are fresh.

2.32 If a complainant was not aware that there was cause for complaint, the complaint should normally be made within **six months** of their becoming

aware of the cause for complaint, or within **twelve months** of the date of the event, whichever is the earlier.

2.33 There is discretion for the Complaints Manager to extend this time limit where it would be unreasonable in the circumstances of a particular case for the complaint to have been made earlier and where it is still possible to investigate the facts of the case. This discretion should be used with sensitivity. The complainant should be advised that with the passage of time the investigation and response will be based largely on a review of records.

2.34 In any case where a Complaints Manager has decided not to investigate a complaint on the grounds that it was not made within the time limit, the complainant can request the Ombudsman to consider it. The complainant should be advised of the options available to him/her to pursue this further.

2.35 The Complaints Manager must consider the content of complaints that fall outside the time limit in order to identify any potential risk to public or patient safety and, where appropriate, the need to investigate the complaint if it is in the public's interest to do so or refer to the relevant regulatory body.

SECTION 3 - HANDLING COMPLAINTS

Accountability

3.1 Accountability for the handling and consideration of complaints rests with the Chief Executive (or Clinical Governance Lead in FPS settings). The HSC organisation must designate a senior person within the organisation to take responsibility for the local complaints procedure and to ensure compliance with the regulations and that action is taken in light of the outcome of any investigation. In the case of HSC Trusts, a Director should be designated (or a Clinical Governance Lead in FPS setting). All staff must be aware of, and comply with, the requirements of the complaints procedure. These arrangements will ensure the integration of complaints management into the organisation's governance arrangements. Standard 1: *Accountability* provides the criteria by which organisations should operate (Annexe 1 refers).

3.2 Where care or treatment is provided by an independent provider, for example residential or nursing home care, the commissioning body must ensure that the contract includes entitlement, by the HSC organisation, to any and all documentation relating to the care of service users and a provision to comply with the requirements of the HSC Complaints Procedure.

Performance Management

3.3 Complaints provide a rich source of information and should be considered a vital part of the HSC organisation's performance management strategy. HSC organisations need to be able to demonstrate that positive action has been taken as a result of complaints and that learning from complaints is embedded in the organisation's governance and risk management arrangements.

3.4 Complaints should be used to inform and improve. HSC organisations should aim for continuous change and improvement in their performance as a result of complaints. Where something has gone wrong or fallen below standard the organisation has the opportunity to improve and avoid a recurrence. By making sure that lessons from complaints are taken on board and followed up appropriately, services and performance can be greatly improved for the future.

Co-operation

3.5 Local arrangements 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:

- HSC organisations;
- Regulatory authorities e.g. professional bodies, DHSSPS Pharmaceutical Inspectorate;
- NI Commissioner for Complaints (the Ombudsman); and
- The Regulation and Quality Improvement Authority (RQIA).

3.6 This general duty to co-operate includes answering questions, providing information and attending any meeting reasonably requested by those investigating the complaint.

Complaints Manager

3.7 HSC organisations must have a designated Complaints Manager of appropriate authority and standing who is readily accessible to both the public and members of staff. While it is not essential that this title be used, it is nevertheless important that the person with the role is easily identifiable to service users. The Complaints Manager is responsible for co-ordinating the

local complaints arrangements and managing the process and is supported in his/her role by the designated senior person. The Complaints Manager should:

- deal with complaints referred by front-line staff;
- be easily identifiable to service users;
- be available to complainants who do not wish to raise their concerns with those directly involved in their care;
- advise and support vulnerable adults;
- consider all complaints received and identify and appropriately refer those falling outside the remit of the complaints procedure;
- provide support to staff to respond to complaints and be aware of the role of the Medical and Dental Defence organisations to assist staff;
- have access to all relevant records (including personal medical records);
- take account of any corroborative evidence available relating to the complaint e.g. witness to a particular event;
- identify training needs associated with the complaints procedure and ensure these are met;
- ensure all issues are addressed in the draft response, taking account of information obtained from reports received and providing a layman's interpretation to otherwise complex reports;
- compile a summary of complaints received, actions taken and lessons learnt and maintain records;
- assist the designated senior person in the examination of trends, monitoring the effectiveness of local arrangements and the action taken (or proposed) in terms of service improvement; and
- assist the designated senior person in ensuring compliance with standards, identifying lessons and dissemination of learning in line with the organisation's governance arrangements.

3.8 Complaints Managers should involve the complainant from the outset and seek to determine what they are hoping to achieve from the process. The complainant should be given the opportunity to understand all possible options

for pursuing the complaint and the consequences of following these options. Throughout the process, the Complaints Manager should assess what further action might best resolve the complaint and at each stage keep the complainant informed.

Publicity

3.9 HSC organisations must ensure that the complaints process is well publicised locally. This means that service users should be made aware of:

- their right to complain;
- all possible options for pursuing a complaint, and the types of help available; and
- the support mechanisms that are in place.

3.10 Ready access to information can make a critical difference to the service user's experience of HSC services. Information about services and what to expect, the various stages involved in the complaints process, response targets and independent support and advice should be available. Clear lines of communication are required to ensure complainants know who to communicate with during the lifetime of their complaint. The provision of information will improve attitudes and communication by staff as well as support and advice for complainants.

3.11 Local information should:

- be visible, accessible and easily understood;
- be available in other formats or languages as appropriate;
- be provided free of charge;
- outline the arrangements for handling complaints, how to contact complaints staff, the availability of support services, and what to do if the complainant remains dissatisfied with the outcome of the complaints process.

Training

3.12 All staff should be trained and empowered to deal with complaints as they occur. Appropriately trained staff will recognise the value of the complaints process and, as a result will welcome complaints as a source of learning. Staff have a responsibility to highlight training needs to their line managers. Line managers, in turn, have a responsibility to ensure needs are met to enable the individual to function effectively in their role and HSC organisations have a responsibility to create an environment where learning can take place. It is essential that staff recognise that their initial response can be crucial in establishing the confidence of the complainant.

Actions on receipt of a complaint

3.13 Standard 3: *Receiving Complaints* provides the criteria by which organisations must operate (Annexe 1 refers).

3.14 All complaints received should be treated with equal importance regardless of how they are submitted. Complainants should be encouraged to speak openly and freely about their concerns and should be reassured that whatever they may say will be treated with appropriate confidence and sensitivity. Complainants should be treated courteously and sympathetically and where possible involved in decisions about how their complaint is handled and considered. However received, the first responsibility of staff is to ensure that the service user's immediate care needs are being met. This may require urgent action before any matters relating to the complaint are addressed.

3.15 The involvement of the complainant throughout the consideration of their complaint will provide for a more flexible approach to the resolution of the complaint. Complaints staff should discuss individual cases with complainants at an early stage and an important aspect of the discussion will be about the time it may take to complete the investigation. Early provision of information

and an explanation of what to expect should be provided to the complainant at the outset to avoid disappointment and subsequent letters of complaint. Each complaint must be taken on its own merit and responded to appropriately. It may be appropriate for the entire process of local resolution to be conducted informally. Overall, arrangements should ensure that complaints are dealt with quickly and effectively in an open and non-defensive way.

3.16 Where possible, all complaints should be recorded and discussed with the Complaints Manager in order to identify those that can be resolved immediately, those that will require a formal investigation or those that should be referred outside the HSC Complaints Procedure. Front-line staff will often find the information they gain from complaints useful in improving service quality. This is particularly so for complaints that have been resolved "on the spot" and have not progressed through the formal complaints process. Mechanisms for achieving this are best agreed at organisational level.

Acknowledgement of Complaint

3.17 A complaint should be acknowledged in writing within **2 working days** of receipt. FPS complaints should be acknowledged within 3 working days in line with legislative requirements. (See Legal Framework at Annexe 2) A copy of the complaint and its acknowledgement should be sent to any person subject to complaint unless there are reasonable grounds to believe that to do so would be detrimental to that person's health or well-being. The acknowledgement letter should always thank the complainant for drawing the matter to the attention of the organisation.

3.18 There should be a statement expressing sympathy or concern over the incident. This is a statement of common courtesy, not an admission of responsibility.

3.19 It is good practice for the acknowledgement to be conciliatory, and indicate that a full response will be provided within **20 working days**. FPS acknowledgement should indicate that a full response will be provided within 10 working days. Where these response timescales are not possible an explanation must be provided to the complainant.

3.20 The acknowledgement should:

- seek to confirm the issues raised in the complaint;
- offer opportunities to discuss issues either with a member of the complaints staff or, if appropriate, a senior member of staff; and
- provide information about the availability of independent support and advice.

3.21 Complaints Managers should provide the complainant with further information about the complaints process. This may include locally produced information leaflets or those provided by the Ombudsman's Office or the RQIA. It is also advisable to include information about the disclosure of patient information at this stage.

Joint Complaints

3.22 Where a complaint relates to the actions of more than one HSC organisation the Complaints Manager should notify the other organisation(s) involved. The complainant's consent must be obtained before sharing the details of the complaint across HSC organisations. In cases of this nature there is a need for co-operation and partnership between the relevant organisations in agreeing how best to approach the investigation and resolution of the complaint. It is possible that the various aspects of the complaint can be divided easily with each organisation able to respond to its own area of responsibility. The complainant must be kept informed and provided with advice about how each aspect of their complaint will be dealt with and by whom.

Out of Area Complaints

3.23 Where the complainant lives in Northern Ireland and the complaint is about events elsewhere, the HSC Board or HSC Trust that commissioned the service or purchased the care for that service user is responsible for co-ordinating the investigation and ensuring that all aspects of the complaint are investigated. HSC contracts must include entitlement, by the HSC organisation, to any and all documentation relating to the care of service users and a provision to comply with the requirements of the HSC Complaints Procedure.

Investigation

3.24 HSC organisations should establish a clear system to ensure an appropriate level of investigation. The purpose of investigation is not only "resolution" but to ascertain what happened, to establish the facts, to learn, to detect misconduct or poor practice and to improve services. Standard 5: *Investigation* provides the criteria by which organisations must operate (Annexe 1 refers).

3.25 An investigation into a complaint may be undertaken by a suitable person appointed by the HSC organisation. Investigations should be conducted in a manner that is supportive to all those involved, without bias and in an impartial and objective manner. The investigation must not be adversarial and must uphold the principles of fairness and consistency. The investigation process is best described as listening, learning and improving. Investigators should be able to seek advice from the Complaints Manager/ senior person, wherever necessary, about the conduct or findings of the investigation. Whoever undertakes the investigation should seek to understand the nature of the complaint and identify any issues not immediately obvious. Complaints must be approached with an open mind, being fair to all parties. The complainant and those identified as the subject of a complaint should be

advised of the process, what will be investigated and what will not, those who will be involved, the roles they will play and the anticipated timescales. All those involved should be kept informed of progress throughout. Those staff involved in the investigation process should familiarise themselves with the Equality Good Practice Reviews' principles for staff undertaking complaints investigation[8].

Assessment of the complaint

3.26 It is unrealistic to suggest that all complaints should be investigated to the same degree or at the same level within the organisation. HSC organisations must ensure that a robust risk assessment process is applied to all complaints to allow serious complaints, such as those involving unsafe practice, to be identified. The use of assessment tools to risk assess and categorise a complaint may be helpful in determining the course of action to take in response. It can help ensure that the process is proportionate to the seriousness of the complaint and the likelihood of recurrence. HSC organisations should refer to the DHSSPS' guidance *How to classify adverse incidents and risks*[9] to assist them in developing processes to assess complaints.

Investigation and resolution

3.27 The HSC organisation should use a range of investigating techniques that are appropriate to the nature of the complaint and to the needs of the complainant. Those responsible for investigation should be empowered to choose the method that they feel is the most appropriate to the circumstances.

[8] Guidance Note – Implementing the Equality Good Practice Reviews
[9] http://www.dhsspsni.gov.uk/ph_how_to_classify_adverse__incidents_and_risk_-_guidance.pdf

3.28 The investigator should establish the facts relating to the complaint and assess the quality of the evidence. Depending on the subject matter and complexity of the investigation the investigator may wish to call upon the services of others. There are a number of options available to assist HSC organisations in the resolution of complaints. These should be considered in line with the assessment of the complaint and also in collaboration with the complainant and include the involvement of:

- senior managers/ professionals at an early stage;
- honest broker;
- independent experts;
- lay persons; or
- conciliators.

3.29 It is not intended that HSC organisations utilise all the options outlined above as not all these will be appropriate in the resolution of the complaint. Rather HSC organisations should consider which option would assist in providing the desired outcome. The HSC Board will provide the necessary support and advice to FPS in relation to access and appointment of these options, where appropriate.

Completion of Investigation

3.30 Once the investigator has reached their conclusion they should prepare the draft report/response. The purpose is to record and explain the conclusions reached after the investigation of the complaint. The Department's *HSC Regional Template and Guidance for Incident Investigation/ Review Reports*[10] will assist HSC organisations in ensuring the completeness and readability of such reports.

[10] http://www.dhsspsni.gov.uk/hsc_sqsd__34-07_guidance.pdf

3.31 Where the complaint involves clinical/ professional issues, the draft response must be shared with the relevant clinicians/ professionals to ensure the factual accuracy and to ensure clinicians/ professionals agree with and support the draft response.

3.32 All correspondence and evidence relating to the investigation should be retained. The Complaints Manager should ensure that a complete record is kept of the handling and consideration of each complaint. Complaints records should be kept separate from health or social care records, subject only to the need to record information which is strictly relevant to the service user's on-going health or care needs.

3.33 HSC organisations should regularly review their investigative processes to ensure the effectiveness of these arrangements locally.

Circumstances that might cause delay

3.34 Some complaints will take longer than others to resolve because of differences in complexity, seriousness and the scale of the investigative work required. Others may be delayed as a result of circumstance, for example, the unavailability of a member of staff or a complainant as a result of holidays, personal or domestic arrangements or bereavement. Delays may also be as a result of the complainant's personal circumstances at a particular time e.g. a period of mental illness, an allegation of physical injury or because a complaint is being investigated under another procedure (as outlined in paragraphs 1.12 to 1.31).

Periods of acute mental illness

3.35 If a service user makes a complaint during an acute phase of mental illness, the Complaints Manager should register the complaint and

consideration should be given to delaying the complaint until his/her condition has improved. A delay such as this will need either the agreement of the complainant or someone who is able to act on his/her behalf including, where appropriate, consultation with any advocate. The decision about whether a complainant is well enough to proceed with the complaint should be made by a multi-disciplinary team, and the Complaints Manager should refer regularly to this team to establish when this point has been reached.

Physical Injury

3.36 Where a complainant is alleging physical injury, a physical examination should be arranged without delay and with the consent of the injured person. Medical staff undertaking the physical examination should clearly report their findings. If a person refuses a physical examination, or if his or her mental state (for example, degree of agitation) makes this impossible, this should be clearly documented.

3.37 Whatever the reason, as soon as it becomes clear that it will not be possible to respond within the target timescales, the Complaints Manager should advise the complainant and provide an explanation with the anticipated timescales. While the emphasis is on a complete response and not the speed of response, the HSC organisation should, nevertheless, monitor complaints that exceed the target timescales to prevent misuse of the arrangements.

Responding to a complaint

3.38 A full investigation of a complaint should normally be completed within 20 working days (10 working days within FPS). Standard 6: *Responding to complaints* provides the criteria by which organisations must operate (Annexe 1 refers).

3.39 Where appropriate, HSC organisations must consider alternative methods of responding to complaints whether through an immediate response from front-line staff, a meeting, or direct action by the Chief Executive (or senior person). It may be appropriate to conduct a meeting in complex cases, in cases where there is serious harm/death of a patient, in cases involving those whose first language is not English, or, for example in cases where the complainant has a learning disability or mental illness. Where complaints have been raised electronically the HSC must obtain a postal address for the purposes of the response to maintain appropriate levels of confidentiality. **Responses should not be made electronically**.

3.40 Where a meeting is scheduled it is more likely to be successful if the complainant knows what to expect and can offer some suggestions towards resolution. Complainants have a right to choose from whom they seek support and should be encouraged to bring a relative or friend to meetings. Where meetings do take place they should be recorded and that record shared with the complainant for comment.

3.41 The Chief Executive (or Clinical Governance Lead) may delegate responsibility for responding to a complaint, where, in the interests of a prompt reply, a designated senior person may undertake the task (or the governance lead within FPS settings). In such circumstances, the arrangements for clinical and social care governance must ensure that the Chief Executive (or Clinical Governance Lead) maintains an overview of the issues raised in complaints (including those FPS complaints lodged with the HSC Board), the responses given and be assured that appropriate organisational learning has taken place. HSC organisations should ensure that the complainant and anyone who is a subject of the complaint understand the findings of the investigation and the recommendations made.

3.42 The response should be clear, accurate, balanced, simple and easy to understand. It should avoid technical terms, but where these must be used to describe a situation, events or condition, an explanation of the term should be provided. The letter should:

- address the concerns expressed by the complainant and show that each element has been fully and fairly investigated;
- include an apology where things have gone wrong;
- report the action taken or proposed to prevent recurrence;
- indicate that a named member of staff is available to clarify any aspect of the letter; and
- advise of their right to take their complaint to the Ombudsman if they remain dissatisfied with the outcome of the complaints procedure.

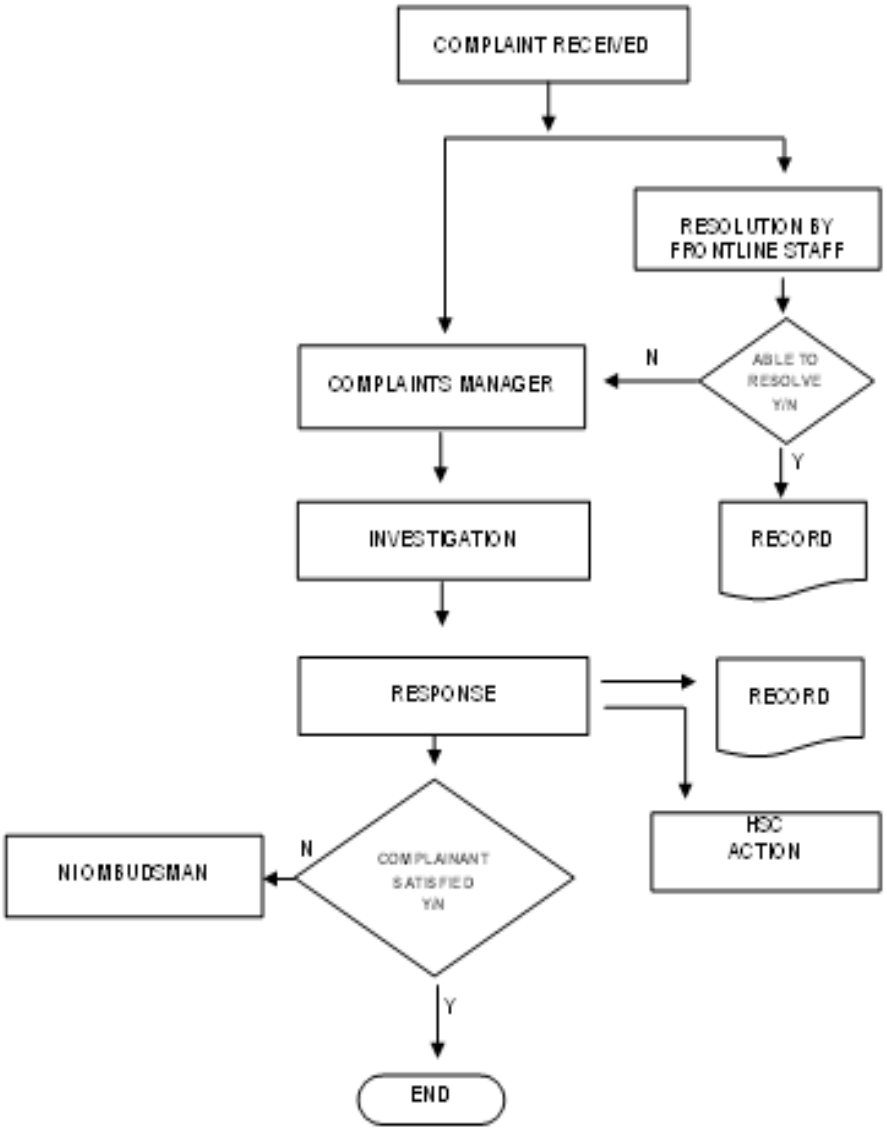
Concluding Local Resolution

3.43 The HSC organisation should offer every opportunity to exhaust local resolution. While the final response should offer an opportunity to clarify the response this should not be for the purposes of delaying “closure”.

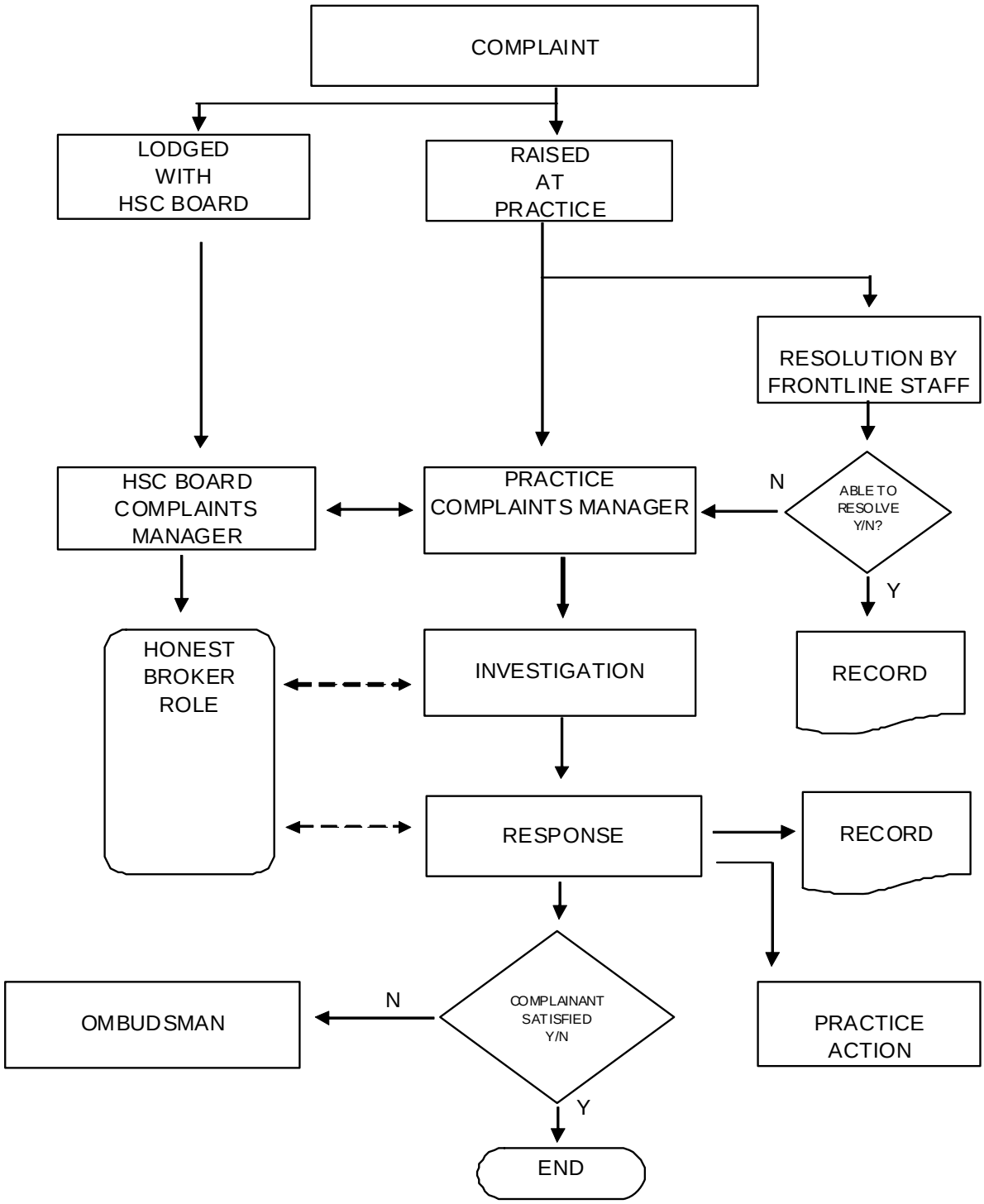
3.44 Once the final response has been signed and issued, the Complaints Manager, on behalf of the Chief Executive/Clinical Governance Lead, should liaise with relevant local managers and staff to ensure that all necessary follow-up action has been taken. Arrangements should be made for any outcomes to be monitored to ensure that they are actioned. Where possible, the complainant and those named in the complaint should be informed of any change in system or practice that has resulted from their complaint.

3.45 This completes the HSC Complaints Procedure. Complainants must be advised of their right to refer their complaint to the Ombudsman if they remain dissatisfied with the outcome of the complaints procedure.

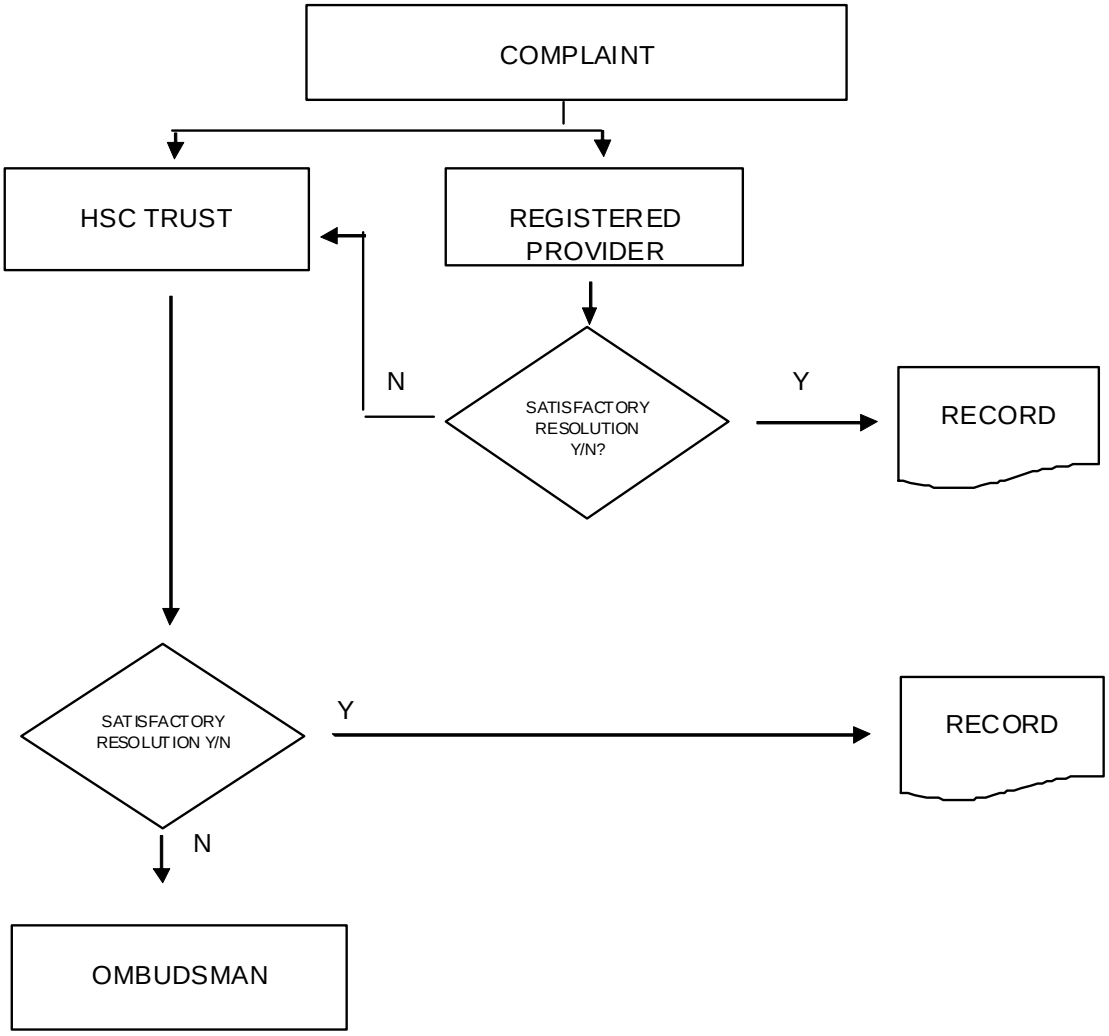
HOSPITAL OR COMMUNITY COMPLAINTS FLOWCHART



FAMILY PRACTITIONER SERVICE COMPLAINTS FLOWCHART



REGISTERED ESTABLISHMENTS & AGENCIES FLOWCHART



SUMMARY OF TARGET TIMESCALES

EVENT	TIMESCALE
Making a complaint	within 6 months of the event, or 6 months after becoming aware of the cause for complaint, but no longer than 12 months from the event
Acknowledgement Family Practitioner Services	within 2 working days* of receipt within 3 working days
Response Family Practitioner Services	within 20 working days within 10 working days

* A working day is any weekday (Monday to Friday) which is not a local or public holiday.

SECTION 4 - LEARNING FROM COMPLAINTS

Reporting & Monitoring

4.1 Each HSC organisation has a legal duty to operate a complaints procedure and is required to monitor how they, or those providing care on their behalf, deal with and respond to complaints. This includes the regular reporting on complaints in line with governance arrangements and monitoring the effectiveness of the procedure locally. The HSC organisation must:

- regularly review its policies and procedures to ensure they are effective;
- monitor the nature and volume of complaints;
- seek feedback from service users and staff to improve services and performance; and
- ensure lessons are learnt from complaints and use these to improve services and performance.

4.2 HSC organisations are also required to keep a record of all complaints received, including copies of all correspondence relating to complaints. HSC organisations must have effective processes in place for identifying and minimising risk, identifying trends, improving quality and safety and ensuring lessons are learnt and shared. HSC organisations must ensure regular and adequate reporting on complaints in line with agreed governance arrangements[11].

4.3 The *Standards for Complaints Handling* (Annexe 1 refers) provide the criteria by which organisations must operate and will assist organisations in monitoring the effectiveness of their complaints-handling arrangements locally. HSC organisations should also involve service users and staff to improve the

[11] Controls Assurance Standard, Risk Management, Criterion 5 http://www.dhsspsni.gov.uk/risk_07_pdf.pdf

quality of services and effectiveness of complaints-handling arrangements locally.[12]

4.4 The HSC must ensure they have the necessary technology/ information systems to record and monitor all complaints. For the purposes of measuring the effectiveness of the procedures, HSC organisations must maintain systems as described below.

The HSC Board

4.5 The HSC Board must maintain an oversight of all Family Practitioner Service and HSC Trust complaints received (including HSC prison healthcare) and be prepared to investigate any patterns or trends of concern or clusters of complaints against individuals, practices, or organisations.

4.6 The HSC Board must provide the Department with quarterly complaints statistics in relation to all FPS and, where appropriate, out-of-hours services.

4.7 The HSC Board must produce an annual report on complaints outlining the number of FPS and, where appropriate, out-of-hours services complaints received, the categories to which the complaints relate and the response times. The annual report should also include the number of FPS complaints in which the HSC Board acted as “honest broker”. Copies should be sent to the PCC, the RQIA, the Ombudsman and the DHSSPS. Reports must not breach patient/ client confidentiality.

HSC Trusts

[12] Circular HSC (SQSD) 29/07: Guidance on Strengthening Personal and Public Involvement in Health and Social Care http://www.dhsspsni.gov.uk/hsc_sqsd_29-07.pdf

4.8 HSC Trusts (including the Northern Ireland Ambulance Service) must provide the Department with quarterly statistical returns on complaints.

4.9 HSC Trusts must provide the HSC Board with quarterly complaints reports outlining the number and type of complaint received, the investigation undertaken and actions as a result including those relating to registered establishments and agencies, the Children Order and, where appropriate, out-of-hours services, pilot schemes and HSC prison healthcare;

4.10 HSC Trusts must produce an annual complaints report to include the number of complaints received, the categories to which the complaints relate, the response times and the learning from complaints. Copies should also be made available to the HSC Board, PCC, RQIA, the Ombudsman and the DHSSPS. Reports must not breach patient/ client confidentiality.

Quarterly reports

4.11 The management boards of the HSC Board and HSC Trusts should receive quarterly reports summarising the categories, emerging trends and the actions taken (or proposed) to prevent recurrence in order to:

- monitor arrangements for local complaints handling;
- consider trends in complaints; and
- consider any lessons that can be learned and shared from complaints and the result in terms of service improvement.

4.12 The HSC Board's quarterly reports to their management board should include a breakdown of complaints received in relation to **all** Family Practitioner Services and, where appropriate, out-of-hours services.

4.13 HSC Trusts' quarterly reports to their management board should include a breakdown of all complaints received including those received by, or on

behalf of, residents in statutory or independent residential care and nursing homes and, where appropriate, out-of-hours services, pilot schemes and HSC prison healthcare.

Family Practitioner Services

4.14 Family Practitioner Services must provide the HSC Board with:

- quarterly complaints statistics outlining the number of complaints received; and
- copies of all written complaints received - within 3 working days of receipt.

Arrangements should ensure that the complainant is aware and agrees to his/her complaint being forwarded to the HSC Board.

4.15 The HSC Board must record and monitor the outcome of all FPS complaints lodged with them.

Other HSC organisations

4.16 All other HSC organisations must publish annually a report on complaints handling. Copies should be sent to the PCC, HSC Board and the DHSSPS. Reports must not breach patient/client confidentiality.

Regulated establishments and agencies

4.17 All regulated establishments and agencies are required to provide RQIA, on request, with a statement containing a summary of complaints made during the proceeding 12 months and the action that was taken in response. RQIA will record and monitor all outcomes and will report on complaints activity within the regulated sector.

DHSSPS

4.18 The DHSSPS will continue to collect statistics on the number, type and response times of complaints made to HSC organisations. A regional breakdown of complaints statistics will be provided via the Departmental website on an annual basis.

Learning

4.17 All HSC organisations are expected to manage complaints effectively, ensuring that appropriate action is taken to address the issues highlighted by complaints and making sure that lessons are learned, to minimise the chance of mistakes recurring. Learning should take place at different levels within the HSC organisation (individual, team and organisational) and the HSC organisation must be able to demonstrate that this is taking place[13].

4.18 Learning is a critical aspect of the HSC Complaints Procedure and provides an opportunity to improve services and contribute to and learn from regional, national and international quality improvement and patient safety initiatives. The HSC, RQIA and Ombudsman must share the intelligence gained through complaints.

4.19 The HSC Board must have in place area-wide procedures for collecting and disseminating the information, themes and good practice derived from complaints ensuring they are used to improve service quality. HSC Trusts and FPS should be encouraged to share learning and seek feedback from service users for further improvement.

[13] The Quality Standards for Health and Social Care, Theme 5 (8.3 (k)) - http://www.dhsspsni.gov.uk/qpi_quality_standards_for_health___social_care.pdf

SECTION 5 - ROLES AND RESPONSIBILITIES

HSC Board

5.1 The HSC Board is required to monitor how they, or those providing care on their behalf, deal with and respond to complaints. This will include monitoring complaints processes, outcomes and service improvements. The S*tandards for Complaints Handling* provides a level against which HSC service performance can be measured (Annexe 1 refers).

5.2 The HSC Board must maintain an oversight of all FPS and HSC Trust complaints received and, where appropriate, out-of-hours services. The HSC Board must be prepared to investigate any patterns or trends of concern or clusters of complaints against individual clinicians/ professionals.

5.3 The HSC Board must have in place area-wide procedures for collecting and disseminating learning and sharing intelligence.

5.4 The HSC Board will provide a vital role in supporting FPS complaints that includes:

- providing support and advice;
- the role of “honest broker” between the complainant and the service provider;
- providing independent experts, lay persons, conciliation services, where appropriate;
- recording and monitoring the outcome of all complaints;
- addressing breaches of contractual arrangements; and
- sharing complaints intelligence with appropriate authorities e.g. the DHSSPS Pharmaceutical Inspectorate.

HSC Organisations

5.5 HSC organisations must:

- make arrangements for the handling and consideration of complaints and publicise these arrangements locally;
- appoint a Complaints Manager with responsibility for co-ordinating the local complaints arrangements and managing the process;
- appoint a senior person to take responsibility for delivering the organisation's complaints process and ensuring that all necessary organisational learning takes place;
- ensure that all staff who provide services on their behalf are aware of, and trained in, the procedures to be followed when dealing with complaints;
- ensure that complainants and staff are supported and made aware of the availability of support services;
- ensure that there is full co-operation between organisations/bodies in the handling and consideration of complaints;
- integrate complaints management into the organisation's clinical and social care governance and risk management arrangements;
- monitor the effectiveness of local complaints handling arrangements;
- have in place area-wide procedures for collecting and disseminating the information, themes and good practice derived from complaints; and
- where appropriate, publish annually a report on complaints handling.

The Regulation and Quality Improvement Authority (RQIA)

5.6 The Regulation and Quality Improvement Authority (RQIA) is an independent non-departmental public body. RQIA is charged with overall responsibility for regulating, inspecting and monitoring the standard and quality of health and social care services provided by independent and statutory bodies in Northern Ireland.

5.7 RQIA has a duty to assess and report on how the HSC and the regulated sector handle complaints in light of the standards and regulations laid down by the DHSSPS. RQIA will assess the effectiveness of local procedures and will use information from complaints to identify wider issues for the purposes of raising standards.

5.8 RQIA has a duty to encourage improvement in the delivery of services and to keep the DHSSPS informed on matters concerning the provision, availability and quality of services.

5.9 RQIA may be contacted at:

9th Floor, Riverside Tower
Lanyon Place
Belfast
BT1 3BT
Tel: 028 90 517500
Fax: 028 90 571501
http://www.rqia.org.uk/home/index.cfm

ANNEXE 1: STANDARDS FOR COMPLAINTS HANDLING

Standards for complaints handling

1. The following standards have been developed to address the variations in the standard of complaints handling across HSC organisations. These will assist organisations in monitoring the effectiveness of their complaints handling arrangements locally and will build public confidence in the process by which their complaint will be handled.

2. These are the standards to which HSC organisations are expected to operate. These standards complement existing Controls Assurance Standards, the Quality Standards for Health and Social Care, the Minimum Standards in relation to registered establishments and agencies and the Standards for Patient and Client Experience[14]. The standards for complaints handling are:

Standard 1: Accountability
Standard 2: Accessibility
Standard 3: Receiving complaints
Standard 4: Supporting complainants and staff
Standard 5: Investigation of complaints
Standard 6: Responding to complaints
Standard 7: Monitoring
Standard 8: Learning

[14] http://www.dhsspsni.gov.uk/improving_the_patient_and_client_experience.pdf

STANDARD 1: ACCOUNTABILITY

HSC organisations will ensure that there are clear lines of accountability for the handling and consideration of complaints.

Rationale:

HSC organisations will demonstrate that they have in place clear accountability structures to ensure the effective and efficient investigation of complaints, to provide a timely response to the complainant and a framework whereby learning from complaints is incorporated into the clinical, social care and organisational governance arrangements.

Criteria:

1. Managerial accountability for complaints within HSC organisations rests with the Chief Executive (or Clinical Governance Lead in FPS settings);
2. HSC organisations must designate a senior person to take responsibility for complaints handling and responsiveness locally;
3. HSC organisations must ensure that complaints are integrated into clinical and social care governance and risk management arrangements;
4. HSC organisations will include complaints handling within its performance management framework and corporate objectives;
5. Each HSC organisation must ensure that the operational Complaints Manager is of appropriate authority and standing and has appropriate support;
6. All staff must be aware of, and comply with, the requirements of the complaints procedure within their area of responsibility;
7. Where applicable, HSC organisations will ensure that independent provider contracts include compliance with the requirements of the HSC Complaints Procedure;

8. Each HSC organisation is responsible for quality assuring its complaints handling arrangements.

STANDARD 2: ACCESSIBILITY

All service users will have open and easy access to the HSC Complaints Procedure and the information required to enable them to complain about any aspect of service.

Rationale:

Those who wish to complain will be treated impartially, in confidence, with sensitivity, dignity and respect and will not be adversely affected because they have found cause to complain. Where possible, arrangements will be made as necessary for the specific needs of those who wish to complain, including provision of interpreting services; information in a variety of formats and languages; at suitable venues; and at suitable times.

Criteria:

1. Arrangements about how to make a complaint are widely publicised, simple and clear and made available in all areas throughout the service;
2. Arrangements for making a complaint are open, flexible and easily accessible to all service users, no matter what their personal situation or ability;
3. Flexible arrangements are in place in order that individual complainants may be suitably accommodated in an environment where they feel comfortable;
4. All staff have appropriate training about the needs of service users, including mental health, disability and equality awareness training.

STANDARD 3: RECEIVING COMPLAINTS

All complaints received will be dealt with appropriately and the process and options for pursuing a complaint will be explained to the complainant.

Rationale:

All complaints are welcomed. Effective complaints handling is an important aspect of the HSC clinical and social care governance arrangements. All complaints, however or wherever received, will be recorded, treated confidentially, taken seriously and dealt with in a timely manner.

Criteria:

1. Flexible arrangements are in place so that complaints can be raised in a variety of ways (e.g. verbally or in writing), and in a way in which the complainant feels comfortable;
2. Complaints from a third party must, where possible, have the written consent of the individual concerned;
3. HSC staff are aware of their legal and ethical duty to protect the confidentiality of service user information;
4. Attempts to resolve complaints are as near to the point of contact as possible, and in accordance with the complainant's wishes;
5. Where possible, the complainant should be involved in decisions about how their complaint is handled and considered;
6. Complaints are appropriately recorded and assessed according to risk in line with agreed governance arrangements;

STANDARD 4: SUPPORTING COMPLAINANTS AND STAFF

HSC organisations will support complainants and staff throughout the complaints process.

Rationale:

The HSC will support service users in making complaints and will encourage feedback through a variety of mechanisms. Information on complaints will outline the process as well as the support services available. Staff will be trained and empowered to deal with complaints as they arise.

Criteria:

1. HSC organisations will ensure the provision of readily available advice and information on how to access support services appropriate to the complainant's needs;
2. The HSC organisation's Complaints Manager will offer assistance in the formulating of a complaint;
3. HSC organisations will promote the use of independent advice and advocacy services;
4. HSC organisations will facilitate, where appropriate, the use of conciliation;
5. HSC organisations will adopt a consistent approach in the application of DHSSPS guidance on responding to unreasonable, vexatious or abusive complainants;
6. HSC organisations will ensure that staff receive training on complaints, appropriate to their needs;
7. HSC organisations will ensure that mechanisms are in place to support staff throughout the complaints process.

STANDARD 5: INVESTIGATION OF COMPLAINTS

All investigations will be conducted promptly, thoroughly, openly, honestly and objectively.

Rationale:

HSC organisations will establish a clear system to ensure an appropriate level of investigation. Not all complaints need to be investigated to the same degree. A thorough, documented investigation will be undertaken, where appropriate, including a review of what happened, how it happened and why it happened. Where there are concerns, the HSC organisation will act appropriately and, where possible, improve practice and ensure lessons are learned.

Criteria

1. Investigations are conducted in line with agreed governance arrangements;
2. Investigations are robust and proportionate and the findings are supported by the evidence;
3. A variety of flexible techniques are used to investigate complaints, dependent on the nature and complexity of the complaint and the needs of the complainant;
4. Independent experts or lay people are involved during the investigation, where identified as being necessary or potentially beneficial and with the complainant's consent;
5. People with appropriate skills, expertise and seniority are involved in the investigation of complaints, according to the substance of the complaint;
6. All HSC providers/ commissioners and regulatory bodies will co-operate, where necessary, in the investigation of complaints;
7. The HSC organisation will investigate and take necessary action, regardless of consent, where a patient/client safety issue is raised;

8. All correspondence and evidence relating to the investigation will be retained in line with relevant information governance requirements;

STANDARD 6: RESPONDING TO COMPLAINTS

All complaints will be responded to as promptly as possible and all issues raised will be addressed.

Rationale:

All complainants have a right to expect their complaint to be dealt with promptly and in an open and honest manner.

Criteria:

1. The timescales for acknowledging and responding to complaints are in line with statutory requirements;
2. Where any delays are anticipated or further time required the HSC organisation will advise the complainant of the reasons and keep them informed of progress;
3. HSC organisations will consider a variety of methods of responding to complaints;
4. Responses will be clear, accurate, balanced, simple, fair and easy to understand. All the issues raised in the complaint will be addressed and, where appropriate, the response will contain an apology;
5. The Chief Executive may delegate responsibility for responding to a complaint where, in the interests of a prompt reply, a designated senior person may undertake this task (or a clinical governance lead in FPS settings);
6. Complainants should be informed, as appropriate, of any change in system or of practice that has resulted from their complaint;
7. Where a complainant remains dissatisfied, he/she should be clearly advised of the options that remain open to them.

STANDARD 7: MONITORING

HSC organisations will monitor the effectiveness of complaints handling and responsiveness.

Rationale:

HSC organisations are required to monitor how they, or those providing care on their behalf, deal with and respond to complaints. Monitoring performance is essential in determining any necessary procedural change that may be required. It will also ensure that organisations have taken account of the issues and incorporated improvements where appropriate.

Criteria:

1. HSC organisations should ensure the regular and adequate reporting on complaints in accordance with agreed governance arrangements;
2. HSC organisations must produce and disseminate, where appropriate, an Annual Report on Complaints;
3. HSC organisations must ensure that they have in place the necessary technology/information system to record and monitor all complaints and outcomes;
4. HSC organisations should have a mechanism to routinely request feedback from service users and staff on the operation of the complaints process;
5. HSC organisations must review the arrangements for complaints handling and responsiveness.

STANDARD 8: LEARNING

HSC organisations will promote a culture of learning from complaints so that, where necessary, services can be improved when complaints are raised.

Rationale:

Complaints are viewed as a significant source of learning within HSC organisations and are an integral aspect of its patient/client safety and quality services ethos. Complaints will help organisations to continue to improve the quality of their services and safeguard high standards of care and treatment. HSC organisations must have effective structures in place for identifying and minimising risk, identifying trends, improving quality and safety and ensuring lessons are learnt and shared.

Criteria:

1. HSC organisations will monitor the nature and volume of complaints so that trends can be identified and acted upon;
2. HSC organisations will ensure there are provisions made within governance arrangements for the identification of learning from complaints and the sharing of learning locally and regionally;
3. Learning will take place at different levels within the HSC (individual, team and organisational);
4. HSC organisations will ensure that they have adequate mechanisms in place for reporting on progress with the implementation of action plans arising from complaints;
5. HSC organisations will incorporate learning arising from any review of findings of an investigation;
6. HSC organisations will contribute to, and learn from, regional, national and international quality improvement and patient safety initiatives;

7. HSC organisations will include learning from complaints within its Annual Report on Complaints, where Annual Reports are required.

ANNEXE 2: LEGAL FRAMEWORK

HPSS Complaints Procedure Regulations:

- The Health and Personal Social Services (General Medical Services Contracts) Regulations (NI) 2004;
- The Health and Personal Social Services General Dental Services Regulations (NI) 1993;
- The General Ophthalmic Services Regulations (NI) 2007;
- The Pharmaceutical Services Regulations (NI) 1997.

Pilot Scheme Directions

- Directions to Health and Social Services Boards concerning the implementation of pilot schemes (personal dental services) (NI) 2008

The Children (NI) Order 1995:

- The Representations Procedure (Children) Regulations (NI) 1996.

HPSS Complaints Procedure Directions:

- The Health and Social Care Complaints Procedure Directions (NI) 2009;
- Directions to the Health and Social Care Board on Procedures for Dealing with Complaints about Family Health Services Practitioners and Pilot Scheme Providers (NI) 2009

The Health and Personal Social Services (Quality, Improvement and Regulation) (NI) Order 2003

- The Residential Care Homes Regulations (NI) 2005;
- The Nursing Homes Regulations (NI) 2005;
- The Independent Health Care Regulations (NI) 2005;
- The Nursing Agencies Regulations (NI) 2005;

- The Adult Placement Agencies Regulations (NI) 2005;
- The Day Care Settings Regulations (NI) 2007;
- The Residential Family Centres Regulations (NI) 2007;
- The Domiciliary Care Agencies Regulations (NI) 2007;

ANNEXE 3: PROFESSIONAL REGULATORY BODIES

General Chiropractic Council (GCC) Chiropractors Phone: 020 7713 5155 www.gcc-uk.org	**Nursing and Midwifery Council (NMC)** Nurses, midwives and specialist community public health nurses Phone: 020 7333 6622 www.nmc-uk.org
General Dental Council (GDC) Dentists, dental therapists, dental hygienists, dental nurses, dental technicians, clinical dental technicians and orthodontic therapists Phone: 020 7887 3800 www.gdc-uk.org	**Royal Pharmaceutical Society of Great Britain (RPSGB)** Pharmacists, pharmacy technicians (on the voluntary register) and pharmacy premises Phone: 020 7735 9141 www.rpsgb.org
General Medical Council (GMC) Doctors Phone: 0845 357 8001 www.gmc-uk.org	**Pharmaceutical Society of Northern Ireland** Pharmacists and pharmacy premises in Northern Ireland Phone: 02890 326927 www.psni.org.uk
General Optical Council (GOC) Opticians Phone: 020 7580 3898 www.optical.org **General Osteopathic Council (GOsC)** Osteopaths Phone: 020 7357 6655 www.osteopathy.org.uk	**Council for Healthcare Regulatory Excellence (CHRE)** aims to protect the public, promote best practice and encourage excellence among the nine regulators of healthcare professionals listed. www.chre.org.uk
Health Professions Council (HPC) Arts therapists, biomedical scientists, chiropodists, podiatrists, clinical scientists, dieticians, occupational therapists, operating department practitioners, orthoptists, paramedics, physiotherapists, prosthetists and orthotists, radiographers, speech and language therapists Phone: 020 7582 0866 www.hpc-uk.org	**Northern Ireland Social Care Council (NISCC)** Social care workers, qualified social workers, and social work students on approved degree courses in Northern Ireland Phone: 02890 417600 www.niscc.info

ANNEXE 4: HSC PRISON HEALTHCARE

1. From 1 April 2008 responsibility for HSC prison healthcare was transferred to the DHSSPS. From that date the DHSSPS has delegated responsibility for commissioning those health and social services to the Eastern Health and Social Services Board (EHSSB). From 1 April 2009 this responsibility has transferred to the HSC Board. The South Eastern HSC Trust has responsibility for providing or securing the provision of health and social care services for prisoners.

2. Complaints raised about care or treatment or about issues relating to the provision of prison healthcare will be dealt with under the HSC Complaints Procedure.

ANNEXE 5: THE NI COMMISSIONER FOR COMPLAINTS

1. The NI Commissioner for Complaints (the Ombudsman) can carry out independent investigations into complaints about poor treatment or service or the administrative actions of HSC organisations. If someone has suffered because they have received poor service or treatment or were not treated properly or fairly – and the organisation or practitioner has not put things right where they could have – the Ombudsman may be able to help.

2. The Ombudsman's contact details are:

Mr Tom Frawley
Northern Ireland Ombudsman
Progressive House
33 Wellington Place
Belfast
BT1 6HN

Tel: (

3. Further information can be accessed at:
www.ni-ombudsman.org.uk

ANNEXE 6: THE PATIENT AND CLIENT COUNCIL

1. The Patient and Client Council (PCC) is an independent non-departmental public body established on 1 April 2009 to replace the Health and Social Services Councils. Its functions include:

- representing the interests of the public;
- promoting involvement of the public;
- providing assistance to individuals making or intending to make a complaint; and
- promoting the provision of advice and information to the public about the design, commissioning and delivery of health and social care services.

2. If a person feels unable to deal with a complaint alone, the staff of the PCC can offer a wide range of assistance and support. This assistance may take the form of:

- information on the complaints procedure and advice on how to take a complaint forward;
- discussing a complaint with the complainant and drafting letters;
- making telephone calls on the complainants behalf;
- helping the complainant prepare for meetings and going with them to meetings;
- preparing a complaint to the Ombudsman.
- referral to other agencies, for example, specialist advocacy services;
- help in accessing medical/social services records;

3. All advice, information and assistance with complaints is provided free of charge and is confidential. Further information can be obtained from:

www.patientclientcouncil@hscni.net; or
Freephone 0800 917 0222

ANNEXE 7: ADVOCACY

1. Some people who might wish to complain do not do so because they do not know how, doubt they will be taken seriously, or simply find the prospect too intimidating. Advocacy services are an important way of enabling people to make informed choices. Advocacy helps people have access to information they need, to understand the options available to them, and to make their views and wishes known. Advocacy also provides a preventative service that reduces the likelihood of complaints escalating. Advocacy is not new. People act as advocates every day for their children, for their elderly or disabled relatives and for their friends.

2. Within the HSC sector, advocacy has been available mainly for vulnerable groups, such as people with mental health problems, learning disabilities and older people (including those with dementia). However, people who are normally confident and articulate can feel less able to cope because of illness, anxiety and lack of knowledge and be intimidated by professional attitudes.

3. HSC organisations should encourage the use of advocacy services and ensure complainants are supported from the outset and made aware of the role of advocacy in complaints, including those services provided by the PCC. Advocacy in complaints must be seen to be independent to retain confidence in the complaints process.

ANNEXE 8: CONCILIATION

1. Conciliation is a process of examining and reviewing a complaint with the help of an independent person. The conciliator will assist all concerned to a better understanding of how the complaint has arisen and will aim to prevent the complaint being taken further. He/she will work to ensure that good communication takes place between both parties involved to enable them to resolve the complaint. It may not be appropriate in the majority of cases but it may be helpful in situations:

- where staff or practitioners feel the relationship with the complainant is difficult;
- when trust has broken down between the complainant and the practice/ pharmacy/ HSC organisation and both parties feel it would assist in the resolution of the complaint;
- where it is important, e.g. because of ongoing care issues, to maintain the relationship between the complainant and the practice/ pharmacy/ HSC organisation; or
- when there are misunderstandings with relatives during the treatment of the patient.

2. All discussions and information provided during the process of conciliation are confidential. This allows staff to be open about the events leading to the complaint so that both parties can hear and understand each others' point of view and ask questions.

3. Where a complainant is considered unreasonable, vexatious or abusive under the *Unacceptable Action Policy* (Annexe 14 refers) then conciliation would NOT be an appropriate option.

4. Conciliation is a voluntary process available to both the complainant and those named in the complaint. Either may request conciliation but both must agree to the process being used. In deciding whether conciliation should be offered, consideration must be given to the nature and complexity of the complaint and what attempts have already been made to achieve local resolution. The decision to progress to conciliation must be made with the agreement of both parties. The aim is to resolve difficulties, for example, if there is a breakdown in the relationship between a doctor or practitioner and their patient.

5. Conciliation may be requested by the complainant, the practice/pharmacy or the HSC organisation. In FPS complaints it may be suggested by the HSC Board.

FPS arrangements

6. The Practitioner/ Practice/ Pharmacy Manager should approach the HSC Board Complaints Manager for advice.

7. Where a request for a conciliator is received the HSC Board Complaints Manager will liaise with the relevant FPS lead to consider the best way forward. Where it is considered that conciliation would aid resolution then the HSC Board Complaints Manager will advise the FPS practice/ pharmacy. In some cases the HSC Board may consider an alternative to conciliation, such as, an honest broker.

Agreement by parties involved

8. The FPS Practice/ Pharmacy Manager/ HSC organisation must contact the complainant and discuss the rationale for involving a conciliator and provide an opportunity to allow the complainant to agree to such an approach

and consent to share information. It is important that all parties involved are aware of the confidentiality clause attached to conciliation services. Once agreement is received, the HSC organisation or the HSC Board Complaints Manager (on behalf of FPS) will make the necessary arrangements.

9. Where it has been agreed that the intervention of a conciliator is appropriate, the HSC organisation or HSC Board (on behalf of FPS) should clearly define the remit of the appointment for the purposes of:

- explaining the issue(s) to be resolved;
- ensuring all parties understand what conciliation involves;
- agreeing the timescales;
- agreeing when conciliation has ended; and
- explaining what happens when conciliation ends.

10. The conciliator must advise the practice/pharmacy/ HSC organisation when conciliation has ceased and whether a resolution was reached. No further details should be provided. The practice/pharmacy must then notify the HSC Board of the outcome.

11. Using conciliation does not affect the right of a complainant to pursue their complaint further through the HSC organisation or HSC Board (for FPS) if they are not satisfied. Neither does it preclude the complainant from referring their complaint to the Ombudsman should they remain dissatisfied.

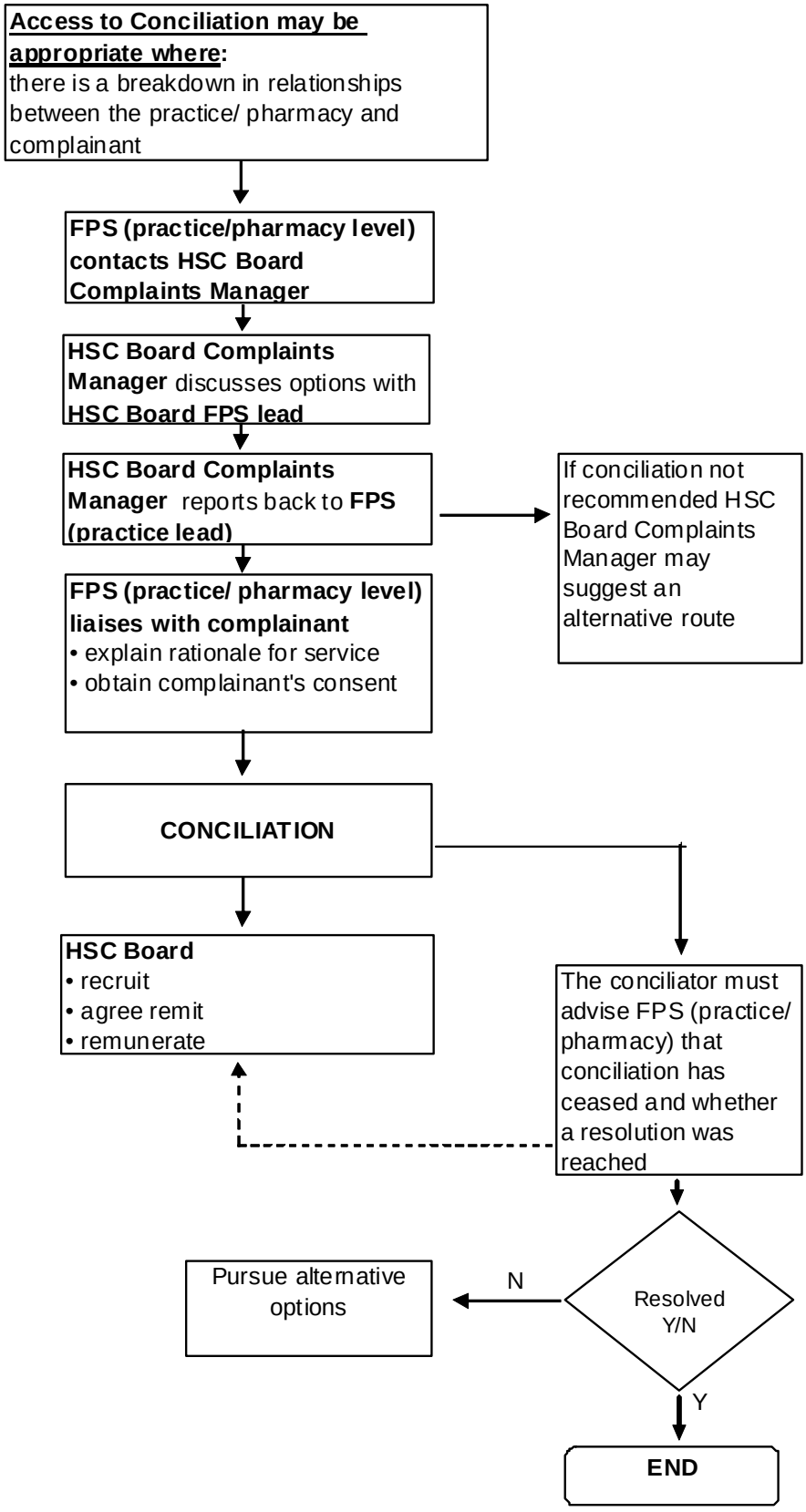
Appointment of conciliators

12. The HSC organisation or HSC Board (on behalf of FPS) is responsible for communicating with, ascertaining the availability of and formally appointing an appropriate conciliation service. In addition it is responsible for all other arrangements, including remuneration.

Monitoring

13. The HSC Board will monitor the effectiveness and usage of conciliation arrangements within HSC Trusts and FPS.

Conciliation – FPS Access



ANNEXE 9: INDEPENDENT EXPERTS

1. The use of an Independent Expert in the resolution of a complaint may be requested by the complainant, the practice/pharmacy or the HSC organisation. In FPS complaints it can also be suggested by the HSC Board. In deciding whether independent advice should be offered, consideration must be given, in collaboration with the complainant, to the nature and complexity of the complaint and any attempts at resolution. Input will not be required in every complaint but it may be considered beneficial where the complaint:

- cannot be resolved locally;
- indicates a risk to public or patient safety;
- could give rise to a serious breakdown in relationships, threaten public confidence in services or damage reputation;
- to give an independent perspective on clinical issues.

FPS arrangements

2. The Practitioner/ Practice/ Pharmacy Manager should approach the HSC Board Complaints Manager for advice.

3. Where a request for an independent expert is received the HSC Board Complaints Manager will liaise with the relevant FPS lead to consider the best way forward. Where it is considered that independent expert advice would aid resolution then the HSC Board Complaints Manager will advise the FPS practice. In some cases the HSC Board may consider an alternative to an Independent Expert.

Agreement and consent

4. The FPS Practice / Pharmacy Manager/ HSC organisation must contact the complainant and discuss the rationale for involving an Independent Expert

and provide an opportunity to allow the complainant to agree to such an approach and consent to share information. Once received, the HSC organisation or the HSC Board Complaints Manager (on behalf of FPS) will make the necessary arrangements.

5. The HSC organisation may decide to involve an Independent Expert in a complaint without the complainant's consent, outside the complaints procedure, for the purposes of obtaining assurances regarding health and social care practice.

6. Where it has been agreed that an Independent Expert will be involved the practice/ pharmacy/ HSC organisation should clearly define the remit of the appointment for the purposes of:

- explaining and agreeing the issue(s) to be reviewed;
- ensuring all parties understand the focus of the issue(s);
- agreeing the timescales;
- agreeing to the provision of a final report; and
- explaining what happens when this process is complete.

7. The Independent Expert's findings/ report will be forwarded to the practice/pharmacy/ HSC organisation. A summary of the findings should be made available by the practice/ pharmacy/ HSC organisation to:

- the complainant; and
- the HSC Board (for FPS only).

8. The letter of response to the complainant is the responsibility of the practice/ pharmacy/ HSC organisation.

Appointment of Independent Experts

9. The HSC organisation or HSC Board (on behalf of FPS) is responsible for communicating with, ascertaining the availability of and formally appointing an appropriate Independent Expert. In addition, it is responsible for all other arrangements, including remuneration and indemnity.

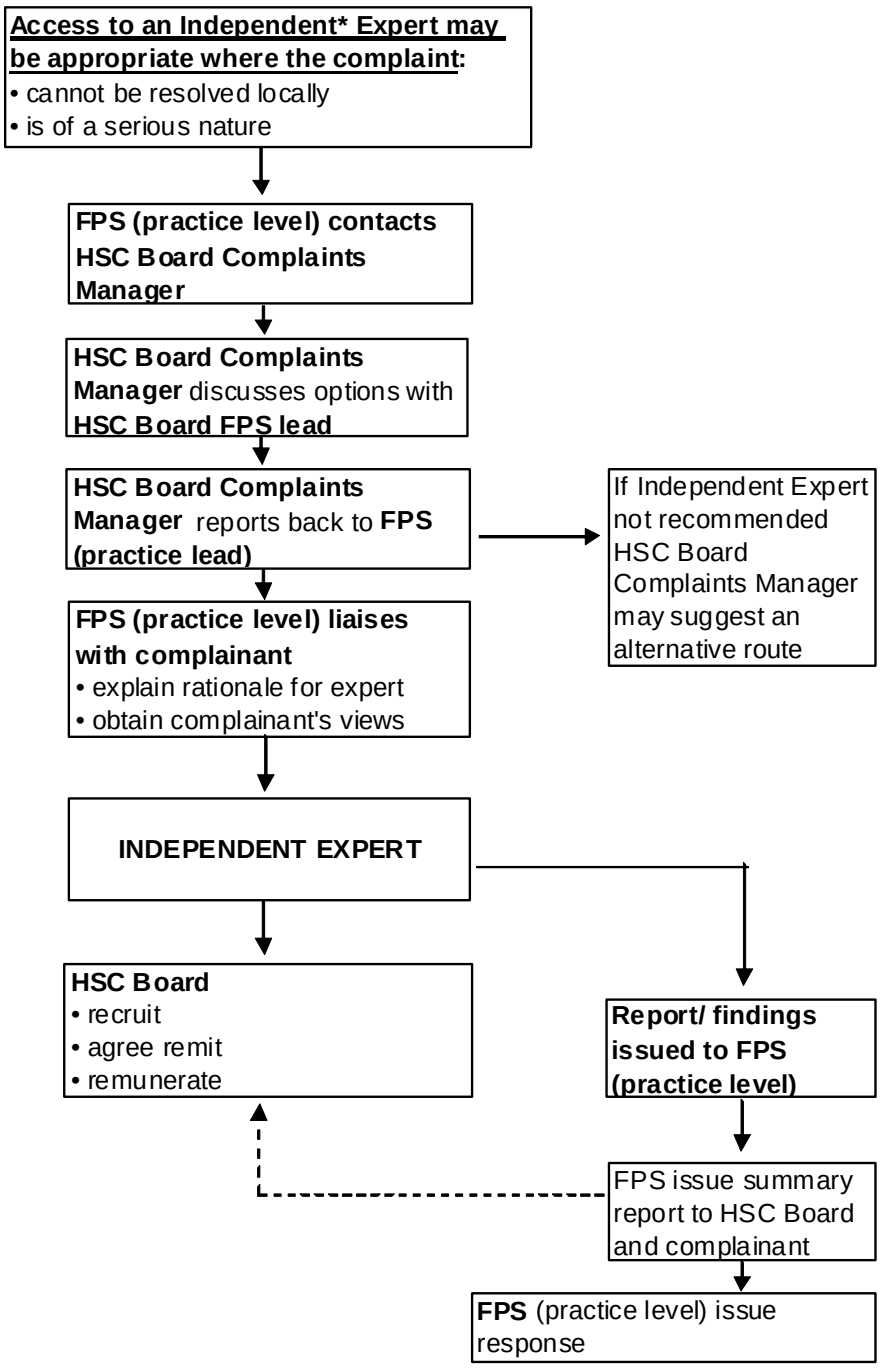
10. Independent Experts must be impartial, objective and independent of any parties to the complaint. Independent Experts should be recruited from another Local Commissioning group (LCG) area to ensure this impartiality (and in certain circumstance may be recruited from outside Northern Ireland).

Monitoring

12. The HSC Board will monitor the effectiveness and usage of Independent Expert arrangements within HSC Trusts and FPS including the implementation of any recommendations in FPS.

13. A flowchart outlining the process for FPS is shown overleaf.

Independent Experts - FPS Access



* definition of "Independent" = an Independent Expert must be recruited from another LCG area (and in certain circumstances outside Northern Ireland) and must have no connection with any of the parties to the complaint to avoid calling into question their objectivity and independence.

ANNEXE 10: LAY PERSONS

1. Lay persons may be beneficial in providing an independent perspective of non-clinical/ technical issues within the local resolution process. Lay persons are NOT intended to act as advocates, conciliators or investigators. Neither do they act on behalf of the provider or the complainant. The lay person's involvement is to help bring about a resolution to the complaint and to provide assurances that the action taken was reasonable and proportionate to the issues raised. For example, the lay person could accompany the investigator during the investigation process where the complainant is considered unreasonable (Annexe 14 refers).

2. Input from a lay person may be valuable to test key issues that are part of the complaint, such as:

- communication issues;
- quality of written documents;
- attitudes and relationships;
- access arrangements (appointment systems).

3. It is essential that both the provider and the complainant have agreed to the involvement of a lay person.

4. Lay persons should have appropriate training in relation to the HSC complaints procedure and have the necessary independence and communication skills.

FPS arrangements

5. The Practitioner/ Practice Manager should approach the HSC Board Complaints Manager for advice.

6. Where a request for a lay person is received the HSC Board Complaints Manager will liaise with the relevant FPS lead to consider the best way forward. Where it is considered that a lay person's involvement would aid resolution then the HSC Board Complaints Manager will advise the FPS practice. In some cases the HSC Board may consider an alternative to a lay person.

Agreement and consent

7. The FPS Practice/ Pharmacy Manager/ HSC organisation must contact the complainant and discuss the rationale for involving a lay person and provide an opportunity to allow the complainant to agree to such an approach and consent to share information. Once received, the HSC organisation/ HSC Board Complaints Manager (on behalf of FPS) will make the necessary arrangements.

8. Where it has been agreed that a lay person will be involved the practice/ pharmacy, HSC organisation should clearly define the remit of the appointment for the purposes of:

- explaining the issue(s) to be resolved;
- ensuring all parties understand the focus of the issue(s);
- ensuring all parties understand what lay person involvement means;
- agreeing the timescales;
- agreeing to the provision of a final report, and
- explaining what happens when this process is complete.

9. The lay person's findings/ report will be forwarded to the practice/ pharmacy/ HSC organisation. A summary should be made available by the practice/ pharmacy/ HSC organisation to:

- the complainant; and
- the HSC Board (for FPS only).

10. The letter of response to the complainant is the responsibility of the practice/ pharmacy/ HSC organisation.

Appointment of lay persons

11. The HSC organisation of HSC Board (on behalf of FPS) is responsible for communicating with, ascertaining the availability of and formally appointing an appropriate lay person. In addition it is responsible for all other arrangements, including training, performance management and remuneration.

Monitoring

12. The HSC Board will monitor the effectiveness and usage of lay person arrangements within HSC Trusts and FPS.

ANNEXE 12: HONEST BROKER ROLE

1. “Honest broker” is the term used to describe the role of the HSC Board Complaints Manager in supporting and advising FPS on the handling of complaints. The complainant or the practice/ pharmacy can ask the HSC Board to act in this role at any point in the complaints process.

2. It is not an alternative to local resolution. Neither is it an opportunity for the HSC Board to take over an investigation. Rather it is about facilitating communications and building relationships between the practice/ pharmacy and the complainant. The honest broker will act as an intermediary and is available to both the complainant or practice/ pharmacy staff throughout the complaints process. For example, the honest broker may:

- provide advice to both the complainant and the practice/pharmacy;
- act as a link between both parties and/ or negotiate with them; and
- facilitate and attend meetings between both parties.

3. Paragraphs 2.16 to 2.20 outline the options available to complainants when pursuing FPS complaints. This includes an option to lodge their complaint directly with the HSC Board. Where the complainant contacts the HSC Board the Complaints Manager will explain the options available to resolve the complaint:

- that the complaint can be copied to the relevant practice/ pharmacy for investigation, resolution and response; or
- that the HSC Board can act as honest broker between the complainant and the practice/ pharmacy.

4. FPS co-operation in complaints of this type is essential for the role of honest broker to effectively assist in the successful local resolution of

complaints. FPS will be asked for their agreement should the complainant prefer the HSC Board's involvement.

5. Where the HSC Board Complaints Manager has been asked to act as honest broker he/she will:

- act as intermediary between the complainant and the practice/ pharmacy;
- make arrangements for independent expert advice, conciliation, lay person assistance, where appropriate; and
- ensure the complainant is informed about the progress of the practice/ pharmacy complaint.

6. Whichever process is used it is important to note that the practice/ pharmacy are responsible for the investigation and the response. The HSC Board Complaints Manager, however, must ensure that:

- a written response is provided by the practice/ pharmacy to the complainant and any other person subject to the complaint;
- the written response is provided within 10 working days of receipt of complaint and where this is not possible that the complainant is informed; and
- the response notifies the complainant of their right to refer their complaint to the Ombudsman should they remain dissatisfied with the outcome of the complaints procedure.

7. The complainant may contact the HSC Board Complaints Manager for further advice and support.

ANNEXE 13: VULNERABLE ADULTS

Definition of vulnerable adult

1. For the purposes of "Safeguarding Vulnerable Adults – Regional Adult Protection Policy and Procedural Guidance" the term "vulnerable adult" is defined as: *a person aged 18 years or over who is, or may be, in need of community care services* ***or*** *is resident in a continuing care facility by reason of mental or other disability, age or illness* ***or*** *who is, or may be, unable to take care of him or herself* ***or*** *unable to protect him or herself against significant harm or exploitation.*[15]

2. Adults who "may be eligible for community care services" are those whose independence and well being would be at risk if they did not receive appropriate health and social care support. They include adults with physical, sensory and mental impairments and learning disabilities, howsoever those impairments have arisen; e.g. whether present from birth or due to advancing age, chronic illness or injury. They also include informal carers, family and friends who provide personal assistance and care to adults on an unpaid basis.

3. Making a complaint about health and social care can be intimidating, especially for people with mental health problems, learning disabilities or for those who are old or frail. HSC organisations should have consistent, explicit arrangements in place for advising and supporting vulnerable adults including signposting to independent advice and specialist advocacy services.

[15] Law Commission for England and Wales (1995) Mental Incapacity, Report No.231 London: HMSO – definition of "vulnerable adult" adopted by the HSC Regional Adult Protection Forum

Reportable offences and allegations of abuse

4. Very careful consideration must be given to complaints alleging offences that could be reportable to the police, and there should be explicit policies about the arrangements for such reporting. Where it is apparent that a complaint relates to abuse, exploitation or neglect then the regional *Safeguarding Vulnerable Adults Policy and Procedural Guidance (Sept 2006)* and the associated *Protocol for Joint Investigation of Alleged or Suspected Cases of Abuse of Vulnerable Adults* should be activated (see paragraph 1.26).

ANNEXE 14: UNREASONABLE, VEXATIOUS OR ABUSIVE COMPLAINANTS

1. HSC staff must be trained to respond with patience and empathy to the needs of people who make a complaint, but there will be times when there is nothing further that can reasonably be done to assist them. Where this is the case and further communications would place inappropriate demands on HSC staff and resources, consideration may need to be given to classifying the person making a complaint as an unreasonable, demanding or persistent complainant.

2. In determining arrangements for handling such complainants, staff need to:

- ensure that the complaints procedure has been correctly implemented as far as possible and that no material element of a complaint is overlooked or inadequately addressed;
- appreciate that even habitual complainants may have grievances which contain some substance;
- ensure a fair approach; and
- be able to identify the stage at which a complainant has become habitual.

3. The following *Unacceptable Actions Policy*[16] should only be used as a last resort after all reasonable measures have been taken to resolve the complaint.

[16] Unacceptable Actions Policy based on best practice guidelines issued by the Scottish Public Services Ombudsman

Unacceptable Actions Policy

4. This policy sets out the approach to those complainants whose actions or behaviour HSC organisations consider unacceptable. The aims of the policy are:

- to make it clear to all complainants, both at initial contact and throughout their dealings with the organisation, what the HSC organisation can or cannot do in relation to their complaint. In doing so, the HSC organisation aims to be open and not raise hopes or expectations that cannot be met;
- to deal fairly, honestly, consistently and appropriately with all complainants, including those whose actions are considered unacceptable. All complainants have the right to be heard, understood and respected. HSC staff have the same rights.
- to provide a service that is accessible to all complainants. However, HSC organisations retain the right, where it considers complainants' actions to be unacceptable, to restrict or change access to the service;
- to ensure that other complainants and HSC staff do not suffer any disadvantage from complainants who act in an unacceptable manner.

Defining Unacceptable Actions

5. People may act out of character in times of trouble or distress. There may have been upsetting or distressing circumstances leading up to a complaint. HSC organisations do not view behaviour as unacceptable just because a complainant is assertive or determined. In fact, it is accepted that being persistent can be a positive advantage when pursuing a complaint. However, the actions of complainants who are angry, demanding or persistent may result in unreasonable demands on the HSC organisation or unacceptable behaviour towards HSC staff. It is these actions that HSC organisations consider

unacceptable and aim to manage under this policy. These unacceptable actions are grouped under the following headings:

Aggressive or abusive behaviour

6. Violence is not restricted to acts of aggression that may result in physical harm. It also includes behaviour or language (whether verbal or written) that may cause staff to feel afraid, threatened or abused. Examples of behaviours grouped under this heading include threats, physical violence, personal verbal abuse, derogatory remarks and rudeness. HSC organisations also consider that inflammatory statements and unsubstantiated allegations can be abusive behaviour.

7. HSC organisations expect its staff to be treated courteously and with respect. Violence or abuse towards staff is unacceptable and a Zero Tolerance[17] approach must be adopted. HSC staff understand the difference between aggression and anger. The anger felt by many complainants involves the subject matter of their complaint. However, it is not acceptable when anger escalates into aggression directed towards HSC staff.

Unreasonable demands

8. Complainants may make what the HSC consider unreasonable demands through the amount of information they seek, the nature and scale of service they expect or the number of approaches they make. What amounts to unreasonable demands will always depend on the circumstances surrounding the behaviour and the seriousness of the issues raised by the complainant. Examples of actions grouped under this heading include demanding responses within an unreasonable timescale, insisting on seeing or speaking

[17] www.dhsspsni.gov.uk/zerotolerance.pdf

to a particular member of staff, continual phone calls or letters, repeatedly changing the substance of the complaint or raising unrelated concerns.

9. HSC organisations consider these demands as unacceptable and unreasonable if they start to impact substantially on the work of the organisation, such as taking up an excessive amount of staff time to the disadvantage of other complainants or functions.

Unreasonable persistence

10. It is recognised that some complainants will not or cannot accept that the HSC organisation is unable to assist them further or provide a level of service other than that provided already. Complainants may persist in disagreeing with the action or decision taken in relation to their complaint or contact the organisation persistently about the same issue. Examples of actions grouped under this heading include persistent refusal to accept a decision made in relation to a complaint, persistent refusal to accept explanations relating to what the HSC organisation can or cannot do and continuing to pursue a complaint without presenting any new information. The way in which these complainants approach the HSC organisation may be entirely reasonable, but it is their persistent behaviour in continuing to do so that is not.

11. HSC organisations consider the actions of persistent complainants to be unacceptable when they take up what the HSC organisation regards as being a disproportionate amount of time and resources.

Managing Unacceptable Actions

12. There are relatively few complainants whose actions a HSC organisation consider unacceptable. How the organisation manages these depends on their

nature and extent. If it adversely affects the organisation's ability to do its work and provide a service to others, it may need to restrict complainant contact with the organisation in order to manage the unacceptable action. The HSC organisation will do this in a way, wherever possible, that allows a complaint to progress to completion through the complaints process. The organisation may restrict contact in person, by telephone, fax, letter or electronically or by any combination of these. The organisation will try to maintain at least one form of contact. In extreme situations, the organisation will tell the complainant in writing that their name is on a "no contact" list. This means that they may restrict contact with the organisation to either written communication or through a third party.

13. The threat or use of physical violence, verbal abuse or harassment towards HSC staff is likely to result in the ending of all direct contact with the complainant. All incidents of verbal and physical abuse will be reported to the police.

14. HSC organisations do not deal with correspondence (letter, fax or electronic) that is abusive to staff or contains allegations that lack substantive evidence. When this happens the HSC organisation will tell the complainant that it considers their language offensive, unnecessary and unhelpful. The HSC organisation will ask them to stop using such language and state that it will not respond to their correspondence if they do not stop. The HSC organisation may require future contact to be through a third party.

15. HSC staff will end telephone calls if the caller is considered aggressive, abusive or offensive. The staff member taking the call has the right to make this decision, tell the caller that the behaviour is unacceptable and end the call if the behaviour does not stop.

16. Where a complainant repeatedly phones, visits the organisation, sends irrelevant documents or raises the same issues, the HSC organisation may decide to:

- only take telephone calls from the complainant at set times on set days or put an arrangement in place for only one member of staff to deal with calls or correspondence from the complainant in the future;
- require the complainant to make an appointment to see a named member of staff before visiting the organisation or that the complainant contacts the organisation in writing only;
- return the documents to the complainant or, in extreme cases, advise the complainant that further irrelevant documents will be destroyed;
- take other action that the HSC organisation considers appropriate. The HSC organisation will, however, tell the complainant what action it is taking and why.

17. Where a complainant continues to correspond on a wide range of issues and the action is considered excessive, then the complainant is told that only a certain number of issues will be considered in a given period and asked to limit or focus their requests accordingly.

18. Complainant action may be considered unreasonably persistent if all internal review mechanisms have been exhausted and the complainant continues to dispute the HSC organisation’s decision relating to their complaint. The complainant is told that no future phone calls will be accepted or interviews granted concerning this complaint. Any future contact by the complainant on this issue must be in writing. Future correspondence is read and filed, but only acknowledged or responded to if the complainant provides significant new information relating to the complaint.

Deciding to restrict complainant contact

19. HSC staff who directly experience aggressive or abusive behaviour from a complainant have the authority to deal immediately with that behaviour in a manner they consider appropriate to the situation in line with this policy. With the exception of such immediate decisions taken at the time of an incident, decisions to restrict contact with the organisation are only taken after careful consideration of the situation by a more senior member of staff. Wherever possible, the HSC organisation will give the complainant the opportunity to modify their behaviour or action before a decision is taken. Complainants are told in writing why a decision has been made to restrict future contact, the restricted contact arrangements and, if relevant, the length of time that these restrictions will be in place.

Appealing a decision to restrict contact

20. A complainant can appeal a decision to restrict contact. A senior member of staff who was not involved in the original decision considers the appeal. They advise the complainant in writing that either the restricted contact arrangements still apply or a different course of action has been agreed.

Recording and reviewing a decision to restrict contact

21. The HSC organisation will record all incidents of unacceptable actions by complainants. Where it is decided to restrict complainant contact, an entry noting this is made in the relevant file and on appropriate computer records. A decision to restrict complainant contact may be reconsidered if the complainant demonstrates a more acceptable approach. A senior member of staff will review the status of all complainants with restricted contact arrangements on a regular basis.

ANNEXE 15: CHILDREN ORDER REPRESENTATIONS AND COMPLAINTS PROCEDURE

1. Under the Children (NI) Order 1995 (the Order) HSC Trusts are statutorily required to establish a procedure for considering:

- any representations (including any complaint) made to it about the discharge of its functions under Part IV of, and paragraph 4 of Schedule 5 to, the Order, and
- matters in relation to children accommodated by voluntary organisations and privately run children's homes, and
- those personal social services to children provided under the Adoption Order (NI) 1987.

2. HSC Trusts functions are outlined in Article 45 of, and paragraph 6 of Schedule 5 to, the Order and in the Representations Procedure (Children) Regulations (NI) 1996.

3. Departmental guidance on the establishment and implementation of such a procedure is included at Chapter 12 of the Children Order Guidance and Regulations, Volume 4 (a flowchart to aid decision making is attached).

4. The HSC Board and HSC Trusts should familiarise themselves with these requirements.

CHILDREN ORDER REPRESENTATIONS AND COMPLAINTS PROCEDURE

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1. Complaint: Does it fit the definition of a Children Order complaint as below?

"…Any representation (including any complaint) made to the Trust … about the discharge of any of its functions under Part IV of the Order in relation to the child."
(Children (NI) Order 1995, Article 45(3))

OR

"A written or oral expression of dissatisfaction or disquiet in relation to an individual child about the Trust's exercise of its functions under Part IV of, and para 6 of Schedule 5 to, the Children Order."
(Guidance & Regulations – Vol. 4, Para 12.5 – DHSS)

If **YES** to **EITHER** of above

If **NO** to **EITHER** of above → Progress via HSC Complaints Procedure

↓

2. Does it meet the criteria of what may be complained about under Children Order?

"… about Trust support for families and their children under Part IV of the Order."
(Vol. 4, Para 12.8)

a. Day care;
b. Services to support children within family home;
c. Accommodation of a child;
d. After care;
e. Decisions relating to the placement of a child;
f. The management or handling of a child's case (in respect of Part IV services);
g. Process involved in decision making (in respect of Part IV services);
h. Denial of a (Part IV) service;
i. Exemptions to usual fostering limit;
j. Matters affecting a group of children (receiving a Part IV service);
k. Issues concerning a child subject to Adoption Services.

If **YES** to **ANY** of above

If **NO** to **ALL** of above → Progress via HSC Complaints Procedure

↓

3. <u>Complainant</u>: Does he/she fit the definition of a Children Order complainant?

a. **Any child** who is being looked after by the Trust;

b. **Any child** who is not being looked after by the Trust, but is in need;

c. A parent **of his**;

d. Any person who is not a parent of his but who has **parental responsibility for him**;

e. Any Trust foster parent;

f. Such other person as the Trust considers has a sufficient interest in **the child's welfare** to warrant his representations being considered by the Trust, i.e.

- the person who had the day to day care of the child within the past two years;
- the child's Guardian ad Litem;
- the person is a relative of the child (as defined by Children Order, Article 2(2));
- The person is a significant adult in the child's life, and where possible, this is confirmed by the child;
- a friend;
- a teacher;
- a general practitioner.
  (Children (NI) Order 1995 Article 45(3))

If **<u>YES</u>** to **ANY** of above → **Progress via Children Order Procedure**

If **<u>NO</u>** to **ALL** of above → Progress via HSC Complaints Procedure

<u>NB</u>: In order for a complaint to be eligible to be considered under the Children Order Procedure, the answer to 1 <u>and</u> 2 <u>and</u> 3 MUST all be YES.

Consent: *The (Trust) should always check with the child (subject to his understanding) that a complaint submitted reflects his views and that he wishes the person submitting the complaint to act on his behalf.* (Where it is decided that the person submitting the complaint is not acting on the child's behalf, that person may still be eligible to have the complaint considered).

Department of Health

An Roinn Sláinte

Männystrie O Poustie

www.health-ni.gov.uk

GUIDANCE IN RELATION TO THE

HEALTH AND SOCIAL CARE COMPLAINTS PROCEDURE

Revised April 2019

REVISIONS TO HSC COMPLAINTS PROCEDURE

Title	Update/Action	Date Effective
Guidance in relation to the Health and Social Care Complaints Procedure	Introduced in place of: Complaints in Health and Social Care: Standards and Guidelines for Resolution and Learning	01 April 2019
Complaints in Health and Social Care: Standards and Guidelines for Resolution and Learning	Introduced in place of: (HPSS) Complaints Procedure 1996	01 April 2009
Health and Personal Social Services (HPSS) Complaints Procedure 1996	Revoked and replaced with new Guidance	31 March 2009

AMENDMENTS TO COMPLAINTS DIRECTIONS

Directions	Details	Date Effective
Directions to the Regional Business Services Organisation on Procedures for dealing with Health and Social Care Complaints	The **BSO Directions** were amended for the first time at: • Paragraph 2 (Interpretation) of the principal Directions (a) update to Northern Ireland Public Services Ombudsman • Paragraph 2 (Interpretation), where the definition of an SAI was added; • Paragraph 7(1) (No investigation of complaint) where sub-paragraph 7(1)(m) was added in regard to SAIs; and • Paragraph 7(4) where paragraph 7(4A) was added	01 April 2019

Directions	Details	Date Effective
	in regard to SAIs.	
Directions to the Regional Agency for Public Health and Social Well-Being on Procedures for Dealing with Health and Social Care Complaints	The **PHA Directions** were amended for the first time at: • Paragraph 2 (Interpretation) of the principal Directions (a) update to Northern Ireland Public Services Ombudsman • Paragraph 2 (Interpretation), where the definition of an SAI was added; • Paragraph 7(1) (No investigation of complaint) where sub-paragraph 7(1)(m) was added in regard to SAIs; and • Paragraph 7(4) where paragraph 7(4A) was added in regard to SAIs. • Paragraph 7 (No investigation of complaint) of the principal Directions—the definition of vulnerable adults policy or procedures was updated to adult safeguarding procedures or protocol	01 April 2019
Directions to the Health and Social Care Board on procedures for dealing with Complaints about Family Health Services Practitioners and Pilot Scheme Providers	The **HSC Board Directions** were amended for the third time at: • Paragraph 2 (Interpretation) of the principal Directions (a) update to Northern Ireland Public Services Ombudsman • Paragraph 2 (Interpretation), where the definition of an SAI was added; • Paragraph 7(1) (No	01 April 2019

Directions	Details	Date Effective
	investigation of complaint) where sub-paragraph 7(1)(m) was added in regard to SAIs; and • Paragraph 7(4) where paragraph 7(4A) was added in regard to SAIs. • Paragraph 7 (No investigation of complaint) of the principal Directions—the definition of vulnerable adults policy or procedures was updated to adult safeguarding procedures or protocol • Paragraph 12 (Referring a complaint) of the principal Directions, for sub-paragraph (5)(b) substitute(b) The HSC Board Complaints Manager acts impartially as "honest broker" to the complainant and Practice/Practitioner in the resolution of the complaint.	
Health and Social Care Complaints Procedure Directions	The **Main Directions** were amended for the second time at: • Paragraph 2 (Interpretation) of the principal Directions (a) update to Northern Ireland Public Services Ombudsman • Paragraph 2 (Interpretation), where the definition of an SAI was added; • Paragraph 7(1) (No investigation of complaint) where sub-paragraph 7(1)(m) was added in regard to SAIs; and • Paragraph 7(4) where	01 April 2019

Directions	Details	Date Effective
	paragraph 7(4A) was added in regard to SAIs. • Paragraph 7 (No investigation of complaint) of the principal Directions—update to adult safeguarding procedures or protocol • Paragraph 12 (Referring a complaint) of the principal Directions, for sub-paragraph (5)(b) substitute(b) The HSC Board Complaints Manager acts impartially as "honest broker" to the complainant and Practice/Practitioner in the resolution of the complaint. • Paragraph 14 (Response) of the principal Directions omit sub-paragraph (7).	
Complaints about Family Health Services Practitioners and Pilot Scheme Providers **(Amendment)** Directions (Northern Ireland) 2013	The **HSC Board Directions** were amended for the second time in regard to the handling of complaints under paragraph 12(5)(b) at: • Paragraph 18(c) (Response) was amended to include sub-paragraph 18(c)(i) to respond to the complainant within 20 days when the HSC Board has been asked to act as 'honest broker'; and • Sub-paragraph 18(c) (ii) to respond to the complainant within 10 days in all other cases.	02 September 2013 **2013 N0. 12**
Health and Social Care Complaints Procedure Directions **(Amendment)** (Northern Ireland) 2009	The **Main Directions** were amended for the first time at: • Paragraph 2	02 September 2013 **2013 N0. 11**

Directions	Details	Date Effective
	(Interpretation), where the definition of an SAI was added; • Paragraph 7(1) (No investigation of complaint) where sub-paragraph 7(1)(m) was added in regard to SAIs; and • Paragraph 7(4) where paragraph 7(4A) was added in regard to SAIs.	
Directions to the Regional Business Services Organisation on Procedures for dealing with Health and Social Care Complaints	The Directions were introduced. Known as **BSO Directions**	26 July 2010
Directions to the Regional Agency for Public Health and Social Well-Being on Procedures for Dealing with Health and Social Care Complaints	The Directions were introduced. Known as **PHA Directions**	26 July 2010
Amendment Directions to the Health and Social Care Board on procedures for dealing with complaints about Family Health Services Practitioners and Pilot Scheme Providers	The **HSC Board Directions** were amended for the first time in respect to monitoring and the requirement by the Family Practitioner Services or pilot scheme provider to obtain consent from the complainant was removed at: Paragraph 21(2)(a) in regards to what the practitioner must send to the HSC Board and the timescale: and Paragraph 21(2) (b) in regards the practitioner sending the HSC Board quarterly complaints.	01 October 2009
Directions to the Health and Social Care Board on procedures for dealing with complaints about Family	The Directions were introduced. Known as **HSC Board Directions**	01 April 2009

Directions	Details	Date Effective
Health Services Practitioners and Pilot Scheme Providers		
Health and Social Care Complaints Procedure Directions (Northern Ireland) 2009	The Directions were introduced. Known as **Main Directions**	01 April 2009

BACKGROUND

The HSC Complaints Procedure*, 'Complaints in Health and Social Care: Standards and Guidelines for Resolution and Learning'* was developed and published in 2009*.* It replaced the former Health and Personal Social Services (HPSS) Complaints Procedure 1996 and provided a streamlined health and social care (HSC) complaints process that applies equally to all HSC organisations. As such it presented a simple, consistent approach and set out complaints handling procedures with clear standards and guidance for both HSC staff who handle complaints and for the public who may wish to raise a complaint across all HSC services.

The HSC Complaints Procedure (published 2009) was developed in conjunction with HSC organisations and publically consulted on before being finalised and published. It reflected the changing culture across HSC services and demonstrated an increased emphasis regarding the promotion of and need for **safety and quality** in service provision as well as the need to be open and transparent; and to learn from complaints and take action in order to reduce the risk of recurrence.

The key principles remain unchanged however this document follows a review and refresh of the HSC Complaints Procedure in order to bring it up to date for 2019. Any changes or improvements in complaints handling across the HSC are set out in detail. The document has been renamed the '*Guidance in relation to the Health and Social Care Complaints Procedure' or 'HSC Complaints Procedure'* for short. Updates include the:

- details on the new government department name introduced under the Departments Northern Ireland Act 2016[1];
- details of the role of the Northern Ireland Public Services Ombudsman (NIPSO) known as 'the Ombudsman' further to changes introduced under the Public Services Ombudsman Act (Northern Ireland) 2016[2];
- removal of the restriction on providing electronic responses to complainants;
- removal of the ability for HSC staff to complain to the Ombudsman about the way they have been dealt with under the Complaints Guidance;
- clarity on the role and remit of the honest broker in complaints handling;
- updated information on complaints about Independent Sector Providers (ISPs); and
- process for dealing with complaints and serious adverse incidents that are subject to legal proceedings.

This single tier process aims to provide:

- a strengthened, more robust, local resolution stage;
- an enhanced role for commissioners in monitoring, performance management and learning;
- improved arrangements for driving forward quality improvements across the HSC; and
- improved arrangements for the delivery of responses to complainants.

[1] Departments Northern Ireland Act 2016: http://www.legislation.gov.uk/nia/2016/5/section/1/enacted
[2] Public Services Ombudsman Act (Northern Ireland) 2016: http://www.legislation.gov.uk/nia/2016/4/enacted

The HSC Complaints Procedure presents HSC organisations with detailed, yet flexible, complaints handling arrangements designed to:

- provide effective local resolution and learning;
- improve accessibility;
- clarify the options for pursuing a complaint;
- promote the use and availability of support services, including advocacy;
- provide a well-defined process of investigation;
- promote the use of a range of investigative techniques;
- promote the use of a range of options for successful resolution, such as the use of independent experts, lay persons and conciliation;
- resolve complaints quickly and efficiently;
- provide flexibility in relation to target response times;
- provide an appropriate and proportionate response within reasonable and agreed timescales;
- provide clear lines of responsibility and accountability;
- improve record keeping, reporting and monitoring; and
- increase opportunities for shared learning across the region.

The standards for complaints handling are designed to assist HSC organisations in monitoring the effectiveness of their complaints handling arrangements locally and build public confidence in the process. The eight specific standards of HSC are:

Standard 1: Accountability
Standard 2: Accessibility
Standard 3: Receiving complaints
Standard 4: Supporting complainants and staff
Standard 5: Investigation of complaints
Standard 6: Responding to complaints
Standard 7: Monitoring
Standard 8: Learning

More details on each of the standards are provided in Annex 1 of this document.

It is recognised that sometimes, and even in despite of the best efforts of all concerned, there will be occasions when local resolution fails. Where this happens the complainant will be advised of their right to refer their complaint to the Ombudsman. The HSC Organisation also reserves the right to refer complaints to the Ombudsman.

This revised guidance in relation to the HSC Complaints Procedure is effective from 01 April 2019. It will be known as *'Guidance in relation to the Health and Social Care Complaints Procedure'*.

SECTION 1 – INTRODUCTION

Purpose of the HSC Complaints Procedure

1.1 This document is an updated version of the HSC Complaints Procedure which was first published in 2009 and sets out how HSC organisations should deal with complaints raised by people who use or are waiting to use their services. It replaces any previous or existing guidance with effect from 01 April 2019 and continues to provide a streamlined complaints process which applies equally to all HSC organisations, including the HSC Board, HSC Trusts, Business Services Organisation (BSO), Public Health Agency (PHA), NI Blood Transfusion Service (NIBTS), Family Practitioner Services (FPS), Out of Hours services pilot schemes and HSC prison healthcare. As such, it presents a simple, consistent approach for both HSC staff who handle complaints and for the public who may wish to raise a complaint across all HSC services.

1.2 The HSC Complaints Procedure continues to promote an organisational culture in health and social care that fosters openness and transparency for the benefit of all who use it or work in it. It is designed to provide ease of access, simplicity and a supportive and open process which results in a speedy, fair and, where possible, local resolution. The HSC Complaints Procedure provides the opportunity to put things right for service users as well as learning from the experience and improving the safety and quality of services. Dealing with those who have made complaints delivers an opportunity to re-establish a positive relationship with the complainant and to develop an understanding of their concerns and needs.

Local resolution

1.3 The purpose of local resolution is to enable the complainant and the organisation to attempt a prompt and fair resolution of the complaint.

1.4 HSC organisations should work closely with service users to find an early resolution to complaints. Every opportunity should be taken to resolve complaints as close to the source as possible, through discussion and negotiation. Where possible, complaints should be dealt with immediately. Where this is not possible, local resolution should be completed within 20 working days of receipt of a complaint (10

working days within FPS settings). The expectations of service users should be managed by HSC staff and any difficulties identified in being able to resolve a complaint within 20 days by local resolution should be communicated to the service user immediately.

1.5 Local procedures should be easily accessible, open, fair, flexible and conciliatory and should encourage communication on all sides. They should include a well-defined process for investigating and resolving complaints. Complainants must be advised of their right and be signposted to refer their complaint to the Ombudsman if they remain dissatisfied with the outcome of the HSC Complaints Procedure.

Principles of an effective Complaints Procedure

1.6 The HSC Complaints Procedure has been developed around four key principles:

- **openness and accessibility** – flexible options for pursuing a complaint and effective support for those wishing to do so;
- **responsiveness** – providing an appropriate and proportionate response;
- **fairness and independence** – emphasising early resolution in order to minimise strain and distress for all; and
- **learning and improvement** – ensuring complaints are viewed as a positive opportunity to learn and improve services.

Learning

1.7 Effective complaints handling is an important aspect of clinical and social care governance arrangements. Lessons learned during the complaints resolution process will assist organisations to make changes to improve the quality of their services and safeguard high standards of care and treatment. Increased efforts should be made to promote a more positive culture of not just resolving complaints but also learning from them. Furthermore, by highlighting the potential added value of complaints and subsequent quality and safety improvements made within HSC organisations the process becomes more acceptable and amenable to all.

1.8 Complaints are seen as a significant source of learning within health and social care and provide opportunities to improve:

- outcomes for services users;
- the quality of services; and
- service user experiences.

1.9 How HSC organisations handle complaints is an indicator of how responsive they are to the concerns of service users and/or their representatives. An increase in the number of complaints is not in itself a reason for thinking the service is deteriorating. The important point is to handle complaints well, take appropriate action and use the lessons learned to improve quality and safety.

What the HSC Complaints Procedure covers

1.10 The HSC Complaints Procedure deals with complaints about care or treatment, or about issues relating to the provision of health and social care. Complaints may, therefore, be raised about services provided by, for example:

- HSC Board
  - commissioning and purchasing decisions (for individuals)
- HSC Trusts
  - hospital and community services
  - registered establishments and agencies where the care is funded by the HSC
  - HSC funded staff or facilities in private pay beds
  - HSC prison healthcare
- Business services organisation (BSO)
  - services provided relevant to health and social care
- Public Health agency (PHA)
- Northern Ireland Blood Transfusion Service (NIBTS)
- Family practitioner Services (FPS)

1.11 The HSC Complaints Procedure may be used to investigate a complaint about any aspect of an application to obtain access to health or social care records for deceased patients under the Access to Health Records (NI) Order 1993[3] as an alternative to making an application to the courts.

[3] Access to Health Records (NI) Order 1993 applies only to records created since 30 May 1994.

What the HSC Complaints Procedure does not cover

1.12 Complaints about private care and treatment or service; which includes private dental care[4] or privately supplied spectacles are not dealt with in this guidance. In addition those services which are not provided or funded by the HSC, for example, provision of private medical reports are also not covered under the HSC Complaints Procedure.

1.13 Complaints may be raised within an HSC organisation which need to be addressed, but the complaint or aspects of it may not fall within the scope of the HSC Complaints Procedure. When this occurs, the HSC organisation should ensure that there are other processes in place which can be referred to in order to deal with these concerns. For example:

- staff grievances
- an investigation under the disciplinary procedure
- an investigation by one of the professional regulatory bodies
- services commissioned by the HSC Board
- requests for information under Freedom of Information or access to records under the General Data Protection Regulation (GDPR)
- independent inquiries and criminal investigations
- the Children Order Representations and Complaints Procedure
- adult safeguarding
- child protection procedures
- Coroners cases
- legal action
- Serious Adverse Incidents (SAIs)
- Whistleblowing[5]

[4] The Dental Complaints Service deals with private dental and mixed health service and private dental complaints and can be contacted via the General Dental Council at http://www.gdc-uk.org/
[5] Public Interest Disclosure (Northern Ireland) Order 1998

1.14 Complaints received that appear to indicate the need for referral under any of the processes listed above should be immediately transferred to the Complaints Manager for onward transmission to the appropriate department. Where a complaint is referred to any of these other processes it will be the responsibility of the officers involved to ensure that information is given to complainants on the reason for the referral; how the new process operates; their expectations for involvement in the process; anticipated timescales and the named officer/organisation the complainant can contact for ongoing communication. If any aspect of the complaint is not covered by the referral it will continue to be investigated under the HSC Complaints Procedure. In these circumstances, investigation will only be taken forward if it does not, or will not, compromise or prejudice the matter being investigated under any other process.

Staff Grievances

1.15 HSC organisations should have separate procedures for handling staff grievances.

Disciplinary Procedure

1.16 Disciplinary matters are not covered under the HSC Complaints Procedure. Its purpose is to focus on resolving complaints and learning lessons for improving HSC services. It is not for investigating disciplinary matters though these can be investigated by the HSC organisation and may be referred to a Professional Regulatory Body (see paragraph 1.20 below). The purpose of the HSC Complaints Procedure is not to apportion blame, but to investigate complaints with the aim of satisfying complainants whilst being fair to staff.

1.17 Where a decision is made to embark upon a disciplinary investigation, action under the HSC Complaints Procedure on any matter which is the subject of that investigation must cease. Where there are aspects of the complaint <u>not</u> covered by the disciplinary investigation, they may continue to be dealt with under the HSC Complaints Procedure.

1.18 The Chief Executive (or designated senior person[6]) must advise the complainant in writing that an investigation is being dealt with under appropriate Trust staff procedures. They also need to be informed that they may be asked to take part in the process and that any aspect of the complaint not covered by the investigation will continue to be investigated under the HSC Complaints Procedure.

1.19 In drafting these letters, the overall consideration must be to ensure that when investigation is required the complainant is not left feeling that their complaint has only been partially dealt with.

Investigation by a Professional Regulatory Body

1.20 A similar approach to that outlined above should be adopted in a case referred to a professional regulatory body (Annex 3). The Chief Executive (or designated senior person) must inform the complainant in writing of the referral. This should include an indication that any information obtained during the complaints investigation may need to be passed to the regulatory body. The letter should also explain how any other aspect of the complaint not covered by the referral to the regulatory body will be investigated under the HSC Complaints Procedure.

Services Commissioned by the HSC Board

1.21 Complaints about the HSC Board's commissioning decisions regarding purchasing of services may be made by, on or on behalf of any individual personally affected by a commissioning decision taken by the HSC Board. The HSC Complaints Procedure may not deal with complaints about the merits of a decision where the HSC Board has acted properly and within its legal responsibilities. Where general concerns about commissioning issues are raised with the HSC Board a full explanation of the HSC Board's policy should be provided. These issues should not, however, be dealt with under the HSC Complaints Procedure.

[6] A designated Senior Person should be a Director (or Nominee)

Requests for Information/Access to Records

1.22 Although use and disclosure of service user information may be necessary in the course of handling a complaint, the complainant, or indeed any other person, may at any time make a request for information which may, or may not, be related to the complaint. Such requests should be dealt with separately under the procedures set down by the relevant HSC organisation for dealing with requests for information under the Freedom of Information Act 2000[7] and requests for access to health or social care records under the General Data Protection Regulation (GDPR)[8].

Independent Inquiries and Criminal Investigations

1.23 Where an independent inquiry into a serious incident or a criminal investigation is initiated, the Chief Executive (or designated senior person) should immediately advise the complainant of this in writing. As the HSC Complaints Procedure cannot deal with matters subject to any such investigation, consideration of those parts of the original complaint must cease until the other investigation is concluded.

1.24 When the independent inquiry or criminal investigation has concluded, consideration of that part of the original complaint on which action was suspended may recommence if there are outstanding matters remaining to be considered under the HSC Complaints procedure.

Children Order Representations and Complaints Procedure

1.25 Arrangements for complaints raised under the Children Order Representations and Complaints Procedure are outlined in Annex 15. The HSC Board and HSC Trusts should familiarise themselves with Part IV of, and paragraph 6 of Schedule 5 to, the Children (NI) Order 1995[9].

[7] Freedom of Information Act 2000: http://www.legislation.gov.uk/ukpga/2000/36/contents
[8] General Data Protection Regulation (GDPR): https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr
[9] Children (NI) Order 1995: http://www.legislation.gov.uk/nisi/1995/755/contents

Adult Safeguarding

1.26 Where it is apparent that a complaint relates to abuse, exploitation or neglect of an adult at risk of harm then the regional '*Adult Safeguarding Operational Procedures*' (September 2016[10]) and the associated *'Protocol for Joint Investigation of Adult Safeguarding Cases'* (August 2016[11]) should be activated by contacting the Adult Protection Gateway Service at the relevant HSC Trust[12]. The HSC Complaints Procedure should be suspended pending the outcome of the adult safeguarding investigation and the complainant advised accordingly. However, if there are aspects of the complaint that do not cause the aforementioned Operational Procedures and associated Protocol to be activated, then these should continue to be investigated under the HSC Complaints Procedure. However, only those aspects of the complaint not falling within the scope of the safeguarding investigation will continue via the HSC Complaints Procedure.

Child Protection Procedures

1.27 Any complaint about individual agencies should be investigated through that agency's complaints procedure. Appeals which relate to decisions about placing a child's name on the Child Protection Register should be dealt with through the Child Protection Registration Appeals Process. The Safeguarding Board for Northern Ireland (SBNI) Child Protection procedures manual outlines the criteria for appeal under that procedure. These include when the:

- ACPC procedures in respect of the case conference were not followed;
- information presented at the case conference was inaccurate; incomplete or inadequately considered in the decision making process;
- threshold for registration/deregistration was not met;
- category for registration was not correct.

[10] Adult Safeguarding Operational Procedures: http://www.hscboard.hscni.net/download/PUBLICATIONS/SAFEGUARDING%20VULNERABLE%20ADULTS/guidance_and_protocols/Adult-Safeguarding-Operational-Procedures.pdf
[11] Protocol for Joint Investigation of Adult Safeguarding Cases: http://www.hscboard.hscni.net/download/PUBLICATIONS/SAFEGUARDING%20VULNERABLE%20ADULTS/guidance_and_protocols/Protocol-for-joint-investigation-of-adult-safeguarding-cases.pdf
[12] Information about and contact details for HSC Trusts can be accessed at the following link - https://www.nidirect.gov.uk/articles/who-contact-if-you-suspect-abuse-exploitation-or-neglect

Coroners Cases

1.28 With the agreement of the Coroner's Office, where there are aspects of the complaint not covered by the Coroners investigation they will continue to be dealt with under the HSC Complaints Procedure. Once the Coroners investigation has concluded, any issues that are outstanding in relation to the matters considered by the Coroner may then be dealt with under the HSC Complaints Procedure.

Legal Action

1.29 Even if a complainant's initial communication is through a solicitor's letter it should not be inferred that the complainant has decided to take formal legal action.

1.30 If the complainant has either instigated formal legal action, or advised that he or she intends to do so, the complaints process should cease. The Chief Executive (or designated senior person) should advise the complainant and any person/member of staff named in the complaint of this decision in writing. However, those aspects of the complaint not falling within the scope of the legal investigation will continue via the HSC Complaints Procedure.

1.31 It is not the intention of the HSC Complaints Procedure to deny someone the opportunity to pursue a complaint if the person subsequently decides **not to take legal action**. If he/she then wishes to continue with their complaint via the HSC Complaints Procedure and requests this, the investigation of their complaint should commence or resume. However, any matter that has been through the legal process to completion cannot also be investigated under the HSC Complaints Procedure.

Serious Adverse Incidents (SAI)

1.32 Complaints may indicate the need for a Serious Adverse Incident (SAI) investigation. When this occurs, the Chief Executive (or designated senior person), must advise the complainant and any person/staff member named in the complaint in writing that an SAI investigation is under way. They must also indicate to all concerned that the HSC Complaints Procedure may still continue during the SAI investigation. However, only those aspects of the complaint not falling within the scope of the SAI investigation will continue via the HSC Complaints Procedure.

1.33 The overall consideration must be to ensure that when the investigation is through the SAI process, the complainant is not left feeling that their complaint has only been partially dealt with.

SECTION 2 – MAKING A COMPLAINT

What is a complaint?

2.1 A complaint is "**an expression of dissatisfaction that requires a response**". Complainants may not always use the word "complaint". They may offer a comment or suggestion that can be extremely helpful. It is important to recognise those comments that are actually complaints and therefore need to be handled as such.

Promoting access

2.2 Standard 2: *Accessibility* provides the criteria by which organisations should operate (Annex 1 refers). Service users should be made aware of their right to complain and given the opportunity to understand all possible options for pursuing a complaint. Complainants must, where appropriate, have the support they need to articulate their concerns and successfully navigate the system. They must also be advised on the types of help available, for example, through front-line staff, the Complaints Manager and the Patient and Client Council (PCC). HSC organisations should promote and encourage more open and flexible access to the HSC Complaints Procedure and other less formal avenues in an effort to address barriers to access.

Who can complain?

2.3 Any person can complain about any matter connected with the provision of HSC services. Complaints may be made by:

- a patient or client;
- former patients, clients or visitors using HSC services and facilities;
- someone acting on behalf of existing or former patients or clients, providing they have obtained the patient's or client's consent;
- parents (or persons with parental responsibility) on behalf of a child; and
- any appropriate person in respect of a patient or client unable by reason of physical or mental capacity to make the complaint himself or who has died e.g. the next of kin.

Consent

2.4 Complaints by a third party should be made with the written consent of the individual concerned. There will be situations where it is not possible to obtain consent, such as when the:

- individual is a child and not of sufficient age or understanding to make a complaint on their own behalf;
- individual is incapable (for example, rendered unconscious due to an accident; judgement impaired as a result of a learning disability, mental illness, brain injury or serious communication problems);
- subject of the complaint is deceased; and
- delay in the provision of consent may result in a delay in the resolution of the complaint.

2.5 Where a person is unable to act for him/herself, his/her consent shall not be required.

2.6 The Complaints Manager, in discussion with the Chief Executive (or designated senior person), will determine whether the complainant has sufficient interest to act as a representative. The question of whether a complainant is suitable to make representation depends, in particular, on the need to respect the confidentiality of the patient or client. If it is determined that a person is not suitable to act as a representative, the Chief Executive (or designated senior person) must provide them with information in writing outlining the reasons the decision has been taken. More information on consent can be found in the DoH good practice in consent guidance[13].

2.7 Third party complainants who wish to pursue their own concerns can bring these to the HSC organisation without compromising the identity of the patient/client. The HSC organisation must consider the matter then investigate and address the issue and any concerns identified fully. A response will be provided to the third party on any issues which may be addressed without breaching patient/client confidentiality.

[13] https://www.health-ni.gov.uk/articles/consent-examination-treatment-or-care

Confidentiality

2.8 HSC staff should be aware of their legal and ethical duty to protect the confidentiality of the service user's information. The legal requirements are set out in the General Data Protection Regulations (GDPR) which controls how personal information is used by organisations, businesses or the government. Additional requirements are detailed in the Human Rights Act 1998 (HRA) which requires public authorities to act in a way which is compatible with the list in the European Convention on Human Rights (the Convention). The Common Law Duty of Confidentiality must also be observed. Ethical guidance is provided by the respective professional bodies. A service user's consent is required if their personal information is to be disclosed. More detailed information can be found in the DoH guidance entitled *Code of Practice on Protecting the Confidentiality of Service User Information* [14]published January 2012.

2.9 It is not necessary to obtain the service user's express consent to the use of their personal information to investigate a complaint. Even so, it is good practice to explain to the service user that information from his/her health and/or social care records may need to be disclosed to the complaint investigators, but only if they have a demonstrable need to know and for the purposes of investigating. If the service user objects to this, it should be explained to him/her that non-disclosure could compromise the investigation and his/her hopes of a satisfactory outcome to the complaint. The service user's wishes should always be respected, unless there is an overriding public interest in continuing with the matter.

Third Party Confidence

2.10 The duty of confidence applies equally to third parties who have given information or who are referred to in the service user's records. Particular care must be taken where the service user's records contain information provided in confidence, by, or about, a third party who is not a health or social care professional. Only

[14] DoH Code of Practice: https://www.health-ni.gov.uk/publications/dhssps-code-practice-protecting-confidentiality-service-user-information

information which is relevant to the complaint should be considered for disclosure, and then only to those *within* the HSC who have a demonstrable 'need to know' in connection with the complaint investigation. Third party information must not be disclosed to the service user unless the person who provided the information has expressly consented to the disclosure.

2.11 Disclosure of information provided by a third party outside the HSC also requires express consent. If the third party objects, then information they provided can only be disclosed where there is an overriding public interest in doing so.

Use of Anonymised Information

2.12 Where anonymised information about a patient/client and/or third parties would suffice for investigation of the complaint, identifiable information should be omitted. Anonymising information does not of itself remove the legal duty of confidence but, where all reasonable steps are taken to ensure that the recipient is unable to trace the patient/client or third party identity, it may be passed on where justified by the complaint investigation. Where a patient/client or third party has expressly refused permission to use certain information, then it can only be used where there is an overriding public interest in doing so.

How can complaints be made?

2.13 Complaints may be made in a variety of formats including verbally, written or electronic. Should a verbal complaint be made the complainant should be asked to formalise their complaint in writing. If the complainant is unable to put their complaint in writing then Trust staff or the Patient Client Council can provide assistance. It is helpful to establish at the outset what the complainant wants to achieve in order to avoid confusion or dissatisfaction and subsequent complaints. HSC organisations should be mindful of technological advances specifically in regard to email communications and must adhere to their relevant Information Technology (IT) policies and procedures. Complaints Managers should also consider local arrangements to ensure there is no breach of patient/client confidentiality in the management of information surrounding complaints.

2.14 Complaints may be made to any member of staff, for example receptionists, clinical or care staff. In many cases complaints are made orally and front-line staff may either resolve the complaint "on the spot" or pass it to the Complaints Manager. It is important that front-line staff receive the appropriate complaints handling training including refresher training according to extant local procedures. They must also be supported to respond sensitively to the comments and concerns raised and be able to distinguish those issues which would be better referred elsewhere for more detailed investigation. Front line staff should familiarise themselves with Section 75 of the Northern Ireland Act 1998 which changed the practices of government and public authorities so that equality of opportunity and good relations are central to policy making, policy implementation, policy review and service delivery[15]. (See Flowchart page 50)

Options for pursuing a complaint

2.15 Some complainants may prefer to make their initial complaint to someone within the relevant organisation who has not been involved in the care provided. In these circumstances, they should be advised to address their complaint to the Complaints Manager, an appropriate senior person or, if they prefer, to the Chief Executive. All HSC organisations have named Complaints Managers. The following paragraphs outline the options available to complainants who want to raise complaints in relation to:

- Family Practitioner Services;
- Regulated Establishments and Agencies; and
- Independent Sector Providers.

Family Practitioner Services (family doctors, dentists, pharmacists, opticians)

2.16 Family Practitioner Services (FPS) are required to have in place a practice-based complaints procedure which forms part of the local resolution mechanism for settling complaints. A patient may approach any member of staff with a complaint about the service or treatment he/she has received.

[15] Section 75 of the Northern Ireland Act 1998
https://www.legislation.gov.uk/ukpga/1998/47/section/75

2.17 Alternatively, the complainant has the right to lodge his/her complaint with the HSC Board's Complaints Manager if he/she does not feel able to approach immediate staff (see flowchart page 51).

2.18 Where requested, the HSC Board will act impartially as "honest broker" to the complainant and Practice/Practitioner in either the resolution of a complaint or by assisting all parties in reaching a position of understanding. The objective for the HSC Board should be, wherever possible, to restore the trust between the patient and the Practice/Practitioner staff. This will involve an element of mediation on the part of the HSC Board or the offer of conciliation services where they are appropriate. The HSC Board's Complaints Manager should seek with the complainant's agreement to involve the FPS Complaints Manager as much as possible in resolving the issues. The HSC Board's Complaints Manager is also available to Practice/Practitioner staff for support and advice.

2.19 The HSC Board has a responsibility to record and monitor the outcome of complaints lodged with them.

2.20 The HSC Board will provide support and advice to FPS in relation to the resolution of complaints. It will also appoint Independent Experts, Lay Persons or Conciliation Services, where appropriate.

2.21 Complainants must be advised of their right to refer their complaint to the Ombudsman if they remain dissatisfied with the outcome of the practice-based complaints procedure.

Regulated Establishments and Agencies

2.22 All regulated establishments and agencies[16] must operate a complaints procedure that meets the requirements of applicable Regulations, relevant Minimum Standards and the HSC Complaints Procedure. This includes:

- Effectively publicising the arrangements for dealing with complaints and ensuring service users, clients and families are aware of such arrangements;
- Ensuring that any complaint made under the complaints procedure is investigated;
- Ensuring that time limits for investigations are adhered to;
- Advising complainants regarding the outcomes of the investigation; and
- Maintaining a record of learning from complaints that is available for inspection.

2.23 Complainants must also be advised of their right to refer their complaint to the Ombudsman if they remain dissatisfied with the HSC Complaints Procedure. It is for the Ombudsman to determine whether or not a case falls within that office's jurisdiction.

2.24 Complaints may be made by service users or persons acting on their behalf providing they have obtained the service user's consent. Complaints relating to contracted services provided by the registered provider or agency may be received directly by the service provider or by the contracting Trust. Complainants should be encouraged to raise their concerns, at the outset, with the registered provider or agency. The registered provider is required by legislation to ensure the complaint is fully investigated. The general principle in the first instance would be that the registered provider or agency investigates and responds directly to the complainant.

2.25 However, individuals placed in a regulated establishment or who have their service provided by a regulated agency may, if they prefer, raise their concerns through the HSC Trust that commissioned the care on their behalf (see flowchart on page 52) as the commissioning Trust has a continuing duty of care to the service user and should participate in local resolution as necessary.

[16] Residential and nursing homes as well as Voluntary Adoption Agencies are examples of regulated establishments and agencies.

2.26 Where complaints are raised with the HSC Trust, the Trust must establish the nature of the complaint and consider how best to proceed. For example, the complaint may be about an aspect of the "care plan" and can, therefore, only be fully dealt with by the Trust. The complaint may also trigger the need for an investigation under child protection or protection of vulnerable adults' procedures or indeed, might highlight non-compliance with statutory requirements. It is not the intention to operate parallel complaints procedures, however, if the RQIA is notified of a breach of regulations or associated standards it will review the matter and take whatever appropriate action is required. It is important, therefore, that Trusts work closely with the registered providers, other professionals and the RQIA to enable appropriate decisions to be made.

2.27 HSC Trusts must assure themselves that regulated establishments and agencies that deliver care on their behalf are effective and responsive in complaints handling. Service users may approach the Ombudsman if they remain dissatisfied. It is possible that referrals to the Ombudsman where complaints are dealt with directly by the registered provider without HSC Trust participation in local resolution will be referred to the HSC Trust by the Ombudsman for action.

2.28 Copies of all correspondence relating to regulated sector complaints should be retained. The RQIA will use this information to monitor all regulated services including those services commissioned by the HSC Trust.

2.29 Voluntary Adoption Agencies became regulated by the RQIA in 2010 and in due course, these arrangements will extend to Fostering Agencies services which will also be regulated by the RQIA.

Independent Sector Providers

2.30 This section of the guidance has been developed for use in complaints against Independent Service Providers (ISP) in contract with HSC Trusts. Complaints against regulated establishments and agencies, such as, residential and nursing homes should be handled in accordance with paragraphs 2.22 to 2.28 above. On occasions HSC organisations contract with ISPs to provide services for patients/clients. An example where this may be the case is in the maintenance of waiting lists for elective forms of treatment.

2.31 Such contracts are agreed and managed by HSC Trusts and procured in accordance with public procurement law. ISPs may have their own premises or may be permitted to use Trust premises, equipment and facilities.

2.32 Trusts must be assured that ISPs with which they contract have appropriate governance arrangements in place for the effective handling, management and monitoring of all complaints. This should include the appointment of designated officers of suitable seniority to take responsibility for the management of the in-house complaints handling procedures, the investigation of complaints and the production of leaflets, or other literature (available and accessible to patients/clients) that outline the provider's complaints procedure.

2.33 Complaints relating to contracted services provided by ISPs may be received directly by the ISP or by the contracting Trust. The general principle in the first instance would be that the ISP investigates and responds directly to the complainant. Independent Sector Providers are required to notify Trusts of any complaints received without delay and in any event within 72 hours. Trusts can then determine how they wish the complaints to be investigated (see flowchart on page 53).

2.34 Where complaints are raised directly with the Trust, it must establish the nature of the complaint and consider how best to proceed. The Trust may simply refer the complaint to the ISP for investigation, resolution and response or it may decide to investigate the complaint itself where it raises serious concerns or where the Trust deems it in the public interest to do so. This may also be considered preferable should the Trust premises and/or staff have been involved (see flowchart on page 53).

2.35 In all cases, appropriate communication should be made with the complainant to inform them which organisation is leading the investigation into their complaint.

2.36 In complaints investigated by the ISP:

- A written response will be provided by the ISP to the complainant and copied to the Trust;

- Where there is a delay in responding within the target timescales the complainant will be informed and where possible provided with a revised date for conclusion of the investigation; and

- The letter of response must advise the complainant that they may progress their complaint to the Trust for further consideration if they remain dissatisfied. The Trust will then determine whether the complaint warrants further investigation and, if so, will confirm who should be responsible for conducting it. The Trust will work closely with the ISP to enable appropriate decisions to be made.

2.37 The complainant must also be informed of their right to refer their complaint to the Ombudsman if they remain dissatisfied with the outcome of the complaints procedure.

2.38 It is possible that referrals to the Ombudsman, where complaints are dealt with directly by the ISP without Trust participation in local resolution, will be referred to the Trust by the Ombudsman for action.

2.39 Trusts should have agreed arrangements in place to ensure that ISPs regularly provide information relating to all complaints received and responded to directly by them. This information should be made available to the Trust for monitoring purposes. The ISP must keep a record of complaints, the subsequent investigation and its outcome and any action taken as a result. This record must be submitted to the Trust no longer than 10 working days after the end of each quarter for complaints closed in the period. This should include details of the number, source and type(s) of complaint, action taken and outcome of investigation.

2.40 The ISP should also indicate if the learning from complaints has been disseminated to all relevant staff. The ISP must review their complaints procedure on an annual basis and in this annual review shall include a review of the outcome of any complaints investigations during the preceding year to ensure that where necessary any changes to practice and procedure are implemented. This annual review must be available for inspection by Trust staff on request.

What information should be included in the complaint?

2.41 A complaint need not be long or detailed, but it should include:

- contact details;
- who or what is being complained about, including the names of staff if known;
- where and when the events of the complaint happened; and
- where possible, what remedy is being sought – e.g. an apology or an explanation or changes to services.

2.42 Standard 4: *Supporting complainants and staff* provides the criteria by which organisations should operate (Annex 1 refers). Advice and assistance is available to complainants and staff at any stage in the complaints process from the Complaints Manager. Independent advice and support for complainants is available from the PCC (detailed in Section 5 – Roles and responsibilities). Independent advocacy and specialist advocacy services are also available (Annex 7 refers).

What are the timescales for making a complaint?

2.43 A complaint should be made as soon as possible after the action giving rise to it, normally within six months of the event. HSC organisations should encourage those who wish to complain to do so as soon as possible after the event. Investigation is likely to be most effective when memories are fresh and the relevant evidence such as records of treatment will be easier to source.

2.44 If a complainant was not aware that there was potential cause for complaint, the complaint should normally be made within **six months** of their becoming aware of the cause for complaint, or within **twelve months** of the date of the event, whichever is the earlier.

2.45 There is discretion for the Complaints Manager to extend this time limit where it would be unreasonable in the circumstances of a particular case for the complaint to have been made earlier and where it is still possible to investigate the facts of the case. This discretion should be used with sensitivity and impartiality. The complainant should be advised that with the passage of time the investigation and response will be based largely on a review of records.

2.46 In any case where a Complaints Manager has decided not to investigate a complaint on the grounds that it was not made within the time limit, the complainant can request the Ombudsman to consider it. The complainant should be advised of the options available to pursue this further.

2.47 The Complaints Manager must consider the content of complaints that fall outside the time limit in order to identify any potential risk to public or patient safety and, where appropriate, the need to investigate the complaint if it is in the public's interest to do so or refer to the relevant regulatory body.

SECTION 3 – HANDLING COMPLAINTS

Accountability

3.1 Standard 1: *Accountability* provides the criteria by which organisations should operate (Annex 1 refers). Accountability for the handling and consideration of complaints rests with the Chief Executive (or Clinical Governance Lead in FPS settings). The HSC organisation must designate a senior person within the organisation:

- to take responsibility for the local complaints procedure;
- to ensure compliance with the regulations; and
- to ensure that action is taken in light of the outcome of any investigation.

In the case of HSC Trusts, a Director (or a Clinical Governance Lead in FPS setting) should be designated. All staff must be aware of, and comply with, the requirements of the complaints procedure. These arrangements will ensure the integration of complaints management into the organisation's governance arrangements.

3.2 Where care or treatment is provided by an independent provider, for example residential or nursing home care, the commissioning body must ensure that the contract includes entitlement, by the HSC organisation, to any and all documentation relating to the care of service users and a provision to comply with the requirements of the HSC Complaints Procedure.

Performance Management

3.3 Complaints provide a rich source of information and learning from complaints should be considered a vital part of the HSC organisation's performance management strategy. HSC organisations need to be able to demonstrate that positive action has been taken as a result of complaints and that learning from complaints is embedded in the organisation's governance and risk management arrangements.

3.4 Complaints should be used to inform and improve the standard of service provision. HSC organisations should aim for continuous change and improvement in their performance as a result of complaints. Where something has gone wrong or

fallen below standard the organisation has the opportunity to improve and avoid a recurrence. By making sure that lessons from complaints are taken on board and followed up appropriately, services and performance can be greatly improved for the future.

Co-operation

3.5 Local arrangements must ensure that a full and comprehensive response is given to a complainant and that there is the necessary co-operation in the handling and consideration of complaints between:

- HSC organisations;
- Regulatory authorities e.g. professional bodies, DOH, Medicines Regulatory Group (MRG);
- The Ombudsman; and
- The RQIA.

3.6 This general duty to co-operate includes answering questions, providing information and attending any meeting reasonably requested by those investigating the complaint.

Complaints Manager

3.7 HSC organisations must appoint:

- A senior person within the organisation to ensure compliance with the relevant Complaints Directions[17] and to ensure that action is taken in light of the outcome of any investigation; and
- A Complaints Manager to co-ordinate the local complaints arrangements and manage the process.

[17] DoH Complaints Directions: https://www.health-ni.gov.uk/publications/hsc-complaints-directions

3.8 The Complaints Manager or whoever is designated on their behalf must be readily accessible to both the public and members of staff. The Complaints Manager should:

- deal with complaints referred by front-line staff;
- be easily identifiable to service users;
- be available to complainants who do not wish to raise their concerns with those directly involved in their care;
- provide advice and support to vulnerable adults;
- consider all complaints received and identify and appropriately refer those falling outside the remit of the complaints procedure;
- provide support to staff to respond to complaints;
- be aware of and advise on the role of the Medical Defence Organisations (MDOs)[18] to assist staff requiring professional indemnity[19];
- have access to all relevant records (including personal medical records);
- take account of all evidence available relating to the complaint e.g. witness to a particular event;
- identify training needs associated with the complaints procedure and ensure those needs are met;
- ensure all issues are addressed in the draft response, taking account of information obtained from reports received and providing a layman's interpretation to otherwise complex reports;
- compile a summary of complaints received, actions taken and lessons learnt;
- maintain and appropriately store records;
- assist the designated senior person in the examination of trends, monitoring the effectiveness of local arrangements and the action taken (or proposed) in terms of service improvement; and

[18] There are 3 MDOs, the Medical Defence Union (MDU), Medical and Dental Defence Union of Scotland (MDDUS), and Medical Protection Society (MPS).
[19] Since 16 July 2014 and the introduction of the Health Care and Associated Professions (Indemnity Arrangements) Order 2014, all registered healthcare professionals are legally required to have adequate and appropriate insurance or indemnity to cover the different aspects of their practice in the UK.

- assist the designated senior person in ensuring compliance with standards, identifying lessons and dissemination of learning in line with the organisation's governance arrangements.

3.9 Complaints Managers should involve the complainant from the outset and seek to determine what they are hoping to achieve from the process. The complainant should be given the opportunity to understand all possible options available in seeking complaint resolution. Throughout the process, the Complaints Manager should assess what further action might best resolve the complaint and at each stage keep the complainant informed.

Publicity

3.10 HSC organisations must ensure that the complaints process is well publicised locally. This means that service users should be made aware of:

- their right to complain;
- all possible options for pursuing a complaint, and the types of help available; and
- the support mechanisms that are in place.

3.11 Ready access to information can make a critical difference to the service user's experience of HSC services. Information about services and what to expect, the various stages involved in the complaints process, response targets and independent support and advice should be available. Clear lines of communication are required to ensure complainants know who to communicate with during the lifetime of their complaint. The provision of information will improve attitudes and communication by staff as well as support and advice for complainants.

3.12 Local information should:

- be visible, accessible and easily understood;
- be available in other formats or languages as appropriate;
- be provided free of charge; and
- outline the arrangements for handling complaints, how to contact complaints staff, the availability of support services, and what to do if the complainant remains dissatisfied with the outcome of the complaints process.

Training

3.13 All staff should be trained and empowered to deal with complaints as they occur. Appropriately trained staff will recognise the value of the complaints process and, as a result will welcome complaints as a source of learning. HSC staff have a responsibility to highlight training needs to their line managers. Line managers, in turn, have a responsibility to ensure needs are met to enable the individual to function effectively in their role and HSC organisations have a responsibility to create an environment where learning can take place. It is essential that staff recognise that their initial response can be crucial in establishing the confidence of the complainant.

Actions on receipt of a complaint

3.14 Standard 3: *Receiving Complaints* provides the criteria by which organisations must operate (Annex 1 refers).

3.15 All complaints received should be treated with equal importance regardless of how they are submitted. Complainants should be encouraged to speak openly and freely about their concerns and should be reassured that whatever they may say will be treated with appropriate confidence and sensitivity. Complainants should be treated courteously and sympathetically and where possible involved in decisions about how their complaint is handled and considered. The first responsibility of staff is to ensure that the service user's immediate care needs are being met. This may require urgent action before any matters relating to the complaint are addressed.

3.16 The involvement of the complainant throughout the consideration of their complaint will provide for a more flexible approach to the resolution of the complaint. Complaints staff should discuss individual cases with complainants at an early stage and an important aspect of the discussion will be about the time it may take to complete the investigation especially if it is likely to exceed the 20 working day target for any reason. Early provision of information and an explanation of what to expect should be provided to the complainant at the outset to avoid disappointment and subsequent letters of complaint. Each complaint must be taken on its own merit and responded to accordingly. It may be appropriate for the entire process of local

resolution to be conducted informally. Overall, arrangements should ensure that complaints are dealt with quickly and effectively in an open and non-defensive way.

3.17 Where possible, all complaints should be registered and discussed with the Complaints Manager in order to identify those that can be resolved immediately, those that require formal investigation, or those that should be investigated and managed outside of the HSC Complaints Procedure by other means. Front-line staff will often find the information they gain from complaints useful in improving service quality. This is particularly so for complaints that have been resolved "on the spot" and have not progressed through the formal HSC Complaints procedure. Mechanisms for achieving this are best agreed at organisational level.

Acknowledgement of Complaint

3.18 A complaint should be acknowledged in writing within **2 working days** of receipt. FPS complaints should be acknowledged within **3 working days** in line with legislative requirements (see Legal Framework at Annex 2). The acknowledgement letter should always thank the complainant for drawing the matter to the attention of the organisation. A copy of the complaint and its acknowledgement should be sent to any person involved in the complaint unless there are reasonable grounds to believe that to do so would be detrimental to that person's health or well-being.

3.19 There should be a statement expressing sympathy or concern regarding the issue that led to a complaint being made. This is a statement of common courtesy, not an admission of responsibility.

3.20 It is good practice for the acknowledgement letter to be conciliatory, and indicate that a full response will be provided within **20 working days**. FPS acknowledgement should indicate that a full response will be provided within **10 working days**. As soon as the HSC organisation becomes aware that the relevant response timescale is not achievable they must provide the complainant with an explanation. The complainant must be updated every 20 working days on the progress of their complaint by the most appropriate means. All contact with the complainant must be recorded by the HSC organisation.

3.21 The acknowledgement should:

- seek to confirm the issues raised in the complaint;
- offer opportunities to discuss issues either with a member of the complaints staff or, if appropriate, a senior member of staff; and
- provide information about the availability of independent support and advice.

3.22 Complaints Managers should provide the complainant with further information about the complaints process. This may include locally produced information leaflets or those provided by the Ombudsman's Office or the RQIA. It is also advisable to include information about the disclosure of patient information at this stage.

Joint Complaints

3.23 Where a complaint relates to the actions of more than one HSC organisation the Complaints Manager should notify any other organisations involved. The complainant's consent must be obtained before sharing the details of the complaint across HSC organisations. In cases of this nature there is a need for co-operation and partnership between the relevant organisations in agreeing how best to approach the investigation and resolution of the complaint. It is possible that the various aspects of the complaint can be divided easily with each organisation able to respond to its own area of responsibility. The complainant must be kept informed and provided with advice about how each aspect of their complaint will be dealt with and by whom.

Out of Area Complaints

3.24 Where the complainant lives in Northern Ireland and the complaint is about events elsewhere, the HSC Board or HSC Trust that commissioned the service or purchased the care for that service user is responsible for co-ordinating the investigation and ensuring that all aspects of the complaint are investigated. HSC contracts must include entitlement, by the HSC organisation, to any and all documentation relating to the care of service users and a provision to comply with the requirements of the HSC Complaints Procedure.

Investigation

3.25 Standard 5: *Investigation* provides the criteria by which organisations must operate (Annex 1 refers). HSC organisations should establish a clear system to ensure an appropriate level of investigation. The purpose of investigation is not only "resolution" but also to:

- ascertain what happened or what was perceived to have happened;
- establish the facts;
- learn lessons;
- detect misconduct or poor practice; and
- improve services and performance.

3.26 An investigation into a complaint may be undertaken by a suitable person appointed by the HSC organisation. Investigations should be conducted in a manner that is supportive to all those involved, without bias and in an impartial and objective manner. The investigation must uphold the principles of fairness and consistency. The investigation process is best described as listening, learning and improving. Investigators should be able to seek advice from the Complaints Manager/senior person, wherever necessary, about the conduct or findings of the investigation.

3.27 Whoever undertakes the investigation should seek to understand the nature of the complaint and identify any issues not immediately obvious. Complaints must be approached with an open mind, being fair to all parties. The complainant and those identified as the subject of a complaint should be advised of the process, what will and will not be investigated, those who will be involved, the roles they will play and the anticipated timescales. Everyone involved should be kept informed of progress throughout. Staff involved in the investigation process should familiarise themselves with Section 75 of the Northern Ireland Act 1998.

Assessment of the complaint

3.28 It is unrealistic to suggest that all complaints should be investigated to the same degree or at the same level. HSC organisations must ensure that a robust risk assessment process is applied to all complaints to allow serious complaints, such as those involving unsafe practice, to be identified. The use of assessment tools to risk assess and categorise a complaint may be helpful in determining the course of action to take in response. It can help ensure that the process is proportionate to the seriousness of the complaint and the likelihood of recurrence.

Investigation and resolution

3.29 The HSC organisation should use a range of investigating techniques that are appropriate to the nature of the complaint and to the needs of the complainant. Those responsible for investigation should be empowered to choose the method that they feel is the most appropriate to the circumstances.

3.30 The investigator should establish the facts relating to the complaint and assess the quality of the evidence. Depending on the subject matter and complexity of the investigation the investigator may wish to call upon the services of others. There are a number of options available to assist HSC organisations in the resolution of complaints. These should be considered in line with the assessment of the complaint and also in collaboration with the complainant and include the involvement of:

- senior managers/professionals at an early stage;
- honest broker;
- independent experts;
- lay persons; and
- conciliators.

3.31 It is not intended that HSC organisations utilise all the options outlined above as not all these will be appropriate in the resolution of the complaint. Rather HSC organisations should consider which option would assist in providing the desired outcome. The HSC Board will provide the necessary support and advice to FPS in relation to access and appointment of these options, where appropriate.

Completion of Investigation

3.32 Once the investigator has reached their conclusion they should prepare the draft report/response. The purpose is to record and explain the conclusions reached after the investigation of the complaint. The Department's *HSC Regional Template and Guidance for Incident Investigation/ Review Reports*[20] will assist HSC organisations in ensuring the completeness and readability of such reports.

3.33 Where the complaint involves clinical/ professional issues, the draft response must be shared with the relevant clinicians/ professionals to ensure the factual accuracy and to ensure clinicians/ professionals agree with and support the draft response.

3.34 All correspondence and evidence relating to the investigation should be retained. The Complaints Manager should ensure that a complete record is kept of the handling and consideration of each complaint. Complaints records should be kept separate from health or social care records, subject only to the need to record information which is strictly relevant to the service user's on-going health or care needs.

3.35 HSC organisations should regularly review their investigative processes to ensure the effectiveness of these arrangements locally.

[20] https://www.health-ni.gov.uk/sites/default/files/publications/dhssps/HSC%20%28SQSD%29%2034-07_0.pdf

Circumstances that might cause delay

3.36 Some complaints will take longer than others to resolve because of differences in complexity, seriousness and the scale of the investigative work required. Others may be delayed as a result of circumstance, for example, the unavailability of a member of staff or a complainant as a result of holidays, personal or domestic arrangements or bereavement. Delays may also be as a result of the complainant's personal circumstances at a particular time e.g. a period of mental illness, an allegation of physical injury or because a complaint is being investigated under another procedure (as outlined in paragraphs 1.12 to 1.14).

Periods of acute mental illness

3.37 If a service user makes a complaint during an acute phase of mental illness, the Complaints Manager should register the complaint and consideration should be given to delaying the complaint until his/her condition has improved. A delay such as this will need either the agreement of the complainant or someone who is able to act on his/her behalf including, where appropriate, consultation with any advocate. The decision about whether a complainant is well enough to proceed with the complaint should be made by a multi-disciplinary team, and the Complaints Manager should refer regularly to this team to establish when this point has been reached.

Physical Injury

3.38 Where a complainant is alleging physical injury, a physical examination should be arranged without delay and with the consent of the injured person. Medical staff undertaking the physical examination should clearly report their findings. If a person refuses a physical examination, or if his or her mental state (for example, degree of agitation) makes this impossible, this should be clearly documented.

3.39 Whatever the reason, as soon as it becomes clear that it will not be possible to respond within the target timescales, the Complaints Manager should advise the complainant and provide an explanation with the anticipated timescales. While the emphasis is on a complete response and not the speed of response, the HSC

organisation should, nevertheless, monitor complaints that exceed the target timescales to prevent misuse of the arrangements. The complainant must also be updated every 20 working days on the progress of their complaint by the most appropriate means. All contact with the complainant must be recorded by the HSC organisation.

Responding to a complaint

3.40 Standard 6: *Responding to complaints* provides the criteria by which organisations must operate (Annex 1 refers). A response must be sent to the complainant within **20 working days of receipt** of the complaint (**10 working days within FPS**) or, where that is not possible, the complainant must be advised of the delay (as per paragraph 3.39 above).

3.41 Where appropriate, HSC organisations must consider alternative methods of responding to complaints whether through an immediate response from front-line staff, a meeting, or direct action by the Chief Executive (or senior person). It may be appropriate to conduct a meeting in complex cases, in cases where there is serious harm/death of a patient, in cases involving those whose first language is not English, or, for example in cases where the complainant has a learning disability or mental illness. Where complaints have been raised electronically the HSC may reply electronically whilst ensuring they adhere to the relevant Information Technology (IT) policies and procedures and maintain appropriate levels of confidentiality according to Trust policies and procedures**.**

3.42 Where a meeting is scheduled it is more likely to be successful if the complainant knows what to expect and can offer some suggestions towards resolution. Complainants have a right to choose from whom they seek support and should be encouraged to bring a relative or friend to meetings. Where meetings do take place they should be recorded and that record shared with the complainant for comment.

3.43 The Chief Executive (or Clinical Governance Lead) may delegate responsibility for responding to a complaint, where, in the interests of a prompt reply, a designated senior person may undertake the task (or the governance lead within FPS settings). In such circumstances, the arrangements for clinical and social care governance must ensure that the Chief Executive (or Clinical Governance Lead) maintains an overview of the issues raised in complaints (including those FPS complaints lodged with the HSC Board), the responses given and be assured that appropriate organisational learning has taken place. HSC organisations should ensure that the complainant and anyone who is a subject of the complaint understand the findings of the investigation and the recommendations made.

3.44 The response should be clear, accurate, balanced, simple and easy to understand. It should avoid technical terms, but where these must be used to describe a situation, events or condition, an explanation of the term should be provided. The letter should:

- address the concerns expressed by the complainant and show that each element has been fully and fairly investigated;
- include an apology where things have gone wrong;
- report the action taken or proposed to prevent recurrence;
- indicate that a named member of staff is available to clarify any aspect of the letter;
- advise of their right to refer their complaint to the Ombudsman if they remain dissatisfied with the outcome of the complaints procedure; and
- advise of the availability of the Patient and Client Council to provide assistance in making a submission to the Ombudsman.

Concluding Local Resolution

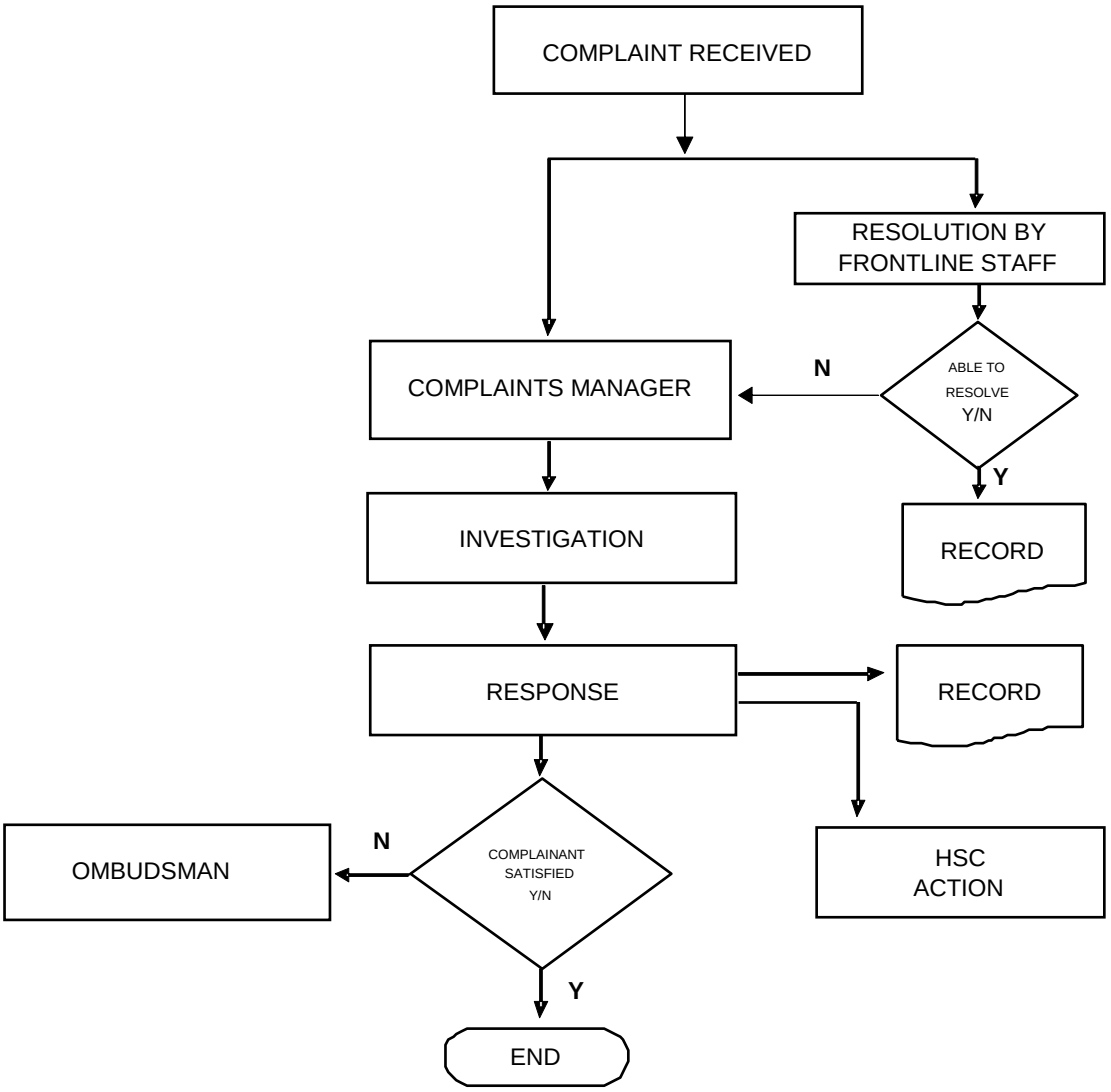
3.45 The HSC organisation should offer every opportunity to exhaust local resolution. While the final response should offer an opportunity to clarify the response this should not be for the purposes of delaying "closure". Complainants should contact the organisation within one month of the organisation's response if they are dissatisfied with the response or require further clarity[21]. There is discretion for the Complaints Manager to extend this time limit where it would be unreasonable in the circumstances for the complainant to have made contact sooner.

3.46 Once the final response has been signed and issued, the Complaints Manager, on behalf of the Chief Executive/Clinical Governance Lead, should liaise with relevant local managers and staff to ensure that all necessary follow-up action has been taken. Arrangements should be made for any outcomes to be monitored to ensure that they are actioned. Where possible, the complainant and those named in the complaint should be informed of any change in system or practice that has resulted from the investigation into their complaint.

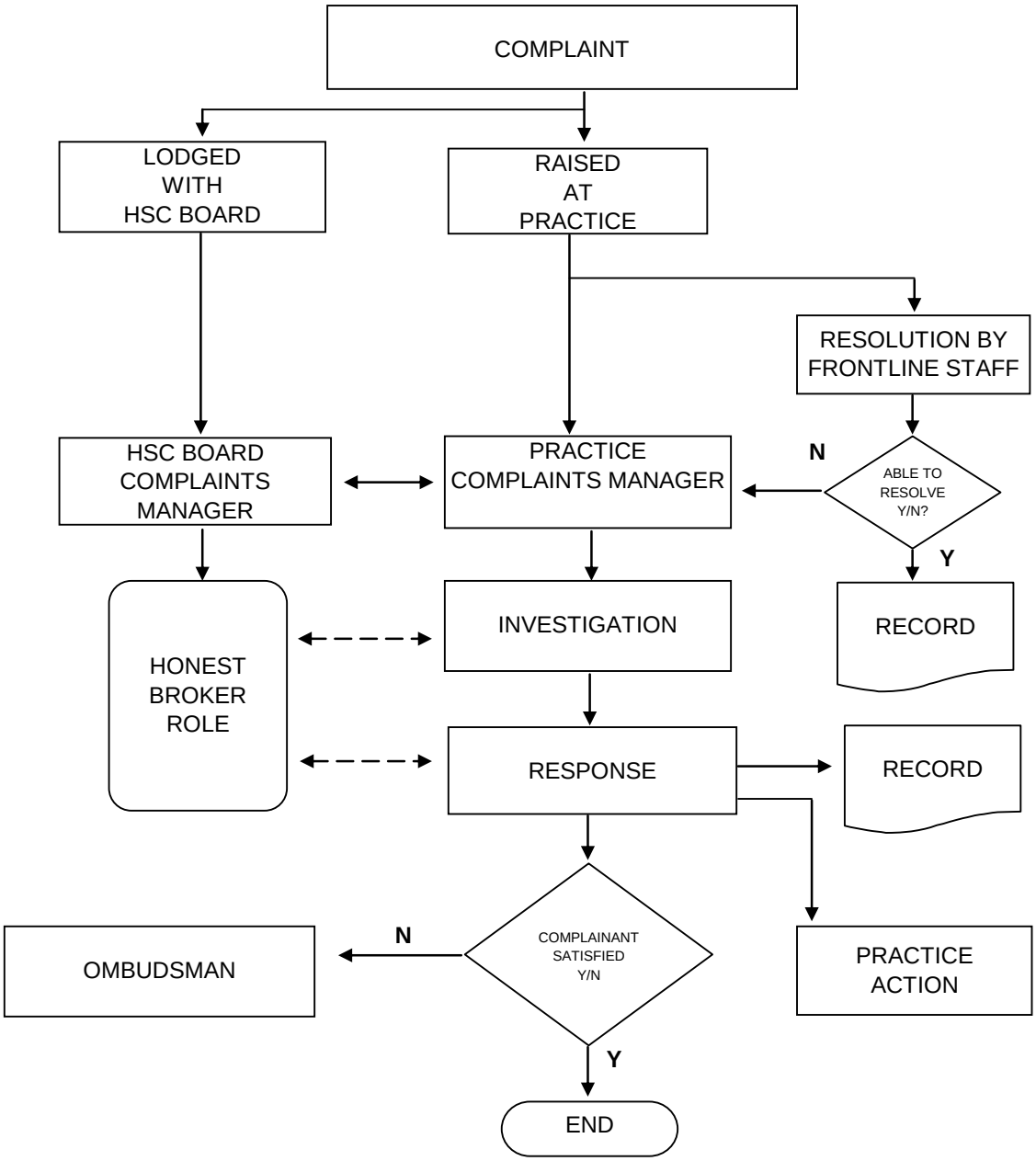
3.47 This completes the HSC Complaints Procedure. There is a statutory obligation on all HSC organisations to signpost to the Ombudsman upon completion of the complaints procedure. Please refer to Annex 5 for details on the requirements for signposting.

[21]Inserted 5th June 2013 per letter from Director of Safety, Quality & Standards Directorate

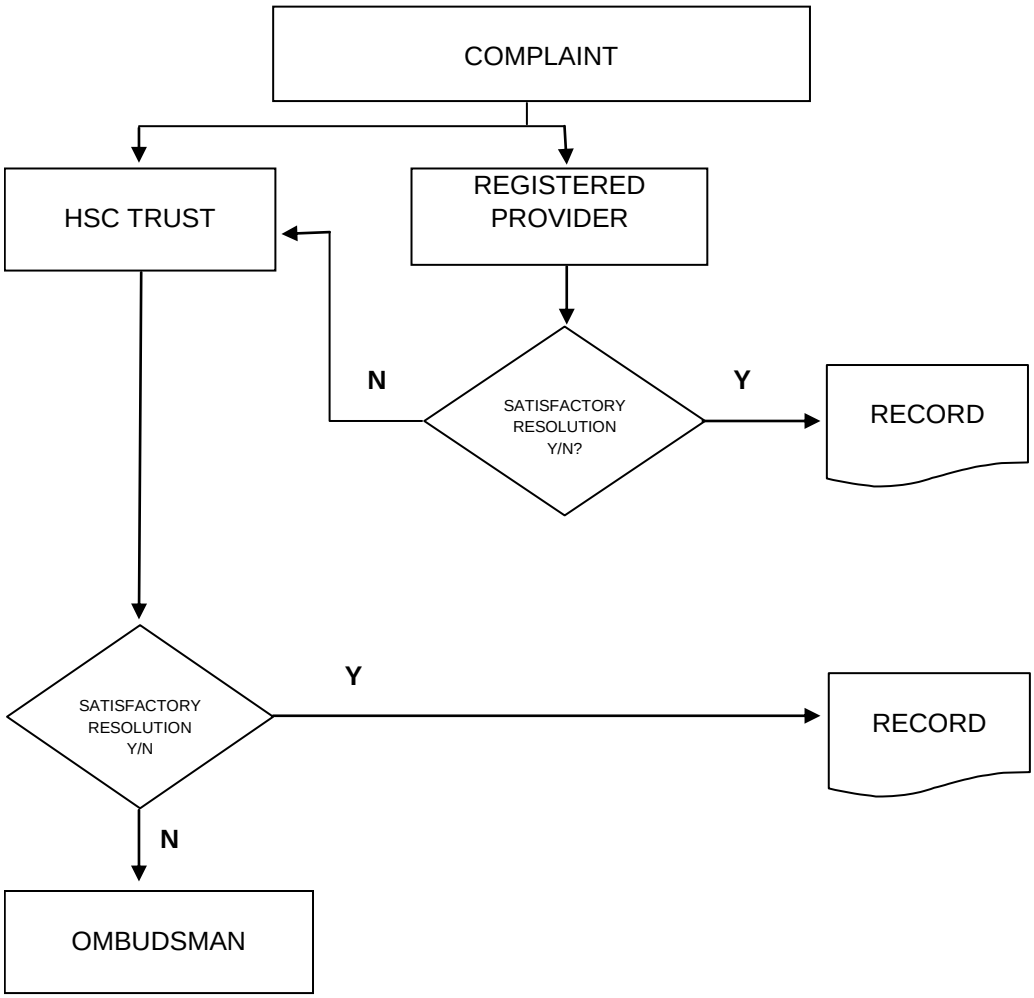
HOSPITAL OR COMMUNITY COMPLAINTS FLOWCHART



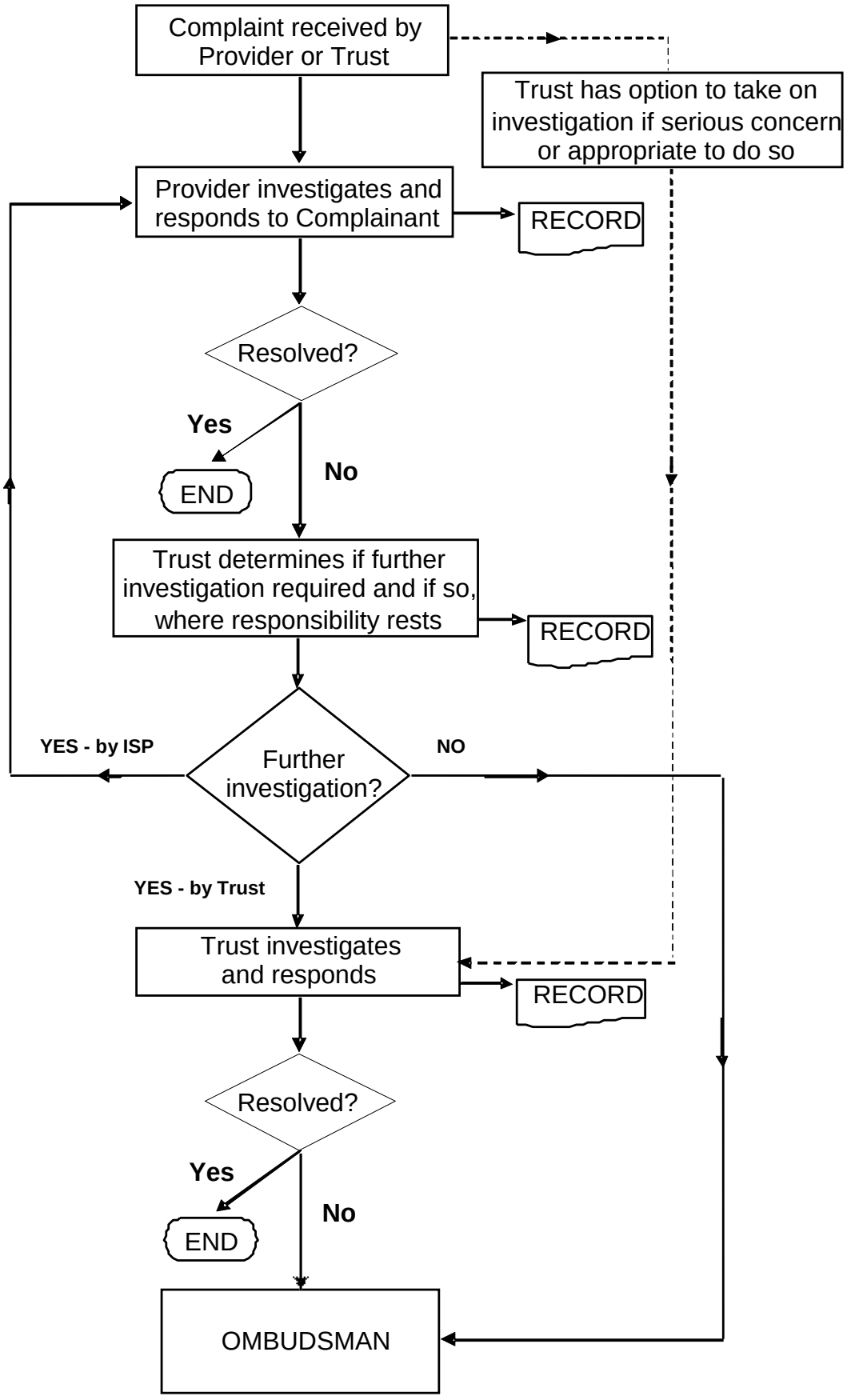
FAMILY PRACTITIONER SERVICE COMPLAINTS FLOWCHART



REGULATED ESTABLISHMENTS & AGENCIES FLOWCHART
(Services commissioned by HSC)



INDEPENDENT SECTOR PROVIDER (ISP) COMPLAINTS FLOWCHART



SUMMARY OF TARGET TIMESCALES

EVENT	TIMESCALE
Making a complaint	within 6 months of the event, or 6 months after becoming aware of the cause for complaint, but no longer than 12 months from the event
Acknowledgement Family Practitioner Services	within 2 working days* of receipt within 3 working days
Response Family Practitioner Services	within 20 working days within 10 working days (20 working days if lodged with HSC Board)
Should complainant wish to seek clarity in relation to response or express continued dissatisfaction	within 1 months of the organisation's response

*** A working day is any weekday (Monday to Friday) which is not a local or public holiday.**

SECTION 4 – LEARNING FROM COMPLAINTS

Reporting and Monitoring

4.1 Each HSC organisation has a legal duty to operate a complaints procedure and is required to monitor how they, or those providing care on their behalf, deal with and respond to complaints. This includes the regular reporting on complaints in line with governance arrangements and monitoring the effectiveness of the procedure locally. The HSC organisation must:

- regularly review its policies and procedures to ensure they are effective;
- monitor the nature and volume of complaints;
- seek feedback from service users and staff to improve services and performance; and
- ensure lessons are learnt from complaints and use these to improve services and performance.

4.2 HSC organisations are also required to keep a record of all complaints received, including copies of all correspondence relating to complaints. HSC organisations must have effective processes in place for identifying and minimising risk, identifying trends, improving quality and safety and ensuring lessons are learnt and shared. HSC organisations must ensure regular and adequate reporting on complaints in line with agreed governance arrangements.

4.3 The *Standards for Complaints Handling* (Annex 1 refers) provide the criteria by which organisations must operate and will assist organisations in monitoring the effectiveness of their complaints handling arrangements locally. HSC organisations should also involve service users and staff to improve the quality of services and effectiveness of complaints handling arrangements locally

4.4 The HSC must ensure they have the necessary technology/information systems to record and monitor all complaints. For the purposes of measuring the effectiveness of the procedures, HSC organisations must maintain systems as described below.

The HSC Board

4.5 The HSC Board must maintain an oversight of all FPS and HSC Trust complaints received (including HSC prison healthcare) and be prepared to analyse any patterns or trends of concern or clusters of complaints against individuals, practices, or organisations.

4.6 The HSC Board must provide the Department with quarterly complaints statistics in relation to all FPS and, where appropriate, out-of-hours services.

4.7 The HSC Board must produce an annual report on complaints outlining the number of FPS and, where appropriate, out-of-hours services complaints received, the categories to which the complaints relate and the response times. The annual report should also include the number of FPS complaints in which the HSC Board acted as "honest broker". Copies should be sent to the PCC, the RQIA, the Ombudsman and the DOH. Reports must not breach patient/ client confidentiality.

HSC Trusts

4.8 All HSC Trusts including the Northern Ireland Ambulance Service (NIAS) must provide the Department with quarterly statistical returns on complaints.

4.9 HSC Trusts must provide their Management Boards and the HSC Board with quarterly complaints reports outlining the number and types of complaints received, the investigation undertaken and actions as a result including those relating to regulated establishments and agencies, and, where appropriate, out-of-hours services, pilot schemes and HSC prison healthcare. The reports must summarise the categories, emerging trends and the actions taken (or proposed) to prevent recurrence in order to:

- monitor arrangements for local complaints handling;
- consider trends in complaints; and
- consider any lessons that can be learned and shared from complaints and the result in terms of service improvement.

4.10 HSC Trusts must also produce an annual complaints report to include the number of complaints received, the categories to which the complaints relate, the response times and the learning from complaints. Copies should also be made available to the HSC Board, PCC, RQIA, the Ombudsman and the DoH. Reports must not breach patient/ client confidentiality.

Quarterly reports

4.11 The management boards of the HSC Board and HSC Trusts should receive quarterly reports summarising the categories, emerging trends and the actions taken (or proposed) to prevent recurrence in order to:

- monitor arrangements for local complaints handling;
- consider trends in complaints; and
- consider any lessons that can be learned and shared from complaints and the result in terms of service improvement.

4.12 The HSC Board's quarterly reports to their management board should include a breakdown of complaints received in relation to **all** Family Practitioner Services and, where appropriate, out-of-hours services.

4.13 HSC Trusts' quarterly reports to their management board should include a breakdown of all complaints received including those received by, or on behalf of, residents in statutory or independent residential care and nursing homes and, where appropriate, out-of-hours services, pilot schemes and HSC prison healthcare.

Family Practitioner Services

4.14 Family Practitioner Services must provide the HSC Board with anonymised copies of all written complaints received and responses provided by the Practice within 3 working days of the response being issued.

4.15 Arrangements should be in place to ensure that the complainant is aware and agrees to his/her complaint being forwarded to the HSC Board.

4.16 The HSC Board must record and monitor the outcome of all FPS complaints lodged with them.

Other HSC organisations

4.17 All other HSC organisations must publish an annual report on complaints handling. Copies should be sent to the PCC, HSC Board and the DoH. Reports must not breach patient/client confidentiality.

Regulated establishments and agencies

4.18 All regulated establishments and agencies are required if requested to provide the RQIA with a statement containing a summary of complaints made during the preceding 12 months and the action that was taken in response. The RQIA will record and monitor all outcomes and will report on complaints activity within the regulated sector.

Department of Health (DoH)

4.19 The DoH will continue to collect statistics on the number, type and response times of complaints made to HSC organisations. A regional breakdown of complaints statistics will be provided via the Departmental website on an annual basis.

Learning

4.20 All HSC organisations are expected to manage complaints effectively, ensuring that appropriate action is taken to address the issues highlighted by complaints and making sure that lessons are learned, to minimise the chance of mistakes recurring and to improve the safety and quality of services. Learning should take place at different levels within the HSC organisation (individual, team and organisational) and the HSC organisation must be able to demonstrate that this is taking place[22].

4.21 Learning is a critical aspect of the HSC Complaints Procedure and provides an opportunity to improve services and contribute to and learn from regional, national and international quality improvement and patient safety initiatives. All HSC organisations, the RQIA and Ombudsman must share the intelligence gained through complaints.

4.22 The HSC Board must have in place regional-wide procedures for collecting and disseminating the information, themes and good practice derived from complaints and must ensure they are used to improve service quality. HSC Trusts and FPS should be encouraged to share learning and seek feedback from service users for further improvement.

[22] The Quality Standards for Health and Social Care, Theme 5 (8.3 (k)) - https://www.health-ni.gov.uk/sites/default/files/publications/dhssps/the-quality-standards-for-health-and-social-care.pdf

SECTION 5 - ROLES AND RESPONSIBILITIES

HSC Board

5.1 The HSC Board is required to monitor how they, or those providing care on their behalf, deal with and respond to complaints. This will include monitoring complaints processes, outcomes and service improvements. The S*tandards for Complaints Handling* provides a level against which HSC service performance can be measured (Annex1 refers).

5.2 The HSC Board must maintain an oversight of all FPS and HSC Trust complaints received and, where appropriate, out-of-hours services. The HSC Board must be prepared to investigate any patterns or trends of concern or clusters of complaints against individual clinicians/ professionals.

5.3 The HSC Board must have in place area-wide procedures for collecting and disseminating learning and sharing intelligence.

5.4 The HSC Board will provide a vital role in supporting FPS complaints that includes:

- providing support and advice;
- the role of “honest broker” between the complainant and the service provider;
- providing independent experts, lay persons, conciliation services, where appropriate;
- recording and monitoring the outcome of all complaints;
- addressing breaches of contractual arrangements; and
- sharing complaints intelligence with appropriate authorities e.g. the DoH Medicines Regulatory Group (MRG).

HSC Organisations

5.5 HSC organisations must:

- make arrangements for the handling and consideration of complaints and publicise these arrangements locally;
- appoint a Complaints Manager with responsibility for co-ordinating the local complaints arrangements and managing the process;
- appoint a senior person to take responsibility for delivering the organisation's complaints process and ensuring that all necessary organisational learning takes place;
- ensure that all staff who provide services on their behalf are aware of, and trained in, the procedures to be followed when dealing with complaints;
- ensure that complainants and staff are supported and made aware of the availability of support services;
- ensure that there is full co-operation between organisations/bodies in the handling and consideration of complaints;
- integrate complaints management into the organisation's clinical and social care governance and risk management arrangements;
- monitor the effectiveness of local complaints handling arrangements;
- have in place area-wide procedures for collecting and disseminating the information, themes and good practice derived from complaints; and
- where appropriate, publish annually a report on complaints handling.

The Patient and Client Council (PCC)

5.6 The PCC is an independent non-departmental public body established on 1 April 2009 to replace the Health and Social Services Councils. Its functions include:

- representing the interests of the public;
- promoting involvement of the public;
- providing assistance to individuals making or intending to make a complaint; and
- promoting the provision of advice and information to the public about the design, commissioning and delivery of health and social care services.

5.7 If a person feels unable to deal with a complaint alone, the staff of the PCC can offer a wide range of assistance and support. This assistance may take the form of:

- information on the complaints procedure and advice on how to take a complaint forward;
- discussing a complaint with the complainant and drafting letters;
- making telephone calls on the complainants behalf;
- helping the complainant prepare for meetings and going with them to meetings;
- preparing a complaint to the Ombudsman;
- referral to other agencies, for example, specialist advocacy services; and
- help in accessing medical/social services records.

5.8 All advice, information and assistance with complaints is provided free of charge and is confidential. Further information can be obtained from: www.patientclientcouncil@hscni.net or Freephone 0800 917 0222

WHO CAN HELP ME RAISE MY COMPLAINT?

You can get practical help to raise your complaint from the Patient and Client Council (PCC).

You can contact a PCC Officer at:

Phone: 0800 917 0222
Email: complaints.pcc@hscni.net

For more information, visit PCC's website:
www.patientclientcouncil.hscni.net

The PCC Complaints Support Service is there to:

- Give you information on how to complain and who to complain to
- Help you write letters of complaint
- Make telephone calls for you about your complaint
- Go with you to meetings about your complaint and make sure your concerns are responded to
- Work with health and social care organisations to improve services as a result of your complaint

WHAT CAN I DO IF I AM NOT SATISFIED WITH THE TRUST'S RESPONSE?

If you are not happy with the trust's response to your complaint, you can contact the Northern Ireland Public Service Ombudsman (NIPSO) at:

Phone: 0800 343 424

Email: nipso@nipso.org.uk

For more information, visit NIPSO's website:
www.nipso.org.uk

ANNEX 1: STANDARDS FOR COMPLAINTS HANDLING

Standards for complaints handling

1. The following standards have been developed to address the variations in the standard of complaints handling across HSC organisations. These will assist organisations in monitoring the effectiveness of their complaints handling arrangements locally and will build public confidence in the process by which their complaint will be handled. These are the standards to which HSC organisations are expected to operate for complaints handling:

STANDARD 1: ACCOUNTABILITY

HSC organisations will ensure that there are clear lines of accountability for the handling and consideration of complaints.

Rationale:

HSC organisations will demonstrate that they have in place clear accountability structures to ensure the effective and efficient investigation of complaints, to provide a timely response to the complainant and a framework whereby learning from complaints is incorporated into the clinical, social care and organisational governance arrangements.

Criteria:

1. Managerial accountability for complaints within HSC organisations rests with the Chief Executive (or Clinical Governance Lead in FPS settings);
2. HSC organisations must designate a senior person to take responsibility for complaints handling and responsiveness locally;
3. HSC organisations must ensure that complaints are integrated into clinical and social care governance and risk management arrangements;
4. HSC organisations will include complaints handling within its performance management framework and corporate objectives;
5. Each HSC organisation must ensure that the operational Complaints Manager is of appropriate authority and standing and has appropriate support;
6. All staff must be aware of, and comply with, the requirements of the complaints procedure within their area of responsibility;
7. Where applicable, HSC organisations will ensure that independent provider contracts include compliance with the requirements of the HSC Complaints Procedure; and
8. Each HSC organisation is responsible for quality assuring its complaints handling arrangements.

STANDARD 2: ACCESSIBILITY

All service users will have open and easy access to the HSC Complaints Procedure and the information required to enable them to complain about any aspect of service.

Rationale:

Those who wish to complain will be treated impartially, in confidence, with sensitivity, dignity and respect and will not be adversely affected because they have found cause to complain. Where possible, arrangements will be made as necessary for the specific needs of those who wish to complain, including provision of interpreting services; information in a variety of formats and languages; at suitable venues; and at suitable times.

Criteria:

1. Arrangements about how to make a complaint are widely publicised, simple and clear and made available in all areas throughout the service;
2. Arrangements for making a complaint are open, flexible and easily accessible to all service users, no matter what their personal situation or ability;
3. Flexible arrangements are in place in order that individual complainants may be suitably accommodated in an environment where they feel comfortable; and
4. All staff have appropriate training about the needs of service users, including mental health, disability and equality awareness training.

STANDARD 3: RECEIVING COMPLAINTS

All complaints received will be dealt with appropriately and the process and options for pursuing a complaint will be explained to the complainant.

Rationale:

All complaints are welcomed. Effective complaints handling is an important aspect of the HSC clinical and social care governance arrangements. All complaints, however or wherever received, will be recorded, treated confidentially, taken seriously and dealt with in a timely manner.

Criteria:

1. Flexible arrangements are in place so that complaints can be raised in a variety of ways (e.g. verbally or in writing), and in a way in which the complainant feels comfortable;
2. Complaints from a third party must, where possible, have the written consent of the individual concerned;
3. HSC staff are aware of their legal and ethical duty to protect the confidentiality of service user information;
4. Attempts to resolve complaints are as near to the point of contact as possible, and in accordance with the complainant's wishes;
5. Where possible, the complainant should be involved in decisions about how their complaint is handled and considered; and
6. Complaints are appropriately recorded and assessed according to risk in line with agreed governance arrangements.

STANDARD 4: SUPPORTING COMPLAINANTS AND STAFF

HSC organisations will support complainants and staff throughout the complaints process.

Rationale:

The HSC will support service users in making complaints and will encourage feedback through a variety of mechanisms. Information on complaints will outline the process as well as the support services available. Staff will be trained and empowered to deal with complaints as they arise.

Criteria:

1. HSC organisations will ensure the provision of readily available advice and information on how to access support services appropriate to the complainant's needs;
2. The HSC organisation's Complaints Manager will offer assistance in the formulating of a complaint;
3. HSC organisations will promote the use of independent advice and advocacy services;
4. HSC organisations will facilitate, where appropriate, the use of conciliation;
5. HSC organisations will adopt a consistent approach in the application of DOH guidance on responding to unreasonable or abusive complainants;
6. HSC organisations will ensure that staff receive training on complaints, appropriate to their needs; and
7. HSC organisations will ensure that mechanisms are in place to support staff throughout the complaints process.

STANDARD 5: INVESTIGATION OF COMPLAINTS

All investigations will be conducted promptly, thoroughly, openly, honestly and objectively.

Rationale:

HSC organisations will establish a clear system to ensure an appropriate level of investigation. Not all complaints need to be investigated to the same degree. A thorough, documented investigation will be undertaken, where appropriate, including a review of what happened, how it happened and why it happened. Where there are concerns, the HSC organisation will act appropriately and, where possible, improve practice and ensure lessons are learned.

Criteria

1. Investigations are conducted in line with agreed governance arrangements;
2. Investigations are robust and proportionate and the findings are supported by the evidence;
3. A variety of flexible techniques are used to investigate complaints, dependent on the nature and complexity of the complaint and the needs of the complainant;
4. Independent experts or lay people are involved during the investigation, where identified as being necessary or potentially beneficial and with the complainant's consent;
5. People with appropriate skills, expertise and seniority are involved in the investigation of complaints, according to the substance of the complaint;
6. All HSC providers/commissioners and regulatory bodies will co-operate, where necessary, in the investigation of complaints;
7. The HSC organisation will investigate and take necessary action, regardless of consent, where a patient/client safety issue is raised; and
8. All correspondence and evidence relating to the investigation will be retained in line with relevant information governance requirements;

STANDARD 6: RESPONDING TO COMPLAINTS

All complaints will be responded to as promptly as possible and all issues raised will be addressed.

Rationale:

All complainants have a right to expect their complaint to be dealt with promptly and in an open and honest manner.

Criteria:

1. The timescales for acknowledging and responding to complaints are in line with statutory requirements;
2. Where any delays are anticipated or further time required the HSC organisation will advise the complainant of the reasons and keep them informed of progress;
3. HSC organisations must consider alternative methods of responding to complaints;
4. Responses will be clear, accurate, balanced, simple, fair and easy to understand. All the issues raised in the complaint will be addressed and, where appropriate, the response will contain an apology;
5. The Chief Executive may delegate responsibility for responding to a complaint where, in the interests of a prompt reply, a designated senior person may undertake this task (or a clinical governance lead in FPS settings);
6. Complainants should be informed, as appropriate, of any change in system or of practice that has resulted from their complaint; and
7. Where a complainant remains dissatisfied, he/she should be clearly advised of the options that remain open to them.

STANDARD 7: MONITORING

HSC organisations will monitor the effectiveness of complaints handling and responsiveness.

Rationale:

HSC organisations are required to monitor how they, or those providing care on their behalf, deal with and respond to complaints. Monitoring performance is essential in determining any necessary procedural change that may be required. It will also ensure that organisations have taken account of the issues and incorporated improvements where appropriate.

Criteria:

1. HSC organisations should ensure the regular and adequate reporting on complaints in accordance with agreed governance arrangements;
2. HSC organisations must produce and disseminate, where appropriate, an Annual Report on Complaints;
3. HSC organisations must ensure that they have in place the necessary technology/information system to record and monitor all complaints and outcomes;
4. HSC organisations should have a mechanism to routinely request feedback from service users and staff on the operation of the complaints process;
5. HSC organisations must review the arrangements for complaints handling and responsiveness; and
6. HSC organisations must be assured, that ISPs with which they contract have appropriate governance arrangements in place for the effective handling, management and monitoring of all complaints.

STANDARD 8: LEARNING

HSC organisations will promote a culture of learning from complaints so that, where necessary, services can be improved when complaints are raised.

Rationale:

Complaints are viewed as a significant source of learning within HSC organisations and are an integral aspect of its patient/client safety and quality services ethos. Complaints will help organisations to continue to improve the quality of their services and safeguard high standards of care and treatment. HSC organisations must have effective structures in place for identifying and minimising risk, identifying trends, improving quality and safety and ensuring lessons are learnt and shared.

Criteria:

1. HSC organisations will monitor the nature and volume of complaints so that trends can be identified and acted upon;
2. HSC organisations will ensure there are provisions made within governance arrangements for the identification of learning from complaints and the sharing of learning locally and regionally;
3. Learning will take place at different levels within the HSC (individual, team and organisational);
4. HSC organisations will ensure that they have adequate mechanisms in place for reporting on progress with the implementation of action plans arising from complaints;
5. HSC organisations will incorporate learning arising from any review of findings of an investigation;
6. HSC organisations will contribute to, and learn from, regional, national and international quality improvement and patient safety initiatives; and
7. HSC organisations will include learning from complaints within its Annual Report on Complaints.

ANNEX 2: LEGAL FRAMEWORK

HPSS Complaints Procedure Regulations:

- The Health and Personal Social Services (General Medical Services Contracts) Regulations (NI) 2004;
- Health and Personal Social Services General Dental Services (Amendment) Regulations (NI) 2008;
- The General Ophthalmic Services (Amendment) Regulations
- (Northern Ireland) 2014The Pharmaceutical Services Regulations (NI) 1997.

The Children (NI) Order 1995:

- The Representations Procedure (Children) Regulations (NI) 1996.

HSC Complaints Procedure Directions:

- The Health and Social Care Complaints Procedure Directions (NI) 2009;
- Directions to the Health and Social Care Board on Procedures for Dealing with Complaints about Family Health Services Practitioners and Pilot Scheme Providers (NI) 2009;
- Amendment Directions to the Health and Social Care Board on Procedures for Dealing with Complaints about Family Health Services Practitioners and Pilot Scheme Providers (2009);
- Complaints about Family Health Services Practitioners and Pilot Scheme Providers (2009) (Honest Broker Timescales) (Amended 2013)
- Directions to the Regional Business Services Organisation on Procedures for Dealing with Health and Social Care Complaints (2010);
- Directions to the Regional Agency for Public Health and Social Well-being on Procedures for Dealing with Health and Social Care Complaints (2010).

The Health and Personal Social Services (Quality, Improvement and Regulation) (NI) Order 2003

- The Residential Care Homes Regulations (NI) 2005;
- The Nursing Homes Regulations (NI) 2005;
- The Independent Health Care Regulations (NI) 2005;
- The Nursing Agencies Regulations (NI) 2005;
- The Adult Placement Agencies Regulations (NI)2007;
- The Day Care Settings Regulations (NI) 2007;
- The Residential Family Centres Regulations (NI) 2007;
- The Domiciliary Care Agencies Regulations (NI) 2007;

ANNEX 3: PROFESSIONAL REGULATORY BODIES

General Chiropractic Council (GCC) Chiropractors Phone: 020 7713 5155 www.gcc-uk.org	**Nursing and Midwifery Council (NMC)** Nurses, midwives and specialist community public health nurses Phone: 020 76377181 www.nmc-uk.org
General Dental Council (GDC) Dentists, dental therapists, dental hygienists, dental nurses, dental technicians, clinical dental technicians and orthodontic therapists Phone: 020 71676000 www.gdc-uk.org	**Royal Pharmaceutical Society of Great Britain (RPSGB)** Pharmacists, pharmacy technicians (on the voluntary register) and pharmacy premises Phone: 08452572570 https://www.rpharms.com
General Medical Council (GMC) Doctors Phone: 01619236602 www.gmc-uk.org	**Pharmaceutical Society of Northern Ireland** Pharmacists and pharmacy premises in Northern Ireland Phone: 02890 326927 www.psni.org.uk
General Optical Council (GOC) Opticians Phone: 020 7580 3898 www.optical.org **General Osteopathic Council (GOsC)** Osteopaths Phone: 020 7357 6655 www.osteopathy.org.uk	**Professional Standards Authority for Health and Social Care (the Authority)** aims to protect the public, promote best practice and encourage excellence among the nine regulators of healthcare professionals listed. Phone: 020 73898030 http://www.professionalstandards.org.uk
Health and Care Professions Council (HCPC) Arts therapists, biomedical scientists, chiropodists, podiatrists, clinical scientists, dieticians, occupational therapists, operating department practitioners, orthoptists, paramedics, physiotherapists, prosthetists and orthotists, radiographers, speech and language therapists Phone: 03005006184 www.hpc-uk.org	**Northern Ireland Social Care Council (NISCC)** Social care workers, qualified social workers, and social work students on approved degree courses in Northern Ireland Phone: 028 95362600 www.niscc.info

ANNEX 4: HSC PRISON HEALTHCARE

1. From 1 April 2008 responsibility for HSC prison healthcare was transferred to the DOH. From that date the DOH delegated responsibility for commissioning those health and social services to the Eastern Health and Social Services Board (EHSSB). From 1 April 2009 this responsibility transferred to the HSC Board. The South Eastern HSC Trust has responsibility for providing or securing the provision of health and social care services for prisoners.

2. Complaints raised about care or treatment or about issues relating to the provision of prison healthcare will be dealt with under the HSC Complaints Procedure.

ANNEX 5: THE NI PUBLIC SERVICES OMBUDSMAN

1. The Ombudsman[23] can carry out independent investigations into complaints about poor treatment or service or the administrative actions of HSC organisations. If someone has suffered because they have received poor service or treatment or were not treated properly or fairly, and the organisation or practitioner has not put things right where they could have, the Ombudsman may be able to help. The Ombudsman powers have also been extended to include the power to investigate complaints about social care decisions.

All listed authorities within the Ombudsman's jurisdiction have a statutory obligation to signpost complainants to the Ombudsman's office where the listed authority's complaints handling procedure is exhausted.

Section 25 of the Public Services Ombudsman Act (Northern Ireland) 2016 states:

25. (1) This section applies where a listed authority's complaints handling procedure is exhausted.
(2) The authority must, within 2 weeks of the day on which the complaint handling procedure is exhausted give the person aggrieved a written notice stating –
(a) that the complaints handling procedure is exhausted, and
(b) that the person aggrieved may, if dissatisfied, refer the complaint to the Ombudsman.
(3) A notice under subsection (2) must –
(a) inform the person aggrieved of the time limit for referring the complaint to the Ombudsman; and
(b) provide details of how to contact the Ombudsman.

[23] With effect from 1 April 2016 the statutory office of "NI Commissioner for Complaints" was abolished and the new statutory office of "Northern Ireland Public Services Ombudsman" was created as a result of the Public Services Ombudsman Act (Northern Ireland) 2016 coming into operation.

2. The Ombudsman's contact details are:

Northern Ireland Public Services Ombudsman
Progressive House
33 Wellington Place
Belfast
BT1 6HN

Freepost: Freepost NIPSO
Telephone: (028) 9023 3821
Freephone: (0800) 34 24 24
Email: nipso@nipso.org.uk

3. Additional information on the jurisdiction and powers under the Public Services Ombudsman Act (NI) 2016 can be accessed at:

www.nipso.org.uk

ANNEX 6: THE REGULATION AND QUALITY IMPROVEMENT AUTHORITY (RQIA)

1. The RQIA is an independent non-departmental public body. The RQIA is charged with overall responsibility for regulating, inspecting and monitoring the standard and quality of health and social care services provided by independent and statutory bodies in Northern Ireland.

2. The RQIA has a duty to assess and report on how the HSC and the regulated sector handle complaints in light of the standards and regulations laid down by the DOH. The RQIA will assess the effectiveness of local procedures and will use information from complaints to identify wider issues for the purposes of raising standards.

3. The RQIA has a duty to encourage improvement in the delivery of services and to keep the DOH informed on matters concerning the provision, availability and quality of services.

4. The RQIA may be contacted at:

9th Floor, Riverside Tower
Lanyon Place
Belfast
BT1 3BT
Tel: 028 90 517500

http://www.rqia.org.uk/

ANNEX 7: ADVOCACY

1. Some people who might wish to complain do not do so because they do not know how, doubt they will be taken seriously, or simply find the prospect too intimidating. Advocacy services are an important way of enabling people to make informed choices. Advocacy helps people have access to information they need, to understand the options available to them, and to make their views and wishes known. Advocacy also provides a preventative service that reduces the likelihood of complaints escalating. Advocacy is not new. People act as advocates every day for their children, for their elderly or disabled relatives and for their friends.

2. Within the HSC sector, advocacy has been available mainly for vulnerable groups, such as people with mental health problems, learning disabilities and older people (including those with dementia). However, people who are normally confident and articulate can feel less able to cope because of illness, anxiety and lack of knowledge and be intimidated by professional attitudes.

3. HSC organisations should encourage the use of advocacy services and ensure complainants are supported from the outset and made aware of the role of advocacy in complaints, including those services provided by the PCC. Advocacy in complaints must be seen to be independent to retain confidence in the complaints process.

ANNEX 8: CONCILIATION

1. Conciliation is a process of examining and reviewing a complaint with the help of an independent person. The conciliator will assist all concerned to a better understanding of how the complaint has arisen and will aim to prevent the complaint being taken further. He/she will work to ensure that good communication takes place between both parties involved to enable them to resolve the complaint. It may not be appropriate in the majority of cases but it may be helpful in situations:

- where staff or practitioners feel the relationship with the complainant is difficult;
- when trust has broken down between the complainant and the Practice/ Practitioner/HSC organisation/HSC Board and both parties feel it would assist in the resolution of the complaint;
- where it is important, e.g. because of ongoing care issues, to maintain the relationship between the complainant and the Practice/Practitioner/HSC organisation/HSC Board; or
- when there are misunderstandings with relatives during the treatment of the patient.

2. All discussions and information provided during the process of conciliation are confidential. This allows staff to be open about the events leading to the complaint so that both parties can hear and understand each other's point of view and ask questions.

3. Where a complainant is considered unreasonable or abusive under the *Unacceptable Action Policy* (Annex 13 refers) then conciliation would NOT be an appropriate option.

4. Conciliation is a voluntary process available to both the complainant and those named in the complaint. Either may request conciliation but both must agree to the process being used. In deciding whether conciliation should be offered, consideration must be given to the nature and complexity of the complaint and what attempts have already been made to achieve local resolution. The decision to progress to conciliation must be made with the agreement of both parties. The aim is to resolve

difficulties, for example, if there is a breakdown in the relationship between a doctor or practitioner and their patient.

5. Conciliation may be requested by the complainant, the Practice/Practitioner/HSC organisation/HSC Board. In FPS complaints it may be suggested by the HSC Board.

FPS arrangements

6. The Practitioner/Practice/Pharmacy Manager (respondent) should approach the HSC Board Complaints Manager for advice.

7. Where a request for a conciliator is received the HSC Board Complaints Manager will liaise with the relevant FPS lead to consider the best way forward. Where it is considered that conciliation would aid resolution then the HSC Board Complaints Manager will advise the FPS Practice/Practitioner. In some cases the HSC Board may consider an alternative to conciliation, such as, an honest broker.

Agreement by parties involved

8. The FPS Practice/Practitioner/HSC organisation must contact the complainant and discuss the rationale for involving a conciliator and provide an opportunity to allow the complainant to agree to such an approach and consent to share information. It is important that all parties involved are aware of the confidentiality clause attached to conciliation services. Once agreement is received, the HSC organisation or the HSC Board Complaints Manager (on behalf of FPS) will make the necessary arrangements.

9. Where it has been agreed that the intervention of a conciliator is appropriate, the HSC organisation or HSC Board (on behalf of FPS) should clearly define the remit of the appointment for the purposes of:

- explaining the issue(s) to be resolved;
- ensuring all parties understand what conciliation involves;
- agreeing the timescales;
- agreeing when conciliation has ended; and

- explaining what happens when conciliation ends.

10. The conciliator must advise the Practice/Practitioner/ HSC organisation when conciliation has ceased and whether a resolution was reached. No further details should be provided. The Practice/Practitioner must then notify the HSC Board of the outcome.

11. Using conciliation does not affect the right of a complainant to pursue their complaint further through the HSC organisation or HSC Board (for FPS) if they are not satisfied. Neither does it preclude the complainant from referring their complaint to the Ombudsman should they remain dissatisfied.

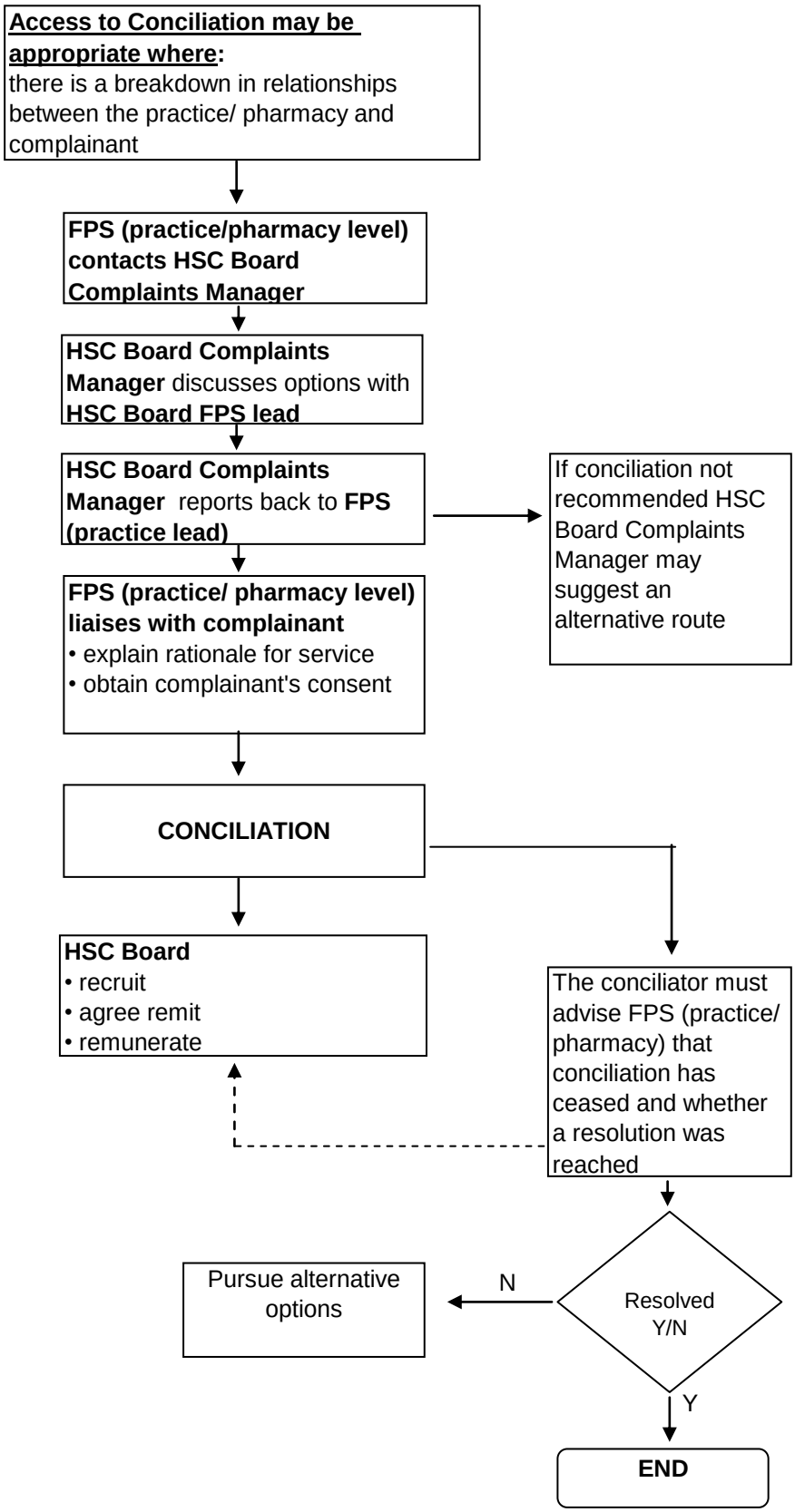
Appointment of conciliators

12. The HSC organisation or HSC Board (on behalf of FPS) is responsible for communicating with, ascertaining the availability of and formally appointing an appropriate conciliation service. In addition it is responsible for all other arrangements, including remuneration.

Monitoring

13. The HSC Board will monitor the effectiveness and usage of conciliation arrangements within HSC Trusts and FPS.

Conciliation – FPS Access



ANNEX 9: INDEPENDENT EXPERTS

1. The use of an Independent Expert in the resolution of a complaint may be requested by the complainant, the Practice/Practitioner/ HSC organisation. In FPS complaints it can also be suggested by the HSC Board. In deciding whether independent advice should be offered, consideration must be given, in collaboration with the complainant, to the nature and complexity of the complaint and any attempts at resolution. Input will not be required in every complaint but it may be considered beneficial where the complaint:

- cannot be resolved locally;
- indicates a risk to public or patient safety;
- could give rise to a serious breakdown in relationships, threaten public confidence in services or damage reputation; and
- to give an independent perspective on clinical issues.

FPS arrangements

2. The Practice/Practitioner should approach the HSC Board Complaints Manager for advice.

3. Where a request for an Independent Expert is received the HSC Board Complaints Manager **may** wish to liaise with the relevant FPS lead to consider the best way forward. Where it is considered that independent expert advice would aid resolution then the HSC Board Complaints Manager will advise the FPS practice. In some cases the HSC Board may consider an alternative to an Independent Expert.

Agreement and consent

4. The FPS Practice/Practitioner/HSC organisation/HSC Board must contact the complainant and discuss the rationale for involving an Independent Expert and provide an opportunity to allow the complainant to agree to such an approach and consent to share information. Once agreement is received, the HSC organisation or the HSC Board Complaints Manager (on behalf of FPS) will make the necessary arrangements.

5. The HSC organisation or HSC Board may decide to involve an Independent Expert in a complaint without the complainant's consent, outside the complaints procedure, for the purposes of obtaining assurances regarding health and social care practice.

6. Where it has been agreed that an Independent Expert will be involved the Practice/Practitioner/HSC organisation/HSC Board should clearly define the remit of the appointment for the purposes of:

- explaining and agreeing the issue(s) to be reviewed;
- ensuring all parties understand the focus of the issue(s);
- agreeing the timescales;
- agreeing to the provision of a final report; and
- explaining what happens when this process is complete.

7. The Independent Expert's findings/report will be forwarded to the Practice/Practitioner/HSC organisation/HSCB (if acting as contact point). A full report of the findings should be made available by the practice/pharmacy/HSC organisation to:

- the complainant; and
- the HSC Board (for FPS only).

8. The letter of response to the complainant is the responsibility of the Practice/Practitioner/ HSC organisation

Appointment of Independent Experts

9. The HSC organisation or HSC Board (on behalf of FPS) is responsible for communicating with, ascertaining the availability of and formally appointing an appropriate Independent Expert. In addition, it is responsible for all other arrangements, including remuneration and indemnity.

10. Independent Experts must be impartial, objective and independent of any parties to the complaint. Independent Experts should be recruited from another Local

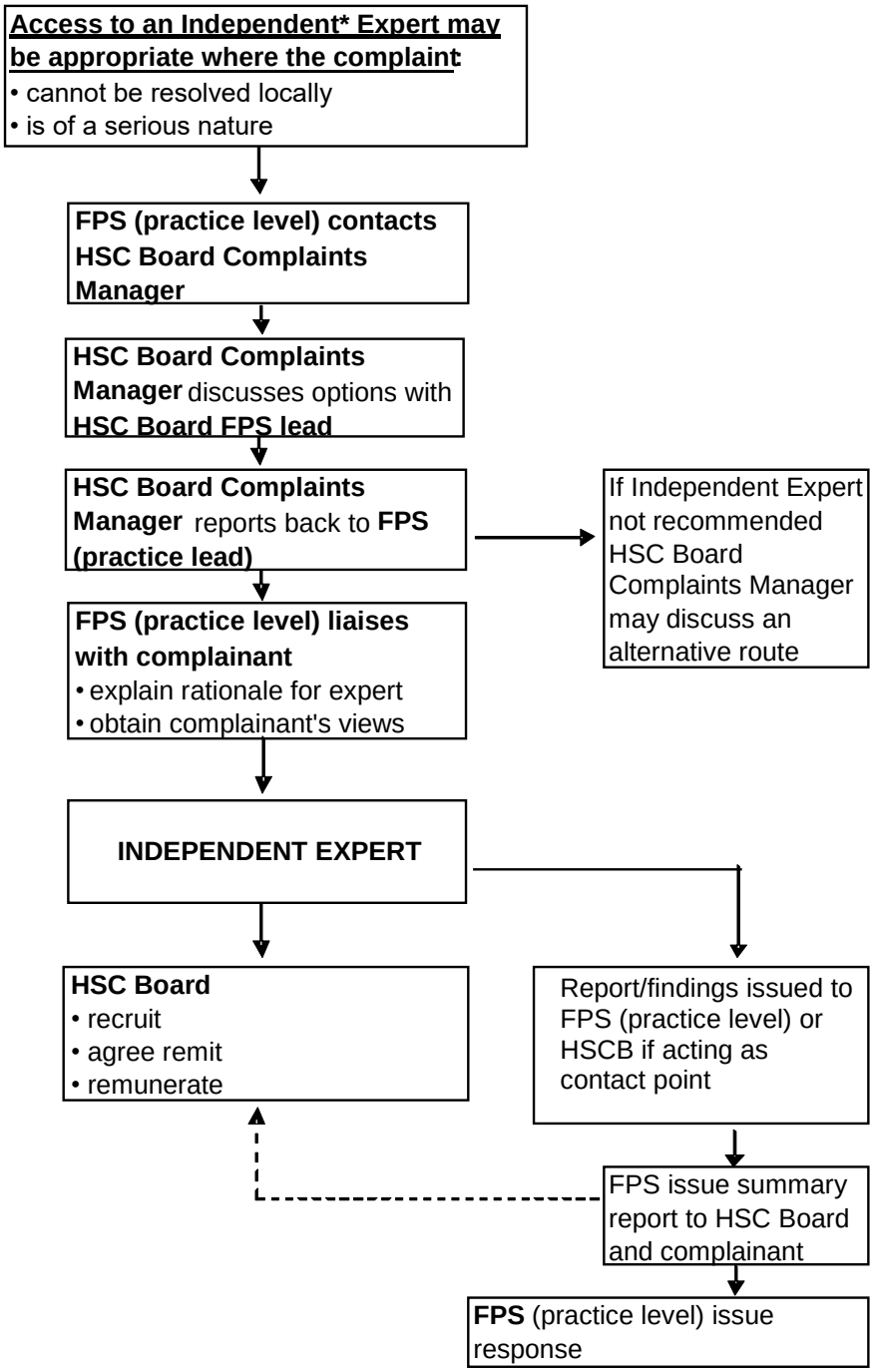
Commissioning group (LCG) area to ensure this impartiality (and in certain circumstance may be recruited from outside Northern Ireland).

Monitoring

11. The HSC Board will monitor the effectiveness and usage of Independent Expert arrangements within HSC Trusts and FPS including the implementation of any recommendations in FPS.

12. A flowchart outlining the process for FPS is shown overleaf.

Independent Experts - FPS Access



* Definition of "Independent" = an Independent Expert must be recruited from another LCG area (and in certain circumstances outside Northern Ireland) and must have no connection with any of the parties to the complaint to avoid calling into question their objectivity and independence.

ANNEX 10: LAY PERSONS

1. Lay persons may be beneficial in providing an independent perspective of non-clinical/ technical issues within the local resolution process. Lay persons are NOT intended to act as advocates, conciliators or investigators. Neither do they act on behalf of the provider or the complainant. The lay persons involvement is to help bring about a resolution to the complaint and to provide assurances that the action taken was reasonable and proportionate to the issues raised. For example, the lay person could accompany the investigator during the investigation process where the complainant is considered unreasonable (Annex 13 refers).

2. Input from a lay person may be valuable to test key issues that are part of the complaint, such as:

- communication issues;
- quality of written documents;
- attitudes and relationships; and
- access arrangements (appointment systems).

3. It is essential that both the provider and the complainant have agreed to the involvement of a lay person.

4. Lay persons should have appropriate training in relation to the HSC complaints procedure and have the necessary independence and communication skills.

FPS arrangements

5. The Practice/Practitioner should approach the HSC Board Complaints Manager for advice.

6. Where a request for a lay person is received the HSC Board Complaints Manager **may** liaise with the relevant FPS lead to consider the best way forward. Where it is considered that a lay person's involvement would aid resolution then the HSC Board Complaints Manager will advise the FPS practice. In some cases the HSC Board **may** consider an alternative to a lay person.

Agreement and consent

7. The FPS Practice/ Practitioner/ HSC Organisation/HSC Board must contact the complainant and discuss the rationale for involving a lay person and provide an opportunity to allow the complainant to agree to such an approach and consent to share information. Once received, the HSC organisation/HSC Board Complaints Manager (on behalf of FPS) will make the necessary arrangements.

8. Where it has been agreed that a lay person will be involved the Practice/Practitioner/HSC Organisation/HSC Board should clearly define the remit of the appointment for the purposes of:

- explaining the issue(s) to be resolved;
- ensuring all parties understand the focus of the issue(s);
- ensuring all parties understand what lay person involvement means;
- agreeing the timescales;
- agreeing to the provision of a final report, and
- explaining what happens when this process is complete.

9. The layperson's findings/ report will be forwarded to the Practice/Practitioner/HSC Organisation/HSC Board. The full report will be made available by the Practice/ Practitioner/HSC Organisation/HSC Board (for FPS only) and to the complainant.

10. The letter of response to the complainant is the responsibility of the Practice/Practitioner/HSC Organisation/HSC Board.

Appointment of lay persons

11. The HSC organisation or HSC Board (on behalf of FPS) is responsible for communicating with, ascertaining the availability of and formally appointing an appropriate lay person. In addition it is responsible for all other arrangements, including training, performance management and remuneration.

Monitoring

12. The HSC Board will monitor the effectiveness and usage of lay person arrangements within HSC Trusts and FPS.

ANNEX 11: HONEST BROKER ROLE

1. "Honest broker" is the term used to describe the role of the HSC Board Complaints Manager in supporting and advising FPS on the handling of complaints. The complainant or the Practice/Practitioner can ask the HSC Board to act in this role at any point in the complaints process. It is expected that the HSC Board will not carry out the investigation but it is also expected that the HSC Board will add value to the process by providing support and advice to FPS.

2. It is not an alternative to local resolution. Neither is it an opportunity for the HSC Board to take over an investigation. Rather it is about facilitating communications and building relationships between the Practice/Practitioner and the complainant or reaching positions of understanding. The honest broker will act as an intermediary and is available to both, the complainant or Practice/Practitioner staff throughout the complaints process. For example, the honest broker may:

- provide advice to both the complainant and the Practice/Practitioner;
- act as a link between both parties and/ or negotiate with them; and
- facilitate and attend meetings between/with both parties together or separately.

3. Paragraphs 2.16 to 2.21 outline the options available to complainants when pursuing FPS complaints. This includes an option to lodge their complaint directly with the HSC Board. Where the complainant contacts the HSC Board the Complaints Manager will explain the options available to resolve the complaint:

- that the complaint can be copied to the relevant practice/pharmacy for investigation, resolution and response; or
- that the HSC Board can act as honest broker between the complainant and the Practice/Practitioner.

4. FPS co-operation in complaints of this type is essential for the role of honest broker to effectively assist in the successful local resolution of complaints. FPS will be asked for their agreement should the complainant prefer the HSC Board's involvement.

5. Where the HSC Board Complaints Manager has been asked to act as honest broker he/she will:

- act as intermediary between the complainant and the practice/ pharmacy;
- make arrangements for independent expert advice, conciliation, lay person assistance, where appropriate;
- provide advice to the complainant and the Practice/Practitioner on target timescales[24]; and
- where there is a delay, ensure the complainant is advised as set out in paragraph 3.39.

6. Whichever process is used it is important to note that the Practice/Practitioner are responsible for the investigation and the response. The HSC Board Complaints Manager, however, must ensure that:

- a written response is provided by the Practice/Practitioner to the complainant and any other person subject to the complaint (whether this is direct from the Practice/Practitioner or from the HSC Board after receiving a report from the Practice/Practitioner ;
- the response is of sufficient quality and addresses the complainant's concerns;
- the written response is provided within target timescales and where this is not possible that the complainant is informed; and
- the response notifies the complainant of their right to refer their complaint to the Ombudsman should they remain dissatisfied with the outcome of the complaints procedure.

7. The complainant may contact the HSC Board Complaints Manager for further advice and support.

[24] For 'honest broker' this is 20 working days from receipt of the complaint: for FPS, this is 10 working days from receipt of the complaint.

ANNEX 12: ADULT SAFEGUARDING

Definition of vulnerable adult

1. The regional policy 'Adult Safeguarding – Prevention and Protection in Partnership' defines the terms 'adult at risk of harm' and 'adult in need of protection[25]'.

2. The definition of an 'adult at risk of harm' takes account of a complex range of interconnected personal characteristics and/or life circumstances, which may increase exposure to harm either because a person may be unable to protect him/herself or their situation may provide opportunities for others to neglect, exploit or abuse them. It is not possible to definitively state when an adult is at risk of harm, as this will vary on a case by case basis. The following definition is intended to provide guidance as to when an adult may be at risk of harm, in order that further professional assessment can be sought.

3. An 'adult at risk of harm' is a person aged 18 or over, whose exposure to harm through abuse, exploitation or neglect may be increased by their:

a) **personal characteristics**
AND/OR
b) **life circumstances**

Personal characteristics may include, but are not limited to, age, disability, special educational needs, illness, mental or physical frailty or impairment of, or disturbance in, the functioning of the mind or brain.

Life circumstances may include, but are not limited to, isolation, socio-economic factors and environmental living conditions.

[25] 'Adult Safeguarding – Prevention and Protection in Partnership' (July 2015) (https://www.health-ni.gov.uk/publications/adult-safeguarding-prevention-and-protection-partnership-key-documents), p10

4. An '**adult in need of protection**' is a person aged 18 or over, whose exposure to harm through abuse, exploitation or neglect may be increased by their:

a) **personal characteristics**

AND/OR

b) **life circumstances**

AND

c) who is **unable to protect** their own well-being, property, assets, rights or other interests;

AND

d) where the action or inaction of another person or persons is causing, or is likely to cause, him/her to be harmed.

5. In order to meet the definition of an 'adult in need of protection' either (a) or (b) must be present, in addition to both elements (c), and (d).

6. The decision as to whether the definition of an 'adult in need of protection' is met will demand the careful exercise of professional judgement applied on a case by case basis. This will take into account all the available evidence, concerns, the impact of harm, degree of risk and other matters relating to the individual and his or her circumstances. The seriousness and the degree of risk of harm are key to determining the most appropriate response and establishing whether the threshold for protective intervention has been met.

Reportable offences and allegations of abuse

7. Very careful consideration must be given to complaints alleging offences that could be reportable to the police, and there should be explicit policies about the arrangements for such reporting. Where it is apparent that a complaint relates to abuse, exploitation or neglect of an adult at risk then the regional *'Adult Safeguarding Operational Procedures' (September 2016)* and the associated *'Protocol for Joint Investigation of Adult Safeguarding Cases' (August 2016)* should be activated (see paragraph 1.26).

ANNEX 13: UNREASONABLE OR ABUSIVE COMPLAINANTS

1. HSC staff must be trained to respond with patience and empathy to the needs of people who make a complaint, but there will be times when there is nothing further that can reasonably be done to assist them. Where this is the case and further communications would place inappropriate demands on HSC staff and resources, consideration may need to be given to classifying the person making a complaint as an unreasonable, demanding or persistent complainant.

2. In determining arrangements for handling such complainants, staff need to:

- ensure that the complaints procedure has been correctly implemented as far as possible and that no material element of a complaint is overlooked or inadequately addressed;
- appreciate that even habitual complainants may have grievances which contain some substance;
- ensure a fair approach; and
- be able to identify the stage at which a complainant has become habitual.

3. The following *Unacceptable Actions Policy*[26] should only be used as a last resort after all reasonable measures have been taken to resolve the complaint.

Unacceptable Actions Policy

4. People may act out of character in times of trouble or distress. There may have been upsetting or distressing circumstances leading up to a complaint. HSC organisations do not view behaviour as unacceptable just because a complainant is forceful or determined. In fact, it is accepted that being persistent can be a positive advantage when pursuing a complaint. However, we do consider actions that result in unreasonable demands on the HSC organisation or unreasonable behaviour towards HSC staff to be unacceptable. It is these actions that HSC organisations aim to manage under this policy.

[26] Unacceptable Actions Policy based on best practice guidelines issued by the Scottish Public Services Ombudsman-Updated 18 January 2017

Aggressive or abusive behaviour

5. HSC organisations understand that many complainants are angry about the issues they have raised in their complaint. If that anger escalates into aggression towards HSC staff, it will consider that unacceptable. Any violence or abuse towards staff will not be accepted.

6. Violence is not restricted to acts of aggression that may result in physical harm. It also includes behaviour or language (whether verbal or written) that may cause staff to feel afraid, threatened or abused. Examples of behaviours grouped under this heading include threats, physical violence, personal verbal abuse, derogatory remarks and rudeness. HSC organisations will judge each situation individually and appreciate individuals who come may be upset. Language which is designed to insult or degrade, is racist, sexist or homophobic or which makes serious allegations that individuals have committed criminal, corrupt or perverse conduct without any evidence is unacceptable. HSC organisations may decide that comments aimed at third parties are unacceptable because of the effect that listening or reading them may have on staff. HSC organisations also consider that inflammatory statements and unsubstantiated allegations can be abusive behaviour.

7. HSC organisations expect its staff to be treated courteously and with respect. Violence or abuse towards staff is unacceptable and staff should refer to the Zero Tolerance campaign launched in 2007 to clarify the HSC position in relation to attacks on the workforce. HSC staff understand the difference between aggression and anger. The anger felt by many complainants involves the subject matter of their complaint. However, it is not acceptable when anger escalates into aggression directed towards HSC staff.

Unreasonable demands

8. HSC organisations consider these demands become unacceptable when they start to (or when complying with the demand would) impact substantially on the work of the organisation.

9. Examples of actions grouped under this heading include:

- repeatedly demanding responses within an unreasonable timescale;
- insisting on seeing or speaking to a particular member of staff when that is not possible; and
- repeatedly changing the substance of a complaint or raising unrelated concerns.

10. An example of such impact would be that the demand takes up an excessive amount of staff time and in so doing disadvantages other complainants.

Unreasonable levels of contact

11. Sometimes the volume and duration of contact made to the HSC organisation by an individual causes problems. This can occur over a short period, for example a number of calls in one day or one hour. It may occur over the life-span of the complaint when a complainant repeatedly makes long telephone calls to the organisation or inundates the organisation with copies of information that has been sent already or that is irrelevant to the complaint.

12. The HSC organisation considers that the level of contact has become unacceptable when the amount of time spent talking to a complainant on the telephone, or dealing with emails or written correspondence impacts on its ability to deal with that complaint, or with other people's complaints.

Unreasonable use of the complaints process

13. Individuals with complaints have the right to pursue their concerns through a range of means. They also have a right to complain more than once about an organisation with which they have a continuing relationship, if subsequent incidents occur.

14. However, this contact becomes unreasonable when the effect of the repeated complaints is to harass, or to prevent the organisation from pursuing a legitimate aim or implementing a legitimate decision. The HSC organisation considers access to a

complaints system to be important and it will only be in exceptional circumstances that it would consider such repeated use is unacceptable, however it reserves the right to do so in those exceptional circumstances.

Unreasonable refusal to co-operate

15. When the HSC organisation is looking at a complaint, it will need to ask the individual who has complained to work with them. This can include agreeing with the HSC organisation the complaint it will look at; providing it with further information, evidence or comments on request; or the individual summarising the concerns or completing a form for the HSC organisation.

16. Sometimes, an individual repeatedly refuses to cooperate and this makes it difficult for the HSC organisation to proceed. The HSC organisation will always seek to assist someone if they have a specific, genuine difficulty complying with a request. However, the HSC organisation consider it is unreasonable to bring a complaint to it and then not respond to reasonable requests.

Examples of how the HSC manage aggressive or abusive behaviour

17. The threat or use of physical violence, verbal abuse or harassment towards HSC staff is likely to result in a termination of all direct contact with the complainant. All incidents of verbal and physical abuse will be reported to the police.

18. HSC organisations will not accept any correspondence (letter, fax or electronic) that is abusive to staff or contains allegations that lack substantive evidence. The HSC organisation will tell the complainant that it considers their language offensive, unnecessary and unhelpful and ask them to stop using such language. It will state that it will not respond to their correspondence if the action or behaviour continues.

19. HSC staff will end telephone calls if they consider the caller aggressive, abusive or offensive. The staff member taking the call has the right to make this decision, tell the caller that their behaviour is unacceptable and end the call if the behaviour persists. In extreme situations, the HSC organisation will tell the

complainant in writing that their name is on a “no personal contact” list. This means that it will limit contact with them to either written communication or through a third party.

Examples of how the HSC deal with other categories of unreasonable behaviour

20. The HSC organisation has to take action when unreasonable behaviour impairs the functioning of its office. It aims to do this in a way that allows a complainant to progress through its process. It will try to ensure that any action it takes is the minimum required to solve the problem, taking into account relevant personal circumstances including the seriousness of the complaint and the needs of the individual.

21. Where a complainant repeatedly phones, visits the organisation, raises issues repeatedly, or sends large numbers of documents where their relevance is not clear, the HSC organisation may decide to:

- limit contact to telephone calls from the complainant at set times on set days;
- restrict contact to a nominated member of staff who will deal with the future calls or correspondence from the complainant;
- see the complainant by appointment only;
- restrict contact from the complainant to writing only;
- return any documents to the complainant or, in extreme cases, advise the complainant that further irrelevant documents will be destroyed; and
- take any other action that the HSC organisation considers appropriate.

22. Where the HSC organisation considers correspondence on a wide range of issues to be excessive, it may tell the complainant that only a certain number of issues will be considered in a given period and ask them to limit or focus their requests accordingly.

23. In exceptional cases, the HSC organisation will reserve the right to refuse to consider a complaint or future complaints from an individual. It will take into account the impact on the individual and also whether there would be a broader public interest in considering the complaint further.

24. The HSC organisation will always tell the complainant what action it is taking and why.

The process the HSC follows to make decisions about unreasonable behaviour

25. HSC staff who directly experience aggressive or abusive behaviour from a complainant have the authority to deal immediately with that behaviour in a manner they consider appropriate to the situation in line with this policy. With the exception of such immediate decisions taken at the time of an incident, decisions to restrict contact with the organisation are only taken after careful consideration of the situation by a more senior member of staff. Wherever possible, the HSC organisation will give the complainant the opportunity to change their behaviour or action before a decision is taken.

How the HSC lets people know it has made this decision

26. When a HSC member of staff makes an immediate decision in response to aggressive or abusive behaviour, the complainant is advised at the time of the incident. When a decision has been made by senior management, a complainant will always be told in writing[28] why a decision has been made to restrict future contact, the restricted contact arrangements and, if relevant, the length of time that these restrictions will be in place. This ensures that the complainant has a record of the decision.

The process for appealing a decision to restrict contact

27. It is important that a decision can be reconsidered. A complainant can appeal a decision to restrict contact. If they do this, the HSC organisation will only consider arguments that relate to the restriction and not to either the complaint made to the organisation or its decision to close a complaint. An appeal could include, for example, a complainant saying that: their actions were wrongly identified as unacceptable, the restrictions were disproportionate; or that they will adversely impact on the individual because of personal circumstances.

28. A senior member of staff who was not involved in the original decision will consider the appeal. They have discretion to quash or vary the restriction as they think best. They will make their decision based on the evidence available to them. They must advise the complainant in writing[27] that either the restricted contact arrangements still apply or a different course of action has been agreed.

How the HSC record and review a decision to restrict contact

29. The HSC organisation records all incidents of unacceptable actions by complainants. Where it is decided to restrict complainant contact, an entry noting this is made in the relevant file and on appropriate computer records. A decision to restrict complainant contact as described above, may be reconsidered if the complainant demonstrates a more acceptable approach. A member of the Senior Management Team reviews the status of all complainants with restricted contact arrangements on a regular basis.

[27] Unacceptable Actions Policy based on best practice guidelines issued by the Scottish Public Services Ombudsman-Updated 18 January 2017

ANNEX 14: CHILDREN ORDER REPRESENTATIONS AND COMPLAINTS PROCEDURE

1. Under the Children (NI) Order 1995[28] (the Order) HSC Trusts are statutorily required to establish a procedure for considering:
   - any representations (including any complaint) made to it about the discharge of its functions under Part IV of, and paragraph 4 of Schedule 5 to, the Order, and
   - matters in relation to children accommodated by voluntary organisations and privately run children's homes, and
   - those personal social services to children provided under the Adoption Order (NI) 1987[29].

2. HSC Trusts functions are outlined in Article 45 of, and paragraph 6 of Schedule 5 to, the Order and in the Representations Procedure (Children) Regulations (NI) 1996[30].

3. Departmental guidance on the establishment and implementation of such a procedure is included at Chapter 12 of the Children Order Guidance and Regulations, Volume 4 (a flowchart to aid decision making is attached).

4. The HSC Board and HSC Trusts should familiarise themselves with these requirements.

[28] Children (NI) Order 1995: http://www.legislation.gov.uk/nisi/1995/755/contents
[29] Adoption Order (NI) 1987: http://www.legislation.gov.uk/nisi/1987/2203/contents
[30] Representations Procedure (Children) Regulations (NI) 1996: http://www.legislation.gov.uk/nisr/1996/451/contents/made

CHILDREN ORDER REPRESENTATIONS AND COMPLAINTS PROCEDURE

↓

1. Complaint: Does it fit the definition of a Children Order complaint as below?

"…Any representation (including any complaint) made to the Trust … about the discharge of any of its functions under Part IV of the Order in relation to the child."
(Children (NI) Order 1995, Article 45(3))

OR

"A written or oral expression of dissatisfaction or disquiet in relation to an individual child about the Trust's exercise of its functions under Part IV of, and para 6 of Schedule 5 to, the Children Order."
(Guidance & Regulations – Vol. 4, Para 12.5 – DHSS)

If **YES** to **EITHER** of above

If **NO** to **EITHER** of above → Progress via HSC Complaints Procedure

↓

2. Does it meet the criteria of what may be complained about under Children Order?

"… about Trust support for families and their children under Part IV of the Order."
(Vol. 4, Para 12.8)

a. Day care;
b. Services to support children within family home;
c. Accommodation of a child;
d. After care;
e. Decisions relating to the placement of a child;
f. The management or handling of a child's case (in respect of Part IV services);
g. Process involved in decision making (in respect of Part IV services);
h. Denial of a (Part IV) service;
i. Exemptions to usual fostering limit;
j. Matters affecting a group of children (receiving a Part IV service);
k. Issues concerning a child subject to Adoption Services.

If **YES** to **ANY** of above

If **NO** to **ALL** of above → Progress via HSC Complaints Procedure

↓

3. <u>Complainant</u>: Does he/she fit the definition of a Children Order complainant?

a. **Any child** who is being looked after by the Trust;

b. **Any child** who is not being looked after by the Trust, but is in need;

c. A parent **of his**;

d. Any person who is not a parent of his but who has **parental responsibility for him**;

e. Any Trust foster parent;

f. Such other person as the Trust considers has a sufficient interest in **the child's welfare** to warrant his representations being considered by the Trust, i.e.

- the person who had the day to day care of the child within the past two years;
- the child's Guardian ad Litem;
- the person is a relative of the child (as defined by Children Order, Article 2(2));
- The person is a significant adult in the child's life, and where possible, this is confirmed by the child;
- a friend;
- a teacher;
- a general practitioner.
  (Children (NI) Order 1995 Article 45(3))

If **<u>YES</u>** to **ANY** of above

If **<u>NO</u>** to **ALL** of above → Progress via HSC Complaints Procedure

↓

Progress via Children Order Procedure

<u>NB</u>: In order for a complaint to be eligible to be considered under the Children Order Procedure, the answer to 1 <u>and</u> 2 <u>and</u> 3 MUST all be YES.

Consent: *The (Trust) should always check with the child (subject to his understanding) that a complaint submitted reflects his views and that he wishes the person submitting the complaint to act on his behalf.* (Where it is decided that the person submitting the complaint is not acting on the child's behalf, that person may still be eligible to have the complaint considered).

Definitions of Key Terms

Throughout the standards and guidelines the following terms have the meanings set out below:

Complaint	"an expression of dissatisfaction that requires a response"
Complainant	an existing or former patient, client, resident, family, representative or carer (or whoever has raised the complaint)
Chief Executive	the Chief Executive of the HSC organisation
Complaints Manager	the person nominated by an HSC organisation to handle complaints
DoH[31]	Department of Health in Northern Ireland
Family Practitioner Service (FPS)	family doctors, dentists, pharmacists and opticians
Honest Broker	this is the term used to describe the HSC Board's role in FPS complaints
HSC Board	Health and Social Care Board
HSC Organisation	an organisation which commissions or provides health and social care services and for the purpose of this guidance includes the HSC Board, HSC Trusts, the Northern Ireland Ambulance Service (NIAS), the Business Services Organisation (BSO), the Public Health Agency (PHA), Family Practitioner Services (FPS), Out-of-Hours Services, and pilot scheme providers
Local Resolution	the resolution of a complaint by the organisation, working closely with the service user

[31] Formally the Department for Health, Social Services and Public Safety (DHSSPS)

	Northern Ireland Blood Transfusion Service
NIBTS	Northern Ireland Public Services Ombudsman (NIPSO, known as 'the Ombudsman')
NIPSO	refers to immediate necessary treatment provided by FPS 6.00 pm to 8.00 am Monday – Friday, weekends and local holidays
Out of-Hours services	
	Patient and Client Council
PCC	a small-scale experiment or set of observations undertaken to decide how and whether to launch a full-scale project (refers to personal
Pilot Scheme	dental services provided by an HSC Trust in this case)
	is a complaints procedure established by the pilot scheme
Pilot Scheme Complaints Procedure	is an FPS complaints procedure established within the terms of the relevant regulations
Practice based complaints procedure	person carrying on or managing the establishment or agency
Registered Provider	Regulation, Quality and Improvement Authority which is the organisation responsible for regulating, inspecting and monitoring the standard and
RQIA	quality of health and social care services provision by independent and statutory bodies in Northern Ireland
	for example, residential care homes, nursing homes, children's homes, nursing agencies, independent clinics/hospitals, etc. registered with
Registered Establishments and Agencies	
	and regulated by the RQIA

Regulated Sector	refers to registered establishments and agencies
Senior Person	means the person designated to take responsibility for delivering the organisation's complaints process e.g. a Director in the HSC Trust
Service User	means a patient, client, resident, carer, visitor or any other person accessing HSC services
Special Agency	For example the NI Blood Transfusion Service (NIBTS)

CIRCULAR HSS (GEN1) 1/2000

The General Manager/Chief Executive
of each Health and Social Services Board
The Chief Executive of the Central Services Agency
The Chief Executive of each HSS Trust and
The Chief Executive of each Special Agency

Our Ref: BP 2878/99

14 January 2000

For information to:

Human Resources Director of each HSS Board,
Trust, the Central Services Agency and
Special Agency

Dear Sir/Madam

THE PUBLIC INTEREST DISCLOSURE (NORTHERN IRELAND) ORDER 1998 - WHISTLEBLOWING IN THE HPSS

SUMMARY

1. On 12 February 1996 a document entitled "Guidance for Staff on Relations with the Public and the Media", was issued under cover of Circular HSS(GEN1) 1/96. The emphasis of the guidance was on the encouragement of a climate of openness and dialogue within the HPSS where the free expression by staff of their concerns are welcomed by their managers as a contribution towards improving services.

2. The Public Interest Disclosure (Northern Ireland) Order 1998 became law on 31 October 1999 and the purpose of this new circular is to update the guidance given previously and to set out the key elements of the Order as it affects employers. It should be noted that the Northern Ireland Order was passed to correspond with the introduction of the Public Interest Disclosure Act 1998 which applies only to England and Wales. The main provisions are the same.

3. The Order gives significant statutory protection to employees who disclose information reasonably and responsibly in the public interest and are victimised as a result. An employee who is victimised in breach of the Order can bring a claim at an employment tribunal. Those who lose their jobs in breach of the Order can be fully compensated for their losses. There is no limit to the amount of awards that employment tribunals can make in these circumstances. Similarly, there is no cap on the awards for victimisation short of dismissal. Awards will be based on what is just and equitable in all the circumstances.

[redacted]

[redacted]

4. Gagging clauses in employment contracts and severance agreements which conflict with the protection afforded by the Order will be void. A summary of the main provisions of the Order is attached at Annex A.

5. The Order does not require organisations to set up a whistleblowing policy, but provides strong reasons why they should. HSS Boards, HSS Trusts and Agencies should have such policies already in place, but local policies will need to be reviewed and updated as necessary to ensure that they comply with the new statutory protection for employees.

6. Introduced in tandem with the Order, is the Public Interest Disclosure (Prescribed Persons) Order (Northern Ireland) 1999 which became effective from 31 October 1999. The Prescribed Persons Order lists the persons and bodies who are prescribed by the Public Interest Disclosure (Northern Ireland) Order. This means that a worker will be protected if he makes a qualifying disclosure in good faith to a person prescribed in the Order, reasonably believing that the failure disclosed falls within the matters in respect of which that person is prescribed, and that the information disclosed, and any allegation contained in it, are substantially true.

Background

7. The fear of being labelled a trouble-maker, the fear of appearing disloyal and the fear of victimisation by managers and colleagues are powerful disincentives against speaking up about genuine concerns staff have about criminal activity, failure to comply with a legal duty, miscarriages of justice, danger to health and safety or the environment, and the cover up of any of these in the workplace.

8. In recent years the public has been shocked by disasters and scandals that have claimed lives and damaged others. The enquiries set up to uncover the facts behind these catastrophes have revealed all too often that they had been a consequence of a pattern of poor practice over a long period of time and that, although not officially recognised, were often known about by employees who had been too scared to speak up, or who had raised the matter only to find their concerns ignored.

9. There will have been incidents in the HPSS which could, and should, have been prevented had staff felt able to raise concerns about health and social care matters in a responsible way without fear of victimisation. Such incidents damage public confidence in the HPSS. The public and the wider healthcare community is entitled to ask why it is that staff are unwilling to take it up with the powers that be and where they are why was nothing done about it.

10. There should be a culture and environment everywhere in the HPSS which encourages staff to feel able to raise concerns about health and social care matters sensibly and responsibly without fear of victimisation. The Public Interest Disclosure (Northern Ireland) Order provides a fresh impetus for further action.

Action

[redacted] [redacted]

11. Every HPSS Trust, Board and Agency should:

- Have in place local policies and procedures which comply with the provisions of the Public Interest Disclosure (Northern Ireland) Order 1998. The minimum requirements of local policies should include:-

(i) the designation of a senior manager with specific responsibilities for addressing concerns raised in confidence which need to be handled outside the usual line management chain;

(ii) guidance to help staff who have concerns about malpractice to do so reasonably and responsibly with the right people;

(iii) a clear commitment that staff concerns will be taken seriously, and investigated;

(iv) an unequivocal guarantee that staff who raise concerns responsibly and reasonably will be protected against victimisation;

and should prohibit:-

(v) confidentiality "gagging" clauses in contracts of employment, and compromise agreements which seek to prevent the disclosure of information in the public interest.

- Ensure that all their staff are aware of local policy and procedures and their own responsibilities for raising genuine concerns in a reasonable and responsible way.

12. A Whistleblowing Policy Pack has been produced by Public Concern at Work, an independent charity and a leading authority on public interest whistleblowing. This pack costs £360 (incl VAT and P&P) and can be obtained by contacting them at Suite 306, 16 Baldwins Gardens, London EC1N 7RJ, telephone number [redacted] or through CIPFA, Publications Section, Freepost SW 2959, London WC2N 6BR, telephone number [redacted] It must be noted that the Pack is based on the Public Interest Disclosure Act and not the Northern Ireland Order but as stated, the provisions are the same.

13. The pack includes a copy of the Public Interest Disclosure Act and a toolkit which has been designed particularly to help employers to draw up whistleblowing policies and procedures and, where these already exist, to update them to ensure compliance with the Act. The components of the toolkit are:-

- An introductory booklet which explains in simple terms what whistleblowing is and why it is important to your organisation and everyone involved with it. Along with four case studies and a practical summary of the Public Interest Disclosure Act, it takes you through the key aspects of whistleblowing policies.

[redacted] [redacted]

- An implementation guide which gives a practical, easy-to-follow guide with all you need to roll-out a successful whistleblowing policy. Starting from the first meeting with management, taking you step-by-step through to the launch and monitoring of your policy. It includes a model policy, promotional and training aids and letters to legal advisers and staff.

- A computer disk which contains PowerPoint slides and OHPs with speaking notes for training and presentations to managers and staff. It also has file copies of key documents.

- Other tools, including a checklist to guide you through the preparation and implementation of your policy, the full Act with authoritative notes for use by you and your legal advisers, posters to display throughout your organisation, a pocket guide to reproduce for staff and gives details of a free helpline for staff.

Associated Documentation:

- 'Guidance to staff on relations with the public and the media - Circular HSS(GEN1) 1/96'. (February 1996).

- Maintaining Good Medical Practice, General Medical Council (July 1998).

- The Code of Professional Conduct, United Kingdom Central Council for Nursing, Midwifery and Health Visitors (1992).

Enquiries

Enquiries concerning this circular to the Pay and Employment Unit, Room 3B, Dundonald House, Upper Newtownards Road, Belfast BT4 3SF, telephone number [redacted]

Yours faithfully

T A McNEILL
Deputy Director
Human Resources Directorate

[redacted]

[redacted]

Annex A

SUMMARY OF THE MAIN PROVISIONS OF THE PUBLIC INTEREST DISCLOSURE (NORTHERN IRELAND) ORDER 1998

MALPRACTICE

The Order applies to people at work raising genuine concerns about crime, breach of a legal obligation (including negligence, breach of contract, breach of administrative law), miscarriage of justice, danger to health and safety or the environment and any cover up of these. In the HPSS this would include a worker raising concerns about risks to patients/clients or about financial malpractice. It applies whether or not the information is confidential.

INDIVIDUALS COVERED

In addition to employees, it covers other workers, trainees, agency staff, home workers and all self-employed HPSS professionals (ie doctors, dentists, ophthalmologists and pharmacists). The usual employment law restrictions on minimum qualifying period and age do not apply. It does not cover the genuinely self-employed (other than in the HPSS), volunteers, the intelligence services, the army or the police.

INTERNAL DISCLOSURES

A disclosure to the employer will be protected if the whistleblower has an honest and reasonable suspicion that the malpractice has occurred, is occurring or is likely to occur. For the purposes of the Order, the employer of self-employed HPSS professionals is deemed to be the Health and Social Services Boards. Where a third party is responsible for the malpractice this same test applies to disclosures made to it.

LEGAL ADVICE

To ensure that people concerned about malpractice can get independent and confidential advice about how the Order works, disclosures to lawyers are protected.

HPSS AND QUANGO'S

To promote accountability in public life, the same protection as for internal disclosures applies where someone in the HPSS or a public body blows the whistle direct to the sponsoring Department. There is no requirement that such concerns should be raised internally first.

REGULATORY DISCLOSURES

Special provision is made for disclosures to persons and bodies which are prescribed under the Order. Such disclosures will be protected where the whistleblower meets the tests for internal disclosures and, additionally, honestly and reasonably believes that the information and any allegation contained in it are substantially true.

[redacted] [redacted]

WIDER DISCLOSURES

Wider disclosures (eg to the police, the media, MPs and non-prescribed regulators) are protected if, in addition to the tests for regulatory disclosures, they are not made for personal gain and if they satisfy a further two provisions. That is the concern must have been raised with the employer or a prescribed regulator, unless, there was reasonable belief of victimisation, there was no prescribed regulator and there was reasonable belief that there would be a cover up, and the matter was exceptionally serious. If one of these preconditions is met and the tribunal is satisfied that the disclosure was reasonable, the whistleblower will be protected.

FULL PROTECTION

Where a worker or employee is victimised for blowing the whistle in breach of the Order, they may bring a claim to an employment tribunal. Workers and employees who lose their jobs in breach of the Order will be fully compensated for their losses. Awards for victimisation short of dismissal will also be uncapped and based on what is just and equitable in all the circumstances.

GAGGING CLAUSES

Such clauses in employment contracts and severance agreements are void insofar as they conflict with the Order's protection.

[redacted] [redacted]