
D I R E C T I O N S

NATIONAL HEALTH SERVICE

The Patient Rights (Feedback, Comments, Concerns and Complaints) (Scotland) Directions 2012

The Scottish Ministers make the following Directions in exercise of the powers conferred on them by sections 14(6), 15(4)(b) and (5) and 25(5) of the Patient Rights (Scotland) Act 2011^(a) and all other powers enabling them to do so.

PART 1

COMMENCEMENT AND INTERPRETATION

Commencement

1. These Directions come into force on 1st April 2012.

Interpretation

- 2.—(1) In these Directions—

“the Act” means the Patient Rights (Scotland) Act 2011;

“the 1978 Act” means the National Health Service (Scotland) Act 1978^(b);

“the Regulations” means the Patient Rights (Complaints Procedure and Consequential Provisions) (Scotland) Regulations 2012^(c);

“ADR provider” means the independent and impartial third party appointed by virtue of direction 17 of these Directions to conduct alternative dispute resolution;

“alternative dispute resolution” means mediation or conciliation;

“area professional committee” means an—

- (a) area medical committee;
- (b) area dental committee;
- (c) area nursing and midwifery committee;
- (d) area pharmaceutical committee; or
- (e) area optical committee,

all within the meaning of section 9 of the 1978 Act;

“arrangements” means, unless the context otherwise requires, arrangements that are required by virtue of section 15 of the Act;

“feedback and complaints officer” means the person appointed under regulation 3(1) of the Regulations;

^(a) 2011 asp 5.

^(b) 1978 c.29.

^(c) S.S.I. 2012/36.

“feedback and complaints manager” means the person appointed under regulation 3(3) of the Regulations;

“Healthcare Improvement Scotland” means the body established under section 10A of the 1978 Act;

“the PASS” means the patient advice and support service secured by the Agency under section 10ZA of the 1978 Act;

“primary care provider” means a person or body who-

- (a) provides primary medical services in accordance with the 1978 Act;
- (b) provides general dental services in accordance with arrangements made under section 25 of the 1978 Act;
- (c) provides personal dental services in accordance with a pilot scheme;
- (d) provides general ophthalmic services in accordance with arrangements made under section 26 of the 1978 Act;
- (e) provides pharmaceutical services in accordance with arrangements made under section 27 of the 1978 Act, or additional pharmaceutical services in accordance with directions made under section 27A of the 1978 Act;

“service provider” means any person who provides health services for the purposes of the health service under a contract, agreement or arrangements made under or by virtue of the 1978 Act;

“SPSO” means the Scottish Public Services Ombudsman;

“staff” means any person employed by a relevant NHS body (or by a service provider as the case may be), or otherwise engaged to provide services to such a body (whether under a contract, agreement or other arrangement);

“writing” includes any communication sent by electronic means if it is received in a form which is legible and capable of being used for subsequent reference.

(2) Unless the context otherwise requires, other words and phrases used in these Directions have the same meaning as they do in the Act.

PART 2

GENERAL

Arrangements in writing

3. Each relevant NHS body must make information available in writing to any person who requests such information, as to the arrangements for handling and responding to feedback or comments given, or concerns or complaints raised.

Handling feedback, comments, concerns, complaints

4. Each relevant NHS body must take reasonable steps to ensure that any person who gives feedback or comments, or raises a concern or complaint under the arrangements is treated in a courteous and sympathetic manner by any person handling the feedback, comments, concern or complaint.

Staff training

5. Each relevant NHS body must ensure that:

- (a) all frontline staff, who could potentially be the first point of contact for a patient, are aware of the arrangements and are able to signpost patients appropriately pursuant to sub-paragraph (b)(ii) below;

- (b) all staff who handle feedback, comments, concerns and complaints under the arrangements:
 - (i) receive relevant training and guidance in order to do so;
 - (ii) are aware of the advice and support available to persons who give feedback or comments, or raise concerns or complaints, specifically the feedback and complaints officer and the PASS.

PART 3

DEALING WITH COMPLAINTS

Requirement to deal with complaints

6.—(1) Pursuant to regulation 6(1)(a) of the Regulations, each relevant NHS body must ensure that a written record of the complaint specifies (where known and where relevant and appropriate):

- (a) the patient's name and Community Health Index number;
- (b) the name of the complainant;
- (c) in the event that the complainant is making the complaint on behalf of another person, whether that other person has given consent for the complaint to be made on his or her behalf;
- (d) the date when the complaint was received;
- (e) the date on which the matter which is the subject of the complaint occurred; and
- (f) the subject matter of the complaint.

(2) Pursuant to regulation 6(1)(b) of the Regulations, each relevant NHS body must ensure that a written acknowledgement of the complaint includes the following information:

- (a) contact details of the feedback and complaints officer or the person authorised to act on his or her behalf;
- (b) details of the advice and support available to the complainant including the PASS;
- (c) information on the role of and contact details for the SPSO;
- (d) a statement confirming that the complainant shall be:
 - (i) sent a report of the investigation into the complaint within 20 working days of the date on which the complaint was made or as soon as reasonably practicable; and
 - (ii) notified in the event that it is not possible to send such a report within 20 working days, and provided with an explanation as to why there is a delay and, where possible, provided with a revised timetable.

Investigation and result of a complaint

7.—(1) A complaint may be investigated in any manner which is appropriate for resolving the complaint efficiently and effectively, and may include in particular offering the complainant:

- (a) a meeting with senior staff;
- (b) the use of alternative dispute resolution services.

(2) In so far as it is appropriate and reasonably practicable, each relevant NHS body must ensure that during the investigation of the complaint:

- (a) the complainant; and
- (b) any person who was involved in the matter which is the subject of the complaint,

are informed as to the progress of the investigation, and are given the opportunity to comment on the investigation.

(3) Each relevant NHS body must keep a record of all complaints in accordance with the arrangements, but such records, including copies of all correspondence relating to complaints, must be kept separately from patients' health records.

Report of the investigation

8.—(1) The report of the investigation referred to in regulation 6(1)(c) of the Regulations must:

- (a) include the conclusions of the investigation and information as to any remedial action taken or proposed as a consequence of the complaint; and
- (b) be signed by an appropriately senior person.

(2) Each relevant NHS body must ensure in so far as it is reasonably practicable and appropriate to do so, that any person who was involved in the matter which is the subject of the complaint is given feedback following resolution of the complaint.

Form of communication

9.—(1) When investigating a complaint pursuant to the arrangements, each relevant NHS body must ascertain the complainant's preferred method of communication and where reasonably practicable communicate with the complainant by this means.

(2) Any communication which is required by these Directions to be made to a complainant may be sent to the complainant electronically where the complainant:

- (a) has consented to this in writing; and
- (b) has not withdrawn such consent in writing.

PART 4

MONITORING AND PUBLICITY

Monitoring

10.—(1) For the purposes of monitoring the arrangements, each relevant NHS body must:

- (a) prepare a report in accordance with paragraph (2) below every 3 months;
- (b) ensure that each of its service providers prepares a report in accordance with paragraph (2) below every 3 months and submits that report to it as soon as reasonably practicable after the end of the 3 month period to which it relates;
- (c) prepare a report at the end of each year summarising action taken as a result of feedback, comments and concerns received in that year;
- (d) ensure that each of its service providers prepares a report at the end of each year summarising action taken as a result of feedback, comments and concerns received in that year and submits that report to it as soon as reasonably practicable after the end of the year to which the report relates.

(2) The report referred to in paragraph (1)(a) and (b) must, in relation to the 3 month period to which it relates:

- (a) specify the number of complaints received other than complaints specified in regulation 7(2) of the regulations;
- (b) specify the number of complaints where alternative dispute resolution services were used;
- (c) specify the number of complaints where the report of the investigation specified in regulation 6(1)(c) of the Regulations was sent to the complainant within 20 working days of the date on which the complaint was received; and
- (d) summarise:
 - (i) the key themes of the complaints received;

- (ii) what action has been taken or will be taken to improve services as a consequence of the complaints.

(3) In relation to the reports referred to in paragraph (1)(a) and (b) above the relevant NHS body must:

- (a) review the reports with a view to identifying any area of concern and whether any further action is required in order to improve the exercise of its functions or the exercise of its service providers functions as the case may be;
- (b) ensure that the feedback and complaints manager or suitably senior person acting on his or her behalf is involved in these reviews at least twice a year; and
- (c) ensure that where appropriate the review considers any recommendations made by SPSO in relation to the investigation of NHS complaints.

Annual reports

11.—(1) At the end of each year, each relevant NHS body must publish—

- (a) a summary of the reports which have been prepared that year by virtue of direction 10(1)(a) and (b) of these Directions; and
- (b) details summarising the action which has been taken or is to be taken to improve services as a result of feedback, comments or concerns received and handled in relation to health care in that year and reported by virtue of direction 10(1)(c) and (d) of these Directions.

(2) In paragraph (1), ‘year’ means a period of 12 months ending with 31st March.

(3) Each relevant NHS body must ensure that—

- (a) the details referred to in direction 10(1)(a) and (b) are submitted to the Agency within 3 months of the year end to which the details relate in an appropriate format to allow collation and publication of national complaints statistics; and
- (b) that the details referred to in paragraph (1)(a) and (b) above are sent to:
 - (i) the Scottish Ministers;
 - (ii) the relevant PASS;
 - (iii) Healthcare Improvement Scotland;
 - (iv) SPSO; and
 - (v) where appropriate, the Scottish Prison Service,

as soon as is reasonably practicable after the end of the year to which the details relate.

Publicity

12.—(1) Each relevant NHS body must take reasonable steps to ensure that the persons listed in paragraph (2) below are informed of:

- (a) the arrangements;
- (b) the name, postal and email address of the relevant feedback and complaints officer;
- (c) the details of the advice and support which is available to patients, including the PASS.

(2) The persons referred to in paragraph (1) above are:

- (a) patients and carers;
- (b) staff of the relevant NHS body;
- (c) persons exercising functions of the relevant NHS body under a contract or other arrangement with it; and
- (d) where appropriate, the PASS.

Application to service providers

13. Each relevant NHS body must ensure that each of its service providers has arrangements in place pursuant to directions 3, 4, 5, 6, 7, 8, 9, 10(1)(b) and (2), and 12 (but as if references to a “relevant NHS body” were to a “service provider”).

PART 5

ALTERNATIVE DISPUTE RESOLUTION

14. Each Health Board must provide alternative dispute resolution services in accordance with this Part if:

- (a) a request is made, orally or in writing, to the Health Board by:
 - (i) a primary care provider; or
 - (ii) a complainant; and
- (b) any of the circumstances set out in direction 15 apply.

15.—(1) The circumstances referred to in direction 14 are that:

- (a) a person wishes to raise a complaint about a primary care provider;
- (b) a complaint about a primary care provider is in the course of investigation;
- (c) the investigation of a complaint about a primary care provider has been completed and the complainant is dissatisfied with the result of that investigation,

and in each case the complainant, where the complaint is made on behalf of another person, that other person and the person subject to the complaint have agreed that alternative dispute resolution services should be provided.

(2) In this direction, the reference to a “complaint” means a complaint, other than a complaint specified in regulation 7(2) of the Regulations.

Requirement to provide alternative dispute resolution services

16. Where it is agreed pursuant to direction 7(1) of these Directions that alternative dispute resolution is appropriate, or the Health Board is required to provide such services in accordance with direction 14, the feedback and complaints officer of the relevant NHS body must, as soon as practicable, refer the matter to the ADR provider.

Appointment of ADR provider and assistants

17.—(1) ADR providers are to be appointed by each relevant NHS body for a period to be agreed between the relevant NHS body and the ADR provider of not more than one year (without prejudice to any re-appointment), to conduct the process of alternative dispute resolution upon referral of the matter in accordance with direction 16.

(2) Without prejudice to paragraph (3), each relevant NHS body must ensure that adequate numbers of ADR providers are appointed in relation to each relevant NHS body.

(3) A pool of ADR providers may be appointed and organised jointly between relevant NHS Bodies.

(4) Each relevant NHS body must, after consultation with any relevant area professional committee or such bodies as appear to it to be appropriate, establish and maintain a list of persons from among whom an ADR provider may nominate a person (“a professional adviser”) to assist them in the process of alternative dispute resolution.

(5) A professional adviser nominated under paragraph (4) must be a member of the same profession as the person who performed the service with which the subject matter of the complaint is most closely connected.

Alternative dispute resolution procedure

18. The ADR provider may, in consultation with the parties involved, adopt such procedures as he or she considers appropriate for conducting the alternative dispute resolution process.

Conclusion and Report of alternative dispute resolution

19.—(1) In so far as it is appropriate, on conclusion of the alternative dispute resolution process, the ADR provider must notify the results of the process in writing to:

- (a) the complainant;
- (b) any person who was involved in the matter which is the subject of the complaint, and
- (c) the relevant NHS body.

(2) Each relevant NHS body must require the ADR provider to submit on an annual basis an anonymised report, which will provide a statement of the result of ADR services provided by virtue of direction 16.

PART 6

REVOCATIONS

20. The Directions to Health Boards, Special Health Boards and the Agency on Complaints Procedures, made on 31 March 2005 and brought into force on 1st April 2005 are revoked.



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