THE HEALTH AND SOCIAL CARE (REFORM) ACT
(NORTHERN IRELAND) 2009

DIRECTIONS TO THE HEALTH AND SOCIAL CARE BOARD ON
PROCEDURES FOR DEALING WITH COMPLAINTS ABOUT FAMILY
HEALTH SERVICES PRACTITIONERS AND PILOT SCHEME PROVIDERS

The Department of Health, Social Services and Public Safety, in exercise of the powers conferred
by section 8(1)(b) of the Health and Social Care (Reform) Act (Northern Ireland) 2009 (a) hereby
directs as follows:

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PART I
CITATION, COMMENCEMENT, INTERPRETATION AND APPLICATION

Citation and commencement

1. These Directions, which may be cited as the Directions to the Health and Social Care Board on procedures for dealing with complaints about family health services practitioners and pilot scheme providers, shall come into operation on 1st April 2009.

Interpretation

2.—(1) In these Directions—

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

"the 1997 Order" means the Health Services (Primary Care) (Northern Ireland) Order 1997 (b);

"the 2009 Act" means the Health and Social Care (Reform) Act (Northern Ireland) 2009;

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

"complaint", except in paragraph 11 (6), means a complaint made under a practice-based complaints procedure or under a pilot scheme complaints procedure, and "complainant" shall be construed accordingly;

(a) S.I. 1972/1265 (N.I.14)
(b) S.I. 1997/1177 (N.I.7)
“complaints manager” means the person appointed under paragraph 8;

“disciplinary proceedings” means—

(a) any procedure for disciplining employees adopted by a practitioner;
(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; and
(d) any inquiry under the Inquiries Act 2005(a);

“family health services” means primary medical services, general dental services, general ophthalmic services or pharmaceutical services provided in accordance with arrangements made under the 1972 Order, and “family health services practitioner” and “family health services practice” shall be construed accordingly;

“former Directions” means the Directions specified in paragraph 26;

“HSC Board” means the Regional Health and Social Care Board established under section 7 of the 2009 Act;

“HSC bodies” means the health and social care bodies as defined in section 1 (5) of the 2009 Act;

“honest broker” means the role whereby the complaints manager of the HSC Board acts as an intermediary in an attempt to resolve the complaint;

“NI Commissioner for Complaints” means the NI Commissioner for Complaints appointed in accordance with the Commissioner for Complaints (Northern Ireland) Order 1996(b);

“Patient and Client Council” means the Patient and Client Council established under section 16 of the 2009 Act;

“patient” (other than in paragraph 15) shall be construed;

(a) where the complaint is made under a pilot scheme complaints procedure, in accordance with the definition of “patient” in the pilot scheme agreement; or
(b) where the complaint is made under the practice-based complaints procedure, in accordance with the relevant terms of service, except in respect of the provision of general pharmaceutical services where “patient” means a person to whom a chemist has provided pharmaceutical services;

“personal dental services” has the meaning given in Article 3(7) of the 1997 Order;

“person subject to complaint” means the practitioner who has undertaken to provide the services which are the subject of the complaint;

“pilot scheme” has the meaning given in Article 3(1) of the 1997 Order;

(a) 2005 c.12
(b) S.I. 1996/1297 (N.1.7)
“pilot scheme agreement” means an agreement which constitutes, or is one of the agreements which together constitute, a pilot scheme;

“pilot scheme complaints procedure” means a procedure established by the pilot scheme provided for dealing with complaints made by or on behalf of those who are receiving or who have received personal dental services (other than where personal dental services are provided by a HSC trust) under the scheme;

“pilot scheme provider” means a person, other than the HSC Board, who is a party to a pilot scheme agreement, and “pilot scheme practice” shall be construed accordingly;

“practice-based complaints procedure” means a complaints procedure established in accordance with the relevant terms of service;

“practitioner” means either a family health services practitioner or a pilot scheme provider;

“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.

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

(a) the Health and Personal Social Services (General Medical Services Contracts) Regulations (Northern Ireland) 2004(a);

(b) the Pharmaceutical Services Regulations (Northern Ireland) 1997(b);

(c) the Health and Personal Social Services General Dental Services Regulations (Northern Ireland) 1993(c);

(d) the General Ophthalmic Services Regulations (Northern Ireland) 2007(d).

Application of Directions

3. These Directions apply to any complaint, made on or after the 1st April 2009, in respect of the provision of family health services, or personal dental services (other than where personal dental services are provided by a HSC trust (e)).

(a) S.R. 2004 No. 140; as amended by S.R. 2004 Nos. 141 and 477, S.R. 2005 Nos. 230 and 368


(d) S.R. 2007 No.436; as amended by S.R. 2009 No. 16

(e) The Health and Social Care Complaints Procedures Directions (Northern Ireland) 2009, apply in the case of complaints about personal dental services provided by a HSC trust.
PART II
GENERAL

Requirement to make arrangements

4.—(1) The HSC Board shall make arrangements in accordance with the provisions of these Directions for the handling and consideration of family health services complaints and pilot scheme complaints.

(2) The arrangements must be such as to ensure—

(a) that the complaints procedure is accessible;

(b) that complaints are dealt with efficiently;

(c) that complaints are properly investigated;

(d) that complainants are treated with respect and courtesy;

(e) that complainants receive, so far as reasonably practicable—

(i) assistance to enable them to understand the procedure in relation to complaints; or

(ii) advice on where they might obtain such assistance.

(f) that complainants are, as far as possible, involved in the decisions about how their complaint is handled and considered;

(g) that complainants receive a timely and appropriate response;

(h) that complainants are told of the outcome of their complaint; and

(i) that action is taken in light of the outcome of a complaint.

(3) 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.

(4) The arrangements shall ensure that the HSC Board will only become involved in the practice-based procedure or a pilot scheme complaints procedure where the practitioner, or the complainant, requests the HSC Board to assist in the handling of the complaint.

(5) The HSC Board shall make arrangements in accordance with Part V (Monitoring and Publicity) of these Directions for monitoring the effectiveness of and for publishing the arrangements for dealing with family health services complaints and pilot scheme complaints.

Support and advice

5.—(1) The HSC Board will provide, where appropriate, all necessary support and advice to family health services practices and pilot scheme practices in the resolution of complaints.

(2) Where requested by the family health services practice, the pilot scheme practice or the complainant (under paragraph 12(5)(b)) the HSC Board may act as “honest broker” in the resolution of the complaint.

General duty to co-operate

6.—(1) The arrangements under these Directions 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—

(a) HSC bodies;

(b) family health services; and

(c) the NI Commissioner for Complaints.
(2) The general duty to co-operate required by sub-paragraph (1) includes in particular a duty to -

(a) answer questions reasonably put to the body carrying out the investigation;
(b) provide any information relating to the complaint which is reasonably requested by the body carrying out the investigation; and
(c) attend any meeting reasonably required to consider the complaint.

Responsibility for arrangements

7.—(1) The HSC Board must appoint a senior person within the organisation to take responsibility for ensuring—
(a) compliance with the arrangements made under these Directions; and
(b) that action is taken in the light of the outcome of any investigation.

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

Complaints Manager

8.—(1) The HSC Board shall appoint an appropriate number of complaints managers—
(a) to perform the functions of the complaints manager under the arrangements;
(b) to perform such other functions relating to the investigation of complaints as the HSC Board may direct; and
(c) generally to co-ordinate and manage the operation of the procedures for dealing with complaints under the arrangements.

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

No investigation of complaint

9.—(1) The following complaints are excluded from the scope of the arrangements made under these Directions and shall not be investigated, or shall cease to be investigated—
(a) a complaint made by a practitioner which relates to the exercise of functions by another practitioner;
(b) a complaint made by an employee of a practitioner about any matter relating to his contract of employment;
(c) a complaint arising out of the practitioner’s alleged failure to comply with a data subject request under the Data Protection Act 1998(a) or a request for information under the Freedom of Information Act 2000 (b);
(d) a complaint about which the complainant has stated that he intends to take legal proceedings;
(e) a complaint about which a practitioner is taking or is proposing to take disciplinary proceedings in relation to the substance of the complaint against a person subject to complaint;
(f) a complaint which has lead to the protection of vulnerable adults policy or procedures having been activated;

(a) 1998 c.29
(b) 2000 c.36
(g) a complaint which has raised an independent inquiry and/or a criminal investigation;
(h) a complaint which has resulted in a referral to a professional regulatory body;
(i) a complaint the subject matter of which has previously been fully investigated under —
   (i) these Directions; or
   (ii) former Directions.
(j) a complaint which is being or has been investigated by the NI Commissioner for Complaints.

(2) Where the investigation of a matter which is the subject of a complaint is not commenced, or has ceased, in accordance with sub-paragraph (1)(d), investigation shall be commenced, or resumed, where a complainant states in writing, that he no longer intends to pursue a remedy by way of legal proceedings.

(3) Where the investigation of a matter which is the subject of a complaint is not commenced, or has ceased, in accordance with sub-paragraph (1)(e) investigation shall be commenced, or resumed in relation to any matter which has not been dealt with by disciplinary proceedings.

(4) Where the investigation of a matter which is the subject of a complaint is not commenced, or has ceased, in accordance with heads (f), (g) or (h) of sub-paragraph (1), investigation shall be commenced, or resumed in relation to any matter which has not been dealt with under the proceedings referred to in those heads.

(5) The HSC Board shall require the relevant practitioner to notify the HSC Board, 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.

(6) The notification to be given under sub-paragraph (5) shall be in writing and shall state the reason for any decision referred to in that sub-paragraph.

PART III
THE INITIAL COMPLAINT

Requirement to deal with the complaint

10. Subject to paragraph 9, a complaint shall be dealt with in accordance with the arrangements if it is made —
   (a) by a person specified in paragraph 11;
   (b) in the manner specified in paragraph 12; and
   (c) within the period specified in paragraph 13.

Person who may make a complaint

11. — (1) A complaint may be made by—
   (a) a patient or former patient; or
   (b) a person (in these Directions referred to as a representative) acting on behalf of a patient in any case where the patient—
      (i) has died;
      (ii) is a child;
(iii) is unable by reason of physical or mental incapacity to make the complaint himself;

or

(iv) has requested the person to act on his behalf.

(2) In the case of a patient who has died or who is incapable, the representative must be a relative or other person, who, in the opinion of the complaints manager, had or has a sufficient interest in his welfare and is a suitable person to act as representative.

(3) If in any case the complaints manager is of the opinion that a representative does or did not have a sufficient interest in the person’s welfare or is unsuitable to act as representative, he must notify that person in writing, stating his reasons. The complaints manager may then either refuse to deal with the complaint or nominate another person to act with respect to the complaint.

(4) In the case of a child, the representative must be either a parent, or in the absence of both parents, guardian or other adult person who has care of the child, or where the child is in the care of an authority or a voluntary organisation, the representative must be a person authorised by the authority or the voluntary organisation.

(5) In these Directions any reference to a complainant includes a reference to his representative.

(6) A complaint may be made by a practitioner about the behaviour of a patient.

Referring a complaint

12.—(1) Where a person wishes to refer a complaint under these Directions, he may make the complaint to the complaints manager or any other member of the staff of the HSC Board.

(2) Any person other than the complaints manager to whom a complaint is made, whether orally, in writing or electronically, shall refer the complaint to the complaints manager.

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

(a) where it is made orally, the complaints manager or other member of staff of the HSC Board shall make a written record of the complaint which includes the name of the complainant, the subject matter of the complaint and the date on which it was made, and provide a copy of the written record to the complainant;

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

(4) For the purposes of these Directions where the complaint is referred in writing it is treated as being made on the date on which it is received by the complaints manager or as the case may be, other member of the staff of the HSC Board.

(5) Where a complaint is made under sub-paragraph (3) the complainant shall be asked to confirm under which of the following options they would prefer their complaint to be dealt with, either—

(a) the HSC Board complaints manager forwards the complaint to the relevant family health services practice or pilot scheme practice for investigation and resolution; or

(b) the HSC Board complaints manager acts as “honest broker” in the resolution of the complaint.

Time limits

13.—(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 of 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 manager 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).

Acknowledgement and record of complaint

14.—(1) The complaints manager shall send to the complainant a written acknowledgement of the complaint within 3 working days of the date on which the complaint was made.

(2) Where a complaint was made orally, the acknowledgment shall be accompanied by the written record mentioned in paragraph 12(3)(a) with an invitation to the complainant to sign and return it.

(3) The acknowledgement should also refer to the option chosen by the complainant under paragraph 12(5), and provide further details of the role of the HSC Board in respect of that option and the handling arrangements.

(4) The complaints manager shall send a copy of the complaint and its acknowledgement to the person subject to complaint, unless he has reasonable grounds to believe that to do so would be detrimental to the subject person’s health and wellbeing. The person subject to complaint should also be advised of the option chosen by the complainant and the handling arrangements. Where the HSC Board complaints manager has been asked to act as “honest broker” the family health services practice or pilot scheme practice should be asked for their agreement.

(5) The acknowledgement sent to the complainant under sub-paragraph (1) must include information about the right to seek assistance from the Patient and Client Council.

Handling of complaints under paragraph 11(6)

15.—(1) Where a practitioner wishes to make a complaint under paragraph 11(6) he shall write to the complaints manager giving details of the complaint, and shall send a copy of his letter to the patient whose behaviour is the matter of the complaint, unless he has reasonable grounds to believe that to do so would be detrimental to the subject patient’s health and wellbeing.

(2) On receipt of the letter referred to in sub-paragraph (1), the complaints manager shall investigate the complaint and shall send a report of his investigation to—
   (a) the patient whose behaviour is the matter of the complaint, unless he has reasonable grounds to believe that to do so would be detrimental to the subject patient’s health and wellbeing;
(b) the practitioner who has made the complaint.

Handling of complaints under paragraph 12(5)(a)

16. Where a complaint is received and the complainant asks that it be dealt with under paragraph 12(5)(a), the HSC Board complaints manager shall—
   (a) forward the complaint to the relevant practitioner; and
   (b) carry out duties under paragraphs 5(1) and 18 of these Directions.

Handling of complaints under paragraph 12(5)(b)

17.—(1) Where a complaint is received and the complainant asks that it be dealt with under paragraph 12(5)(b) (HSC Board complaints manager has been asked to act as “honest broker”), the HSC Board complaints manager shall —
   (a) act as an intermediary between the complainant and the practitioner;
   (b) in any case where he thinks it appropriate to do so and with the agreement of the family health services practice or pilot scheme practice, and complainant, make arrangements for independent expert advice, conciliation or lay person assistance under Part IV of these Directions for the purposes of resolving the complaint;
   (c) take such steps as are reasonably practicable to keep the complainant informed about the progress of the family health services practice or pilot scheme practice investigation; and
   (d) carry out his duties under paragraphs 5 and 18 of these Directions.

(2) The HSC Board complaints manager must appropriately record complaints handled under sub-paragraph (1).

Response

18. The HSC Board complaints manager shall require that—
   (a) a written response is provided by the family health services practice or the pilot scheme practice as the case may be, which summarises the nature and substance of the complaint, describes the investigation and summarises its conclusions;
   (b) a copy of the written response is received by the complainant and any other person to whom the complaint was sent under paragraph 14(4);
   (c) the response is sent to the complainant within 10 working days beginning on the date on which the complaint was made or, where that is not possible, the complainant must be notified of the delay and the full response issued as soon as reasonably practicable; and
   (d) the response notifies the complainant of his right to refer the complaint to the NI Commissioner for Complaints should he remain dissatisfied with the outcome of the HSC complaints procedure.

PART IV
INDEPENDENT EXPERTS, CONCILIATION AND LAY PERSON ASSISTANCE

Requirement to provide independent experts, conciliation and lay person assistance

19. The HSC Board shall make arrangements in accordance with the following provisions of this Part to provide—
   (a) independent experts;
   (b) conciliation services; or
   (c) lay person assistance;
in any of the circumstances referred to in paragraph 17(1)(b), to the complainant, and/or person subject to complaint.

Appointment of independent experts, conciliators and lay persons

20.—(1) The HSC Board will communicate with, ascertain the availability of and formally appoint independent experts, conciliators and lay persons, where appropriate.

(2) Where an independent expert, conciliator or lay person's assistance is provided their report or findings should be copied the relevant family health services practice or pilot scheme practice, and a summary made available to the complainant and the HSC Board complaints manager by that practice.

PART V
MONITORING AND PUBLICITY

Monitoring

21.—(1) For the purposes of—
(a) ensuring effective complaints handling arrangements are in place;
(b) considering the nature, volume and outcome of complaints;
(c) identifying any patterns or trends of concern or clusters of complaints against individual practices; and
(d) collating and sharing learning and intelligence;
(e) the HSC Board must monitor how it, and practitioners, deal with, respond to, and the outcome of, complaints.

(2) For the purposes of monitoring complaints the HSC Board shall require the practitioner to—
(a) inform the complainant of, and obtain the complainants consent to, the complaint being shared with the HSC Board, where the complainant has not done so;
(b) where the complainant consents, forward a copy of his written complaint to the HSC Board within 3 working days of receipt of the complainant’s consent to do so; and
(c) provide the HSC Board with quarterly complaints statistics outlining the number of complaints received.

(3) The HSC Board complaints manager must provide the Department of Health, Social Services and Public Safety with quarterly complaints statistics in relation to all family health services complaints and pilot scheme complaints including, where appropriate, out-of-hours statistics.

(4) For the purposes of ensuring the efficient use of resources the HSC Board will monitor the effectiveness and usage of independent experts, conciliation and lay persons within family health services and pilot scheme practices.

Annual Reports

22. The HSC Board’s annual report must include the number of family health services complaints and pilot scheme complaints received including the number in which it acted as “honest broker”.
Publicity

23. The HSC Board shall take such steps as are necessary to ensure that—

(a) patients of any practitioner, and the Patient and Client Council, are fully informed of the arrangements for dealing with complaints about any such practitioner; and

(b) patients and any such practitioner are informed of the name of the complaints manager(s) and the address at which he can be contacted.

Training

24. The HSC Board must ensure that its staff are informed about, and appropriately trained in, the operation of the complaints arrangements.

PART VI
TRANSITIONAL PROVISION AND REVOCATIONS

Transitional provision

25. Where, before 1st April 2009, a complaint has been made in accordance with any former Directions, it must be investigated, or in an appropriate case continue to be investigated, in accordance with the former Directions as if these Directions had not come into effect.

Revocation

26. The Directions to Health and Social Services Boards on procedures for dealing with complaints about family health services practitioners and providers of personal medical services or personal dental services dated 21 December 1998 are revoked.

Sealed with the Official Seal of the Department of Health Social Services and Public Safety on 1st April 2009

[Signature]

A senior officer of the Department of Health, Social Services and Public Safety