
STATUTORY INSTRUMENTS

2012 No. 3094

The NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012

PART 5

COMPLAINTS ABOUT PUBLIC HEALTH FUNCTIONS OF LOCAL AUTHORITIES

Interpretation

19. In this Part—

- “complaints manager” means the person designated in accordance with regulation 22(1)(b);
- “responsible body” means a local authority(1) or a service provider;
- “responsible person” means the person designated in accordance with regulation 22(1)(a);
- “service provider” has the meaning given by regulation 20(e);
- “working day” means any day except a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in England under section 1 of the Banking and Financial Dealings Act 1971(2).

Complaints about exercise of public health functions by local authorities

20.—(1) Subject to regulation 25, where a complaint of a description to which paragraph (2) applies is made under these Regulations, it shall be handled and considered in accordance with these Regulations.

(2) This paragraph applies to complaints about—

- (a) the exercise by a local authority of any of its public health functions(3);
- (b) the exercise by a local authority of its functions by virtue of section 6C(1) or (3) of the 2006 Act (regulations as to the exercise by local authorities of the public health functions of the Secretary of State)(4);
- (c) anything done by a local authority in pursuance of arrangements made under section 7A of the 2006 Act(5) (exercise of Secretary of State’s public health functions);
- (d) the exercise by a local authority of any of its other functions—

(1) See section 2B(5) of the 2006 Act for the definition of “local authority”, which is also applied to section 73C by virtue of section 73C(6) of the 2006 Act.

(2) 1971 c.80.

(3) See section 1H(5)(b) of the 2006 Act for the meaning of references to the public health functions of local authorities.

(4) Section 6C of the 2006 Act is inserted by section 18(1) of the 2012 Act. See section 1H(5)(a) of the 2006 Act for the meaning of references to the public health functions of the Secretary of State.

(5) Section 7A of the 2006 Act is inserted by section 22 of the 2012 Act.

- (i) which relate to public health, and
- (ii) for which its director of public health has responsibility⁽⁶⁾;
- (e) the provision of services by another person, in this Part referred to as a service provider, in pursuance of arrangements made by a local authority in the exercise of any function mentioned in sub-paragraphs (a) to (d).

Arrangements for the handling and consideration of complaints

21.—(1) Each responsible body must make arrangements (“arrangements for dealing with complaints”) in accordance with these Regulations for the handling and consideration of complaints.

- (2) The arrangements for dealing with complaints must be such as to ensure that—
 - (a) complaints are dealt with efficiently;
 - (b) complaints are properly investigated;
 - (c) complainants are treated with respect and courtesy;
 - (d) complainants receive, so far as is reasonably practical—
 - (i) assistance to enable them to understand the procedure in relation to complaints, or
 - (ii) advice on where they may obtain such assistance;
 - (e) complainants receive a timely and appropriate response;
 - (f) complainants are told the outcome of the investigation of their complaint; and
 - (g) action is taken if necessary in the light of the outcome of a complaint.

Responsibility for complaints arrangements

22.—(1) Each responsible body must designate—

- (a) a person, in this Part referred to as a responsible person, to be responsible for ensuring compliance with the arrangements made under these Regulations, and in particular ensuring that action is taken if necessary in the light of the outcome of a complaint; and
- (b) a person, in this Part referred to as a complaints manager, to be responsible for managing the procedures for handling and considering complaints in accordance with the arrangements made under these Regulations.

(2) The functions of the responsible person may be performed by any person authorised by the responsible body to act on behalf of the responsible person.

(3) The functions of the complaints manager may be performed by any person authorised by the responsible body to act on behalf of the complaints manager.

(4) The responsible person is to be—

- (a) in the case of a responsible body which is a local authority, the person who acts as the chief executive or other person designated as the authority’s head of paid service pursuant to section 4 of the Local Government and Housing Act 1989⁽⁷⁾;
- (b) in the case of a responsible body which is a service provider, the person who is the chief executive of the provider or, if none—
 - (i) the person who is the sole proprietor of the service provider;
 - (ii) where the service provider is a partnership, a partner; or

⁽⁶⁾ See section 73A of the 2006 Act and regulation 14 of these Regulations as to the responsibilities of directors of public health.
⁽⁷⁾ 1989 c.42.

- (iii) in any other case, a director of the service provider or a person who is responsible for managing the service provider.
- (5) The complaints manager may be—
 - (a) a person who is not an employee of the responsible body;
 - (b) the same person as the responsible person;
 - (c) a complaints manager designated by another responsible body under paragraph (1)(b).

Persons who may make complaints

- 23.**—(1) A complaint may be made by—
- (a) a person who receives or has received services from a responsible body; or
 - (b) a person who is affected, or likely to be affected, by the action, omission or decision of the responsible body which is the subject of the complaint.
- (2) A complaint may be made by a person (in this regulation referred to as a representative) acting on behalf of a person mentioned in paragraph (1) who—
- (a) has died;
 - (b) is a child;
 - (c) is unable to make the complaint themselves because of—
 - (i) physical incapacity; or
 - (ii) lack of capacity within the meaning of the Mental Capacity Act 2005(8); or
 - (d) has requested the representative to act on their behalf.
- (3) Where a representative makes a complaint on behalf of a child, the responsible body to which the complaint is made—
- (a) must not consider the complaint unless it is satisfied that there are reasonable grounds for the complaint being made by a representative instead of the child; and
 - (b) if it is not so satisfied, must notify the representative in writing, and state the reason for its decision.
- (4) This paragraph applies where—
- (a) a representative makes a complaint on behalf of—
 - (i) a child; or
 - (ii) a person who lacks capacity within the meaning of the Mental Capacity Act 2005; and
 - (b) the responsible body to which the complaint is made is satisfied that the representative is not conducting the complaint in the best interests of the person on whose behalf the complaint is made.
- (5) Where paragraph (4) applies—
- (a) the complaint must not be considered or further considered under these Regulations; and
 - (b) the responsible body must notify the representative in writing, and state the reason for its decision.
- (6) In this Part, any reference to a complainant includes a reference to a representative.

Duty to handle complaints

24.—(1) Subject to the following provisions of this regulation, where a responsible body receives a complaint made in accordance with these Regulations, it must handle the complaint in accordance with these Regulations.

(2) The duty in paragraph (1) applies—

- (a) in the case of a local authority, to any complaint made to the authority about—
 - (i) the exercise of any its functions as specified in regulation 20(2)(a) to (d); or
 - (ii) the provision of services by a service provider, in pursuance of arrangements made by the authority in the exercise of any of those functions; and
- (b) in the case of a service provider, to any complaint made to the provider about the provision of services by it under arrangements made by a local authority in the exercise of any of the functions specified in regulation 20(2)(a) to (d).

(3) In the case of a complaint which is received by the local authority which is about a service provided by a service provider in pursuance of arrangements made by that authority—

- (a) the authority must ask the complainant whether the complainant consents to details of the complaint being sent to the service provider; and
- (b) if the complainant so consents, the authority must as soon as reasonably practicable send details of the complaint to the service provider.

(4) Where details of the complaint are sent to the service provider in accordance with paragraph (2), the local authority may also consider whether it would be more appropriate for the complaint to be dealt with by the service provider.

(5) If the local authority considers that it is more appropriate for the complaint to be dealt with by the service provider, the authority must ask the complainant whether the complainant consents to the complaint being dealt with by the service provider and if the complainant consents—

- (a) the local authority must so notify the complainant and the service provider; and
- (b) the service provider must handle the complaint in accordance with these Regulations and the complainant shall be deemed to have made the complaint to the service provider under these Regulations.

Complaints not required to be dealt with

25.—(1) The following complaints are not required to be dealt with in accordance with these Regulations—

- (a) a complaint by a responsible body;
- (b) a complaint by an employee of a responsible body about any matter relating to that employment;
- (c) a complaint which—
 - (i) is made orally, and
 - (ii) is resolved to the complainant's satisfaction not later than the next working day after the day on which the complaint was made;
- (d) a complaint the subject matter of which is the same as that of a complaint that has previously been made and resolved in accordance with sub-paragraph (c);
- (e) a complaint the subject matter of which has previously been investigated under these Regulations;

- (f) a complaint the subject matter of which is being or has been investigated by a Local Commissioner under the Local Government Act 1974⁽⁹⁾;
 - (g) a complaint arising out of the alleged failure by a responsible body to comply with a request for information under the Freedom of Information Act 2000⁽¹⁰⁾;
 - (h) a complaint which relates to any scheme established under section 7 (superannuation of persons employed in local government service etc.) or section 24 (compensation for loss of office, etc.) of the Superannuation Act 1972⁽¹¹⁾, or to the administration of those schemes.
- (2) Subject to paragraph (3), where a complaint is a complaint specified in paragraph (1), and a responsible body makes a decision to that effect, the responsible body must as soon as reasonably practicable notify the complainant in writing of its decision and the reason for its decision.
- (3) Paragraph (2) does not apply to a complaint specified in sub-paragraph (c) of paragraph (1).
- (4) Where a complaint specified in paragraph (1) is part of, or is connected with, another complaint which is not so specified, nothing in this regulation prevents that other complaint being handled in accordance with these Regulations.

Duty to co-operate

- 26.**—(1) This regulation applies where—
- (a) a local authority (“the first body”) is considering a complaint made in accordance with these Regulations; and
 - (b) it appears to the first body that the complaint contains material which, if it had been sent to another local authority (“the second body”), would be a complaint which would fall to be handled in accordance with these Regulations by the second body.
- (2) The first body and the second body must co-operate for the purpose of—
- (a) co-ordinating the handling of the complaint; and
 - (b) ensuring that the complainant receives a co-ordinated response to the complaint.
- (3) The duty to co-operate under paragraph (2) includes, in particular, a duty for each body—
- (a) to seek to agree which of the two bodies should take the lead in—
 - (i) co-ordinating the handling of the complaint; and
 - (ii) communicating with the complainant;
 - (b) to provide to the other body information relevant to the consideration of the complaint which is reasonably requested by the other body; and
 - (c) to send a representative to any meeting reasonably required in connection with the consideration of the complaint.

Time limit for making a complaint

- 27.**—(1) Except as mentioned in paragraph (2), a complaint must be made not later than twelve months after—
- (a) the date on which the matter which is the subject of the complaint occurred; or
 - (b) if later, the date on which the matter which is the subject of the complaint came to the notice of the complainant.
- (2) The time limit in paragraph (1) shall not apply if the responsible body is satisfied that—

⁽⁹⁾ 1974 c.7.
⁽¹⁰⁾ 2000 c.36.
⁽¹¹⁾ 1972 c.11.

- (a) the complainant had good reasons for not making the complaint within that time limit; and
- (b) notwithstanding the delay, it is still possible to investigate the complaint effectively and fairly.

Procedure before investigation

- 28.**—(1) A complaint may be made orally, in writing or electronically.
- (2) Where a complaint is made orally, the responsible body to which the complaint is made must make a written record of the complaint.
- (3) Except where paragraph (4) applies, the responsible body must acknowledge the complaint not later than three working days after the day on which it receives the complaint.
- (4) In the case of a complaint of a description specified in regulation 24(3)—
- (a) the local authority which receives the complaint must acknowledge the complaint not later than three working days after the day on which it receives the complaint; and
 - (b) where a service provider receives notification under regulation 24(5)(a), it must acknowledge the complaint not later than three working days after the day on which it receives the notification.
- (5) The acknowledgement may be made orally, in writing or, subject to regulation 30(1), electronically.
- (6) At the time it acknowledges the complaint, the responsible body must offer to discuss with the complainant, at a time to be agreed with the complainant—
- (a) the manner in which the complaint is to be handled; and
 - (b) the period (the “response period”) within which—
 - (i) the investigation of the complaint is likely to be completed; and
 - (ii) the response required by regulation 29(2) is likely to be sent to the complainant.
- (7) If the complainant does not accept the offer of a discussion under paragraph (6), the responsible body must—
- (a) determine the response period specified in paragraph (6)(b); and
 - (b) notify the complainant in writing of that period.

Investigation and response

- 29.**—(1) A responsible body to which a complaint is made must—
- (a) investigate the complaint in a manner appropriate to resolve it speedily and efficiently, and
 - (b) during the investigation, keep the complainant informed, as far as reasonably practicable, as to the progress of the investigation.
- (2) As soon as reasonably practicable after completing the investigation and in any event before the expiry of the relevant period, the responsible body must send the complainant in writing a response, signed by the responsible person, which includes—
- (a) a report which includes the following matters—
 - (i) an explanation of how the complaint has been considered; and
 - (ii) the conclusions reached in relation to the complaint, including any matters in respect of which the complaint specifies, or the responsible body considers, that remedial action is needed;
 - (b) confirmation as to whether the responsible body is satisfied that any action needed in consequence of the complaint has been taken or is proposed to be taken; and

- (c) details of the complainant’s right to take their complaint to a Local Commissioner under the Local Government Act 1974.
- (3) In this regulation, “relevant period” means—
 - (a) the period of 6 months commencing on the day on which the complaint was received or, where notification was given to a service provider by the local authority under regulation 24(5), the day on which notification was given, or
 - (b) such longer period as may be agreed by the complainant and the responsible body before the expiry of the period specified in sub-paragraph (a).
- (4) If the responsible body does not send the complainant a response in accordance with paragraph (2) within the relevant period, the responsible body must—
 - (a) notify the complainant in writing accordingly and explain the reason why; and
 - (b) send the complainant in writing a response in accordance with paragraph (2) as soon as reasonably practicable after the relevant period.

Form of communications

30.—(1) Any communication which is required by these Regulations to be made to a complainant may be sent to the complainant electronically where the complainant—

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

(2) Any requirement in these Regulations for a document to be signed by a person is satisfied, in the case of a document which is sent electronically in accordance with these Regulations, by the individual who is authorised to sign the document typing their name or producing their name using a computer or other electronic means.

Publicity

31. Each responsible body must make information available to the public as to—

- (a) its arrangements for dealing with complaints; and
- (b) how further information about those arrangements may be obtained.

Monitoring

32. For the purpose of monitoring the arrangements under these Regulations, each responsible body must maintain a record of the following matters—

- (a) each complaint received;
- (b) the subject matter and outcome of each complaint; and
- (c) whether a report of the outcome of the investigation was sent to the complainant within the response period specified in regulation 28(6)(b).

Annual reports

33.—(1) Each responsible body must prepare an annual report for each year which must—

- (a) specify the number of complaints which the responsible body received;
- (b) specify the number of complaints which the responsible body decided were well-founded;
- (c) specify the number of complaints which the responsible body has been informed have been referred to a Local Commissioner to investigate under the Local Government Act 1974; and

- (d) summarise—
 - (i) the subject matter of complaints that the responsible body received;
 - (ii) any matters of general importance arising out of those complaints, or the way in which the complaints were handled;
 - (iii) any matters where action has been or is to be taken to improve services as a consequence of those complaints.
- (2) In paragraph (1), “year” means a period of 12 months ending with 31st March.
- (3) Each responsible body must ensure that its annual report is available to any person on request.
- (4) A local authority shall be deemed to have complied with the requirements of this regulation where the matters specified in paragraph (1) are included in an annual report which also covers matters relating to other statutory complaints procedures⁽¹²⁾, so long as that report has otherwise been prepared and made available in compliance with this regulation.

⁽¹²⁾ See section 115(6) of the 2003 Act for the meaning of “statutory complaints procedure”.