Dear Colleague


Summary

1. I attach a copy of Directions to NHS Boards on complaints procedures which provide the legal framework for the new NHS complaints procedure.

Action

2. Board Chief Executives are asked to

- Bring these Directions to the attention of managers responsible for complaints.

- Ensure that all family health service providers are aware of these changes and especially the Secretary of the GP Sub-Committee of their Area Medical, Dental, Optical and Pharmaceutical Committees.

- Ensure mechanisms are in place for local training in the new procedure.


Yours sincerely

ANDREW MACLEOD 05 April

05 April 2005

Addresses

For action

Chief Executives NHS Boards
Chief Executive National Services Scotland
Chief Executive State Hospital Board For Scotland

For information

Scottish Public Services Ombudsman
Chief Executive NHS Quality Improvement Scotland
Chief Executive NHS Health Scotland
Chief Executive NHS Education Scotland
Chief Executive Scottish Health Council
British Medical Association (Scottish Branch)
Medical & Dental Defence Union

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NATIONAL HEALTH SERVICE (SCOTLAND) ACT 1978

DIRECTIONS TO HEALTH BOARDS, SPECIAL
HEALTH BOARDS AND THE AGENCY ON
COMPLAINTS PROCEDURES

The Scottish Ministers, in exercise of the powers conferred on them by sections 2(5), 10(7), 105(6) and (7) of the National Health Service (Scotland) Act 1978(a) and of all other powers enabling them in that behalf, hereby give the following directions:-

PART 1
COMMENCEMENT AND INTERPRETATION

Commencement
1. These Directions shall come into force on 1st April 2005.

Interpretation
2. In these Directions –

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

“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.

“arrangements” means, unless the context otherwise requires, arrangements that are required to be made by these Directions;

“complaints officer” means the person appointed under direction 5;

“complainant” means -

(a) in Part 2 of these Directions, a person who either makes a complaint about any matter connected with exercise by an NHS body of its functions or the provision of services by a primary care provider;

(b) in Part 3 of these Directions, a person who makes a complaint about any matter connected with the exercise by an NHS body of its functions; and

(a) 1978 c.29; section 2(5) was amended by the National Health Service and Community Care Act 1990 (c.19), Schedule 9, paragraph 19(1) and is to be read with section 1 of the Hospital Complaints Procedure Act 1985 (c.42); section 105(7) was amended by the Health Services Act 1980 (c.53), Schedule 6, paragraph 5 and Schedule 7, the Health and Social Services and Social Security Adjudications Act 1983 (c.41), Schedule 9, paragraph 24 and the Health Act 1999 (c.8), Schedule 4, paragraph 60. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).
(c) In Part 4 of these Directions, a person who makes a complaint about any matter connected with the provision of services by a primary care provider;

“disciplinary proceedings” means –

(a) any procedure for disciplining employees adopted by any NHS body;

(b) the investigation of matters relating to primary care services under the National Health Service (Services Committees and Tribunal) (Scotland) Regulations 1992(a);

“HBPMS contractor” means a person or body which is providing primary medical services under arrangements made with a Health Board in accordance with section 2C(2) of the Act(b), other than in accordance with a general medical services contract or section 17C arrangements, and “HBPMS contract” shall be construed accordingly;

“NHS body” means a Health Board, Special Health Board and the Agency;

“person who is subject to the complaint” means any person or persons who –

(a) are identified in the complaint as the subject of the complaint;

(b) where the complainant 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 that are the subject of the complaint; or

(c) in the case of a complaint about the provision of services by a primary care provider, the primary care provider;

“practice based complaints procedure” means a complaints procedure for dealing with complaints about the provision of services by a primary care provider established –

(a) in accordance with Part 6 of Schedule 5 to the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004(c);

(b) in accordance with Part 6 of Schedule 1 to the National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2004(d);

(c) by a HBPMS contractor in accordance with a terms of their contract for the provision of primary medical services giving effect to direction 3(6) of these Directions;

(d) in accordance with paragraph 31A to C of Schedule 1 to the National Health Service (General Dental Services) (Scotland) Regulations 1996(e);

(e) by a person or persons providing personal dental services in accordance with a pilot scheme;

(f) in accordance with paragraph 8A to C of Schedule 1 to the National Health Service (General Ophthalmic Services) (Scotland) Regulations 1986(f);

(g) in accordance with paragraph 9A to 9B of Schedule 1 to the National Health Service (Pharmaceutical Services) (Scotland) Regulations 1995(g);

“primary care provider” means –

(a) a person who provides primary medical services in accordance with a general medical services contract;

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(a) S.I. 1992/ 434.
(b) Section 2C was inserted by the Primary Medical Services (Scotland) Act 2004, section 1(2).
(c) S.S.I. 2004/115.
(d) S.S.I. 2004/116.
(e) S.I. 1996/177; relevant amending instruments are S.I. 1996/841 and 2060 and S.S.I. 1999/51.
(g) S.I. 1995/414; relevant amending instruments are S.I. 1996/840 and S.S.I. 1999/57.
(b) a person or persons who provides or provide primary medical services in accordance with section 17C arrangements;

(c) a HBPMS contractor;

(d) a dental practitioner who provides general dental services in accordance with arrangements made under section 25 of the Act;

(e) a person or persons who provide personal dental services in accordance with a pilot scheme;

(f) an ophthalmic optician or medical practitioner who provides general ophthalmic services in accordance with arrangements made under section 26 of the Act;

(g) a person who provides pharmaceutical services in accordance with arrangements made under section 27 of the Act;

“primary care services “ means services provided by a primary care provider;

“Scottish Public Services Ombudsman” mean the individual appointed in accordance with section 1(1) of, and Schedule 1 to, the Scottish Public Services Ombudsman Act 2002(a); and

“in writing” includes, except in direction 12 and 19, transmission by electronic means.

PART 2

GENERAL

Requirement to make arrangements

3.—(1) Each NHS body shall make arrangements in accordance with this Part of these Directions

(2) Each NHS body shall make arrangements in accordance with Part 3 of these Directions for dealing with complaints made about any matter connected with the exercise of its functions.

(3) In paragraph (2), “any matter connected with the exercise of its functions” includes in particular -

(a) any matter connected with the provision of services at a hospital which that NHS body manages, including services provided for a patient other than on the hospital premises and including in particular the provision of transport for a patient to and from the hospital and the provision of pathology services; and

(b) the exercise of its functions by any other person under a contract or other arrangement with it,

but does not include any matter connected with the provision of services by a primary care provider.

(4) Each Health Board shall also make arrangements in accordance with Part 4 of these Directions for dealing with complaints made about any matter connected with the provision of services by a primary care provider with whom it has made a contract or arrangements for the provision of primary care services.

(5) Each NHS body shall make arrangements in accordance with Part 5 of these Directions for monitoring the effectiveness of and for publishing the arrangements made for dealing with complaints.

(6) Where a Health Board makes an HBPMS contract with a HBPMS contractor, the Health Board shall ensure that the HBPMS contract contains terms which require the HBPMS contractor to have in place arrangements for the handling and consideration of complaints about any matter

(a) 2002 asp 11.
connected with its provision of services which have the effect of Part 6 of Schedule 1 to the National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2004.

Arrangements in writing

4. The arrangements shall be in writing and a copy of the arrangements shall be given free of charge to anyone who requests them.

The Complaints Officer

5.—(1) Each NHS body shall appoint a complaints officer to manage the operation of the procedures for dealing with complaints under the arrangements and in, particular, to -
   (a) perform the functions of the complaints officer under these Directions; and
   (b) perform such other functions relating to the investigation of complaints as the NHS body may require.

   (2) The functions of the complaints officer under paragraph (1) may be performed personally or by a person authorised by the NHS body to act on the complaints officer’s behalf.

Matters excluded from consideration under the arrangements

6. The following complaints are excluded from the scope of arrangements required under these Directions: -
   (a) a complaint made by an NHS body which relates to any matter connected with the exercise by another NHS body of its functions;
   (b) a complaint made by a primary care provider which relates either to any matter connected with the exercise by an NHS body of its functions or to the contract or arrangements under which it provides primary care services;
   (c) a complaint made by an employee of an NHS body about any matter relating to the employee’s contract of employment;
   (d) a complaint made by an HBPMS contractor about any matter relating to arrangements made by a Health Board with that HBPMS contractor;
   (e) a complaint which is being or has been investigated by the Scottish Public Services Ombudsman;
   (f) a complaint arising out of an alleged failure to comply with a request for information under the Freedom of Information (Scotland) Act 2002(a);
   (g) a complaint about which the complainant has stated in writing that the complainant intends to take legal proceedings; and
   (h) a complaint about which an NHS body is taking or proposing to take disciplinary proceedings in relation to the substance of the complaint against the person who is the subject of the complaint.

Objectives of the arrangements

7. Arrangements shall be such to ensure that the complainants are treated courteously and sympathetically by any person dealing with complaints.

(a) 2002 asp 13.
PART 3
DEALING WITH COMPLAINTS ABOUT NHS BODIES

Requirement to deal with complaints

8. Subject to direction 6, a complaint shall be dealt with in accordance with the arrangements required by this Part if it is made –
   (a) in writing to a the complaints officer or any member of staff of the NHS body which is the subject of the complaint;
   (b) within the period specified in direction 9; and
   (c) by a person specified in direction 10.

Requirement to make arrangements

9.—(1) Subject to paragraph (2) the period for making a complaint is –
   (a) 6 months from the date on which the matter which is the subject of the complaint occurred; or
   (b) 6 months from the date on which the matter which is the subject of the complaint comes to the complainants notice, provided that the complaint is made no later than 12 months after the date on which the matter which is the subject of complaint occurred.

   (2) Where the complaint is not made during the period specified in paragraph (1) it shall be referred to the complaints officer and if the complaints officer is of the opinion that-
       (a) having regard to all the circumstances of the case, it would be have been unreasonable for the complainant to make the complaint within that period; and
       (b) notwithstanding the time 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 paragraph (1).

Person who may make a complaint

10.—(1) A complaint may be made by –
   (a) a patient or former patient; or
   (b) any person who is affected or likely to be affected by the action, omission or decision of the NHS body which is the subject of the complaint.

   (2) A complaint may be made by a person on behalf of a person mentioned in paragraph (1)-
       (a) with the consent of the person mentioned in paragraph (1);
       (b) where the person mentioned in paragraph (1) 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) by a person duly authorised by the local authority, where the child is in the care of that local authority under the Children (Scotland) Act 1995(a);
           (iii) by a person duly authorised by a voluntary organisation by which the child is being accommodated under the provisions of that Act;
       (c) where the person is incapable of making a complaint, by a relative or other adult person who has an interest in their welfare.

(a) 1995 c.36.
(3) Where a person mentioned in paragraph (1) has died a complaint may be made by a relative or other adult person who had an interest in their welfare or, where the person was as described in paragraph (2)(a)(ii) or (ii), by the authority or voluntary organisation.

Acknowledgement of complaint

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

(2) The complaints officer shall send a written copy of the complaint to any person who is subject to the complaint.

Investigation and report

12.—(1) A complaint may be investigated by the complaints officer in any manner which appears appropriate for resolving the complaint and may include in particular offering the complainant a meeting with senior staff or the use of a process of conciliation.

(2) Subject to paragraph (3), the Chief Executive of the NHS body shall inform the complainant and any person who is subject to the complaint in writing of the result of the investigation.

(3) Where for good reason the Chief Executive of the NHS body is not able to inform the complainant and any person who is subject to the complaint in writing of the result, it may be done by a person acting on the Chief Executive’s behalf.

(4) The result of the investigation must be sent to the complainant within 20 working days beginning on the date on which the complaint was made or, where that is not possible, as soon as reasonably practicable.

PART 4

DEALING WITH COMPLAINTS ABOUT PRIMARY CARE PROVIDERS

Requirement to provide conciliation services

13. Subject to direction 6, every Health Board shall provide conciliation services in accordance with this Part if a request is made, orally or in writing to the complaints officer, by a person specified in direction 14, and any of the circumstances set out in direction 15 apply.

Persons who may request conciliation services under

14.—(1) A request for conciliation services under this Part may be made by –

(a) a patient or former patient of a primary care provider; or

(b) a primary care provider.

(2) A request may be made by a person on behalf of a person mentioned in paragraph (1)(a) –

(a) with the consent of the person mentioned in paragraph (1)(a);

(b) where the person mentioned in paragraph (1)(a) 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) by a person duly authorised by the local authority, where the child is in the care of that local authority under the Children (Scotland) Act 1995; or

(iii) by a person duly authorised by a voluntary organisation by which the child is being accommodated under the provisions of that Act;
(c) where the person is incapable of making a complaint, by a relative or other adult person who has an interest in their welfare.

(3) Where a person mentioned in paragraph (1)(a) has died a request may be made by a relative or other adult person who had an interest in their welfare or, where the person was as described in paragraph (2)(a)(ii) or (iii), by the authority or voluntary organisation.

Circumstances under which conciliation is to be provided

15. The circumstances referred to in direction 13 are that –

(a) a person wishes to make a complaint about the provision of services by a primary care provider and, in the opinion of the Health Board, it would be unreasonable in the circumstances of the case to expect the person to make the complaint directly to the primary care provider about whom the person wishes to complain;

(b) a complaint about the provision of services by a primary care provider is in the course of investigation under the provider’s practice based complaints procedure; or

(c) the investigation of a complaint about the provision of services by a primary care provider under the provider’s practice based complaints procedure has been completed and the complainant is dissatisfied with the result of that investigation,

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

Requirement to provide conciliation services

16. Where a Health Board is required to provide conciliation services in accordance with direction 13, the complaints officer of the Health Board shall, as soon as practicable, refer the matter to the conciliator.

Appointment of conciliators

17.—(1) Each Health Board shall appoint one or more persons, to be known as conciliators, for a period to be agreed between the Health Board and any conciliator of not more than one year (without prejudice to any re-appointment), to conduct the process of conciliation upon referral of the matter in accordance with direction 16.

(2) A person who is or has been a medical practitioner, dental practitioner, ophthalmic optician, registered pharmacist, a registered nurse or registered midwife shall not be eligible to be appointed as a conciliator.

(3) Each Health Board shall, after consultation with any relevant area professional committee, establish and maintain a list of persons from among whom a conciliator may nominate a person to assist them, as necessary, in the process of conciliation in relation to any matter.

(4) A person nominated under paragraph (3), to be called a professional adviser, shall be a member of the same profession as the person who performed the primary care service with which the subject matter of complaint is connected.

Conciliation procedure

18. The conciliator may adopt such procedures as they determine are appropriate for conducting the conciliation process.

Conclusion of conciliation

19. On conclusion of the conciliation process the conciliator shall notify the results of the process in writing to the complainant, the person who is the subject of the complaint and to the Health Board.
Reports on conciliation

20.—(1) Each Health Board shall require the conciliator to submit to it, at such intervals as it shall determine, a report on all matters referred to them under direction 16 during the period covered by the report.

(2) In relation to any matter reported on in accordance with paragraph (1) the report –
   (a) shall include a statement of the result of the conciliation process; and
   (b) shall not identify the patient, any person who made the request for conciliation services on behalf of the patient or the person subject to the complaint.

PART 5
MONITORING AND PUBLICITY

Monitoring

21.—(1) Each NHS body shall prepare reports at annual intervals for the purposes of –
   (a) monitoring the arrangements made for dealing with complaints;
   (b) considering the volume of complaints; and
   (c) monitoring the remedial action taken following the investigation of complaints.

(2) Each NHS body shall publish a report in its annual report detailing its dealings with complaints under these Directions which shall be sent to –
   (a) the Scottish Ministers; and
   (b) in the case of an NHS body other than NHS Quality Improvement Scotland, NHS Quality Improvement Scotland(a)

Publicity

22.—(1) Each NHS body shall take such steps as are necessary to ensure that the persons listed in paragraph (2) are informed of the arrangements, the name of the complaints officer and the address where the complaints officer can be contacted.

(2) The persons referred to in paragraph (1) are –
   (a) patients and their carers;
   (b) staff of the NHS body;
   (c) in the case of a Health Board, primary care providers with whom they have made contracts or arrangements for the provision of services;
   (d) persons exercising functions of the NHS body under a contract or other arrangement with it.

PART 6
TRANSITIONAL PROVISION AND REVOCATIONS

Transitional provision in respect of former complaints directions

(a) NHS Quality Improvement Scotland is a Special Health Board established by S.S.I. 2002/534.
23.—(1) Where before 1st April 2005, a complaint has been made in accordance with any former complaints directions, it must be investigated, or in an appropriate case continue to be investigated, in accordance with those provisions.

(2) In this direction, “former complaints directions” means any of the directions in relation to complaints given under section 2(5) of the Act which are revoked by direction 25.

(3) Where, in accordance with the former complaints directions, the person who made the complaint has made a request to a NHS body for a review by a panel, that panel must be appointed, conduct its investigation and make a report in accordance with the former complaints directions.

HBPMMS contracts entered into before the coming into force of Direction 3(6)

24.—(1) Where a Health Board has entered into an HBPMMS contract before the coming into force of these Directions which does not comply with the requirement in direction 3(6), the Health Board shall enter into negotiations with the HBPMMS contractor with a view to agreeing variations to the HBPMMS contract to make it compatible with these Directions.

(2) Where a Health Board has power under an HBPMMS contract to impose a variation of the HBPMMS contract it shall where necessary (and in particular where the negotiations envisaged under paragraph (1) have failed) exercise that power so as to ensure that the HBPMMS contract is compatible with these Directions.

(3) Until such time as such a variation to an HBPMMS contract may be agreed or imposed the Health Board shall make arrangements in accordance with Part 3 of these Directions for dealing with complaints about the provision of primary medical services by the HBPMMS contractor.

Revocations

25. The following directions made under section 2(5) of the Act are revoked: -

(a) the Directions to NHS Trusts, Health Boards and Special Health Boards on Hospital Complaints Procedures, made on 20th March 1996;

(b) the Miscellaneous Directions to Health Boards for Dealing with Complaints, made on 22nd March 1996; and

(c) the Directions to Health Boards on Dealing with Complaints about Family Health Service Practitioners, made on 30th March 1998.

A member of staff of the Scottish Ministers
St Andrew’s House,
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31 March 2005