



Your Service Your Say

The Management of
Service User Feedback
for Comments,
Compliments and
Complaints

HSE Policy 2017

Enabling
Feedback

Listening and
Responding
to Feedback

Supporting
Service Users

Supporting
Staff

Learning,
Improvement &
Accountability

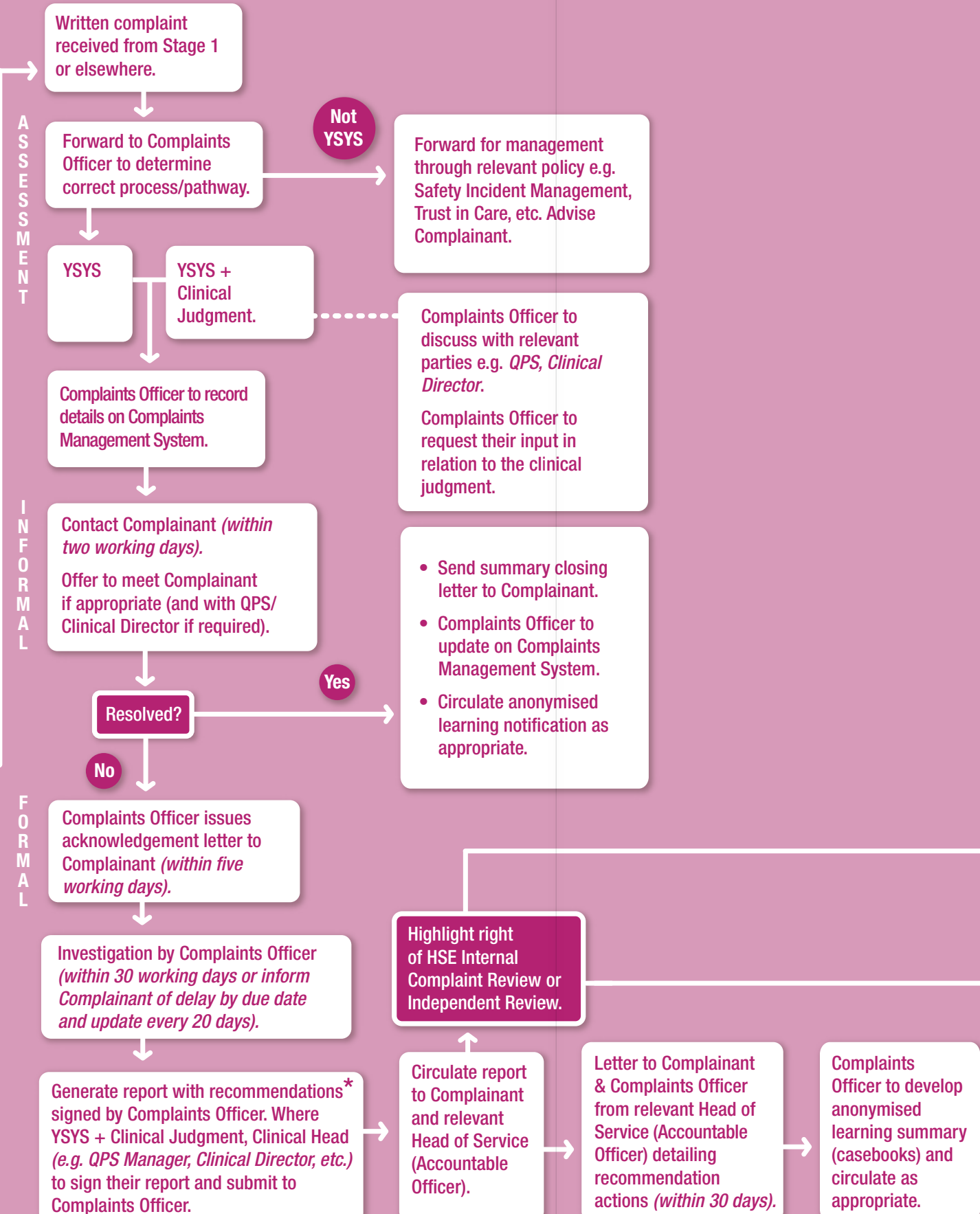
Complaints
Management
Pathway



Stage 1 HSE Point of Contact Resolution

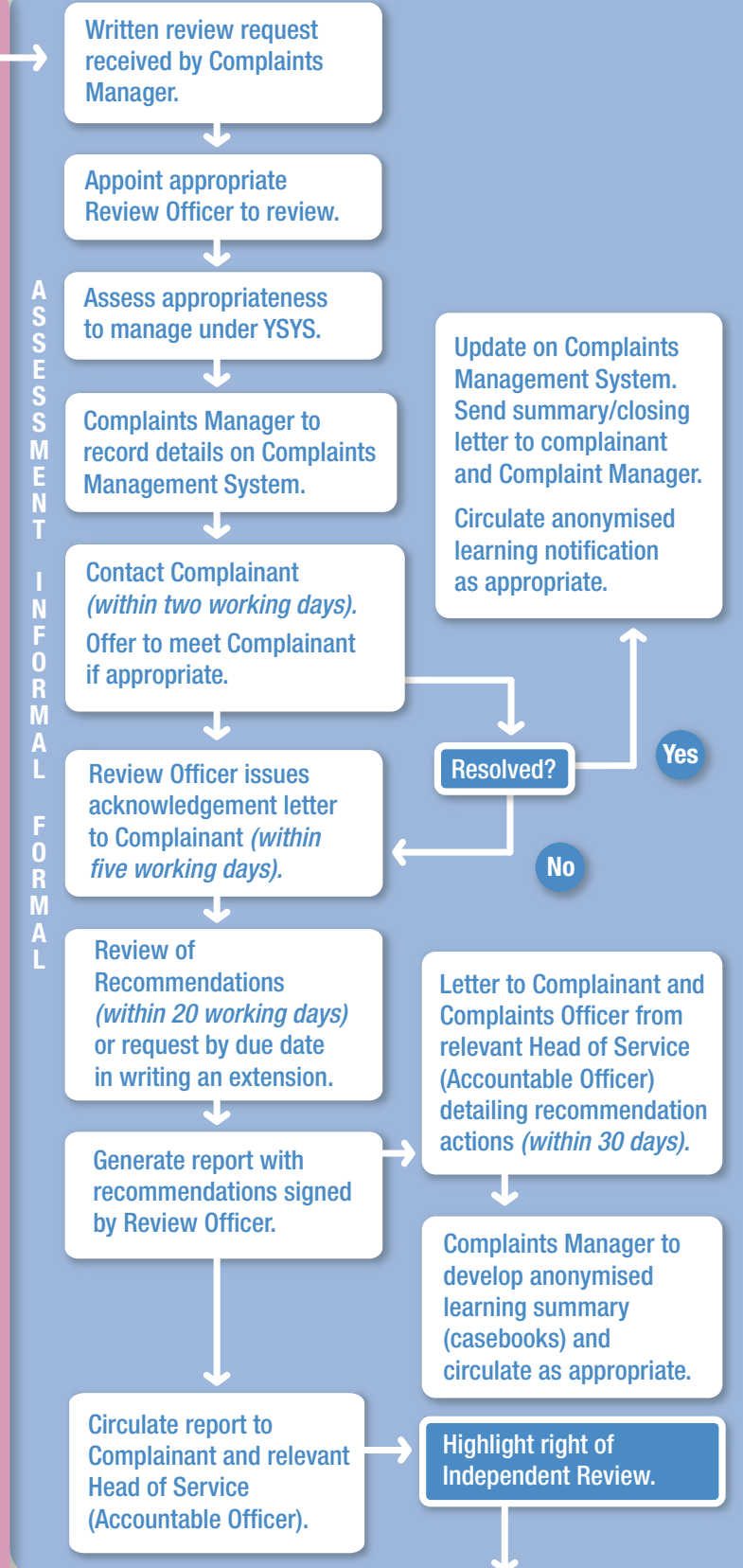


Stage 2 HSE Formal Investigation Process



* All complaint reports must include a recommendation(s). Where a complaint is not upheld, the recommendation of the Complaints Officer is that the complaint is not upheld.

Stage 3 HSE Internal Complaint Review



Stage 4 Independent Review

Office of the Ombudsman/Ombudsman for Children's Office or other professional or regulatory bodies.

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2.0 Foreword

At the launch of the Ombudsman's *Learning to Get Better* report in May 2015, I gave a commitment to implementing the recommendations as outlined in that report and I gave an undertaking that the HSE would improve its feedback and complaints processes as a result.

In doing so, my intentions were clear in that I wanted to ensure that the HSE was an organisation that proactively welcomes, encourages and embraces feedback from all our service users.

To that aim, I committed to a number of key actions to ensure strong leadership in the area of feedback and complaints management. The Quality Assurance and Verification Division have been tasked with reforming and strengthening our feedback processes. In addition, named managers with responsibility for leading the complaints process within the various divisions of the HSE have been appointed and the delegation of Complaints Officers and Review Officers is being reviewed to ensure sufficient expertise and seniority to discharge the role. With the development of the web-based Complaints Management System, the HSE will, for the first time, have access to comprehensive, live complaints data that will allow for learning to be shared across services and that will offer a valuable contribution to decision making and service improvement.

It is in the spirit of the above efforts that I welcome the newly revised Your Service Your Say; the Management of Service User Feedback for Comments, Compliments and Complaints Policy. This Policy and its associated Guidance Manual has been designed to reflect the best practice highlighted in the Ombudsman's report and strengthened in its capacity to encourage and support healthy and honest dialogue with Patients and Service Users. The Policy also supports the capacity of staff to receive feedback and handle complaints. In addition, the Policy is focused on how feedback including complaints will be used to drive learning within the HSE.

It has embraced five principles as the foundation of its revised feedback process.

- We will **Enable** you to provide feedback.
- We will **Respond** to your feedback promptly.
- We will **Support you** and **Support staff** through the process.
- We will commit to **Learning** from feedback and use it to **Improve** services and make them **Accountable**

The Policy is the result of wide consultation with Patient Groups, Service User Representatives, HSE Staff and Union Groups.

The above efforts represent a significant investment and reflect the importance placed on the effective management of feedback and complaints by the HSE.

I hope that this newly revised Policy and associated Guidance Manual will reaffirm the commitment of the HSE to respond to Patients and Service Users when things go wrong and that we will do so in a way that empowers them and gives them trust in our efforts to put things right.

I want to acknowledge the dedication and good work of all healthcare staff, including doctors, midwives, nurses, allied health professionals and administrative staff, delivering services across the HSE and their willingness to change to improve the quality of the healthcare services they provide. I also want to thank the National Steering Committee for their time and expertise in developing this Policy.

Tony O'Brien
Director General
Health Service Executive

3.0 Introduction

The Health Service Executive (HSE) is committed to ensuring that feedback; comments, compliments and complaints from those using its services is acknowledged, reviewed, acted upon and responded to and that the learning derived from this feedback informs our quality improvement programmes.

Effective handling of service user feedback is fundamental to the provision of a quality service. Best practice identifies what service users want when they provide feedback and the HSE has used this information to develop a system which will meet these requirements.

For an effective and efficient feedback management process:

Service Users want:

- ▶ To be heard and understood.
- ▶ To be treated with dignity and respect.
- ▶ Open and transparent communication.
- ▶ To be supported throughout the complaints management process.
- ▶ An honest explanation when something goes wrong.
- ▶ An apology when appropriate.
- ▶ Reassurance that the organisation will learn from all feedback, especially complaints.

Staff want:

- ▶ To be aware of and understand the process for managing service user feedback.
- ▶ To be trained in complaints handling and be able to deal with complaints at the first point of contact.
- ▶ To be treated with dignity and respect.
- ▶ To be supported throughout the complaints management process.
- ▶ To have the right of reply.

Your Service Your Say will:

- ▶ Be user friendly, person centred, timely and transparent.
- ▶ Be fair and equitable to all parties involved.
- ▶ Support Service Users and Staff.
- ▶ Provide clear delegations and procedures for staff to receive feedback and to deal with complaints and provide resolution.
- ▶ Record and capture all feedback data for analysis and learning on the Complaints Management System.
- ▶ Be responsive – i.e. use this data to identify good practice, problems and trends to inform quality improvement.

The HSE recognises that there are many benefits to be gained from an effective feedback system that is consistent with our core values; *Care, Compassion, Trust and Learning*. These benefits include:

- ▶ Timely and comprehensive resolution of complaints.
- ▶ Optimum quality and patient safety care.
- ▶ An increased number of satisfied service users.
- ▶ Promotion of better healthcare outcomes.
- ▶ Continuous learning and quality improvement.
- ▶ Improved quality assurance by providing feedback on service delivery.
- ▶ Increased public confidence in our services.
- ▶ Reduced costs (direct and indirect) involved with complaints handling.

4.0 Scope

This Policy relates to the handling of feedback provided by service users to the HSE and service providers, about the provision of services, directly by the HSE or through the HSE's contractual arrangements with other service providers (Statutory and Non Statutory)*.

** The scope of this document may be amended in light of future developments with contractual agreements and legislative requirements.*

How to Provide Feedback

If you wish to provide feedback (comment, compliment or complaint) about any aspect of our service, please:

- ▶ **Tell a staff member.**
- ▶ **Email** your feedback to yoursay@hse.ie
- ▶ **Complete a Feedback Form** and leave it in the identified areas provided by the local service you are using or visiting. You may also give it to a member of staff or ask a staff member for an address.
- ▶ Use the **website** feedback facility at the following address: www.hse.ie/yoursay
- ▶ **Telephone us** on 1890 424 555, 9am-5pm Monday to Friday. Your call will be answered by a member of staff from the National Complaints Governance and Learning Team. If telephoning from a mobile please contact 045 880400 to avoid additional charges. You can also call HSELive on 1850 24 1850, 8am-8pm Monday to Friday and 10am-5pm on Saturdays. If telephoning from a mobile please call 041 6850300 to avoid additional charges.
- ▶ **Ask a member of staff** for details of where to send a letter with details of your experience of our services.

It is important to note that this Policy does not supersede other relevant and applicable HSE policies, procedures, protocols and guidelines (PPPGs), e.g. Trust in Care, Incident Management Framework. Matters appropriate for these existing PPPGs will continue to be treated in the same manner. The Complaints Officer will, upon initial examination of the feedback, determine which process is appropriate.

4.1 Who can Provide Feedback?

Anyone can provide feedback in relation to comments or compliments, and in accordance with Section 46, Part 9 of the Health Act 2004 the following may make a complaint:

- ▶ any person who is being or was provided with a health or personal social service by the HSE or service provider,
- ▶ any person who is seeking or has sought provision of such service.

The complaint can be about any action of the HSE or service provider that

- (a) it is claimed does not accord with fair and sound administrative practice, and
- (b) adversely affects or affected that person.

If a person is entitled to make a complaint but is unable to do so because of age, illness or disability, the complaint may be made on that person's behalf by;

- ▶ a close relative or carer of the person,
- ▶ any person who, by law or by appointment of a court, has the care of the affairs of that person,
- ▶ any legal representative of the person,
- ▶ Public Representative,
- ▶ any other person with the consent of the person, or
- ▶ any other person who is appointed as prescribed in the regulations.

If a person who would otherwise have been entitled to make a complaint is deceased, a complaint may be made by a person who, at the time of the action in relation to which the complaint is made, was a close relative, or carer of that person.

4.2 Policy Exemptions

A complaint is excluded under Part 9 of the Health Act 2004 if it is in relation to any of the following matters;

- ▶ a matter that is or has been the subject of legal proceedings before a court or tribunal,
- ▶ a matter relating **solely** to the exercise of clinical judgment by a person acting on behalf of either the Executive or a Service Provider,
- ▶ an action taken by the Executive or a service provider **solely** on the advice of a person exercising clinical judgment,
- ▶ a matter relating to the recruitment or appointment of an employee by the Executive or a service provider,
- ▶ a matter relating to or affecting the terms or conditions of a contract of employment that the Executive or a service provider proposes to enter into (includes terms or conditions relating to superannuation benefits, disciplinary procedures or grievance procedures),
- ▶ a matter relating to the Social Welfare Acts,
- ▶ a matter that could be the subject of an appeal under Section 60 of the Civil Registration Act 2004,
- ▶ a matter that could prejudice an investigation being undertaken by the Garda Síochána,
- ▶ a matter that has been brought before any other complaints procedure established under an enactment (e.g. Complaints made under Part 2 of Disability Act, 2005 or the Mental Health Act 2001).

In accordance with Part 9 of the Health Act 2004 a Complaints Officer shall not investigate a complaint if;

- (a) the person who made the complaint is not entitled under *Section 46* to do so either on the person's own behalf or on behalf of another,
- (b) the complaint is made after the expiry of the period specified or any extension of that period allowed. Further information is detailed under 8.1 Timescales for making a complaint.

A Complaints Officer may decide not to investigate or further investigate an action to which a complaint relates if, after carrying out a preliminary investigation into the action or after proceeding to investigate such action, that officer;

- (a) is of the opinion that;
 - (i) the complainant does not disclose a ground of complaint as outlined in Section 46, Part 9 of the Health Act 2004,
 - (ii) the subject-matter of the complaint is excluded by Section 48 of the Health Act 2004,
 - (iii) the subject-matter of the complaint is trivial, or
 - (iv) the complaint is vexatious or not made in good faith, or
- (b) is satisfied that the complaint has been resolved.

Please see [Appendix 2](#) for Part 9 of the Health Act 2004 and [Appendix 3](#) for the Health Act 2004 (Complaints) Regulations 2006.

5.0 Glossary of Terms and Definitions

Advocate

An advocate is somebody who can act on the patient's or the patient's family's behalf when dealing with a healthcare service. An advocate can represent the views of those seeking information or making complaints when required.

Clinical Judgment

The Health Act 2004 defines clinical judgment as being "a decision made or opinion formed in connection with the diagnosis, care or treatment of a patient".

Close Relative

Section 45 of the Health Act 2004 defines "Close Relative" as a person who;

- ▶ is a parent, guardian, son, daughter or spouse of the other person, or
- ▶ is cohabiting with the other person.

Complaint

The Health Act 2004 defines a complaint as;

"A complaint means a complaint made about any action of the Executive, or a Service Provider (see definition below) that, it is claimed does not accord with fair or sound administration practice, and adversely affects the person by whom, or on whose behalf, the complaint is made".

Complainant

Person(s) making the complaint.

Complaints Management System

Is a unified, standardised national database, developed in partnership with the State Claims Agency, that captures real-time feedback data.

Complaints Manager

A person assigned by their organisation for the purpose of championing the feedback process, including the routine monitoring and review of same.

Complaints Officer

A person designated by the HSE for the purpose of dealing with complaints made to it in accordance with procedures established under Section 49 (1) of the Health Act 2004 or a person designated by a Service Provider with whom the HSE has an arrangement under Section 38 of the Health Act 2004 or given assistance under Section 39 of the Health Act 2004.

Compliment

An expression of praise, commendation or admiration.

Comment

A verbal or written remark expressing an opinion or reaction.

Enquiries

An enquiry is a request for information, clarification, etc. that can be resolved /responded to straight away or by the end of the next working day. These are not reported as complaints and fall outside complaints management arrangements.

Feedback

Feedback consists of the views and opinions of patients and service users on the care that they have experienced. This may include a comment, compliment or a complaint.

**Head of Service
(Accountable
Officer)**

The relevant Head of Service (Accountable Officer) is the person who has accountability and responsibility, or has been delegated with such, for the services under his/her governance.

Personal Data

Personal data is defined as data relating to a living individual who is or can be identified either from the data or from the data in conjunction with other information that is in, or likely to come in to the possession of the data controller.

**Point of
Contact
Complaint**

This is a complaint (see Complaint definition) which can be either verbal or written that has the potential to be resolved at Stage 1.

**Policy,
Procedure,
Protocol,
Guideline
(PPPGs)**

A policy is a written statement that clearly indicates the position and values of an organisation on a given subject. A procedure is a written set of instructions that describe the approved and recommended steps of a particular act or sequence of events. A protocol is a written plan that specifies procedures to be followed in defined situations. A protocol represents a standard of care that describes an intervention or set of interventions. A guideline is defined as a principle or criterion that guides or directs action.

Processing

Processing means performing any operation or set of operations on data, including: obtaining, recording or keeping data, collecting, organising, storing, altering or adapting the data; retrieving, consulting or using the data; disclosing the data by transmitting, disseminating or otherwise making it available; aligning, combining, blocking, erasing or destroying the data.

Review Officer

A person appointed to carry out a review, under Section 49 of the Health Act 2004, to determine the appropriateness of a recommendation made by a Complaints Officer, having regard to all aspects of the complaint and its investigation.

Review Process

A Review Process for complaints is one which gives the complainant an opportunity to have the recommendations made after the investigation of their complaint reviewed either internally by Review Officers or externally by the Ombudsman or Ombudsman for Children.

Service Provider

(External to HSE) Part 7, Section 38 of the Health Act 2004 defines a Service Provider as a person with whom the Executive enters into an arrangement for the provision of a health or personal social service on behalf of the Executive, e.g. Nursing Homes, non-statutory Residential/Respite Homes/Centres etc.

38.(1) The Executive may, subject to its available resources and any directions issued by the Minister under section 10, enter, on such terms and conditions as it considers appropriate, into an arrangement with a person for the provision of a health or personal social service by that person on behalf of the Executive.

Part 7, Section 39 of the Health Act 2004 refers to any person or anybody that provides or proposes to provide a service similar or ancillary to a service that the Executive may provide, and to whom the Executive has given, or proposes to give, assistance.

Assistance is defined in Section 39 as including;

- ▶ contributing to the expenses incurred by the person or the body.
- ▶ permitting the use by the person or the body of premises maintained by the Executive, and where requisite, executing alterations and repairs and supplying furniture and fittings for such premises.
- ▶ providing premises (with all requisite furniture and fittings) for use by the body or the person.

Service User

Service user refers to a person who uses health or personal social services provided by the HSE or HSE funded services.

6.0 Policy Purpose

The purpose of this Policy and the supporting document, *Your Service Your Say*, the Management of Service User Feedback including Comments, Compliments and Complaints Guidance Manual, is to ensure that:

- ▶ The feedback process is accessible, flexible and responsive to the needs of our service users, through a 'no wrong door' approach,
- ▶ An environment which encourages and enables service users to give feedback is provided and promoted,
- ▶ An environment which safeguards the rights of Service Users and where those who provide feedback are listened to and treated with dignity, courtesy and empathy is provided and promoted,
- ▶ A culture is promoted in which both the service user and service provider have an equal voice and are considered of equal importance in the feedback process,
- ▶ Feedback is responded to and complaints are investigated thoroughly in an open, honest and transparent manner,
- ▶ Communication with service users is maintained throughout the feedback process,
- ▶ Service users are involved in and informed of the outcomes of their feedback,
- ▶ When failures in care are identified, these are acknowledged to the service user, an apology is provided and action taken where appropriate,
- ▶ Service users and staff involved in complaints are provided with support throughout the complaints management process,
- ▶ Management and staff have the knowledge and skills to effectively manage feedback,
- ▶ Learning from feedback is identified and appropriate action is taken to share this learning and to reduce the likelihood of a reoccurrence of the same event(s). This learning is shared with service users and staff,
- ▶ The learning from feedback informs service planning and quality improvement programmes,
- ▶ The feedback process complies with obligations in relation to confidentiality, Data Protection and Freedom of Information,
- ▶ Services are supported to meet the requirements of the National Standards for Safer Better Healthcare 2012 and to comply with the provisions of the National Healthcare Charter 2012. The feedback process is in keeping with the Ombudsman's *Learning to Get Better Report 2015*.

7.0 Roles and Responsibilities

Roles and responsibilities underpin the effective implementation of this Policy. It is the role and duty of **all** management and staff to:

- ▶ Comply with this Policy.
- ▶ Ensure that this Policy is implemented and adhered to in their area and that the rights and legitimate interests of service users and staff are protected.
- ▶ Promote a culture and attitude that welcomes feedback and supports the effective and timely resolution of complaints received.
- ▶ Ensure that information on how to provide feedback and on how to make a complaint is accessible and made widely available throughout all health service locations.
- ▶ Provide an efficient, effective, fair and accessible system for handling service user feedback.
- ▶ Support service users and staff in the implementation of the Policy and supporting guidance.
- ▶ Collect data and monitor feedback for the purpose of improving the quality of service delivery.

Please see [Appendix 1](#) for a detailed description of individual roles and responsibilities.

8.0 Policy Provisions

8.1 Timescales for Making a Complaint

In line with the Health Act 2004, a complaint can be submitted up to 12 months after the date on which the matter which is the subject of the feedback occurred or became known. However a Complaints Officer has the discretionary delegated authority to investigate a complaint outside these timeframes if they deem it appropriate to do so.

8.2 Principles

Feedback will be guided and managed by **five** key principles as follows:

- ▶ **Enabling** feedback
- ▶ **Listening and Responding** to feedback
- ▶ **Supporting** service users
- ▶ **Supporting** staff
- ▶ **Learning**, improvement and accountability

The implementation of these five principles will create a culture where feedback is encouraged and allows for service users to make positive comments as well as complaints. These principles are incorporated as a core component of service delivery and the following figure (*Figure 1*) reflects how these principles work in practice.

Figure 1: The five principles governing the HSE's management of service user feedback

Guiding Principles Demonstrated by

**Enabling
Feedback**

- ▶ Feedback from service users is encouraged.
- ▶ Information is made widely available to service users explaining how to provide feedback. There are multiple access and referral points which are actively promoted to service users and which are user friendly.
- ▶ The feedback process is easy for all service users to use and the necessary supports provided to assist them within this process.
- ▶ All healthcare providers have a complaints process overseen by a Complaints Manager.
- ▶ Positive feedback i.e. compliments, are also encouraged and recorded so that the service provider can capture good practice.
- ▶ Staff are empowered to receive complaints and to view them in a positive way and as a means of improving relationships, learning and making positive changes which will contribute to safer, better healthcare services.

**Listening and
Responding
to Feedback**

- ▶ The organisation encourages a culture of responsiveness.
- ▶ Open Disclosure is adopted within the organisation.
- ▶ Staff have a positive attitude towards dealing with feedback.
- ▶ Feedback is dealt with in a timely manner.
- ▶ Communication with service users is open, honest, transparent and responsive to their needs.
- ▶ Each complaint is received and investigated on its own merit.
- ▶ The needs of both service users and staff are considered within the complaints management process.
- ▶ Service users are involved in the complaint management process.
- ▶ Service users are informed of the outcome of a complaint, and subsequent agreed actions which may arise.

Guiding Principles Demonstrated by

Supporting Service Users

- ▶ Service users are given whatever help and support they require to provide feedback.
- ▶ A clear process in relation to the management of feedback is communicated to service users.
- ▶ Service users are treated with dignity and respect.
- ▶ Service users are supported throughout the complaints management process.
- ▶ Ongoing communication with the service user throughout the complaint management process is maintained.
- ▶ Service users are updated on (i) the learning established, (ii) the actions planned/undertaken by the organisation to prevent a reoccurrence of the issues raised, and (iii) quality improvement initiatives.

Supporting Staff

- ▶ A clear process for managing feedback is communicated to staff.
- ▶ Staff across all levels of the organisation are trained in complaints handling and able to deal with complaints at the first point of contact.
- ▶ Staff are supported throughout the complaints management process.
- ▶ Staff are treated with dignity and respect, compassion and empathy.
- ▶ Staff are afforded the right of reply.
- ▶ The practical, professional, psychological, emotional and social needs of staff involved in or affected by feedback are identified and addressed.

Learning, Improvement and Accountability

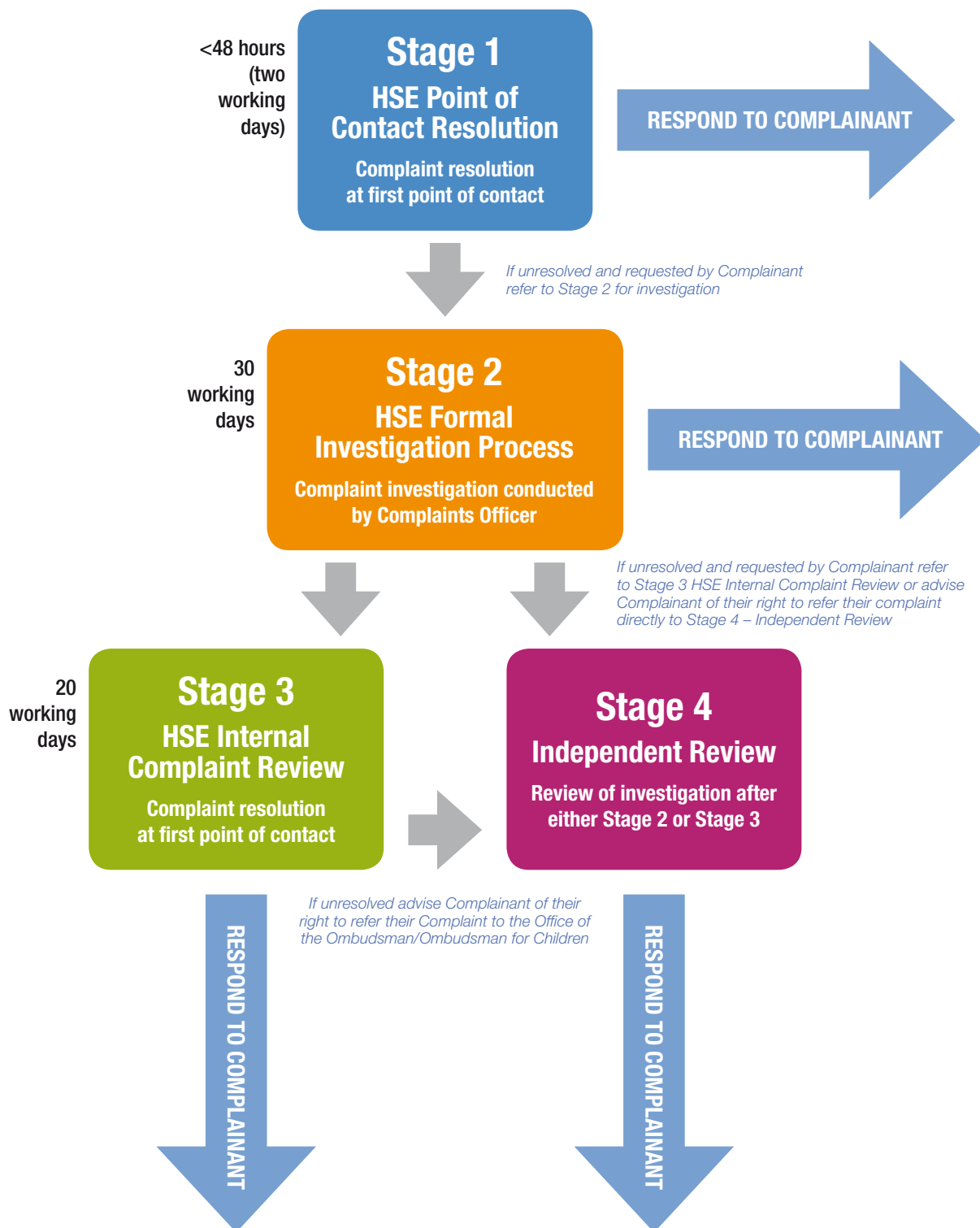
- ▶ Staff responsible for investigating and resolving complaints are trained in complaints handling.
- ▶ Information from feedback including complaints are regularly reported to senior management via the Complaints Manager.
- ▶ Information on trends identified through feedback is publicly available.
- ▶ Lessons learned from complaints are used for system wide learning and improvements.
- ▶ Findings from complaints are regularly communicated to staff.
- ▶ Recommendations made and accepted following the investigation of complaints are implemented fully and all relevant persons have been informed of this.

For more detailed information and guidance on the five principles please refer to **Your Service Your Say, the Management of Service User Feedback for Comments, Compliments and Complaints Guidance Manual**.

8.3 Four Stages of Complaint Management

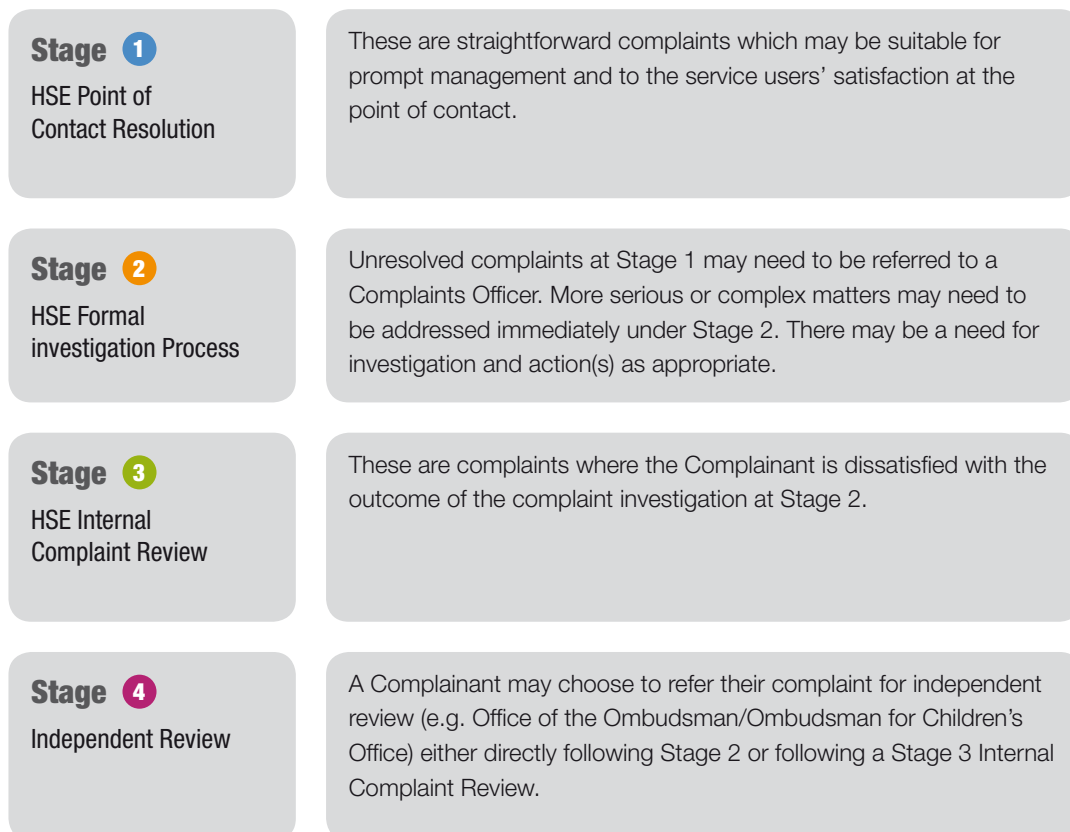
It is the policy of the HSE that the stages and processes for complaints management are adhered to as per the provisions of Part 9 of the Health Act, 2004.

Figure 2: The four distinct stages of the HSE complaints management process.



Complaints Management Pathway is available inside the front cover of this document.

Figure 3 Summary of the four stages involved in the HSE complaints management process.



Further information and guidance is detailed in the [Complaints Management Pathway](#).
(See inside front cover of the Policy.)

8.4 Advocacy Services

An Advocate is somebody who can act on the patient's or the patient's family's behalf when dealing with a healthcare service. An Advocate can represent the views of those seeking information or making complaints when required.

If you wish to provide feedback and would like to avail of advocacy services, further information and guidance is available at: www.hse.ie/yoursay

8.5 Feedback and Complaints from Children

It is the policy of the HSE to ensure that children of sufficient age, reason and understanding are encouraged and supported to provide feedback or to make a complaint about any aspect of the service they have received from the HSE or relevant healthcare provider. Their feedback and, in particular, their complaint will be taken seriously and responded to appropriately.

For more detailed information please see [Your Service Your Say, the Management of Service User Feedback for Comments, Compliments and Complaints Guidance Manual](#).

8.6 Anonymous Complaints

It is the policy of the HSE that complainants must provide contact details when making a complaint against the HSE to enable appropriate validation, follow up and investigation of that complaint unless there is a good and sufficient reason for withholding this information. It is the policy of the HSE to review the complaint within the limitations of the information provided to assure that the welfare of patients/ service users is not at risk and that action is taken, as appropriate.

For more detailed information please see **Your Service Your Say, the Management of Service User Feedback for Comments, Compliments and Complaints Guidance Manual**.

8.7 Unreasonable Complainant Behaviour

The actions of complainants who are angry, demanding or persistent may ultimately result in unreasonable demands or unacceptable behaviour towards staff. Staff are not expected to tolerate abusive or threatening behaviour, but all feedback must be given equal consideration and be investigated.

For more detailed information please see **Your Service Your Say, the Management of Service User Feedback for Comments, Compliments and Complaints Guidance Manual**.

8.8 Accessibility in Meeting the Needs of all Service Users

It is the policy of the HSE to support all service users when making decisions in relation to their health and social care, including maximising a person's capacity to make such decisions. This support applies to everyone and to all health and social care settings. All service users should be given the time and support(s) they need to maximise their ability to make decisions for themselves including the right to make a complaint.

Further information and guidance on Assisted Decision Making is available at: <http://www.hse.ie/eng/about/Who/QID/Other-Quality-Improvement-Programmes/assisteddecisionmaking/>

8.9 Open Disclosure

The HSE operates a policy on open disclosure and promotes a culture of openness and transparency in relation to the management of feedback. Further information on, and resources for, open disclosure are available on www.hse.ie/opendisclosure

8.10 Apology

It is the policy of the HSE that where failures in the delivery of care to a service user have been identified, these failures must be acknowledged to the service user and a meaningful apology provided.

For more detailed information please see **Your Service Your Say, the Management of Service User Feedback for Comments, Compliments and Complaints Guidance Manual**.

8.11 Redress

It is the policy of the HSE to offer redress as part of their management of feedback. Redress is a commitment to acknowledge, apologise and explain when things go wrong and put things right quickly and effectively.

8.12 Consent

The investigation, management and approach to the resolution of a complaint should be undertaken with the knowledge and consent of the service user. [Further information and resources on Consent are available on https://hse.ie/eng/about/Who/QID/Other-Quality-Improvement-Programmes/Consent/](https://hse.ie/eng/about/Who/QID/Other-Quality-Improvement-Programmes/Consent/)

8.13 Freedom of Information

The Freedom of Information Act 2014 confers on all persons the right of access to information held by public bodies, to the greatest extent possible, consistent with the public interest and the right to privacy. It is imperative that all staff are cognisant of the right of the complainant to access any information held by the HSE in relation to the management of their complaint, subject to the exemptions set out in the Act. Staff must ensure that they adhere to the principles of the Data Protection Act 1988 and 2003, that consent to access patient confidential information is obtained where required and that decisions made during the complaint management process are supported by facts and evidence.

Further information and guidance on Freedom of Information is available at: <http://www.hse.ie/eng/services/yourhealthservice/info/FOI>

8.14 Confidentiality/Data Protection

Maintaining privacy and confidentiality of service user information is a basic principle of managing service user feedback including complaints. It is the role of all HSE staff to ensure that privacy and confidentiality is maintained.

The Data Protection Acts 1988 and 2003 place an obligation on the HSE and staff to safeguard the right of individuals in relation to the processing of their personal data. This applies to both personal data of our clients and staff. Under the Data Protection Acts, personal information should only be used or disclosed for the purpose for which it was collected for or another directly related purpose. Feedback information required for reporting and statistical purposes will be anonymised and all identifiable data will be removed.

However, the principles of natural justice and fairness require that any persons directly affected by a complaint be;

- i. informed of the complaint,
- ii. informed of the conclusions reached following investigation of the complaint and of the findings which informed these conclusions, and
- iii. afforded the opportunity to respond to any adverse findings.

Further information and guidance on Data Protection is available at: <http://www.hse.ie/eng/services/yourhealthservice/info/DP>

9.0 Communication

The HSE has a transparent and easily accessible feedback process. We will endeavour to respond to feedback and, in particular, complaints: courteously, efficiently, fairly, promptly and within timelines agreed and in accordance with due process.

Inform the public

We will:

1. Provide information about where and how to provide feedback.
2. Provide information which is readily available about how the feedback process will be managed.
3. Communicate with parties about the progress of managing the feedback received.
4. Provide a timely response to feedback and notify complainant about review processes.

Inform staff

We will:

1. Provide information and guidance about the operation of the Management of Service User Feedback policy.
2. Provide feedback on areas that may require potential improvement.
3. Train relevant staff to manage complaints.
4. Share any learning from service user feedback.

10.0 Revision and Audit

The National Complaints Governance and Learning Team will audit and revise both this Policy and the accompanying Guidance Manual on a three year basis. The review of these documents will include feedback from key stakeholders, healthcare staff and service users.

10.1 Monitoring the Effectiveness of the Policy

An evaluation will be conducted yearly to assess where it is working well and where improvements may need to be made. This involves examining feedback, statistics, trends and policies and asking staff, former complainants and other service users what they think about the system.

Evaluating the feedback process involves:

- ▶ Asking service users what they know about the feedback process and what they expect.
- ▶ Asking service users who have used the feedback process in relation to a complaint what they thought of the process and the outcomes.
- ▶ In relation to complaints, using statistical information to check timelines, the number and types of complaints that have been made and how this has changed over time.

- ▶ Reviewing the outcomes of individual complaints including a review of recommendations made.
- ▶ Using feedback data to determine the learning that has occurred, how this learning has been shared, the changes that have been implemented and how these changes have been monitored.
- ▶ Comparing local complaints management data against external standards, and where possible with services of similar size and nature.

11.0 Supporting Documents

- ▶ Complaints Policy, version number 1:2, 2016, NHS England
- ▶ Guide to Developing Effective Complaints Management Policies and Procedures, www.ombudsman.qld.gov.au
- ▶ Guidelines; Effective Handling of Complaints made to your Organisation – An Overview, 2010, Ombudsman Western Australia
- ▶ Guide to Healthcare Handling in Health Care Services, 2005, Health Services Review Council, 30/570 Bourke Street, Melbourne, Victoria 3000
- ▶ Guideline for Systems Analysis Investigation of Incidents and Complaints, 2012, Health Service Executive
- ▶ Health Act 2004
- ▶ Health Act 2004 (Complaints) Regulations 2006
- ▶ Listening, Responding, Improving – A guide to better customer care, 2009, Department of Health, UK
- ▶ Model Complaints System and Policy; The Ombudsman's Guide to Developing a Complaint Handling System, Office of the Ombudsman
- ▶ National Standards for Safer Better Healthcare; 2012, Health Information and Quality Authority
- ▶ NHS Choices Complaints Policy, 2011
- ▶ Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry, Executive Summary, 2013
- ▶ Report of the investigation into the safety, quality and standards of services provided by the Health Service Executive to patients in the Midland Regional Hospital Portlaoise, 2015, Health Information and Quality Authority
- ▶ Safety Incident Management Policy, 2014, Health Service Executive
- ▶ Saying sorry: A guide to apologising and expressing regret during open disclosure: Australian Open Disclosure Framework: Supporting materials and resources
- ▶ Open Disclosure, National Guidelines: Communicating with Service Users and their Families following adverse events in Healthcare, 2013, HSE and State Claims Agency
- ▶ Learning to Get Better 2015 – An investigation by the Ombudsman into how public hospitals handle complaints, Office of the Ombudsman

12.0 Appendices

Appendix 1: Roles and Responsibilities

Appendix 2: Part 9 of the Health Act 2004

Appendix 3: Health Act 2004 (Complaints) Regulations 2006

Appendix 4: Legislation/Standards/PPPGs/Frameworks

Appendix 5: National Steering Team Members

Appendix 1: Roles and Responsibilities

Role of the Director General and HSE Leadership Team

It is the responsibility of the Director General and the Leadership Team to:

- ▶ Ensure the HSE is compliant with Part 9 of the Health Act 2004.
- ▶ Ensure that all HSE Service Managers and staff are aware of and comply with *Your Service Your Say, the Management of Service User Feedback for Comments, Compliments and Complaints Policy*.
- ▶ Ensure that the feedback process is clearly articulated, open and accountable to both staff and service users.
- ▶ Ensure the strategic decision making is informed by service user feedback data.
- ▶ Ensure the Policy is established, monitored and reviewed accordingly.
- ▶ Ensure the analysis of comments, compliments and complaints inform and influence national strategies, planning and organisational improvements.

Role of the Executive Lead for Complaints Governance and Learning

It is the responsibility of the Executive Lead for Complaints Governance and Learning to;

- ▶ Ensure that a comprehensive system for the management of service user feedback is in place and implemented throughout the HSE and its relevant Service Providers.
- ▶ Ensure an effective communication process is in place to inform the service user of the HSE feedback process and, in particular, complaints management.
- ▶ Ensure an effective process for the monitoring and evaluation of complaints exists and is communicated throughout the HSE.
- ▶ Ensure that appropriate reporting systems are in place between the HSE and relevant Service Providers in accordance with Part 9, Section 55(2) of the Health Act 2004.
- ▶ Prepare an annual report on complaints; identifying trends, KPI compliance and learning.
- ▶ Provide assurance by conducting feedback and, in particular, complaints management performance reviews and audits across the HSE.

Role of Chief Executive Officer (CEO) and Chief Officer (CO)

For the purpose of the implementation of this policy, the role of the CEO and CO is to;

- ▶ Implement and maintain an efficient and effective feedback system, which will ensure recording and tracking of data.
- ▶ Ensure feedback is appropriately assessed to generate action from the appropriate level.
- ▶ Ensure staff are aware of their responsibilities in relation to receiving and managing service user feedback and understand their role.
- ▶ Delegate Complaints Officers and Review Officers in their respective administrative areas.
- ▶ Ensure issues identified through analysis of service user feedback are used for learning and shared at a local, regional and national level.
- ▶ Provide performance reports to the Quality Assurance and Verification Division in relation to management of feedback.
- ▶ Identify trends and system issues in comments, compliments and complaints.
- ▶ Publish feedback data and trends as part of their service annual report.
- ▶ Publish casebooks.

Role of the National Office for Your Service Your Say

For the purpose of the implementation of this Policy, the role of the National Office for Your Service Your Say staff is to:

- ▶ Acknowledge all feedback including complaints received into the National Office for Your Service Your Say on behalf of the National Complaints Governance and Learning Team within 24 hours.
- ▶ Forward feedback including complaints to the appropriate Consumer Affairs Office and copy to the nominated point of contact for complaints within Hospital Groups, Community Healthcare Organisation and National Divisions.
- ▶ Log all complaints received.
- ▶ Return monthly feedback statistics to the National Complaints Governance and Learning Team Office in Limerick.

Role of the Regional Manager for Consumer Affairs

For the purpose of the implementation of this Policy, the role of the Regional Manager for Consumer Affairs is to:

- ▶ Ensure that the HSE Complaints Management Process is effectively implemented throughout their Administrative Area.
- ▶ Ensure that staff within their Administrative Area receive appropriate training in managing feedback and in particular complaints.
- ▶ Ensure that standardised service user friendly information, templates, forms etc. are available for distribution by Complaints Officers in all locations of their Administrative Area.
- ▶ Act as a Review Officer as appropriate within their respective areas.
- ▶ Ensure that there is routine collection, analysis and communication of trends in complaints received within that Administrative Area.
- ▶ Evaluate the complaints data for the Administrative Area to ensure the correct and effective management of complaints.
- ▶ Ensure that relevant Service Providers (non-HSE) in their Administrative Area have an appropriate complaints management system in place as defined in the Health Act 2004 and have a vetted complaints policy signed off by Consumer Affairs as outlined under Schedule 8 of their Service Level Agreement.
- ▶ Liaise with the appropriate Quality and Risk personnel in their Administrative Area, to ensure that complaints management is linked with sustainable quality improvement.
- ▶ Participate in the evaluation of consumer perception of the complaints management process in their Administrative Area.
- ▶ Ensure that a monthly statistical report on complaints is prepared and forwarded on a quarterly basis to the National Complaints Governance and Learning Team as part of the Quality Assurance and Verification Division, pending full implementation of the Complaints Management System (CMS).
- ▶ Collaborate with relevant Community Healthcare Organisations and Hospital Groups on complaints management for their areas and bring to their attention any national issues which require local consideration.
- ▶ Be responsible for the development of a National Complaints Officer Governance and Learning Forum.
- ▶ Act as the Liaison Office with the Ombudsman and Ombudsman for Children's Office in relation to all complaints received by those respective offices.

Role of Consumer Affairs Area Office Staff

For the purpose of the implementation of this policy, the role of the 'Consumer Affairs Area Office Staff' is to:

- ▶ Keep themselves appraised and fully briefed in the latest developments, policies, procedures, protocols and guidelines in relation to managing feedback including complaints management.
- ▶ Provide training to staff and Complaints Officers and voluntary organisations on all aspects of complaints handling at various levels from induction training through awareness training to full Complaints Officer training.
- ▶ Support, advise and guide Service Users/Complainants/Reviewers and HSE staff on the complaints management process.
- ▶ Ensure complaints received via the National Your Service Your Say Office are forwarded to the appropriate Complaints Officer for attention and copied to the designated contact person within each Community Healthcare Organisation/Hospital Group.
- ▶ Co-ordinate complaints where both Your Service Your Say and clinical judgment elements are involved.
- ▶ Ensure that all written complaints received in the Consumer Affairs Area Office are logged, administratively acknowledged and forwarded to an appropriate Complaints Officer. In exceptional circumstances the complaint may need to be sent to the relevant Service Manager.
- ▶ Collect feedback and complaint statistics from Complaints Officers and forward them to the Regional Manager on a monthly basis.
- ▶ Collect monthly complaints statistics from voluntary agencies and hospitals and forward them to the Regional Manager on a quarterly basis.
- ▶ Assist the Regional Manager Consumer Affairs in their role as set out in this Policy.
- ▶ Ensure complaints data is recorded on the Complaints Management System (CMS) or forward monthly complaints statistics to Consumer Affairs Area Office Staff pending full implementation of the Complaints Management System (CMS).

Role of the Complaints Manager

For the purpose of the implementation of this Policy, the role and responsibility role of the Complaints Manager is to:

- ▶ Be a champion for the feedback process including the complaints management process through an active and visible leadership role with key involvement in education, training and reporting arrangements.
- ▶ Be responsible for the routine monitoring and review of the Organisation's feedback process including the complaints management process which is necessary to ensure and assure that the system works in line with the Your Service your Say, the Management of Service User Feedback for Comments, Compliments and Complaints Policy.
- ▶ Promote a process of assurance through the generation of case books following Stage 3 HSE Internal Complaint Reviews and publish reports on the management of complaints by their area and the learning achieved as a result of same in conjunction with Regional Managers Consumer Affairs.
- ▶ Ensure processes are in place to support clinicians and staff to understand how complaints are handled.
- ▶ Upon receipt of a request for a review, appoint a Review Officer to review the recommendations made by the Complaints Officer.

- ▶ Upon notification from a Complaints Officer ensure that any risks identified as part of a complaint are notified to the relevant Head of Service (Accountable Officer) to ensure high risk complaints are appropriately assessed and investigated and that learning is achieved.
- ▶ Provide an overview and update on the management of service user feedback to Senior Management Teams, in relation to key performance indicators in line with national feedback data returns.
- ▶ Ensure that the lessons learned from feedback including complaints are used to improve the service and are implemented.
- ▶ Determine the overall effectiveness of the complaints management process within their area of responsibility.

Role of Complaints Officers

For the purpose of the implementation of this Policy, the statutory roles and responsibilities of the Complaints Officer is to:

- ▶ Ensure service user friendly information on how to offer feedback and, in particular, on how to make a complaint is widely available throughout their health service locations.
- ▶ Ensure that the complaints management process is implemented and being adhered to in their area and that the rights and legitimate interests of service users and staff are protected.
- ▶ Support staff and service users in the implementation of the complaints management process.
- ▶ Identify non excluded matter of the complaint and investigate.
- ▶ Ensure that any risks identified as part of a complaint are assessed and immediately notify the Complaints Manager of any high risk complaints to ensure appropriate investigation and learning.
- ▶ Inform relevant parties of decision to extend or not extend time frames.
- ▶ Find resolution of the complaint using approaches identified in the Policy and Guidance Manual and through implementation of the complaints management process.
- ▶ Investigate and conclude within **30** working days or inform Complainant of delay and update every 20 days.
- ▶ Advise a person if a finding in the report is adverse to that person and afford them the opportunity to consider the finding and to make representations in relation to it.
- ▶ Make recommendations, which may also support organisational learning and improvement.
- ▶ Provide Complainant and relevant Head of Service (Accountable Officer) with a report on the complaint investigation.
- ▶ Advise the service user that they may seek a review of the complaint by requesting a HSE Internal Complaint Review (Stage 3) or by contacting the Office of the Ombudsman/Ombudsman for Children's Office (Stage 4).
- ▶ Where a complaint is withdrawn the Complaints Officer **may** bring this to the attention of the relevant Accountable Officer to determine if the investigation should continue.
- ▶ Determine the overall effectiveness of the complaints management process within their area of responsibility.
- ▶ Generate anonymised complaints data and disseminate this information as appropriate.
- ▶ Submit reports as appropriate to the Office of Consumer Affairs for their respective areas.

Role of Review Officers

Review Officers are appointed in line with the Health Act 2004 (Complaints) Regulations 2006. Upon an application for review being made the Complaints Manager will appoint a Review Officer to review the recommendations made by Complaints Officers after the investigation of a complaint. It is the role of the Review Officer to;

- ▶ Engage with the Complainant as appropriate throughout the review process.
- ▶ Determine the appropriateness of the recommendations by reviewing the processes used to investigate the complaint and having regard to all aspects of the complaint and its investigation.
- ▶ Uphold, vary or make a new recommendation.
- ▶ Complete the review within **20** working days. A Review Officer may request in writing an extension and indicate the additional time considered necessary for completion.
- ▶ Prepare a report on the review and circulate same as appropriate under the Your Service Your Say, the Management of Service User Feedback for Comments, Compliments and Complaints Policy and Guidance Manual.
- ▶ Advise a person if a finding in the report is adverse to that person and afford them the opportunity to consider the finding and to make representations in relation to it.
- ▶ Advise the service user that they may seek a further review of the complaint by contacting the Office of the Ombudsman/Ombudsman for Children's Office.

Role of Staff

All HSE and relevant Service Providers staff have an obligation to deal effectively with all feedback and, in particular, with complaints made to them and this includes;

- ▶ Ensuring they are aware of the Your Service Your Say, the Management of Service User Feedback for Comments, Compliments and Complaints Policy and processes.
- ▶ Participating in complaints management training.
- ▶ Managing a complaint in a timely manner either by dealing with it at the point of contact in line with the Policy or forwarding same to the Complaints Officer for management.
- ▶ Participate in the investigative process of a complaint on the request of a Complaints Officer/ Review Officer.
- ▶ Supporting and facilitating improvement initiatives within their service.
- ▶ Providing data relevant to complaints to service managers and national divisions.

Role of relevant Head of Service (Accountable Officer)

The relevant Head of Service (Accountable Officer) will receive a copy of the complaint investigation report from the Complaints Officer setting out the findings and the recommendations. The Accountable Officer will then:

- ▶ Write to the Complainant and Complaints Officer within 30 days detailing their Recommendation Action Plan, and
- ▶ Advise if any recommendation(s) are rejected, amended or if alternative measures are being taken and set out the reasons for the decision
- ▶ Ensure recommendations are implemented
- ▶ Advise the Complainant of the suspension of implementation of recommendations where a request to review the outcome of the complaint investigation has been received.

Appendix 2: Part 9 of the Health Act 2004

Complaints

45.—In this Part—

“action” means anything done or omitted to be done—

- (a) by the Executive, or
- (b) by a service provider in connection with the provision of—
 - (i) a health or personal social service that is the subject of an arrangement under *section 38*, or
 - (ii) a service in respect of which assistance is given under *section 39*;

“close relative”, in relation to another person, means a person who—

- (a) is a parent, guardian, son, daughter or spouse of the other person, or
- (b) is cohabiting with the other person;

“complaints officer” means a person designated—

- (a) by the Executive for the purpose of dealing with complaints made to it in accordance with procedures established under *section 49(1)(a)*, or
- (b) by a service provider for the purpose of dealing with complaints made to the service provider in accordance with procedures established under *section 49(1)(a) or (2)*;

“complaint” means a complaint made under this Part about any action of the Executive or a service provider that—

- (a) it is claimed, does not accord with fair or sound administrative practice, and
- (b) adversely affects the person by whom or on whose behalf the complaint is made;

“complainant” means a person who is entitled under *section 46* to make a complaint under this Part on the person's own behalf or on behalf of another.

46.—

- (1) Any person who is being or was provided with a health or personal social service by the Executive or by a service provider or who is seeking or has sought provision of such service may complain, in accordance with the procedures established under this Part, about any action of the Executive or a service provider that—
 - (a) it is claimed, does not accord with fair and sound administrative practice, and
 - (b) adversely affects or affected that person.
- (2) For the purposes of this Part, an action does not accord with fair and sound administrative practice if it is—
 - (a) taken without proper authority,
 - (b) taken on irrelevant grounds,
 - (c) the result of negligence or carelessness,
 - (d) based on erroneous or incomplete information,
 - (e) improperly discriminatory,
 - (f) based on undesirable administrative practice, or
 - (g) in any other respect contrary to fair or sound administration.

- (3) If a person entitled under this section to make a complaint is unable to do so because of age, illness or disability, the complaint may be made on that person's behalf by—
 - (a) a close relative or carer of the person,
 - (b) any person who, by law or by appointment of a court, has the care of the affairs of that person,
 - (c) any legal representative of the person,
 - (d) any other person with the consent of the person, or
 - (e) any other person who is appointed as prescribed in the regulations.
- (4) If a person who would otherwise have been entitled under this section to make a complaint is deceased, a complaint may be made by a person who, at the time of the action in relation to which the complaint is made, was a close relative or carer of that person.

47.—

- (1) A complaint must be made within the specified period or any extension of that period allowed under *subsection (3)*.
- (2) The specified period is 12 months beginning before or after the commencement of this section, but not later than—
 - (a) the date of the action giving rise to the complaint, or
 - (b) if the person by whom or on whose behalf the complaint is to be made did not become aware of that action until after that date, the date on which he or she becomes aware of it.
- (3) A complaints officer may extend the time limit for making a complaint if in the opinion of the complaints officer special circumstances make it appropriate to do so.

48.—

- (1) A person is not entitled to make a complaint about any of the following matters:
 - (a) a matter that is or has been the subject of legal proceedings before a court or tribunal;
 - (b) a matter relating solely to the exercise of clinical judgment by a person acting on behalf of either the Executive or a service provider;
 - (c) an action taken by the Executive or a service provider solely on the advice of a person exercising clinical judgment in the circumstances described in *paragraph (b)*;
 - (d) a matter relating to the recruitment or appointment of an employee by the Executive or a service provider;
 - (e) a matter relating to or affecting the terms or conditions of a contract of employment that the Executive or a service provider proposes to enter into or of a contract with an adviser that the Executive proposes to enter into under *section 24*;
 - (f) a matter relating to the Social Welfare Acts;
 - (g) a matter that could be the subject of an appeal under section 60 of the Civil Registration Act 2004;
 - (h) a matter that could prejudice an investigation being undertaken by the Garda Síochána;
 - (i) a matter that has been brought before any other complaints procedure established under an enactment.

- (2) *Subsection (1)(i)* does not prevent a complaints officer from dealing with a complaint that was made to the Ombudsman or the Ombudsman for Children and that is referred by him or her to a complaints officer.
- (3) In relation to a contract referred to in *subsection (1)(e)* “terms or conditions” includes terms or conditions relating to superannuation benefits, disciplinary procedures or grievance procedures.

49.—

- (1) Subject to *subsection (2)* and any regulations under *section 53*, the Executive shall establish procedures for—
 - (a) dealing with complaints against the Executive or a service provider, and
 - (b) reviewing, at the request of a complainant, any recommendation made by a complaints officer following the investigation of a complaint.
- (2) Any service provider may, with the agreement of the Executive, establish procedures, in place of the procedures established under *subsection (1)(a)*, for dealing with complaints against the service provider.
- (3) The Executive may agree to a service provider establishing such procedures if satisfied that they will be of a comparable standard to the procedures established by the Executive under *subsection (1)(a)*.
- (4) Subject to any regulations under *section 53*, the Executive may assign to another body the Executive’s functions in relation to reviewing, and establishing procedures for reviewing, any recommendation made by a complaints officer.

50.—

- (1) A complaints officer shall not investigate a complaint if—
 - (a) the person who made the complaint is not entitled under *section 46* to do so either on the person’s own behalf or on behalf of another,
 - (b) the complaint is made after the expiry of the period specified in *section 47(2)* or any extension of that period allowed under *section 47(3)*.
- (2) A complaints officer may decide not to investigate or further investigate an action to which a complaint relates if, after carrying out a preliminary investigation into the action or after proceeding to investigate such action, that officer—
 - (a) is of the opinion that—
 - (i) the complaint does not disclose a ground of complaint provided for in *section 46*,
 - (ii) the subject-matter of the complaint is excluded by *section 48*,
 - (iii) the subject-matter of the complaint is trivial, or
 - (iv) the complaint is vexatious or not made in good faith,
 - or
 - (b) is satisfied that the complaint has been resolved.
- (3) A complaints officer shall, as soon as practicable after determining that he or she is prohibited by *subsection (1)* from investigating a complaint or after deciding under *subsection (2)* not to investigate or further investigate a complaint, inform the complainant in writing of the determination or decision and the reasons for it.

51.—

- (1) A complaints officer may not, following the investigation of a complaint, make a recommendation the implementation of which would require or cause—
 - (a) the Executive to make a material amendment to its approved service plan, or
 - (b) a service provider and the Executive to make a material amendment to an arrangement under *section 38*.
- (2) If, in the opinion of the relevant person, such a recommendation is made, that person shall either—
 - (a) amend the recommendation in such manner as makes the amendment to the applicable service plan or arrangement unnecessary, or
 - (b) reject the recommendation and take such other measures to remedy, mitigate or alter the adverse effect of the matter to which the complaint relates as the relevant person considers appropriate.
- (3) Pending the outcome of a review, the relevant person may suspend the implementation of a recommendation made by a complaints officer if satisfied that, in the interests of fair and sound administration, it is appropriate to do so.
- (4) In this section “relevant person” means—
 - (a) in relation to a complaint dealt with by the Executive in accordance with the procedures established under *section 49(1)*, the chief executive officer, and
 - (b) in relation to a complaint dealt with in accordance with the procedures established by a service provider under *section 49(2)*, the service provider.

52.—

- (1) It is a condition of any arrangement under *section 38* with a service provider that the service provider will—
 - (a) adhere to the complaints procedures established by the Executive in accordance with *section 49(1)* and any regulations under *section 53*, or
 - (b) establish the procedures agreed under *section 49(2)* and adhere to those procedures.
- (2) In addition, it is a condition of such arrangement that the service provider will co-operate with the Executive, or with anybody to which the Executive assigns its functions under *section 49(4)*, in any review of a recommendation made by a complaints officer following the investigation of a complaint against the service provider.
- (3) The Executive shall exercise any rights or remedies available to it under such arrangement if the service provider concerned does not fulfil any of the applicable conditions specified in *subsections (1) and (2)*.

53.—

- (1) The Minister may make regulations for the purposes of this Part.
- (2) Regulations under this section may, among other things, make provision for the following matters:
 - (a) requirements to be complied with by complainants;
 - (b) the appointment of persons as complaints officers and the functions of complaints officers;

- (c) the procedure to be followed in investigating complaints;
- (d) the making of recommendations by complaints officers following the investigation of complaints and the nature of the recommendations that, subject to *section 51*, they are authorised to make;
- (e) the implementation of recommendations made by complaints officers;
- (f) the appointment of persons as review officers and the functions of those officers;
- (g) the procedure to be followed in undertaking reviews;
- (h) the making of recommendations by review officers following the review of a complaint and the nature of the recommendations that they are authorised to make;
- (i) the implementation of recommendations made by review officers;
- (j) the assignment by the Executive of the review functions referred to in *section 49(4)* to any other body or person.

54.—

- (1) Nothing in this Part prohibits or prevents any person who is dissatisfied with a recommendation made or step taken in response to a complaint under this Part or with a review under this Part from referring the complaint to the Ombudsman or the Ombudsman for Children.
- (2) For the purposes of the Ombudsman Acts 1980 to 1984 and the Ombudsman for Children Act 2002, any action taken by a service provider in relation to a health or personal social service in respect of which the service provider has entered into an arrangement under *section 38* or received assistance under *section 39* is deemed to have been taken by the Executive.

55.—

- (1) The Executive shall submit to the Minister, as part of the Executive's annual report, a general report on the performance of its functions under this Part during the previous year containing such information as the Executive considers appropriate or as the Minister may specify.
- (2) A service provider who has established a complaints procedure by agreement with the Executive shall in each year, at such time and in such manner as the Executive may determine, provide the Executive with a general report on the complaints received by the service provider during the previous year indicating—
 - (a) the total number of complaints received,
 - (b) the nature of the complaints,
 - (c) the number of complaints resolved by informal means, and
 - (d) the outcome of any investigations into the complaints.
- (3) If the Executive assigns its functions under *section 49(4)* to another body, that body shall in each year, at such time and in such manner as the Executive may determine, provide the Executive with a general report on the reviews conducted by it during the previous year indicating—
 - (a) the total number of reviews,
 - (b) the nature of the reviews, and
 - (c) the outcome of the reviews.

Appendix 3: Health Act 2004 (Complaints) Regulations 2006

STATUTORY INSTRUMENTS

S.I. No. 652 of 2006

HEALTH ACT 2004 (COMPLAINTS) REGULATIONS 2006 PUBLISHED BY THE
STATIONERY OFFICE

DUBLIN

HEALTH ACT 2004 (COMPLAINTS) REGULATIONS 2006

S.I. No. 652 of 2006

I, Mary Harney, T.D., Minister for Health and Children, in exercise of the powers conferred on me by sections 53 and 78 of the Health Act 2004 (No. 42 of 2004) hereby make the following regulations:

Citation and Commencement

1. (1) These Regulations may be cited as the Health Act 2004 (Complaints) Regulations 2006.
- (2) These Regulations come into operation on 1 January 2007.

Interpretation

2. (1) In these Regulations-
 - “the Act” means the Health Act 2004 (No.42 of 2004);
 - “confidential information” has the meaning assigned to it by section 26(3) of the Act;
 - “excluded matter” means any of the matters referred to in section 48(1) of the Act subject to subsection (2) of that section;
 - “investigation” includes a preliminary investigation as referred to in section 50(2) of the Act; and
 - “review officer” means a person appointed to carry out a review under section 49.
- (2) In these Regulations-
 - (a) a reference to a regulation is a reference to a regulation in these Regulations; a paragraph or sub-paragraph which is not otherwise identified is a reference to a
 - (b) paragraph or sub-paragraph in the regulation in which the reference occurs;
 - (c) a reference to a section in an Act which is not otherwise identified is a reference to the Act.

Assignment of review functions by the Executive

3. (1) The Executive may assign its functions under section 49(4) either generally or in relation to specified complaints.
- (2) Any such assignment shall be in writing and shall include any such information, conditions and requirements as appear to the Executive to be appropriate.
- (3) The Executive may, at any time, revoke any assignment made under Paragraph (1) or amend the information, conditions and requirements imposed under Paragraph (2).

(4) Any body to whom or person to which the Executive has assigned its functions under Paragraph (1) shall provide to the Executive on request-

- (a) such information as may be requested by the Executive, and in such manner as may be indicated, and
- (b) the information specified in section 55(3).

Requirements to be complied with by persons making a complaint

4. (1) A complaint shall be made in writing or electronically or otherwise as set out in procedures established by the Executive or service providers in accordance with section 49 (1)(a) and for the purposes of these Regulations a complaint is treated as being made on the date on which it is received by the Executive or service provider, as appropriate.
- (2) A person making a complaint may be required by the complaints officer, either at the time the complaint is made or subsequently, to provide him or her with such information and assistance as he or she may reasonably require in order to:
- (a) satisfy himself or herself of the identity of the person concerned and, where the person making the complaint is not the complainant, satisfy himself or herself that the person is entitled to do so under section 46(3) or (4), as appropriate,
 - (b) carry out a proper investigation of the complaint made.

Complaints officers and review officers

5. (1) The Executive and service providers shall appoint such and so many persons, as considered appropriate, as complaints officers.
- (2) The Executive or any body to whom or person to which it has assigned its functions under section 49(4) shall appoint such and so many persons, as appropriate, as review officers.
- (3) A person appointed under Paragraph (1) or Paragraph (2) shall be independent in the exercise of his or her functions under these Regulations.

Functions of complaints officers

6. (1) A complaints officer shall investigate, subject to section 50(2), all complaints received or assigned to him or her for investigation after having satisfied himself or herself that the complaint falls within the provisions of Part 9 of the Act.
- (2) Having concluded his or her investigation, the complaints officer shall make a finding as to whether the complaint is-
- (a) upheld in whole or in part, or
 - (b) not upheld
- and on the basis of that finding he or she may make such a recommendation, subject to section 51(1), that he or she is satisfied is fair and reasonable having regard to all the facts and circumstances of the complaint.
- (3) A complaints officer shall prepare a report on the investigation-
- (a) at the conclusion of the investigation, and
 - (b) at any time during the investigation, if requested by the Executive or service provider, as appropriate.

(4) A complainant may, if he or she so wishes, make written representations in support of his or her complaint and such representations shall be considered by the complaints officer.

Acknowledgement of complaints

7. (1) Upon a complaint being received by or assigned to the complaints officer (including a referral under section 48(2)), he or she shall notify, within 5 working days, the complainant, in writing, that the complaint has been so received or assigned and outline the steps that he or she proposes to take in investigating the complaint and the time limits for the completion of the investigation.

(2) Where a complaints officer decides that a complaint is not one to which Regulation 6(1) applies, he or she shall notify, in writing, the person concerned, within 5 working days, of his or her decision and the reasons for it.

(3) Where the reason for the decision under Paragraph (2) is that the complaint relates to an excluded matter, the notification under that Paragraph shall, where appropriate and to the extent possible, advise the person where the complaint might more properly be referred.

(4) Where a complaint made relates only in part to an excluded matter, the complaints officer shall investigate, in the normal way, that part of the complaint that is not so excluded and his or her notification to the complainant under Paragraph (2) shall so advise.

(5) Where, under section 47(3), a complaints officer extends or determines not to extend the time limit for making a complaint he or she shall notify, in writing, the parties to the complaint of his or her decision and the reasons relating thereto within 5 working days of the decision having been made.

Procedure to be followed in investigating complaints

8. (1) Subject to these Regulations, the complaints officer shall investigate the complaint.

(2) (a) Notwithstanding Paragraph (1) above, the complaints officer shall consider whether it would be practicable, having regard to the nature and circumstances of the complaint, to seek the consent of the complainant and any other person to whom the complaint relates to finding a resolution to the complaint by the parties concerned and where such consent is forthcoming such an approach shall be used.

(b) Where an approach under (a) is used and found to be-

(i) successful, the complaint shall be regarded as resolved,

(ii) unsuccessful, the complaint shall be investigated in accordance with Paragraphs 3 to 10 by the complaints officer who has been involved in dealing with the complaint unless the complainant objects to his or her further involvement.

(c) The resolution of the complaint under this Paragraph shall not include the payment by any person who is a party to the complaint of any financial compensation.

(3) A complaint shall be investigated and concluded within 30 working days of it being acknowledged by the complaints officer but where the complaints officer is unable to conclude his or her investigation within that period he or she shall notify, in writing, the Executive or service provider, as appropriate, and the complainant of that fact and indicate the additional time that he or she considers necessary for completion

- (4) A person who has made a complaint and who is requested to provide information or assistance by a complaints officer shall be advised at the time the request is made of any time limit set by the complaints officer for compliance and that failure to comply by the due date may, subject to the decision of the complaints officer, invalidate the complaint.
- (5) An investigation by a complaints officer shall be conducted in private.
- (6) A complaints officer may request such documents and communicate with such persons as he or she reasonably believes can assist with the investigation of the complaint.
- (7) All information obtained by a complaints officer in the course of investigating a complaint shall be deemed to be confidential information and he or she may not discuss, communicate or disclose it except as is necessary for the proper investigation of a complaint or otherwise provided for in these Regulations or required by law.
- (8) A complaints officer shall not make a finding or criticism in his or her proposed report, adverse to a person, without first having afforded the person concerned the opportunity to consider the finding or criticism and to make representations, which shall be considered, in relation to it.
- (9) Upon conclusion of an investigation, a complaints officer shall, as soon as practicable, prepare a signed and dated report (referred to in Regulation 6(3)(a)) which shall include-
- (a) his or her findings,
 - (b) any recommendation which he or she considers appropriate,
 - (c) the reasons for such findings and recommendations, and forward it, as soon as practicable, to the complainant, the Executive and service provider, as appropriate.
- (10) The report forwarded to the complainant under Paragraph (9) shall also advise that he or she may request that the recommendation made be reviewed and provide such information as is necessary to assist with requesting a review.

Implementation of recommendations made by complaints officers

9. (1) Subject to Paragraph (2), the Executive or service provider, as appropriate, shall take such steps as are reasonable to give effect as soon as practicable and to the greatest extent practicable to any recommendation of the complaints officer, provided that he or she is satisfied that it is within the functional remit of the Executive or service provider, as appropriate, to do so.
- (2) The Executive or service provider, as appropriate, shall, within 30 working days, of receipt of the report referred to in Regulation 8(9) notify, in writing, the complainant and complaints officer of the steps being taken to implement any recommendation made. Where it is proposed, under section 51(2) or otherwise, to amend or reject the recommendation or take alternative measures the reasons for this decision should be set out.
- (3) Where, pending the outcome of a review, a relevant person suspends the implementation of a recommendation by a complaints officer, he or she shall, within 5 working days, so notify the complainant, in writing, of that suspension.

Time limit for requesting a review

10. (1) Subject to Paragraph (2), a complainant who is dissatisfied with a recommendation made by a complaints officer may apply for a review of that recommendation and this shall be done within 30 working days of the date on which the report was signed and dated by the complaints officer.

(2) Where a request for a review is received beyond the period specified in Paragraph (1), the Executive or the body to whom or person to which it has assigned its functions under section 49(4), as appropriate, may extend the time limit for requesting a review if it determines that special circumstances make it appropriate to do so.

(3) Where a decision is taken under Paragraph (2) to extend or not extend the time limit for requesting a review, the complainant shall be so notified, in writing, of the decision and the reasons relating thereto within five working days of the decision having been made and recorded.

Requirements to be complied with by persons requesting a review

11. (1) A request for a review shall be made in writing or electronically or otherwise as set out in procedures established by the Executive or the body to whom or person to which the Executive has assigned its functions under section 49(4) and for the purposes of these Regulations a request for a review is treated as being made on the date on which it is received by the Executive or the body to whom or person to which the Executive has assigned its functions under section 49(4), as appropriate.

(2) A person requesting a review may be required by the review officer, either at the time the review is requested or subsequently, to provide him or her with such information and assistance as he or she may reasonably require in order to:
 - (a) satisfy himself or herself of the identity of the person concerned and, where the person requesting the review is not the complainant, satisfy himself or herself that the person is entitled to do so under section 46(3) or (4), as appropriate,
 - (b) carry out a proper review.

Appointment of review officer to carry out review

12. Upon an application for review being made, the Executive or the body to whom or person to which the Executive has assigned its functions under section 49(4) shall assign a review officer to review the recommendation made and shall notify, in writing, the complainant of the person appointed within 5 working days of the application for review being received.

Functions of review officers

13. (1) A review officer shall determine the appropriateness of a recommendation made having regard to all aspects of the complaint and its investigation and in so doing he or she shall not vary the original recommendation or make another unless he or she deems it appropriate to so do.

(2) A review officer shall prepare a report on the review-
 - (a) at the conclusion of the review, and
 - (b) at any time during the review, if requested by the Executive or the body to whom or person to which the Executive has assigned its functions under section 49(4), as appropriate.
(3) A complainant who has requested a review may, if he or she so wishes, make written representations in support of his or her complaint and such representations shall be considered by the review officer.

Procedure to be followed in reviewing complaints

14. (1) Subject to these Regulations, the review officer shall determine the procedure to be followed in conducting a review.
- (2) A review shall be conducted and concluded within 20 working days of the request being received but where the review officer is unable to conclude his or her investigation within that period he or she shall notify, in writing, the Executive or the body to whom or person to which the Executive has assigned its functions under section 49(4), as appropriate, and the complainant of that fact and indicate the additional time that he or she considers necessary for completion.
- (3) A person who has applied for a review and who is requested to provide information or assistance by a review officer shall be advised at the time the request is made of any time limit set by the review officer for compliance and that failure to comply by the due date may, subject to the decision of the review officer, invalidate the complaint.
- (4) A review shall be conducted in private.
- (5) A review officer may request such documents and communicate with such persons as he or she reasonably believes can assist with the review of the complaint.
- (6) All information obtained by a review officer in the course of reviewing a complaint shall be deemed to be confidential information and he or she may not discuss, communicate or disclose it except as is necessary for the proper review of a complaint or otherwise provided for in these Regulations or required by law.
- (7) A review officer shall not make a finding or criticism in his or her proposed report, adverse to a person, without first having afforded the person concerned the opportunity to consider the finding or criticism and to make representations, which shall be considered, in relation to it.
- (8) Upon conclusion of a review, the review officer shall, as soon as practicable, prepare a signed and dated report on the review and forward it, as soon as practicable, to the complainant, the complaints officer who investigated the complaint, the Executive and the body to whom or person to which the Executive has assigned its functions under section 49(4), as appropriate, and where the review related to a service provider the report shall be forwarded to the service provider concerned at the same time as it is forwarded to the other parties mentioned in this paragraph.

Making of recommendations by review officers

15. (1) On the basis of the review, the review officer shall, as he or she considers appropriate-
- (a) uphold the original recommendation,
 - (b) vary it or make a new recommendation, subject to the proviso that in no case shall the implementation of the varied or new recommendation require or cause either of the matters referred to in section 51(1)(a) or (b).
- (2) The reason for the decision under Paragraph (1) shall be set out by the review officer in the report referred to in Regulation 13(8).

Implementation of upheld, varied or new recommendations made by review officers

16. (1) Subject to these Regulations, the Executive or service provider, as appropriate, shall take such steps as are reasonable to give effect as soon as possible and to the greatest practicable extent to any upheld, varied or new recommendation made by the review officer, provided that he or she is satisfied that it is within the remit of and appropriate for the Executive or service provider to so do.
- (2) The Executive or service provider, as appropriate, shall, within 30 working days of receipt of the report from the review officer, notify, in writing, the complainant, complaints officer and review officer of the steps being taken or proposed to be taken or not to be taken to implement the recommendation and where it is proposed not to implement some or all of the recommendation the reasons for this decision should be set out.

Ombudsman and Ombudsman for Children

17. Any notification, under these Regulations (other than one under Regulation 7(1) or 12), or reports forwarded to a person who has made a complaint shall advise that nothing in Part 9 of the Act prohibits or prevents any person who is dissatisfied with a recommendation made or step taken in response to a complaint or a review that the matter may be referred by him or her to the Ombudsman or the Ombudsman for Children, as appropriate.

Records

18. The Executive, service providers and bodies to whom or persons to which the Executive has assigned its functions under section 49(4) shall establish and keep, in such format as is most appropriate, such records as are necessary to enable them to meet their requirements under these Regulations and section 55.

Public awareness of complaints procedures

19. The Executive, service providers and bodies to whom or persons to which the Executive has assigned its functions under section 49(4) shall make publicly available information on their complaints and review procedures, as appropriate, including-
- (i) the names and contact details of all complaints officers,
 - (ii) the names of all review officers,
 - (iii) the procedures, if any, available under Regulation 8 (2), and
 - (iv) advice on all matters relevant to making a complaint or seeking a review.

Assistance to persons making a complaint

20. The Executive, service providers and bodies to whom or persons to which the Executive has assigned its functions under section 49(4)-
- (a) shall offer or otherwise arrange for such practical assistance to a complainant, as is necessary, for the person to-
 - (i) make a complaint, in the required way,
 - (ii) request a review in a case where he or she is dissatisfied with a recommendation made, or
 - (iii) refer the matter to the Ombudsman, or where appropriate, the Ombudsman for Children under section 54(1); and
 - (b) may, where appropriate, assist a person making or seeking to make a complaint, subject to his or her agreement, to identify another person who could assist with the making of the complaint.

GIVEN under my Official Seal, this 15 day of December, 2006.

L.S.I

MARY HARNEY T.D.,

Minister for Health and Children

Explanatory Note

(This note is not part of the Instrument and does not purport to be a legal interpretation.) These Regulations, made under Part 9 of the Health Act 2004 (No.42 of 2004), make provision for complaints by persons to the Health Service Executive and service providers and require the establishment and operation of procedures and arrangements intended to achieve a fair and reasonable resolution of such complaints.

HEALTH ACT 2004 (COMMENCEMENT) ORDER 2006

S.I. No. 651 of 2006

HEALTH ACT 2004 (COMMENCEMENT) ORDER 2006

I, MARY HARNEY, T.D., Minister for Health and Children, in exercise of the powers conferred on me by section 3 of the Health Act 2004 (No. 42 of 2004), hereby order as follows:

1. This Order may be cited as the Health Act 2004 (Commencement) Order 2006.
2. The 1st day of January 2007 is appointed as the day on which Part 9 of the Health Act 2004 (No. 42 of 2004) comes into operation.

GIVEN under my Official Seal, this 15 day of December, 2006.

L.S.

MARY HARNEY T.D.,

Minister for Health and Children

Explanatory Note

(This note is not part of the Instrument and does not purport to be a legal interpretation.) This Order brings Part 9 of the Health Act, 2004 into operation on and from 1 January 2007.

Appendix 4: Legislation/Standards/PPPGs/Frameworks

Legislation

This policy is guided by statutory requirements, including:

- ▶ Health Act 2004 (Complaints) Regulations 2006
- ▶ Health Act 2004, Part 9
- ▶ Health Acts and Amendments 1947-2016
- ▶ Mental Health Acts 2001-2008
- ▶ Disabilities Act 2005
- ▶ Health and Social Care Professionals Act 2005
- ▶ Medical Practitioners Acts 1978-2011
- ▶ Nurses and Midwives Act 2011
- ▶ Comhairle (Amendment) Bill 2004
- ▶ Freedom of Information Acts and Amendments 1997-2014
- ▶ Data Protection Act 1988 and Amendment Act 2003
- ▶ Defamation Act 1961
- ▶ Ombudsmans Acts 1980, 1980-2012
- ▶ Ombudsman for Children Act, 2002
- ▶ Equal Status Acts 2000-2004
- ▶ Health and Safety at Work Act 2005
- ▶ Assisted Decision Making Capacity Act 2015
- ▶ Misuse of Drugs Act, 1977-2016
- ▶ The Citizens Information Act 2007.

Standards

This policy supports the requirements of National Health Information and Quality Authority (HIQA) Standards, including:

- ▶ National Standards for Safer Better Maternity Services, 2016
- ▶ National Standards for Residential Care Settings for Older People in Ireland, 2016
- ▶ National Standards for Residential Services for Children and Adults with Disabilities 2013
- ▶ National Standards for the Protection and Welfare of Children, 2012
- ▶ National Standards for Safer Better Healthcare, 2012
- ▶ National Standards for the Prevention and Control of Healthcare Associated Infections, 2009

PPPGs/Frameworks

This policy supports the requirements of Policies, Procedures, Protocols and Guidelines (PPPGs) and Frameworks, including:

- ▶ HSE Corporate Plan
- ▶ HSE Open Disclosure Policy
- ▶ HSE National Consent Policy
- ▶ HSE National Healthcare Charter – You and Your Health Service
- ▶ HSE Trust in Care Policy
- ▶ HSE Dignity at Work Policy
- ▶ HSE Grievance and Disciplinary Procedure
- ▶ Health Services People Strategy
- ▶ HSE Access Control Policy
- ▶ HSE Linking Service and Safety Policy
- ▶ HSE National Guidelines on Accessible Health and Social Care Services
- ▶ Tusla 'Tell Us' Policy
- ▶ National Guidelines on Accessible Health and Social Care Services
- ▶ Mental Health Commission – Quality Framework for Mental Health Services in Ireland.

Appendix 5: National Steering Committee Members

Ms June Boulger	National Lead for Patient and Public Partnership, Acute Hospitals Division, HSE
Mr Gerry Clerkin	Head of Quality and Safety, National Social Care Division, HSE
Ms Emer Doyle	Investigator, Office of the Ombudsman
Ms Geraldine Doyle	Operations Manager, Prosper Fingal
Ms Ursula Galvin	Corporate Administration Manager, St. Michael's House
Ms Carol Hickey	Business and Performance Information Manager, Quality Assurance and Verification Division, HSE
Ms Aoife Hilton	Senior Manager, National Complaints Governance and Learning Team, Quality Assurance and Verification Division, HSE
Ms Deirdre Hyland	Mental Health Information Officer, Mental Health Commission
Ms Sinead Kelleher	Senior Manager, National Complaints Governance and Learning Team, Quality Assurance and Verification Division, HSE
Ms Loretta Jenkins	National Patient Safety Office, Department of Health
Ms Debbie Keyes	Regional Manager, Consumer Affairs, HSE
Ms Deirdre McNamara	National Complaints Governance and Learning Team, Quality Assurance and Verification Division, HSE
Mr Stephen McMahon	Irish Patients Association
Ms Anne McMenamin	National Clinical Strategy and Programmes, HSE
Ms Eleanor Mann	Complaints Officer/Business Manager, UL Hospital Group, HSE
Ms Caitriona Meehan	Communications Manager, Saolta University Health Care Group, HSE
Ms Suzanne Moloney	Senior Manager, National Complaints Governance and Learning Team, Quality Assurance and Verification Division, HSE
Ms Shirley Murphy	Project Manager, National Complaints Governance and Learning Team, Quality Assurance and Verification Division, HSE
Ms Ciara Norton	National Patient Safety Office, Department of Health
Ms Sheila O'Connor	Patient Focus
Ms Anne Marie Oglesby	National Quality and Patient Safety Manager, National Ambulance Service, HSE
Mr Liam Quirke	Regional Manager, Consumer Affairs, HSE
Ms Susan Reilly	National Patient Safety Office, Department of Health
Mr Christopher Rudland	Executive Lead, National Complaints Governance and Learning Team, Quality Assurance and Verification Division, HSE
Ms Angela Tysall	National Lead for Open Disclosure, Quality Improvement Division, HSE

Special thanks to the Health Service Trade Unions who consulted with the HSE on the development of this Policy and associated Guidance Manual.

Notes



Talk to a local member of staff

Email yoursay@hse.ie

Fill out the feedback leaflet

Visit www.hse.ie/yoursay

Call 1890 424 555

from 9am-5pm Monday to Friday

Call HSELive on 1850 24 1850

from 8am-8pm Monday to Friday
and 10am-5pm on Saturdays