



# Health and Social Care (Community Health and Standards) Act 2003

## 2003 CHAPTER 43

### PART 2

#### STANDARDS

### CHAPTER 9

#### COMPLAINTS

#### 113 Complaints about health care

- (1) The Secretary of State may by regulations make provision about the handling and consideration of complaints made under the regulations about—
  - (a) the exercise of any of the functions of an English NHS body or a cross-border SHA;
  - (b) the provision of health care by or for such a body;
  - (c) the provision of services by such a body or any other person in pursuance of arrangements made by the body under section 31 of the Health Act 1999 (c. 8) in relation to the exercise of the health-related functions of a local authority.
- (2) The Assembly may by regulations make provision about the handling and consideration of complaints made under the regulations about—
  - (a) the exercise of any of the functions of a Welsh NHS body;
  - (b) the provision of health care by or for a Welsh NHS body;
  - (c) the provision of services by a Welsh NHS body or any other person in pursuance of arrangements made by the body under section 31 of the Health Act 1999 in relation to the exercise of the health-related functions of a local authority.

*Status: Point in time view as at 01/04/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Health and Social Care (Community Health and Standards) Act 2003, Chapter 9. (See end of Document for details)*

- (3) Regulations under this section may provide for a complaint to be considered by one or more of the following—
- (a) an NHS body;
  - (b) the CHAI;
  - (c) an independent lay person;
  - (d) an independent panel established under the regulations;
  - (e) any other person or body.
- (4) Regulations under this section may make provision for a complaint or any matter raised by a complaint—
- (a) [<sup>F1</sup>in the case of regulations under subsection (1),] to be referred to a Health Service Commissioner for him to consider whether to investigate the complaint or matter under the Health Service Commissioners Act 1993 (c. 46) (and to be treated by him as a complaint duly referred to him under section 10 of that Act);
  - [<sup>F2</sup>(aa) in the case of regulations under subsection (2), to be referred to the Public Services Ombudsman for Wales for him to consider whether to investigate the complaint or matter under the Public Services Ombudsman (Wales) Act 2005 (and to be treated by him as a complaint duly referred to him under section 2(3) of that Act);]
  - (b) to be referred to any other person or body for him or it to consider whether to take any action otherwise than under the regulations.

#### Textual Amendments

- F1** Words in s. 113(4)(a) inserted (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\)](#), s. 40, [Sch. 6 para. 75\(a\)](#); S.I. 2005/2800, art. 5(1)(3)
- F2** S. 113(4)(aa) inserted (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\)](#), s. 40, [Sch. 6 para. 75\(b\)](#); S.I. 2005/2800, art. 5(1)(3)

#### Commencement Information

- I1** S. 113 partly in force; s. 113 in force at Royal Assent for certain purposes, see s. 199(1)(4)

## 114 Complaints about social services

- (1) The Secretary of State may by regulations make provision about the handling and consideration of complaints made under the regulations about—
- (a) the discharge by a local authority in England of any of its social services functions;
  - (b) the provision of services by another person pursuant to arrangements made by such an authority in the discharge of those functions;
  - (c) the provision of services by such an authority or any other person in pursuance of arrangements made by the authority under section 31 of the Health Act 1999 in relation to the functions of an NHS body (within the meaning of that section).
- (2) Regulations under subsection (1) may provide for a complaint to be considered by one or more of the following—
- (a) the local authority in respect of whose functions the complaint is made;
  - (b) the CSCI;

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- (c) an independent panel established under the regulations;
  - (d) any other person or body.
- (3) The Assembly may by regulations make provision about the handling and consideration of complaints made under the regulations about—
- (a) the discharge by a local authority in Wales of any of its social services functions;
  - (b) the provision of services by another person pursuant to arrangements made by such an authority in the discharge of those functions;
  - (c) the provision of services by such an authority or any other person in pursuance of arrangements made by the authority under section 31 of the Health Act 1999 (c. 8) in relation to the functions of an NHS body (within the meaning of that section).
- (4) Regulations under subsection (3) may provide for a complaint to be considered by one or more of the following—
- (a) the local authority in respect of whose functions the complaint is made;
  - (b) an independent panel established under the regulations;
  - (c) any other person or body.
- (5) Regulations under this section may provide for a complaint or any matter raised by a complaint—
- (a) in the case of regulations under subsection (1), to be referred to a Local Commissioner under Part 3 of the Local Government Act 1974 (c. 7)<sup>F3</sup>... for him to consider whether to investigate the complaint or matter under that Part (and to be treated as if it had been duly made under section 26 of that Act);
  - [<sup>F4</sup>(b) in the case of regulations under subsection (3), to be referred to the Public Services Ombudsman for Wales for him to consider whether to investigate the complaint or matter under the Public Services Ombudsman (Wales) Act 2005 (and to be treated by him as a complaint duly referred to him under section 2(3) of that Act).]
  - (c) to be referred to any other person or body for him or it to consider whether to take any action otherwise than under the regulations.
- (6) Regulations under this section may not make provision about complaints capable of being considered as representations under section 24D or section 26 of the Children Act 1989 (c. 41).

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#### Textual Amendments

- F3** Words in s. 114(5)(a) repealed (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\)](#), s. 40, [Sch. 6 para. 76\(a\)](#), [Sch. 7](#); [S.I. 2005/2800](#), art. 5(1)(3)
- F4** S. 114(5)(b) substituted (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\)](#), s. 40, [Sch. 6 para. 76\(b\)](#); [S.I. 2005/2800](#), art. 5(1)(3)
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#### Commencement Information

- I2** S. 114 partly in force; s. 114 in force at Royal Assent for certain purposes, see s. 199(1)(4)
- I3** S. 114(3)(4) in force at 1.4.2006 for W. so far as not already in force by [S.I. 2005/3285](#), [art. 2\(2\)\(a\)](#)
- I4** S. 114(5) in force at 1.4.2006 for W. so far as not already in force by [S.I. 2005/3285](#), [art. 2\(2\)\(c\)](#)

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## 115 Complaints regulations: supplementary

- (1) Regulations under subsection (1) or (2) of section 113 or under subsection (1) or (3) of section 114 (“the regulations”) may, without prejudice to the generality of the subsection under which they are made, make the following provision.
- (2) The regulations may make provision about—
  - (a) the persons who may make a complaint;
  - (b) the complaints which may, or may not, be made under the regulations;
  - (c) the persons to whom complaints may be made;
  - (d) complaints which need not be considered;
  - (e) the period within which complaints must be made;
  - (f) the procedure to be followed in making, handling and considering a complaint;
  - (g) matters which are excluded from consideration;
  - (h) the making of a report or recommendations about a complaint;
  - (i) the action to be taken as a result of the complaint.
- (3) The regulations may require—
  - (a) the making of a payment, in relation to the consideration of a complaint under the regulations, by any person or body in respect of whom the complaint is made;
  - (b) any such payment to be—
    - (i) made to such person or body as may be specified in the regulations; and
    - (ii) of such amount as may be specified in, or calculated or determined under, the regulations;
  - (c) an independent panel to review the amount chargeable under paragraph (a) in any particular case and, if the panel thinks fit, to substitute a lesser amount.
- (4) The regulations may require any person or body who handles or considers complaints under the regulations to make information available to the public about the procedures to be followed under the regulations.
- (5) The regulations may also—
  - (a) provide for different parts or aspects of a complaint to be treated differently;
  - (b) require the production of information or documents in order to enable a complaint to be properly considered;
  - (c) authorise the disclosure of information or documents relevant to a complaint to a person or body—
    - (i) who is considering a complaint under the regulations; or
    - (ii) to whom a complaint has been referred;and any such disclosure may be authorised notwithstanding any rule of common law that would otherwise prohibit or restrict the disclosure.
- (6) The regulations may make provision about complaints which raise both matters falling to be considered under the regulations and matters falling to be considered under other statutory complaints procedures, including in particular provision for—
  - (a) enabling such a complaint to be made under the regulations; and
  - (b) securing that matters falling to be considered under other statutory complaints procedures are treated as if they had been raised in a complaint made under the appropriate procedures;

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and in this subsection “statutory complaints procedures” means procedures established by or under any enactment.

#### Commencement Information

- I5** S. 115 partly in force; s. 115 in force at Royal Assent for certain purposes, see s. 199(1)(4)
- I6** S. 115(1)(2)(4)-(6) in force at 1.4.2006 for W. so far as not already in force by [S.I. 2005/3285](#), [art. 2\(2\)\(c\)](#)

## 116 Further consideration of representations under the Children Act 1989

(1) In the Children Act 1989 (c. 41), after section 26 (representations) insert—

### “26ZA Representations: further consideration

- (1) The Secretary of State may by regulations make provision for the further consideration of representations which have been considered by a local authority in England under section 24D or section 26.
- (2) The regulations may in particular make provision—
- (a) for the further consideration of a representation by the Commission for Social Care Inspection (“the CSCI”);
  - (b) for a representation to be referred by the CSCI for further consideration by an independent panel established under the regulations;
  - (c) about the procedure to be followed on the further consideration of a representation;
  - (d) for the making of recommendations about the action to be taken as the result of a representation;
  - (e) about the making of reports about a representation;
  - (f) about the action to be taken by the local authority concerned as a result of the further consideration of a representation;
  - (g) for a representation to be referred by the CSCI back to the local authority concerned for reconsideration by the authority;
  - (h) for a representation or any matter raised by the representation to be referred by the CSCI—
    - (i) to a Local Commissioner in England for him to consider whether to investigate the representation or matter under Part 3 of the Local Government Act 1974 as if it were a complaint duly made under section 26 of that Act; or
    - (ii) to any other person or body for him or it to consider whether to take any action otherwise than under the regulations.
- (3) The regulations may require—
- (a) the making of a payment, in relation to the further consideration of a representation under this section, by any local authority in respect of whose functions the representation is made;
  - (b) any such payment to be—
    - (i) made to such person or body as may be specified in the regulations;

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- (ii) of such amount as may be specified in, or calculated or determined under, the regulations;
  - (c) an independent panel to review the amount chargeable under paragraph (a) in any particular case and, if the panel thinks fit, to substitute a lesser amount.
- (4) The regulations may also—
- (a) provide for different parts or aspects of a representation to be treated differently;
  - (b) require the production of information or documents in order to enable a representation to be properly considered;
  - (c) authorise the disclosure of information or documents relevant to a representation—
    - (i) to a person or body who is further considering a representation under the regulations; or
    - (ii) to a Local Commissioner in England (when a representation is referred to him under the regulations);
 and any such disclosure may be authorised notwithstanding any rule of common law that would otherwise prohibit or restrict the disclosure.
- (5) In this section, “Local Commissioner in England” means a Local Commissioner under Part 3 of the Local Government Act 1974 (c. 7), who is a member of the Commission for Local Administration in England.”
- (2) After section 26ZA of that Act (as inserted by subsection (1)) insert—

**“26ZB Representations: further consideration (Wales)**

- (1) The Secretary of State may by regulations make provision for the further consideration of representations which have been considered by a local authority in Wales under section 24D or section 26.
- (2) The regulations may in particular make provision—
  - (a) for the further consideration of a representation by an independent panel established under the regulations;
  - (b) about the procedure to be followed on the further consideration of a representation;
  - (c) for the making of recommendations about the action to be taken as the result of a representation;
  - (d) about the making of reports about a representation;
  - (e) about the action to be taken by the local authority concerned as a result of the further consideration of a representation;
  - (f) for a representation to be referred back to the local authority concerned for reconsideration by the authority.
- (3) The regulations may require—
  - (a) the making of a payment, in relation to the further consideration of a representation under this section, by any local authority in respect of whose functions the representation is made;
  - (b) any such payment to be—

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- (i) made to such person or body as may be specified in the regulations;
  - (ii) of such amount as may be specified in, or calculated or determined under, the regulations; and
  - (c) for an independent panel to review the amount chargeable under paragraph (a) in any particular case and, if the panel thinks fit, to substitute a lesser amount.
- (4) The regulations may also—
- (a) provide for different parts or aspects of a representation to be treated differently;
  - (b) require the production of information or documents in order to enable a representation to be properly considered;
  - (c) authorise the disclosure of information or documents relevant to a representation to a person or body who is further considering a representation under the regulations;
- and any such disclosure may be authorised notwithstanding any rule of common law that would otherwise prohibit or restrict the disclosure.”
- (3) In section 26A of that Act (requirement on local authorities to provide assistance for persons making representations under section 24D and section 26), after subsection (2) insert—
- “(2A) The duty under subsection (1) includes a duty to make arrangements for the provision of assistance where representations under section 24D or 26 are further considered under section 26ZA or 26ZB.”

#### Commencement Information

- I7** S. 116 partly in force; s. 116 in force at Royal Assent for certain purposes, see s. 199(1)(4)
- I8** S. 116(2) in force at 1.4.2006 by S.I. 2005/3285, art. 2(2)(b)
- I9** S. 116(3) in force at 1.4.2006 for W. by S.I. 2005/3285, art. 2(2)(c)

## 117 Representations relating to special guardianship support services

- (1) In section 26 of the Children Act 1989 (c. 41) (representations), after subsection (3B) insert—
- “(3C) The duty under subsection (3) extends to any representations (including complaints) which are made to the authority by—
- (a) a child with respect to whom a special guardianship order is in force,
  - (b) a special guardian or a parent of such a child,
  - (c) any other person the authority consider has a sufficient interest in the welfare of such a child to warrant his representations being considered by them, or
  - (d) any person who has applied for an assessment under section 14F(3) or (4),
- about the discharge by the authority of such functions under section 14F as may be specified by the Secretary of State in regulations.”

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(2) Section 14G of that Act (special guardianship support services: representations) shall cease to have effect.

#### Commencement Information

- I10** S. 117 partly in force; s. 117 in force at Royal Assent for certain purposes, see s. 199(1)(4)
- I11** S. 117 in force at 30.12.2005 for W. by S.I. 2005/3285, art. 2(1)
- I12** S. 117(1) in force at 17.1.2005 for specified purposes for E. by S.I. 2005/38, art. 2(a)
- I13** S. 117(1) in force at 30.12.2005 for E. so far as not already in force by S.I. 2005/2925, art. 8
- I14** S. 117(2) in force at 17.1.2005 for E. by S.I. 2005/38, art. 2(b)

### 118 Complaints about handling of complaints

In section 3 of the Health Service Commissioners Act 1993 (c. 46) (remit of Commissioners), after subsection (1D) insert—

“(1E) Where a complaint is duly made to a Commissioner by or on behalf of a person that the person has sustained injustice or hardship in consequence of maladministration by any person or body in the exercise of any function under section 113 of the Health and Social Care (Community Health and Standards) Act 2003 (complaints about health care), the Commissioner may, subject to the provisions of this Act, investigate the alleged maladministration.”

#### Commencement Information

- I15** S. 118 in force at 1.6.2004 by S.I. 2004/759, art. 8

### 119 Complaints: data protection

In section 31 of the Data Protection Act 1998 (c. 29) (regulatory activity) at the end insert—

“(6) Personal data processed for the purpose of the function of considering a complaint under section 113(1) or (2) or 114(1) or (3) of the Health and Social Care (Community Health and Standards) Act 2003, or section 24D, 26, 26ZA or 26ZB of the Children Act 1989, are exempt from the subject information provisions in any case to the extent to which the application of those provisions to the data would be likely to prejudice the proper discharge of that function.”

#### Commencement Information

- I16** S. 119 in force at 1.6.2004 by S.I. 2004/759, art. 7



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**Changes to legislation:**

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