**Guidance for staff on S.38/39 Service Providers**

**& Complaint Review Requests**

**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 any body 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*.

**Service Provider Requirements**

Three Reports will be required by the HSE from Service Providers i.e. Section 38s (excluding Voluntary Hospitals), and Section 39s.

1. Complaints Officers will submit complaints data reports to the National Complaints Governance and Learning Team for their respective area four times a year using the relevant templates. (Link)
2. NCGLT will report on complaints data from Section 38s/39s, quarterly and will request that templates provided by NCGLT be returned, completed, on a quarterly basis by Service Providers.

A service provider who has established a complaints procedure by agreement with the Executive must provide the Executive with a general written report on the complaints received by the service provider during the previous calendar year. This report is to include:

* The total number of complaints received
* The nature of the complaints
* The number of complaints resolved by informal means (without a formal investigation having been undertaken).
* The outcome of any investigations into the complaints

Further information may be required at the discretion of the National Complaints Governance and Learning Team, who will inform Service Providers of data required.

**In relation to Review Requests the HSE will also seek a report from the Service Provider indicating:**

(a) the total number of review requests

(b) the nature of the review requests and

(c) the outcome of the review requests.

**Does the HSE have to conduct review investigations for Service Providers?**

There is no obligation on the HSE to conduct a complaint review investigation for the Service Provider as long as there is a review process in place within the agency itself. If the agency is small and consequently doesn’t have the capacity to review a complaint, then the HSE can undertake a review investigation, if requested by the complainant. The complainant may also choose to go directly to the Office of the Ombudsman, Ombudsman for Children, or other professional bodies to whom the complainant could make an application for review.

Clear details as to whom a complainant may apply to for a complaint review should be outlined within the complaint letter being sent out by the Complaints Officer. Small agencies that do not have the capacity to undertake their own reviews should link in with their local HSE Complaints Manager to identify an appropriate person.

**What is the Role of Review Officer?**

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.
* Where a Complainant has requested a review of the outcome of the investigation, the relevant Head of Service (Accountable Officer) will suspend the implementation of a recommendation and will notify the Complainant of this suspension.

**The functions of the Review Officer are twofold:**

1. To determine the appropriateness of a recommendation made, having regard to the two elements:
	1. All aspects of the complaint
	2. The investigation of the complaint
2. Having determined the appropriateness of the recommendation to uphold it, vary it, or make a new recommendation if he/she considers it appropriate to do so.

**The Review Officer is independent in his/her function as a Review Officer.**

**Review Officers and Recommendations**

The Review Officer will decide on any recommendations to be made as a result of the findings of the investigation. The Review report will outline if the recommendations from the investigation are being upheld, if the recommendations are being varied or the report will detail new recommendations made by the Review Officer. The reason for the decision of the Review Officer will be provided in the report.

These recommendations to include:

* action(s) to be taken to remove the causes of the complaint or its likelihood for re-occurrence as far as is reasonably possible where deemed necessary by the review.
* Any redress for the Complainant where deemed appropriate by the review.

A Review Officer may not, following the investigation of a complaint, make a recommendation the implementation of which would require or cause:

* the Executive to make a material amendment to its approved service plan, or
* a service provider and the Executive to make a material amendment to an arrangement under section 38 of the Health Act 2004.

A Review Officer may not make a finding or insert a comment on his/her report, adverse to a person, without first having afforded the person concerned the opportunity to consider the finding or criticism and to make representations in relation to it.



Upon conclusion of a review, the Review Officer will, as soon as is practicable forward a signed report on the review to the Complainant, the Complaints Officer who investigated the complaint and the Head of Service (Accountable Officer) as appropriate. If the HSE is undertaking a review on behalf of a Service Provider the Accountable Officer in this instance would most likely be the most senior officer of the Service Provider.

**Implementation of Recommendations made by Review Officers**

* Within **30 working days** the Accountable Officer will write to the Complainant and the Review Officer detailing recommendation.
* Where a recommendation, the implementation of which would require or cause the Executive to make a material amendment to its approved service plan, the relevant Head of Service (Accountable Officer) may amend or reject the recommendation.
* Where the recommendation is being amended or rejected or where alternative measures are being taken, the relevant Head of Service (Accountable Officer) must give the reasons for their decisions.
* The relevant Head of Service (Accountable Officer) must put an action plan in place for the implementation of the recommendations of the investigation. The action plan, persons responsible and timeframes are to be identified and recorded.

For further information on how to undertake a review investigation please go to:

<https://www.hse.ie/eng/about/who/complaints/ysysguidance/>