Guidance for the support of staff of the HSE Service for Protection of Older People who are subject of a complaint under Your Service Your Say

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13th October 2014

Chairperson, National Elder Abuse Steering Committee
13th October 2014
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1.0 Policy Statement

All HSE Staff are bound by the HSE *Elder Abuse Policy* (NEASC01- May 2012). Section 3.3. and 3.4 of the aforementioned policy identify the roles of Dedicated Officer and Senior Case Worker in the Protection of Older Persons.

The purpose of the Service for Protection of Older Persons is, generally speaking, not about righting a wrong done or establishing guilt, but rather about responding to the needs and wishes of the older person and working with him/her, and his/her family if appropriate, to resolve issue(s) impacting on the safety and welfare of the older person. This service has no statutory powers, nor statutory duties which are specific to it, but rather seeks to enable and support vulnerable older persons in promoting and protecting their own welfare. The sole client of the Service for Protection of Older Persons is the older person him/herself.

The following principles underpin the HSE *Elder Abuse Policy* and therefore the work of the Service for Protection of Older Persons:

- Support the rights of the individual to lead an independent life based on self-determination.
- The right to self-determination can involve risk. Ensure that such risk is recognised and understood and is minimised whenever possible.
- Ensure adequate protection for people who are unable to make their own decisions and/or to protect themselves.
- In those cases where intervention may compromise the individual older person’s right to independence and choice, the principle of “least restrictive alternative” should apply at all times.
- Ensure that the law and statutory requirements are known and used appropriately so that older people receive the protection of the law and the judicial process (RAEA, P.3).

This guidance acknowledges that the staff of the Service for Protection of Older Persons is particularly vulnerable to complaints due to the nature of this service. Complaints often arise in the context of extremely difficult intra-familial relationships. Complaints received, come very rarely from the older person (the client of the service). A significant proportion of complaints are from persons (incl. family members of the older person) whose actions it has been alleged cause concern for the older person’s welfare. Many more are from the person who originally expressed concern that someone was abusing or neglecting the older person and is unhappy with the outcome of the service’s response to that expressed concern.

2.0 Purpose

In recognition of the above particular issues, the purpose of this document is to provide guidance for the support of staff of the HSE’s Service for Protection of Older Persons who are the subject of a complaint under *Your Service Your Say.*
3.0 Scope

This guidance, applies to staff of the HSE Service for Protection of Older Persons i.e. Dedicated Officers for the Protection of Older Persons, Principal Social Workers for the Protection of Older Persons and Senior Case Workers for the Protection of Older Persons.

4.0 Relevant Legislation and National Policies.

*Responding to Allegations of Elder Abuse: HSE Elder Abuse Policy* (HSE May 2012) – Page 4 provides a comprehensive list of legislation and policies which inform it.

*Your Service Your Say* (HSE March 2009) – Page 4 provides a comprehensive list of legislation and policies which inform it.

5.0 Glossary of Abbreviations

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<th>Acronym</th>
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<tr>
<td>RAEA</td>
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<td><em>Your Service Your Say</em> (HSE March 2009)</td>
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6.0 Roles and Responsibilities.

This document is for the benefit and support of staff of the HSE Service for Protection of Older Persons.

This document will be disseminated to staff of the HSE Service for Protection of Older Persons, their line managers and providers of professional supervision.

All the above-named staff should inform themselves of the contents of this document.

7.0 Guidance for the Support of staff of the HSE Service for Protection of Older People who are subject of a complaint under *Your Service Your Say*

7.1 All HSE staff must accept and recognise complaints as a means of improving the services provided by the organisation (YSYS, p.75).

7.2 It is the policy of the HSE that the complaints management process will address the needs of the consumer, uphold the rights and protect the dignity of staff, and prevent, where possible, complaints from further escalation, which can be very time consuming and costly to resolve (YSYS, p.8).

7.3 Complaint investigations will be conducted with due respect for the rights of the complainant and the rights of the service/staff members to be treated in accordance with the principles of natural justice (YSYS, p. 48).
7.4 The Role of a Complaints Officer in *Your Service Your Say* includes:

- Where appropriate and practicable, endeavour to resolve the complaint with the consent of both parties, using approaches such as mediation (YSYS, p. xv).

- To give the complainant the opportunity to identify what they would like to happen as a result of making the complaint (YSYS, p.48). The Complaints Officer must ensure that the expectations of the complainant are managed and that the complainant is clear about what can and cannot be achieved through the investigation (YSYS, p. 49).

- Ensure that the rights and the legitimate interests of consumers and health service staff are being protected in the implementation of the HSE Complaints Management Policy (YSYS, p. xvi).

- The Complaints Officer must be impartial, prejudice free and unbiased in their decision making (YSYS, p.25).

7.5 The Role of Service Managers in *Your Service Your Say* includes:

To take responsibility for complaints pertinent to their area of work. They must take a strong participatory role in the investigation of complaints about their area of responsibility and must ensure that they make improvements to their service where required as a result of the findings and recommendations arising from the complaint investigation. They must also ensure that their staff are appropriately supported throughout the complaint management process. (YSYS, p.8)

7.6 The Role of all HSE Staff includes:

-an obligation to effectively deal with complaints made to them, either through dealing with the complaint at the point of contact, where appropriate, or forwarding the complaint to the Area Complaints Officer for management (YSYS, xvii). All HSE staff are obliged to cooperate fully with the investigation process (YSYS, p.48).

7.7 Persons Appropriate to Investigate Complaints Against Senior Case Workers

The Complaints Officer will have the necessary expertise to conduct an investigation impartially and expeditiously. Where appropriate, the Complaints Officer may request appropriately qualified persons to carry out clinical assessments, validation exercises etc. (YSYS p. 48)

7.8 Complaint re a Named Staff Member

Where a complaint made against a named staff member is not resolved at the point of contact, it must be put in writing and signed by the party making the complaint giving specific details such as dates and locations in order to allow the Complaints Officer/Service Manager to check the veracity of the complaint. Where a complaint is made about a staff member and the complainant does not provide contact details to enable the validation of the complaint, the complaint will not be investigated in the interest of procedural fairness (YSYS, p.19).
7.9 Anonymous Complaints

Anonymous complaints will not normally be investigated as there is always a possibility that they are vexatious or malicious and the anonymity of the complainant does not enable the principles of natural justice and procedural fairness to be upheld. Notwithstanding this fact management should assure themselves that the systems in place are robust and the welfare of patients/clients is not at risk (YSYS, p.58).

If an anonymous complaint provides details that enable the identification of individual staff members, these details must be anonymised and there must be no record of an anonymous complaint on the file of any individual staff members (YSYS, P.58).

7.10 Vexatious or Malicious Complaints

If a complaint is found to be frivolous or vexatious, the HSE will not pursue the complaint. This does not remove the complainant’s right to submit their complaint to the Ombudsman. If a complaint is found to be vexatious or malicious, there will be no record of the complaint kept in the file of the staff member/service about which the complaint was made. Before a complaint is deemed vexatious the Complaints Officer must bring it to the attention of the relevant Local Health Manager or Deputy, (YSYS, p.58).

7.11 Confidentiality and Consent

Before accessing client confidential information as part of the investigation of a complaint, the HSE must first ensure that it has the explicit consent of the client, to do so (YSYS, p.22) – Remember it is common that the complainant is NOT the client.

When a complaint is made on behalf of a third party the HSE must endeavour to ensure that the complaint is being made with the consent of the third party. When a complaint is made on behalf of an incapacitated person, the HSE must ensure that this person, by law or by appointment of a court, has the care of the affairs of that person. An objectively reasonable approach to this issue will usually prevail with each situation being considered on an individual basis (YSYS, P23).

7.12 Protection and Safety of the Client

All HSE staff have a duty of care to be alert to circumstances where an older person may be subject to abuse or is suspected of being abused and to the protection and promotion of the rights of older people, their dignity, diversity and independence (RAEA, p.3). The Complaints Officer will initiate the investigation of the complaint once all steps have been taken to remove or treat any immediate harm caused by the action about which the complaint is being made (YSYS, P.45).

All HSE staff should be alert to the possibility that a complainant is seeking, by his/her complaint, to prevent the taking of measures to protect the older person from abuse (or to reverse such measures where they have already been taken). The views of the staff member should be taken into consideration when determining the appropriate protective measures to take in the circumstances, but the final decision rests with management.
7.13 Support to the Subject of the Complaint

The subject of the complaint’s line manager must ensure that he/she is supported and assisted in every way possible during the investigation of a complaint. The subject of the complaint must be advised of their right to representation and be informed of any support networks and people available to assist them in responding to complaints e.g. union officials, local representatives, professional bodies, human resource managers, peer support officers, employee assistance staff. The Complaint Officer must ensure that support is provided to the subject(s) of the complaint in the form of:

- Time to deal with and respond to the complaint
- An unbiased forum for giving their side of the story and
- An opportunity to be accompanied by an appropriate person during the course of the investigation of the complaint
- Emphasis on resolution as opposed to blame.
- Knowledge of their rights (YSYS, P.68).

7.14 Some Relevant Timeframes in Your Service Your Say

Where there is a response required from staff members in relation to issues raised by the complaint the relevant staff member(s) is required to respond within 10 working days of receiving notice of the complaint (YSYS, P.35).

Where a complaint has become a formal written complaint under stage 2 of the process, the Complaints Officer must update the complainant and the relevant staff/service member every 20 working days (YSYS, p. 34).

7.15 Complaint Investigation Reports

A Complaints Officer will not make a finding or a criticism in his or her report, adverse to a person without having afforded the person concerned the opportunity to consider the proposed finding or criticism and to make representations in relation to it (YSYS, P.49).

The Complaints Officer will forward the report as soon as practicable to the complainant, the relevant Service Manager/Staff Member* and to the CEO or designated officer.

- The report forwarded to the complainant will also advise that he/she may request a review of the outcome of the investigation of their complaint and will provide the complainant with the details of how to request the review.
- The recipients of the report will be invited to contact the Complaints Officer to clarify any issues in the report.
- Where a staff member against whom a complaint has been made is unhappy with the recommendations they may invoke the Grievance & Disciplinary procedures.

*At all times, when issuing a report, the Complaints Officer must be cognisant of confidentiality requirements for both the complainants and the staff members about whom the complaint was made. The Complaints Officer may need to consider anonymising parts of the report to protect the identity of the complainant or the staff member when deemed appropriate by the Complaints Officer (YSYS, p.50-51).