

**GIBRALTAR HEALTH AUTHORITY (COMPLAINTS
REVIEW PANEL) ACT 2004**

Principal Act

Act. No. 2004-25	<i>Commencement</i>	17.8.2004
	<i>Assent</i>	17.8.2004

Amending enactments	Relevant current provisions	Commencement date
LN. 2006/010 Act. 2006-18	<i>Corrigendum</i> s. 17	5.6.2006

English sources

None cited

ARRANGMENT OF SECTIONS.

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AN ACT TO MAKE PROVISION FOR THE APPOINTMENT OF AN INDEPENDENT REVIEW PANEL TO CONSIDER COMPLAINTS FROM USERS OF THE MEDICAL AND HEALTH SERVICES PROVIDED BY THE GIBRALTAR HEALTH AUTHORITY, TO GIVE SUCH USERS THE RIGHT TO REFER THEIR COMPLAINTS TO THE INDEPENDENT REVIEW PANEL, TO REGULATE THE FUNCTION THEREOF, AND FOR PURPOSES CONNECTED THEREWITH.

PART I
PRELIMINARY

Title.

1. This Act may be cited as the Gibraltar Health Authority (Complaints Review Panel) Act 2004.

Interpretation.

2. In this Act unless the context otherwise requires—

“Action” means any action or omission of the Authority or any employee of the Authority or of any employee of the Government or any other person delivering medical services on behalf of the Authority concerning a specific event in relation to a specific patient;

“Authority” means the Gibraltar Health Authority constituted by the Medical (Gibraltar Health Authority) Act;

“Chief Executive” means the Chief Executive of the Authority;

“Complaint” means a formal written complaint relating to an Action brought in accordance with the Complaints Process;

“Complaints Process” means the published complaints process operated by the Authority from time to time;

“Investigation” means a review and investigation of a Complaint culminating in the issuing of a report thereon by the Review Panel;

“Minister” means the Minister for Health;

“Ombudsman” means the person appointed pursuant to Section 3 of the Public Services Ombudsman Act 1998;

“Panel” means the panel of persons appointed under Section 3;

“person aggrieved” means a person who is entitled to make and has made a Complaint;

“Review Panel” means the three members of the Panel appointed under Section 7(1) to conduct an Investigation of a particular Complaint.

PART II

Appointment of Independent Panel.

3.(1) There shall be appointed a Panel for the purposes of conducting Investigations in accordance with the provisions of this Act.

(2) The Minister may, from time to time, by notice in the Gazette appoint such number of persons as he considers appropriate to constitute the Panel.

(3) Appointments made under subsection (2) shall, subject to the provisions of this Act, be for such period of time as is specified in the notice of appointment, and failing the specification of such a period shall be until the appointment is terminated by the Minister by notice in the Gazette, or until the person appointed resigns in writing addressed to the Minister.

(4) The Minister may, by notice in the Gazette, appoint a Secretary to the Panel and other support staff.

Remuneration and Expenses.

4. There shall be paid to members of the Panel such remuneration and expenses as the Minister may prescribe in Regulations made hereunder.

Liability of Panel Members.

5. No member of the Panel shall be liable to any suit or any proceeding for any act or thing done or omitted to be done by him in that capacity.

PART III

INVESTIGATION OF COMPLAINTS

Referral of Complaints to Panel.

6.(1) If a person aggrieved has not received a final response from the Authority to a Complaint within 8 weeks of having made it, or having received such a response is not satisfied with it, such a person may give notice in writing to the Ombudsman that he wishes to refer such Complaint to the Panel for Investigation.

(2) The Ombudsman shall within 3 working days of receipt of any notice under sub-section (1) provide a copy thereof to the Chief Executive.

(3) A notice under subsection (1) shall be given within 28 days of receipt by the person aggrieved of the Authority's final written response to the Complaint.

(4) For the purposes of subsection (3) a response will be deemed to have been received 7 days after it shall have been sent to the person aggrieved by the Chief Executive by registered mail to the address provided in the Complaint.

(5) A notice under subsection (1) must attach a copy of the Complaint and of all written exchanges between the Authority and the person aggrieved relating to it and must set out the reasons why the person aggrieved is not satisfied with the Authority's final response to the Complaint and which points of the Complaint such person feels remains unresolved to his satisfaction.

Nomination of a Review Panel to conduct Investigation.

7.(1) On receipt of a notice under Section 6 (1) the Ombudsman shall within 7 days nominate three members from the Panel to constitute the Review Panel to conduct an Investigation of that Complaint.

(2) The Ombudsman shall designate one of the three persons nominated under subsection (1) to be the convenor of the Review Panel in relation to that Complaint.

(3) The Review Panel nominated pursuant to subsection (1) shall convene to initiate its Investigation of that Complaint within 14 days of its nomination.

Time limit for referring Complaints to the Panel.

8.(1) A referral of a Complaint under this Act to the Panel shall not be entertained unless it is made in the manner and within the time limit specified in Section 6(3).

(2) Notwithstanding the provisions of subsection (1), the Ombudsman may authorise the Investigation of a Complaint by the Panel not referred within the period therein limited, if he considers that there are special circumstances which make it proper to do so, but the Ombudsman shall not do so more than 3 months after the date of the Authority's final response to the Complaint.

Power to appoint clinical assessor.

9.(1) If the Complaint involves a clinical matter or matters and the Review Panel so requests the Minister may appoint at least one (but not more than

two) clinical assessor external to the Authority to advise the Review Panel on such matter or matters.

(2) No person who acts as clinical assessor to the Panel shall be liable to any suit or any proceeding for any act or thing done or omitted to be done by him in that capacity.

(3) The Minister may pay to such clinical assessors such amount by way of remuneration and expenses as the Minister considers reasonable and appropriate.

Power to investigate.

10. The Review Panel shall have power to conduct an Investigation into the Complaint and any question whether a Complaint is duly made or referred under this Act shall be determined by the Ombudsman.

Exceptions to power.

11. The Review Panel shall not conduct an Investigation of any Complaint—

- (a) which is based upon an Action which is the subject matter of litigation or in respect of which an intention to litigate against the Authority has been expressed; or
- (b) which is based upon an Action which reflects, implements or complies with any policy of the Authority or the Government.

Duty to afford opportunity to comment.

12. Where the Review Panel conducts an Investigation of a Complaint it shall afford the Authority, any person who is alleged in the Complaint to have taken the Action complained of and the person aggrieved an opportunity to comment orally and or in writing on any allegations contained in the Complaint.

Conduct of Investigations.

13.(1) Every Investigation of a Complaint under this Act shall be conducted in private but, except as aforesaid, the procedure for conducting an Investigation shall be such as the Review Panel considers appropriate in the circumstances of the case.

(2) Notwithstanding any other provision hereof to the contrary, the procedures of the Review Panel shall be informal, shall not constitute judicial or quasi judicial proceedings and shall not include any form of inter partes hearings or process.

(3) Without prejudice to the generality of subsection (1) the Review Panel may obtain information from such persons and in such manner, and make such inquiries, as it thinks fit.

(4) The conduct of an Investigation under this Act shall not affect any lawful action taken by the Authority, or any power or duty of the Authority to take further action with respect to any matter subject to the Investigation.

Power to call evidence.

14.(1) For the purposes of any Investigation under this Act, the Review Panel shall have the same powers as the Supreme Court in respect of the attendance and examination of witnesses and in respect of the production of documents, provided that neither the Authority nor the person aggrieved shall have any right to be present during any examination of witnesses by the Review Panel, nor to put any questions to witnesses.

(2) No person shall be compelled, for the purposes of an investigation under this Act, to give any evidence or produce any document which he could not be compelled to give or produce in proceedings before the Supreme Court.

(3) The Authority shall provide to the Review Panel, upon request by it, any and all records and documents relating or relevant (in the opinion of the Review Panel) to the Complaint.

Waiver of Confidentiality.

15.(1) By virtue of referring a Complaint to the Panel, the person aggrieved, and if the person aggrieved is not the person to which the Action related, then that person shall be deemed to have waived all rights against the Authority and its employees in respect of the confidentiality of any medical or personal information which the Authority or any of its employees shall provide to the Review Panel under this Act and the Authority and its employees are likewise released of any such duty or obligation imposed by any law, professional or other good practice and such person shall be deemed to have authorised the Authority and its employees to provide all such information to the Review Panel.

(2) Subsection (1) shall apply only to the provision of information by the Authority or any of its employees to the Review Panel.

Duty not to disclose information.

16. Information obtained by the Review Panel or a member of its staff in the course of, or for the purposes of, an Investigation under this Act, shall not be disclosed except—

- (a) for the purposes of the Investigation and of any report to be made thereon under this Act; or
- (b) for the purposes of any proceedings under this Act;

and the Review Panel, any member of it or members of its staff shall not be called upon to give evidence in any proceedings, other than such proceedings as aforesaid, of matters coming to its or their knowledge in the course of an Investigation under this Act.

Reports upon Complaints.

17.(1) The Review Panel shall complete its Investigation within twelve weeks of the referral to it of a Complaint.

(2) If for a reason outside its control the Review Panel is unable to complete its Investigation within the time stipulated in subsection (1), it shall nevertheless produce its report, stating the reasons why it has been unable to complete its Investigation, unless the Review Panel makes a request in writing to the Ombudsman for an extension of such time.

(3) In making a request pursuant to subsection (2), the Review Panel shall provide the Ombudsman with their reasons for making the request.

(4) The Ombudsman shall, within seven days of receipt of a request made under subsection (2), provide the Review Panel and the Chief Executive with a notice in writing by stating his decision for allowing or disallowing the request.

(5) Where the Ombudsman allows a request made under subsection (2), he shall notify the Review Panel and the Chief Executive of a new date for the completion of the report which shall in any event not be longer than twenty six weeks from the date of the referral of the Complaint to the Review Panel.

(6) Any question in respect of allowing or disallowing a request by the Review Panel for an extension to the time stipulated in subsection (1) shall be determined by the Ombudsman.

(7) The Review Panel shall send a copy of its report of an Investigation into a Complaint, within fourteen weeks of the referral of the Complaint to it or within two weeks of the date set by the Ombudsman under subsection (5) to—

- (a) the person aggrieved;
- (b) the Chief Executive;

- (c) any person who is alleged in the Complaint to have taken or authorised the action the subject matter of the Complaint;
- (d) any person criticised in the Report;
- (e) the Ombudsman; and
- (f) the Minister.

(8) No reports of the Review Panel shall be published by it or by the Ombudsman except in accordance with this section.

Effect on law of defamation.

18. For the purposes of the law of defamation, any such publication as is hereinafter mentioned shall be absolutely privileged, that is to say—

- (a) the publication by the Authority or by the person aggrieved of any report of the Review Panel;
- (b) information obtained by the Review Panel or members of its staff in the course of, or for the purposes of, an Investigation except—
 - (i) for the purposes of the investigation and of any report to be made thereon;
 - (ii) for the purposes of any proceedings of an offence of perjury alleged to have been committed in the course of an Investigation under this Act or for the purposes of an inquiry with a view to the taking of such proceedings; or
 - (iii) for the purposes of any proceedings under this Act, and the Review Panel and members of its staff shall not be called upon to give evidence in any proceedings (other than such proceedings as aforesaid) of matters coming to his or their knowledge in the course of an investigation under this Act.

**PART IV
FINAL PROVISIONS**

Offence of obstruction.

19.(1) Any person who, without lawful excuse, obstructs the Review Panel or any member of its staff in the performance of their duties under this Act, or is guilty of any act or omission in relation to any Investigation under this Act which, if that investigation were a proceeding in a court of law, would constitute contempt of court, shall be guilty of an offence.

(2) Where an offence is certified under this section, the court may inquire into the matter and, after hearing any witnesses who may be produced against or on behalf of the person charged with the offence, and after hearing any statement that may be offered in defence, deal with him in any manner in which the court could deal with him if he had committed the like offence in relation to the court.

Regulations.

20. The Minister may from time to time make regulations for all or any of the following purposes–

- (a) prescribing forms of applications and the procedure to be followed with respect to any matter under this Act;
- (b) prescribing any additional information to be submitted in support of any application under this Act;
- (c) providing for such other matters as may be prescribed hereunder or are reasonably necessary for or incidental to the due administration of this Act.