



ISLE OF MAN GOVERNMENT

DEPARTMENT OF HEALTH AND SOCIAL CARE

COMPLAINTS MODERNISATION

Part 2: Consultation on longer term changes –
reform

Issue date: 6 September 2021

Closing date: 18 October 2021

The purpose of this consultation

This consultation is one of two issued by the Department for Health and Social Care (“**the Department**”) in conjunction with the Health and Care Transformation Programme in the Cabinet Office.

Following on from the establishment of Manx Care and the redesigned Department there is now greater emphasis by the Department on transparency and planning for a modern legislative framework for the Island’s health and social care system.

The consultation aims to be open about the steps that the Department could take in future to improve complaints handling across the health and social care system, as a result the consultation is in two parts:

Part 1 – Short term – by Regulations

The purpose of the first consultation document is to seek your views on the proposed content of several sets of draft Regulations to modernise the complaints process, including the independent review stage.

Part 2 – Longer term - reform

This consultation document poses some questions that will help to shape the approach to the handling of complaints in the longer-term, as part of a comprehensive review under the National Health and Social Care Services Bill (“**the Reform Bill**”). The aim of this Bill will be to modernise and consolidate the existing primary legislation in relation to the National Health and Social Care Service and allow for further integration of the services.

Responding to the consultation

All feedback that you provide to the consultation will be valuable in ensuring that the complaints process is as effective as possible. You do not have to answer every question for your feedback to be counted and considered. You may respond to either one or both consultations. The deadline for responses is 18 October 2021.

Paper copies of this consultation are available from the Department:

Complaints Procedure Consultation,
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Demesne Road,
Douglas,
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When submitting a response please bear in mind the following:

1. Any abusive or offensive responses will be discounted.
2. Please let us know the name of the organisation that you are responding on behalf of, if applicable.
3. Your response will be carefully considered; however, it does not guarantee that your proposals or preferences will ultimately form a part of the new legal framework for the complaints procedure.
4. Your response will be reviewed by officers from both the Department of Health and Social Care and the Cabinet Office as these two Departments are working together to progress this work.
5. We would welcome your response at the earliest opportunity ahead of the closing date.

Publishing responses

We will publish any responses where permission has been provided for us to do so after the consultation has closed. Therefore, information you provide to us, including your own personal data may be published or disclosed. Where this is the case, it will be done in accordance with the Island's data protection legislation.

A paper copy of the Consultation may be requested from the Department. In respect of written responses (e.g. by letter or email), if you want your response and/or personal information to remain confidential, then please clearly mark your response as confidential. An automatic confidentiality disclaimer generated by your IT system will not, in itself, be regarded as binding.

In respect of responses made via the Isle of Man Government's consultation hub at consult.gov.im, you will be asked at the beginning of the consultation to indicate if you would prefer your response to be published in full, anonymously or not at all.

Queries

If you have any query that relates to how this consultation has been carried out, please contact Georgina Jones at georgina.jones@gov.im.

Code of Practice on Consultation

This consultation is being carried out in accordance with the Government's Public Engagement and Consultation Principles, October 2017, which sets out eight criteria for consultations:

1. Consultations have a purpose and offer genuine opportunities to make a difference.
2. Consultations follow a clear and open process.
3. Consultations are well planned and delivered in a reasonable timescale.
4. We encourage and enable everyone affected to get involved, if they wish to.
5. We provide jargon free and understandable information.
6. Use suitable methods to deliver the consultation.
7. We learn and share lessons to improve future consultations.
8. We tell people the impact of their contribution.

Background

As a result of its establishment on 1 April 2021, Manx Care now has responsibility for the delivery of health and social care services to patients and service users, whereas the Department is responsible for oversight of the Island's health and social care system including matters of strategy, planning, finance, regulation and assurance. Each year the Department will require Manx Care to provide a range of services to a specified standard for a certain amount of funding to address the needs of the population of the Isle of Man. This is set out within a document called the [Mandate](#)¹.

From 1 April 2021 changes were made to the Complaints Regulations² and to the complaints handling procedures operated by the Department, Manx Care and the Independent Review Bodies to provide an interim solution to ensure that patients and service users can make representations about their care and treatment.

The Department intended to fully overhaul the requirements in relation to health and social care service complaints as part of the Reform Bill. However following a motion by Tynwald in April 2021, the Department now intends to address as many of the issues raised as part of the debate on that motion as possible within changes to Regulations, which are set out in Part 1 of the consultation.

Once those changes have been made, the Department intends to make further changes that are only possible by introducing an Act of Tynwald (primary legislation). The proposals for the Bill will learn from and build upon the changes made to the Regulations. This consultation paper provides a summary of the issues that have arisen to date regarding the Department and Manx Care's complaints policies and procedures that have not been able to be addressed within Regulations.

The reason for bringing in legislative change in stages is that certain changes are only possible by introducing an Act of Tynwald (primary legislation) which takes significantly longer than introducing or amending Regulations (secondary legislation).

¹ For more information on the split between the Department and Manx Care, see the quick reference guide: <https://www.gov.im/media/1372143/redesigned-dhsc-and-manx-care-quick-reference-guide.pdf>

² The National Health Service (Complaints) (Amendment) Regulations 2021, the National Health Service (Independent Review Body) (Amendment) Regulations 2021, and the Social Services Independent Review Body (Amendment) Regulations 2021

The Reform Bill is currently anticipated to be introduced to Tynwald in autumn 2023 based on resource available to the Department, the Attorney General’s Chambers and the Transformation Programme at present. However, efforts are being made to accelerate this work by seeking additional dedicated resource.

Summary of Proposals

This consultation seeks feedback on the Department’s longer-term plans for reform of complaints handling that can only be dealt with in primary legislation (the Reform Bill). It is expected that areas for further consideration will arise from the public consultation process but, at this early stage, some of the key objectives will be to:

- set out new statutory duties and responsibilities for the organisations handling health or social care complaints on the Island,
- require the Department to set out a corporate complaints policy,
- consider whether the Department should be required to set complaints handling quality standards for service providers,
- consider whether the Department should be able to require all health and social care providers operating in the Island (including private providers) to have a statutory complaints process,
- create a truly independent adjudicator or Ombudsman for the review of all health and social care complaints, and
- enhance the ability to access to records relevant to a complaint.

Longer term proposals for reform of complaints handling

The following areas of policy are being considered by the Department and feedback to the questions posed will help to inform the Department's further work in this area.

1. Clear statutory duties

Tynwald asked that each of the entities that have a role in handling health and social care complaints should have statutory responsibilities for handling complaints set out very clearly at a high level within primary legislation.

Whilst there already are statutory responsibilities that each body must adhere to as part of the detail of the current regulations, the separation between the roles and responsibilities of the Department and of Manx Care, in particular, needs to be made clearer in respect of complaints handling.

The Department

The Department should have a duty to have arrangements in place covering complaints received about its functions in relation to oversight of the national health and social care system.

Despite the lack of statutory requirement for this, the Department has set out its corporate complaints policy in relation to its responsibilities concerning complaints made about the Department, and confirming its role in relation to complaints about health and social care services provided by registered providers. The policy is available as part of this consultation and feedback is requested to inform a future review of the policy and the legislative requirement for the policy.

The Department is ultimately responsible at a strategic level for the provision of the Island's health and social care service and so has an oversight and assurance function in relation to complaints about services that Manx Care provides or arranges on behalf of the Department.

This means that the Department is responsible for ensuring that;

- Manx Care is compliant with all regulatory requirements relating to complaints handling, and

- learning and improvement is taking place and is demonstrated in Manx Care’s annual reporting as outcomes from its handling of complaints.

Manx Care

Manx Care’s role is to meet the legitimate concerns of complainants in relation to complaints about any health or social care services it provides directly. This includes a requirement to have in place a complaints handling procedure and arrangements in line with regulatory requirements.

Manx Care also has a role in relation to assurance of complaints in relation to services provided by those organisations that it has contracted with to provide services (known as “**commissioned service providers**”). Therefore, Manx Care is responsible for ensuring that;

- commissioned service providers are compliant with all regulatory requirements relating to complaints handling, and
- learning and improvement is taking place and is demonstrated in contractual reporting as outcomes from the commissioned service provider’s handling of complaints.

Commissioned service providers

Commissioned service providers are required to meet the legitimate concerns of complainants in relation to complaints about any health or social care services provided by them. This includes a requirement to have in place a complaints handling procedure and arrangements in line with regulatory requirements.

Independent Review Body

The role of the combined Independent Review Body proposed under Part 1 of the consultation is set out within the National Health Service (Complaints) Regulations 2021, the Social Services (Complaints) Regulations 2021 and the Social Services for Children (Complaints) Regulations 2021. Other options to fulfil the role of independent adjudicator for complaints in future (as set out in section 3 of this consultation paper) will also need to be set out clearly. The proposals for what exactly that future role should be are covered in section 3.

Mental Health Commission

Currently the Mental Health Commission has a role in relation to reviewing complaints from patients that are detained under the Mental Health Act 1998 or their family and carers. Manx

Care as the provider of mental health services will have a requirement to have complaints procedures in place.

In England, the Care Quality Commission (“**CQC**”) can investigate complaints relating to the Mental Health Act (usually once local complaints procedures have been exhausted) and the Parliamentary and Health Service Ombudsman can consider any complaints which do not fall within the remit of CQC. Consideration is being given to the role of the Mental Health Commission and how it should fit with other processes for reviewing complaints.

People who are detained under the Mental Health Act 1998 cannot choose to leave hospital. This is a sensitive topic and, as there are several bodies that can deal with complaints about this care, it is particularly important that people in this situation have clear information on how to complain.

Question

1. Do you have any views on the statutory duties that would apply to the Department, Manx Care, commissioned service providers or any independent adjudicator?
2. Do you have any comments on the Department’s corporate complaints policy?
3. Do you have any views on the role of the Mental Health Commission?

2. Complaints standards for private health and social care services

The Department has a statutory duty to ensure that a comprehensive health and social care service is made available and accessible to the Island’s public. This ‘comprehensive health and social care service’ is funded from the public purse and is provided by Manx Care and by any service provider contracted by Manx Care to provide services under the mandate on its behalf.

Additionally, the Department’s Registration and Inspection Unit is responsible for ensuring that care services on the Isle of Man comply with the Regulation of Care Act 2003 and Regulations.

The Unit registers services that provide care in the community, such as:

- Adult Care Homes and Adult Day Care Services,
- Children’s Homes, Childminders and Child Day Care Services (nurseries),
- Nurse Agencies,

- Domiciliary Care (home care and supported living),
- Isle of Man Hospice,
- Offender Accommodation,
- Independent clinics and Independent Medical Agencies, and
- Fostering and Adoption Services.

Other privately provided health or social care services are not currently regulated for complaints handling and so do not have standards imposed upon them for the way in which they must deal with complaints.

Service providers that have been contracted by Manx Care to provide services but that also provide private services (such as a dentist that operates NHS clinics on some days and private clinics on others) will be required to have a complaints policy that is in line with the Complaints Regulations. However, under the Regulations this is only required to be operated in relation to complaints about services provided as part of the national health and social care service. A service provider could therefore operate two separate complaints procedures, and in some cases it will be required to do so, because complainants that have a complaint about the private services will not have the right of recourse to an independent adjudicator in relation to such complaints.

Professional service providers will have an established procedure for handling feedback and complaints from patients which they must follow and some professionals that practice privately will be overseen by a professional body (in the example of dentists given above, they would be overseen by the General Dental Council). However, other providers may not have or may not have signed up to the relevant standards and, in such circumstances, the Department does not have a role in requiring such protection for the public or being able to act if problems occur with organisations that could cause significant harm to patients, service users, staff or the public, or undermine public confidence in such services providers.

Feedback is therefore being sought as to whether the public thinks that private health and social care service providers should be required to meet certain standards and adhere to processes and timescales in their complaints handling. This is being considered alongside a wider question of whether the Department should have a remit to register and impose minimum standards on **all** health and social care providers on the Island.

Questions

4. What comments do you have about complaints handling by private health and social care service providers?
5. Do you think the Department should have a role in relation to setting standards for complaints handling by private health and social care service providers?
6. Please provide further explanation for you answer.

3. Options for an independent adjudicator

In Part 1 of the consultation a short-term proposal is set out that would result in a combined Independent Review Body to look at unresolved complaints in relation to health or social care services. However, in the longer term it is possible for more significant reform by changing the primary legislation. There are several options for what kind of independent adjudicator would be best suited to the Isle of Man, including;

- retaining the newly combined IRB,
- creating a stand-alone Ombudsman akin to the Parliamentary and Health Services Ombudsman or the Local Government and Social Care Ombudsman in the UK,
- extending the remit and resources of the Tynwald Commissioner for Administration³ to cover investigation of health and social care service complaints,
- contracting with an appropriate external party through the UK Ombudsman Association, or
- contracting with off Island professional external investigators specialising in health and social care complaints.

There are also important considerations for the scope of what types of complaints the independent adjudicator could review:

- whether a service user who has paid for health or social care privately on the Island and has subsequently made a complaint about the service they received should be able to request a review of their complaint by a publicly funded independent adjudicator. In the UK, the Local Government and Social Care Ombudsman has the

³ The current function of the Tynwald Commissioner for Administration is to investigate complaints from members of the public who claim to have sustained injustice or hardship as a result of service failures by, or administrative actions of Government Departments (including action taken on their behalf) and Statutory Boards.

remit to look at all adult social care complaints, including care that is funded privately without council involvement; and

- whether a complaint relating to the detention of a person under the Mental Health Act 1998 should be dealt with by the same independent adjudicator as complaints about other health services and social care services in the Island.

Questions

7. Do you have any views on which of the above options for an independent adjudicator would be most preferable?

8. Should the independent adjudicator's remit include complaints relating to health and social care services that are funded privately?

9. Should the independent adjudicator's remit include complaints relating to the detention of a person under the Mental Health Act 1998?

10. What areas of concern should the independent adjudicator look at when carrying out a review into a complaint?

11. Should the independent adjudicator be made up of lay members, professionals that are experienced in health or social care, professionals experienced in complaints handling and dispute resolution or a mixture?

12. Who should appoint the members to the independent adjudicator to ensure independence?

13. Where and how should the independent adjudicator be required to report?

14. Should the independent adjudicator be allowed to launch its own investigations on issues of concern without first having to have had a large number of complaints?

4. Who should be able to make a complaint?

The best practice position is that only a person affected by an issue, or a person acting on their behalf, can raise a complaint. The draft Regulations outlined in part 1 of this consultation require this to be the case for a complaint to be considered under the arrangements made by service providers in line with those Regulations.

However, consideration is being given to whether a mechanism is needed to allow people that are aware of an issue but have not been directly impacted by an issue (such the coroner, MHKs, Tribunal Chairs) to point out poor practise to the Department or Manx Care and to ensure that it is investigated and learnt from.

Questions

15. Do you think it is a good idea to have a mechanism to allow people that have been made aware of issues but have not been directly impacted to raise issues?

5. Access to records and data sharing

Potential complainants need to have easy access to all the information they require. There are processes through which complainants can access their own health or social care records; however, these may not always be fully understood. The process for receiving this information should be as simple as possible, but there are interactions between various laws (such as Freedom of Information and Data Protection) which could complicate matters. The proposal in Part 1 of the consultation to introduce more advice and guidance for complainants as well as a dedicated advice and liaison service in Manx Care could help complainants to navigate this process more easily.

The extended time frame proposed for being able to make a complaint should also ensure that the length of time it takes for the hospital to release records does not prohibit complainants from making a complaint.

It is intended that the combined IRB (proposed under part 1 of the consultation) will need the consent of the individual making the complaint to request records from the service provider to complete a review of the complaint. This is common practice and is in compliance with General Data Protection Regulation (GDPR).

Whilst there are no data protection implications for deceased persons, there is a common law duty of confidentiality which applies beyond death, meaning that health and social care records for deceased persons continue to be treated as confidential.

People that wish to make a complaint on behalf of a deceased person may wish to access that person's health or social care records. Currently, health records of a deceased person may be accessed by application under the Access to Health Records and Reports Act 1993.

This Act gives an individual the ability to apply for access to health records of a deceased person if they are that person's representative or if they might have a claim arising out of the person's death. The same does not currently apply to a deceased person's social care records and this is an inconsistency that should be rectified.

If private health and social care service providers are to be part of the future independent adjudicator’s remit, they would require access to those service provider’s records. Under the General Data Protection Regulation (GDPR), the complainant’s consent would be needed for those records to be shared. This is the current position in relation to data sharing with the Independent Review Bodies and is considered to be appropriate.

Commented [MA1]: Suggest ‘the complainant’s consent would be needed for those records to be shared’

Questions

- 16. Should the ability for individuals to access records of a deceased person be extended to include social care records as well as health records?
- 17. What limitations should there be, if any, to the ability for individuals to access health or social care records of a deceased person?
- 18. Do you think additional guidance in relation to data sharing is needed for complainants?

6. Complaints standards

The Department is of the view that all complaints arrangements should be in line with quality standards for complaints handling. This includes standards such as England’s NHS Complaint Standards: Summary of Expectations.

This document cannot be referred to directly in legislation as it would be problematic where the Island has different requirements as a matter of policy. The Department could issue its own standards that closely mirror those in England but fit better with the Manx context.

Question

- 19. Do you think the Department should be required to set out quality standards in complaints handling as guidance for service providers?
- 20. Please provide an explanation for your answer.

7. Any other comments

Question

21. Do you have any other feedback on areas that the Department should consider in relation to the arrangements for health and social care complaints?