



Guidance for Manx Care staff on the Complaints Regulations 2022

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INTRODUCTION

The following is guidance for all Manx Care staff and relates to the introduction of the new health and social care complaints regulations (the “Regulations”).

The Regulations relate to Manx Care and all its commissioned service providers (eg. GPs, Dentists, Pharmacies, Care Services).

Commencement

The Regulations start on 31 October 2022, replacing the 2021 amended Regulations.

Handling complaints and disposal

Manx Care must make arrangements for dealing and considering complaints and for the complaints disposal. Any complaints handling must be in writing (applies to Manx Care and not the complainant) and free of charge.

Responsibility for complaints arrangements

Each service provider must designate —

(a) a “responsible person”, to be responsible for ensuring compliance with the Regulations – for Manx Care this is the Chief Executive Officer. The functions of the responsible person may be performed by any person authorised by the responsible person to act on his or her behalf.

(b) a “complaints manager”, to be responsible for managing the procedures for handling and considering complaints. The functions of the complaints manager may be performed by any person authorised by the CEO. For Manx Care this role has been delegated to the Head of Care Quality and Safety.

Manx Care must ensure that the complaints manager is suitably qualified and experienced, is provided with resources, and has authority to perform their role.

Manx Care’s commissioned service providers must also have a designated responsible person and complaint manager.

Who can make a complaint?

A complaint may be made by a person who is receiving or has received health and social care services on the Isle of Man (IOM).

They may also be someone who is affected, or likely to be affected, by any act, omission or decision of a service provider. They can also be someone who is aggrieved with a decision in respect of services or is likely to be affected by the action of a service provider in carrying out an investigation.

Other people can make a complaint on someone else’s behalf – these are referred to as a “representative”. They may act as a representative if someone has died; if they are a child or for someone with a physical or mental incapacity; or who want a representative to act on their behalf (we must ensure compliance with GDPR and seek consent).

If a representative is making the complaint on behalf of a child, the service provider must not consider the complaint unless it is satisfied that there are reasonable grounds for the complaint being made by the representative instead of the child.

If Manx Care is not satisfied that this is the case, we need to write to the representative and state the reason for its decision.

If Manx Care does not feel the representative is making the complaint in the individual's best interests, we need to write to the representative and the individual (if applicable) and explain why.

An individual's 'best interests' means it is consistent with a person's beliefs, values, wishes and feelings whether expressed orally, in writing or by behaviour in the past or present.

What complaints can't we consider?

Manx Care can't consider a complaint that has previously been dealt with (under 2004 Regulations, 2021 Amended Regulations or 2022 Regulations).

A complaint made by a service provider which relates to an employment matter – these should go to a relevant Manager / Office of Human Resources.

An oral complaint which is resolved to the complainant's satisfaction not later than the end of the **third working day** after the complaint was made.

A complaint arising from alleged failure to comply with a Data Subject Request or a Freedom of Information request – these could possibly go to the Information Commissioner.

Any complaint dealt with under any other enactment.

If Manx Care receives a complaint connected with another complaint, we do not have to consider the complaint. If another complaint has been made and it is a new complaint and not connected, Manx Care must consider this.

What is the time limit for making a complaint?

A complaint must be made not later than **12 months after the event**, or later if the person making the complaint has only found out about it beyond the 12 month period.

Manx Care's complaints manager may also accept a complaint if the complainant has good reasons for not making the complaint within that time limit; and where it is possible to investigate it. If the complaints manager decides this is not possible or that they are not going to consider a complaint, we must put this in writing to the complainant.

So what do we have to do when we receive a complaint?

Before we investigate, a complaint must be made orally or in writing to us and can be made to anyone in Manx Care. All complaints have to be recorded and the date of receipt must also be made.

All complaints *have to be acknowledged in writing*, or in the way the complainant has asked for it; this may be by return of an email. Manx Care have to do this **no later than 5 working days after it was received**. Our response must also include an invitation to the complainant to attend a meeting to discuss the complaint.

If a complaint to Manx Care is made orally we still have to **acknowledge this in writing or email dependant on the request from the complainant**. The response letter from Manx Care **must contain a summary of the oral complaint and a signature field for the complainant to sign and return our written record**.

Manx Care's Care Quality and Safety Team has set up a central point for the receipt, logging (in Datix) and acknowledgement of complaints. Please refer to Manx Care's Policy and Procedure for the Management of Complaints for more details.

If the complaint is not resolved by the time we go to acknowledge it, Manx Care acknowledgement letter needs to contain:

- A summary of the complaint,
- Details of the arrangements and information of how we handle complaints;
- Detail of how long the complainant can expect to wait before receiving a further response from us;
- And provide information as to how the complainant can contact a member of staff who is dealing with their complaint;
- information as to how the complainant can access any other relevant guidance in relation to making a complaint; and;
- if appropriate, what information (or documents) are required by the complaints manager to enable the complaint to be properly considered.

Investigation, response and record-keeping

Manx Care's complaints manager must arrange for any investigation to be handled efficiently and effectively. The letter outlining the investigation, **must** offer the complainant an opportunity to meet with a member of staff who is familiar with the complaint and is qualified to answer questions about the complaint.

Manx Care's complaints manager (via delegated Handler) must prepare a written response **within 20 days of receiving the complaint** (if the complaint has been concluded – see below if not concluded). The response must be signed by the complaints manager. The Response should:

- summarise the nature and substance of the complaint;
- confirms whether the complaint in full or in part is upheld;
- describes the investigation;
- summarise the conclusions reached; and,
- any action taken or to be taken as a result of the complaint and a reasonable timescale for the completion of any action to be taken as a result of the complaint; and
- include an apology, if appropriate;
- an offer of meeting with Manx Care to discuss our response;
- details of any services or support which it considers may provide assistance to the complainant;
- include their rights, including the details and contact information of the Ombudsman.
- Notify the complainant that the complaint will be kept for 10 years from the date of closure in line with the Complaints Regulations.

If the complaint manager (delegated Handler) has not finished their investigation, they still have to let the complainant know the reasons why within but **no later than the 20 days**. This response should be in writing and explain the reasons for the delay and when the complainant can expect to have this concluded.

Manx Care will also need to complete the investigation as soon as possible thereafter. All investigations should be concluded in all cases not later than **6 months** from the date of the complaint.

Learning from complaints

Manx Care must ensure that any remedial action is taken promptly (including, where appropriate, correcting any failures or weaknesses in its systems and procedures and carrying out training of its staff).

Manx Care must have systems and processes to record, analyse and report on the learning from complaints. It must also undertake a review of complaints **every 3 months** to establish any links with any reported and unreported incident within the meaning of the Manx Care (the Duty of Candour Procedure) Regulations 2021.

Publicity and guidance

Manx Care must make information available to the public on —

- how a complaint may be made;
- its arrangements for dealing with complaints; and
- how further information about those arrangements may be obtained.

Manx Care must provide, both face-to-face and in writing, advice, sign-posting to relevant support services and guidance to people wishing to make a complaint.

Manx Care must establish and operate an advice and liaison service to provide a person who is dissatisfied with a service provided by, or on behalf of, Manx Care with —

- assistance to resolve an issue whose subject matter is one in respect of which a complaint could be made;
- assistance to enable them to understand the procedure in relation to making a complaint and the arrangements for dealing with complaints; and
- advice on where they may obtain independent assistance in making a complaint.

Monitoring

Manx Care are required to **provide an annual report (a “Manx Care annual report”) for Manx Care;** and any other **service provider must prepare an annual report (a “relevant service provider annual report”) for Manx Care.**

The **first Manx Care annual report must start from the 31st October 2022 and capture complaints up to the 31st March 2023.** Manx Care **must provide an annual report every year from the 1st April – 31st March** the following year.

A Manx Care annual report must not only include information as to Manx Care’s complaints, specified in Regulation 14(3) and should contain the following —

- Information supplied by a **service provider** as specified in Regulation 14(4).

For Manx Care specific part of their Annual Report, see Regulation 14(3); it must -

- specify the numbers of complaints received in relation to the services provided or functions performed—
 - (i) by Manx Care; and
 - (ii) on Manx Care’s behalf, by all relevant service providers;
- identify the subject matter of those complaints;

- identify the category of service provided or function performed under the Act, the Manx Care Act 2021 or the mandate into which the subject matter of those complaints falls;
- summarise how they were handled, including the outcome of the investigations into those complaints;
- include a statement outlining changes or improvements to services or procedures as a result of consideration of complaints;
- include a statement on the training provided to persons in relation to the handling of complaints;
- include an indicator of the time taken to respond to complaints; and
- identify any complaints where recommendations of the Health and Social Care Ombudsman Body were not acted upon, giving the reasons why not.

A Manx Care annual report must be provided to the Department of Health and Social Care, by Manx Care, no later than 4 months after the end of the annual reporting period – the 31st March.

A relevant service provider (commissioned service) annual report must be provided to Manx Care, by the relevant service provider, no later than 2 months after the end of the annual reporting period – so not later than the last day of May in any given annual reporting period.

If a service provider does **not** supply Manx Care with their annual report, the service provider must –

- provide an explanation for that failure to Manx Care; and
- Manx Care may provide that explanation to the Department.

In this part relating to Reporting, a “**relevant service provider**” means a service provider which is providing services or performing functions under arrangements made with Manx Care in accordance with the Manx Care Act 2021; or the Department novated to Manx Care by virtue of section 13(5) of the Manx Care Act 2021.

What happens if the Ombudsman investigate a Report?

Where the Health and Social Care Ombudsman (HSCOB) investigates a complaint, Manx Care will be required to provide any information relating to that complaint to the HSCOB.

If Manx Care are required to produce information, they must provide it in a good order, or an explanation for not doing so, **not later than one month after the day on which the request was made** and in accordance with the requirement.

If Manx Care **does not do so**, they must —

- explain to the HSCOB why they have not done so; and
- agree with the HSCOB a reasonable period of time within which to do so, not exceeding 2 months following the expiry of the one-month period referred to above.

All complaints should have first come to Manx Care for local resolution, if they have not, it may be that the HSCOB will inform the complainant of this requirement.

During an investigation, the HCOB may convene a hearing to take oral evidence. Any person giving evidence may be accompanied by another person.

If the complaint which has been referred to the HSCOB is or has been investigated, the HSCOB will send a copy to the complainant, Manx Care, the Department of Health & Social Care and if the report is a complaint about a service provider to them also.

What should we do when we receive a Report from the HSCOB?

On receiving a report from the HSCOB, Manx Care must prepare a written statement of —

- how it proposes to give effect to any recommendations made in the report; and
- any other action which it proposes to take in response to the report,
- and the period within which it proposes to do so.

Manx Care **must** send the written statement to the Department.

Manx Care **must publish the written statement on its website** excluding any information from which the identity of a living individual could be ascertained.

If Manx Care **proposes not to give effect to any recommendation** made in the report —

- it must include in the written statement its reasons for not giving effect to the recommendation; and
- the Department may give a direction to Manx Care requiring Manx Care to give effect to the recommendation.

Any direction by the Department to Manx Care will be sent to Manx Care and published by the Department. A direction may specify the period within which Manx Care should comply and make suggestions (which are not binding) as to how this may be given effect. The Department must keep under review Manx Care's performance in implementing any recommendation made in a report and any other actions outlined in the written statement.

The Department will not publish a direction if to publish part of a direction if it could refuse to disclose it in response to a request under the Freedom of Information Act 2015; or if its disclosure is prohibited by any enactment.

The Department, however, must keep under review Manx Care's performance in implementing any recommendation made in a report and any other actions outlined in the written statement.