



Jersey Care  
Commission

# **Complaints Policy**

**Concerns and Complaints about the  
provision of care**

**March 2020**

## **1. Policy Statement**

The Jersey Care Commission (the Commission), is the independent regulator of health and social care services throughout Jersey.

The Commission was established under the provisions of the Regulation of Care (Jersey Law) 2014. Its role is to regulate, inspect and support the improvement of care services in meeting the needs of people who use and rely upon these services. Its ambition is to ensure that people receive care which is of a high quality, safe and person-centred; where the rights, needs and choices of individual are at the heart of service delivery.

The purpose of this policy is to provide the framework for responding to complaints or concerns made to, or raised with, the Commission about registered services.

The Commission has a duty to ensure that complaints about registered services are dealt with appropriately.

The Commission can undertake investigations or ask for an investigation to be undertaken by another party; this can include the care provider.

This policy and procedure should be read alongside the following policies:

- The Commission's Inspection Policy
- The Commission's Escalation, Enforcement and Review policy (which describes the action which the Commission may take when it becomes aware of failings relating to standards of care)

This policy includes reference to the law underpinning the delivery of services and the roles and responsibilities of Commission staff. There is a separate policy which relates to complaints made about the Commission itself.

The Commission will ensure that complaints about services are managed in accordance with this policy and associated procedures, guidance and protocols.

## **2. Legislative Context**

The Regulation of Care (Jersey) Law 2014 ('the Law'), requires the Commission to ensure that complaints concerning the carrying on of a regulated activity are dealt with and, if appropriate, investigated, whether by the Commission itself or by another person.

Regulated activities are care homes, home care services, children's residential homes and day services. This policy does not extend to areas of other health and care provision.

The Law is supported by the Regulation of Care (Standards and Requirements) (Jersey) Regulations 2018 ('the Regulations').

The Regulations are interpreted in the form of a series of Standards ('the Standards'). It is in respect of these Standards that regulated services are inspected.

The Regulations set out the obligation on service providers to have robust arrangements in place for managing complaints.

The Commission is required by the Law to decide upon and publish its procedures for dealing with and investigating complaints.

## **3. Definitions**

### **3:1. Complaint**

The Commission defines a complaint as an expressed concern about any aspect of the quality of care being delivered by a regulated activity. A complaint can be made by one person or more than one person. It may be verbal or communicated electronically or by letter.

A complaint may relate to:

- Alleged breaches of standards or regulations
- Care being delivered in a way which is not safe for the person in receipt of the service
- Evidence that the rights of a person receiving a service are not being upheld
- Behaviour, practice or conduct of staff
- Evidence that quality of staff training is not of a good enough standard

- Concerns relating to the numbers of staff being inadequate to meet the needs of residents/those in receipt of services
- Concerns relating to the environment; use of equipment and concerns relating to moving and handling safety

Although these examples are likely to correlate to most categories of complaints, it is important to note that this is not an exhaustive list.

### **3:2. Complainant**

A person making a complaint will be referred to as a complainant.

A person making a complaint may include residents/care receivers, family members, members of staff and other members of the public. Whistleblowing concerns are not within the scope of this policy and will be dealt with through an alternative process.

The Commission will consider all complaints, including any that are made anonymously.

### **4. Complaints on behalf of another person**

It is acceptable for someone to make a complaint on behalf of another person. This is sometimes appropriate, particularly when a person is either reluctant to make or is incapable of making a complaint themselves.

If a person has capacity to consent to a complaint being made on their behalf but does not consent, the Commission will be unable to consider the complaint.

The sole exception to this is in respect of concerns relating to child protection, adult safeguarding or allegations of criminal behaviour. In these cases, the Commission will act, irrespective of matters relating to consent.

### **5. Access to personal information**

In situations where it is not clear that a complainant has the relevant person's consent, or where it appears that the complainant is not legally entitled to having access to personal information, the Commission will not share such personal information with the complainant irrespective of whether the complaint is progressed by the Commission.

## **6. Anonymous Complaints**

The Commission regards all complaints seriously, including any that are made anonymously.

It is not necessary for a complainant to provide their name or contact details. However, if a complainant wishes to remain anonymous, it will not be possible for the Commission to seek further information regarding the complaint or to otherwise correspond with the complainant about the progress of the complaint or to provide the outcome of the investigation.

The Commission will consider anonymous complaints only when there is enough information to enable the Commission to make further enquiries. In situations where there is insufficient information to facilitate further action, the Commission reserves the right to take no further action.

The Commission may discuss an anonymous complaint with other agencies to determine whether there is additional information held elsewhere which might support the complaint and lead to direct action being taken by the Commission.

In all cases, the Commission will ensure that the Regulation Officers are made aware of the complaint to inform the annual inspections of regulated services.

## **7. Complaints about more than one service**

If a complaint is received relating to two or more registered care services, the Commission will address these separately and may provide separate responses following any investigation which may be undertaken.

## **8. Complaints about unregistered services**

If a complaint is received which concerns a provider of a service which is not registered with the Jersey Care Commission, the complainant will be advised of this and invited to contact the relevant service directly.

## **9. Information Sharing and confidentiality**

Provided that the complainant agrees, the Commission may share the complainant's details with the service provider. This will enable the service provider to communicate directly with the complainant in order that the service manager is better

able to understand the nature of the complaint, initiate an investigation and be able to provide a response stating how the issues raised in the complaint are to be remedied.

If the complainant does not wish their identity or contact details to be shared with the care service, this request will normally be respected. However, this will limit the extent to which the Commission can undertake an investigation. The Commission should consider whether the identity of the complainant is likely to become known to the service which is being investigated. In such circumstances, the Commission will endeavour to contact the complainant to discuss with them how best the complaint should or could be progressed.

When a complainant provides their identity to the Commission but asks that their details remain confidential, the Commission will maintain contact with them to clarify information, provide updates and to advise of the outcome of the investigation.

## **10. Values and Principles**

In considering its response to complaints, the Commission will continue to adopt the principles of “Right-Touch” regulation identified by the Better Regulation Executive and the Professional Standards Authority of:

- Proportionality: regulators should only intervene when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimised
- Consistency: rules and standards must be joined up and implemented fairly
- Targeting: regulation should be focused on the problem and minimise side effects
- Transparency: regulators should be open, and keep regulations simple and user friendly
- Accountability: regulators must be able to justify decisions and be subject to public scrutiny
- Agility: regulation must look forward and be able to adapt to anticipate change

## **11. Scope**

This policy applies to all staff involved in the regulation, inspection and monitoring of regulated services in Jersey. This includes staff members working in the Commission and the Board of Commissioners.

## **12. Responsibilities**

The process of managing and responding to complaints will be overseen by the Chief Inspector who is accountable to the Commission's Board.

The Board has corporate responsibility for ensuring that the aims and objectives of the Commission are fulfilled. It will monitor the number and nature of complaints received and the response provided by the Commission.

The Head of Governance, Policy and Standards will ensure that information in relation to complaints is managed and retained in accordance with relevant legislation and locally agreed protocols.

Regulation Officers are required to gather information pertaining to complaints to ensure that the responses provided by the Commission are consistently evidence-based. They have a responsibility for ensuring that the rights, needs and well-being of care receivers remain central throughout the complaints investigation.

Regulation Officers will ensure that the values and principles embedded within the Commission's constitution are properly upheld throughout the process of investigating complaints.

## **13. Extent of the policy**

The Commission can only respond to complaints which relate to regulated activities.

Complaints which relate to any of the following are outside of the extent of this policy:

- Matters which are before a court or which have already concluded a process relating to a court or a tribunal
- Any complaint which has previously been upheld by a regulated service and where corrective action has already been taken by the service

- Complaints relating to internal staff employment matters such as those pertaining to contracts, pay and conditions and grievances
- Complaints relating to any matters which are beyond the remit of the care service in question
- Complaints relating to Government of Jersey's contracting arrangements with individual services
- Any attempt by a complainant to reopen a complaint which has already been concluded, or to require the Commission to reconsider its decision when a final decision has already been made
- Child protection and Adult Safeguarding concerns. Whilst these concerns are within the scope of the Commission, such concerns/complaints will be referred to the relevant authority (including social services departments or the police), prior to the Commission undertaking investigatory work itself
- Allegations or evidence of a criminal offence. The Commission will refer any such intelligence to the relevant authority i.e. States of Jersey Police

If a complaint is received which is outside the remit of the Commission or which would be better dealt with by a different agency, the Commission will as far as possible ensure that the complainant is made aware of this.

The Commission will not consider complaints relating to the treatment of a relative/visitor by a registered provider. However, such concerns should usually be raised with the manager or provider of the service as appropriate.

#### **14. Public protection and criminal acts**

The Commission has a duty and a responsibility to protect people from harm, abuse and neglect. All complaints which are considered to have an aspect which relates to either child protection or adult safeguarding will be referred to the relevant social work agencies, the Safeguarding Board and, where appropriate, the police.

All complaints relating to a criminal matter will be referred directly to the police.

The Commission has several memoranda of understanding with a range of other regulators and professional bodies. If a matter is raised which relates to the regulatory functions of another body, the Commission may share information in line

with its obligations set out in these memoranda of understanding. The Commission will endeavour to inform the complainant if this needs to happen.

Where concerns are raised about professional conduct of a staff member who holds a professional registration, such as a doctor, nurse, social worker or allied health professional, the Commission may redirect the complainant to the relevant regulatory body or may make a referral directly.

Although the Commission will endeavour to inform the complainant that a complaint has been referred to one or more of the organisations above, it will not seek permission from the complainant to do this. (The Commission is obliged to share such information in the interests of either public protection, or the need to report criminal offences).

The Commission will not consider these matters to have been resolved until the relevant processes have been concluded by the appropriate organisations. The Commission will then be in a position to determine whether it has any role in either inspecting or investigating any service, or in taking any further action.

In some instances, the Commission may undertake an investigation or inspection in advance of any another regulatory body reaching a decision.

## **15. Making a complaint**

### **15.1. Guidance**

As a point of principle, the Commission will always endeavour to contact the complainant at the earliest opportunity to establish the scope of the complaint and ascertain what the complainant is hoping to achieve.

Complaints may be made via email, telephone, in writing, or in person at the office of the Care Commission. Verbal complaints will be acknowledged by the person receiving the complaint immediately and, if desired, will be followed through with a record of the detail of the complaint. Other complaints, for example those received via email or in writing will receive an acknowledgement within three working days.

It is essential that any information pertaining to a complaint includes facts such as dates, times, places and names of people.

## **15.2. Making a complaint: Time Limits**

The Commission recognises the importance of being able to investigate complaints near to the point at which the issue arose. This is because it is more likely that evidence will be of sufficient value to enable a fair and impartial assessment of the complaint to be made and to enable the complaint to be investigated properly.

The Commission will consider complaints which are reported within six months of the issue having arisen. It is acknowledged that there may be good reason for a complaint not having been made earlier. However, the Commission will always deal with complaints in a manner which is thorough and fair. The Commission will need to consider whether the passage of time might preclude a successful investigation being undertaken.

The Commission will need to consider whether investigations which would involve gathering information which is historical in nature, could realistically result in an outcome which is meaningful. If the Commission determines that this would not be achievable, it may determine not to accept or progress a complaint.

Information relating to historical concerns can still be of value in informing the annual inspections of regulated services. Therefore, the Commission may decide to retain such intelligence with a view towards enhancing the quality of future regulatory activity.

Where a complaint is made outside of the six-month timescale, the Commission will ask the complainant why the complaint was not made earlier. This is not to infer any criticism, but to better understand the rationale associated with any delay.

The Commission will not normally investigate historical complaints relating to concerns arising prior to the establishment of the Commission on 1 January 2019.

If there are exceptional circumstances, the Commission may decide to investigate an historical complaint: for example, where the complainant can show that they had good reason to delay because of health or personal difficulties or where there is evidence of an ongoing risk of harm to one or more service users.

The Commission will not investigate an historical complaint that has already been investigated by the service provider or by another body, such as Health and Community Services, unless there is evidence of on-going risk or harm.

### **15.3. Making a Complaint: complaining directly to a service provider**

The Commission will always encourage a complainant to raise any concerns directly with the regulated service in question, in the first instance.

The Regulation of Care (Standards and Requirements) (Jersey) Regulations 2018 require that all regulated services have in place effective procedures for identifying, receiving, handling and responding appropriately to complaints and comments. The procedures must include the keeping of adequate records of the nature of any complaint, the investigation and the outcome.

The service provider must inform the complainant of the outcome of the complaint investigation and, where appropriate, any action taken to remedy the complaint. This information must also be made available to the Commission on request.

In meeting the requirements set out within the Regulations, the service provider is expected to ensure that their complaints process is clearly identified to anyone using the service. This will include ensuring that, for example, a care home's admissions pack includes reference to the complaints policy or includes a copy of the policy; that the process for making a complaint is displayed in a communal area within a residential setting or day service and that the complaints policy is available on the provider's website. These are examples and this list is not exhaustive.

Service providers will need to determine how best to publicise information pertaining to complaints. Ultimately the service provider must make it as simple as possible for someone to make a complaint and must be fully receptive to receiving any complaint/s.

The service provider should ensure that information relating to making complaints is made available in a range of accessible formats. The service providers' complaints information should include guidance for a complainant who is dissatisfied with the providers' investigation outcome.

If the complainant is prepared to make a complaint directly to the service provider, the Commission will not usually undertake a parallel investigation. However, it will keep a record of the contact.

If the complainant does not wish to raise the complaint directly with the service provider or has already done so but was dissatisfied with the service's response, the Commission may will ask the complainant to explain why this is the case or what the response was. The reason for this is both to encourage the use of a service provider's complaints process and to ascertain whether any previous attempts have been made by the complainant to resolve the matter with the service in question. In such cases, the Commission may consider undertaking an investigation.

The Commission expects that care receivers and their representatives are always treated with courtesy and respect by service providers and that their concerns and complaints are appropriately managed.

Irrespective of whether a complainant wishes to make a complaint directly to the service provider, the Commission will consider whether the complaint is appropriate for the service provider to investigate themselves. If the Commission determines that this is the appropriate course of action, it will refer the matter back to the service provider and will inform the complainant accordingly, explaining the reasons why it has reached this decision.

## **16. Investigations**

In some cases, it will be appropriate for the Commission to undertake a complaint investigation and the Regulation of Care (Jersey) Law empowers the Commission to undertake such investigations.

It is often not practicable to provide specific timescales as to when the investigation will be completed. However, the complainant can expect regular updates and, where it is possible, time-scales should be provided.

### **16.1. Investigations: Objectives**

When the Commission undertakes a complaint investigation it will ensure that all relevant facts are obtained and considered thoroughly.

Once the investigation is completed complainants will be provided with a response which is proportionate, thorough and objective. The Commission will also ensure that the outcome includes a clear indication as to whether the complaint, or any part of it, is upheld.

### **16.2. Investigations: Outcomes**

In investigating a complaint, there are two possible outcomes. These are that the complaint is either upheld or not upheld.

If a complaint is upheld, this means that the Commission has found evidence to substantiate the complaint.

If this is the case, the Commission will inform the complainant in writing of any requirements which have been made in respect of the service in question.

The Commission may also determine that a complaint is not upheld. This means that although an investigation has been concluded, the Commission has not found enough evidence to substantiate the complaint (this does not imply in any way that the information provided by the complainant is in any way inaccurate, invalid or untrue).

### **16.3. Investigations: Feedback**

A Regulation Officer will contact the complainant to inform them of the outcome of an investigation.

## **17. Complaint Reports**

As part of an investigation undertaken by the Commission, the Commission will prepare a Complaints Report. The report will detail the concerns relating to the complaint; the action which was taken to investigate the complaint; the evidence which was sourced as part of the investigation and the outcome. It will also detail any recommendations relating to areas of improvement as well as any action which the service provider must take to meet the designated standards.

A service which is subject of a Commission led complaints investigation will have an opportunity to see the report in draft form and to correct any factual inaccuracies.

A copy of the final report will be sent to both the provider of the service named in the complaint and to the complainant.

The Commission reserves the right to redact aspects of a report where there is a concern relating to confidentiality.

### **18. Training and information**

All Commission staff will receive appropriate training relating to the complaints process. Staff will be kept informed of any changes to the policy.

In addition, stakeholders (such as care receivers, their relatives or representatives) will receive information in a range of formats which ensures that they are supported to understand the process and to ask any questions, or to raise any concerns.

The policy will be available on the Commission's website.

### **19. Monitoring/Evaluation**

The effectiveness of this policy will be monitored by the Commission during scheduled Board meetings. Evidence relating to effectiveness may include feedback from Regulation Officers, regulated service providers and managers, service users, families and members of the public.

### **20. Review of the Policy**

This policy will be reviewed at least annually or at any time in response to any need for review borne out of regular inspections or feedback from stakeholders.

### **21. Development and Stakeholder Consultation**

This policy has been developed by the Commission in consultation and engagement with all members of staff, the Commission and a range of stakeholders.