



## **Representation Procedures**

**September 2021**

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## 1. Introduction and background

- 1.1 The Regulation of Care (Jersey) Law 2014 was introduced to establish an independent Health and Social Care Commission to regulate health and social care provision in the island.
- 1.2 The Jersey Care Commission was appointed to:
  - provide the people of Jersey with independent assurance about the quality, safety and effectiveness of their health and social care services
  - promote and support best practice in the delivery of health and social care by setting high standards and challenging poor performance
  - work with service users and their families and carers to improve their experience of health and social care and achieve better outcomes.
- 1.3 The Commission adopts Right-touch regulation principles 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 anticipated change.
- 1.4 The Commission is responsible for registering and inspecting the regulated activities set out in Schedule 1 of the Regulation of Care (Jersey) Law.
- 1.5 In addition, on 1 January 2019, functions previously undertaken by the Minister for Health and Community Services (HCS) were transferred to the Jersey Care Commission. These functions include the registration of Dental Care Professionals, Health Professionals, Medical Practitioners, Piercing and Tattooing Practitioners and Premises, providers of premises where Class 3b or Class 4 laser products are used, and maintaining a list of bodies corporate carrying on business as opticians.

## 2. Scope

The scope of these procedures extends to the regulated activities outlined in the Regulation of Care (Jersey) Law 2014. These procedures should be read alongside the Commission's Procedures for Registration Regulation of Care (Jersey) Law 2014.

## 3. Representations

- 3.1 The Regulation of Care (Jersey) Law 2014 places a duty on the Commission to grant or refuse applications from prospective providers and managers of regulated activities.
- 3.2 The Commission's Procedures for Registration set out clearly the arrangements and criteria to determine that providers and managers are 'fit' and suitable. The Procedures for Registration also include other pre-registration considerations, including the suitability of premises, where appropriate.
- 3.3 Proposals relating to granting or refusing a registration are issued by the Chief Inspector in conjunction with regulation officers and, where necessary, legal advice is sought. Any proposal to grant or refuse a registration application is set out in writing to the applicant, along with their right to make representations within 14 days of the proposal being issued. Any such representations would fall within the scope of this procedure.
- 3.4 When a care service is registered as a regulated activity, there may be occasions when the Commission seeks to impose or vary conditions on registration, suspend the registration of a manager or cancel the registration of the service. In each instance, the Commission must signal an intention, to take these actions, via a Notice of Proposal, setting out in writing the reasons for doing so and the registered persons' right to make representation within 14 days of the proposal being issued. Any such representations would fall within the scope of this procedure.
- 3.5 On receipt of written representations relating to any of the above matters, a letter of acknowledgement will be forwarded to the registered person.

## 4. Representation Panel

- 4.1 Composition of the Panel. The Representation Panel must include two Commissioners, one of whom will chair the Panel. The Chief Inspector, or their nominated deputy, will convene the Panel within two days of receiving any representations.

- 4.2 The Chief Inspector will be responsible for ensuring that the Panel has access to all relevant information relating to the proposal, including any applications, inspection reports, escalation correspondence, Improvement Notices etc.
- 4.3 The Regulation Officer will make themselves available to the Panel and will furnish the Panel with any further information required.
- 4.4 The role of the Representation Panel is to consider the representations that have been made and to determine:
- If the Notice of Proposal has been issued in line with the Commission's Escalation, Enforcement and Review Policy.
  - The Notice of Proposal has been appropriately served on the Registered Person/Applicant.
  - Representations have been made within 14 days of the notice being served.
  - There are sufficient grounds, based on the information available, to validate that the decision to issue the notice was fair, reasonable and proportionate.
  - The Notice of Proposal references the regulations which have been breached.
  - When representation has been made, each of the points of representation should be considered.
- 4.5 The Panel will conclude its consideration of representations within five working days of their receipt.
- 4.6 Decision of the Representation Panel. The Panel will decide one of the following:
- The representation has not been upheld and the Registered Person or applicant will be advised accordingly
  - The representation has been upheld; and the Chief Inspector or their nominated deputy will communicate the decision of the Panel to the Registered Person or applicant, and relevant stakeholders

## **5. Right of Appeal to the Royal Court**

- 5.1 Once the Commission has reached a determination on any representation, the applicant or Registered Person has a right of appeal to the Royal Court, as per Article 44 of the Regulation of Care Jersey Law 2014 (ref Appendix 1).

## **APPENDIX 1: Regulation of Care (Jersey) Law 2014: Article 44**

### **44 Rights of appeal**

- (1) The following persons have a right of appeal to the Royal Court against a decision of the Commission under this Law –
  - (a) the provider and the manager, in relation to the refusal of any application under Article 5;
  - (b) the registered provider and the registered manager, in relation to –
    - (i) the terms on which any mandatory conditions imposed in accordance with Regulations made under Article 11(3) are imposed, or the terms on which any such conditions are varied under Article 17 (whether or not in accordance with Article 18),
    - (ii) any discretionary conditions imposed or varied under Article 12 or under Article 17 (whether or not in accordance with Article 18),
    - (iii) a suspension under Article 19,
    - (iv) the cancellation of the provider's or manager's registration in relation to a regulated activity under Article 20,
    - (v) a refusal to remove the provider or manager from the register under Article 23 in relation to a regulated activity, or a decision to defer such removal.
- (2) An appeal under paragraph (1) must be made within the period of 28 days following the day the person having the right of appeal receives notice of the decision of the Commission.
- (3) On hearing an appeal, the Royal Court may –
  - (a) confirm the decision of the Commission; or
  - (b) direct that the decision of the Commission shall not have effect.
- (4) For the purposes of this Law, a person's rights of appeal are exhausted upon whichever is the earlier of –
  - (a) the expiry of the period within which an appeal must be made, without an appeal being made;
  - (b) the withdrawal of an appeal;
  - (c) the dismissal of the appeal without any further right of appeal.