



Complaints Policy

Concerns and complaints about the provision of care

Version Control

Version 4.0

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March 2021	Policy reviewed. No changes made. Accompanying complaints leaflet ratified.	
March 2022	Escalation and Enforcement Policy reviewed. Addition of the need to signpost complainants when complaints received about non-regulated activities.	
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September 2023 Version 4.0	Policy reviewed and revised following discussion by Commission Board.	Head Business and Performance/ September 2023 Board

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1. Policy Statement

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

The Commission was established under the provisions of the Regulation of Care (Jersey) Law 2014 ('the Law'). 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 high-quality, safe and person-centred care, where the rights, needs and choices of individuals are at the heart of service delivery.

The services which the Commission regulates include care homes providing nursing and personal care or personal support for people of all ages with a range of health and social care needs, care provided to people in their own homes, adult day care services, residential care services for adults and children and children's social care.

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 (also referred to as regulated activities).

The Commission must ensure that complaints about registered services are dealt with and, if appropriate, investigated. 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. A separate policy relates to complaints made about the Commission itself.

The Commission will ensure that complaints about services are managed by following this policy and associated procedures, guidance and protocols.

Whilst the Commission has a statutory duty to ensure that complaints are dealt with, it believes that the outcome of a complaint is likely to be better if the complaint is raised directly with the care provider in the first instance.

2. Legislative Context

The Law requires that the Commission ensures complaints concerning the carrying on of a regulated activity are dealt with and, if appropriate, investigated by the Commission or another person. This can include the care provider themselves.

Regulated activities include care homes, home care services, children's residential homes, adult day care services and social work services for children and young people. This policy only covers areas of health and care provision which are listed in the Regulation of Care (Standards and Requirements) (Jersey) Regulations 2018 and the Regulation of Care (Standards and Requirements) (Amendment) (Jersey) Regulations 2022 (The Standards and Requirements)

The Law enables the Commission to publish standards (the Standards) for compliance with requirements imposed by Regulations (the Standards and Requirements).. Regulated Services are expected to comply with these Standards.

The Standards require service providers to have robust arrangements for managing complaints.

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

3. Scope

This policy applies to all services which are listed as Regulated Activity by the Regulation of Care (Standards and Requirements) (Jersey) Regulations.

The following are the types of issues the Commission is likely to consider are within its remit to investigate:

- Alleged breaches of Regulations or Standards
- 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 relating directly to the provision of care or suitability to provide care
- Evidence that the quality of staff training is not of a sufficient standard
- Concerns relating to the number of staff being inadequate to meet the needs of residents/those in receipt of services
- Matters relating to the environment, use of equipment, and concerns relating to moving and handling safety

These examples are likely to cover most categories of complaints, however this is not an exhaustive list.

The Commission would not normally consider the following within its remit to investigate.

- Staff Grievances/HR issues
- Whistleblowing where it does not relate to care or other requirements directly stipulated in the Standards published on the Commission's website
- Complaints about how a Regulated Provider has treated those other than care receivers. However, if providers have failed to provide appropriate information and support to family members, carers of care receivers or other agencies where this is stipulated in the Standards this will be considered.

Complaints which relate to any of the following are outside the scope 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 the service has already taken appropriate corrective action
- Complaints relating to internal staff employment matters, such as those about 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 the 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 matters will be referred to the relevant authority (including social services departments or the police) before the Commission considers undertaking investigatory work.
- Allegations or evidence of a criminal offence. The Commission will refer any such intelligence to the relevant authority, i.e. the 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 advise the complainant accordingly.

Where a provider has already followed a robust complaints process which involves an opportunity to contest a decision and an element of independent review of a complaint, the Commission will normally limit its investigation to reviewing the appropriateness of the process and consideration by the provider.

Where a complaint has been considered by a Public Sector Ombudsperson or similar body, the Commission will normally consider that the complaint has already been dealt with appropriately.

4. Definitions

4.1 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 by email or by letter.

4.2 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 not relating directly to care 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.

5. Complaints on behalf of another person

A complaint can be made on behalf of another person. This is sometimes appropriate, particularly when a person is either reluctant or is incapable of making a complaint themselves.

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

In cases relating to child protection, adult safeguarding, or allegations of criminal behaviour, the Commission will take appropriate action, irrespective of matters relating to consent. This may include referral to other agencies such as the police or the Safeguarding Board.

If, for any reason, the Commission cannot investigate a complaint it will still record the information provided and may consider it as part of its routine inspection programme.

6. Access to personal information

When it is unclear that a complainant has the relevant person's consent or the complainant is not legally entitled to access personal information, the Commission will not share any personal data.

7. Anonymous Complaints

The Commission takes all complaints seriously, including any that are made anonymously. A complainant is not required 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 a complaint, correspond with the complainant about the investigation's progress, or provide information about the outcome.

The Commission will consider what action to take when a complaint is made anonymously. In some situations, there may be insufficient information for the

Commission to take any action and the Commission reserves the right to take no further action in these cases.

The Commission may discuss an anonymous complaint with other agencies, to determine if additional information is held elsewhere which may help verify the complaint, or to assist in any investigation.

The Commission will retain information about complaints to inform subsequent inspections. It may also be more appropriate to undertake action on such complaints as part of the next inspection.

8. 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.

9. Complaints about activities not regulated by the Commission

If a complaint is received about a provider of a service which is not an activity regulated by the Commission, the complainant will be advised of this and invited to contact the relevant service directly, or to contact the body responsible for managing complaints about this service.

10. Information sharing and confidentiality

The Commission may share the complainant's details with the service provider if the complainant agrees. This will enable the service provider to communicate directly with the complainant about the nature of the complaint, initiate an internal investigation as necessary, and respond appropriately about the findings of any investigation.

If the complainant does not wish to share their identity or contact details with the care service, this will usually be respected. However, this will limit the extent to which the Commission can undertake an investigation. The Commission will also consider whether the complainant's identity is likely to become known during an investigation. In these circumstances, the Commission will contact the complainant to discuss how the complaint should be progressed.

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

11. Responsibilities

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 responses provided by the Commission.

A senior officer will ensure that information about complaints is managed and retained appropriately.

12. Public protection and criminal acts

The Commission has a duty and a responsibility to protect people from harm, abuse and neglect. All complaints considered to have an aspect related to child protection or adult safeguarding will be referred to the relevant social work agencies, the Jersey Safeguarding Partnership Board and, where appropriate, the States of Jersey Police. All complaints relating to a criminal matter will be referred directly to the police.

The Commission has several memoranda of understanding with 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 the relevant memoranda of understanding. The Commission will endeavour to inform the complainant if this needs to happen.

Where concerns are raised about the professional conduct of a person 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 professional regulatory authority 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 and report potential criminal activity in the interests of public protection.

Unless otherwise stated, the Commission will only consider a complaint to have been resolved once the appropriate organisations have concluded their investigations. Where the Commission considered that another organisation is better placed to investigate a complaint, it is for the Commission to determine whether it also has any role in investigating the complaint or taking any further action. The Commission may undertake an investigation or other action before any other regulatory body reaches a final decision.

13. Making a complaint

13.1. 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 hopes to achieve.

Complaints may be made via email, telephone, or in writing. Complaints can be made, by appointment, in person at the office of the 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.

Information about a complaint must include appropriate facts such as dates, times, places, and names of people.

13.2. Making a complaint: Time Limits

The Commission recognises the importance of being able to investigate complaints at or close to the time the issue arose. This is likely to ensure that evidence will be of sufficient value to enable a fair and impartial assessment of the complaint and to enable the complaint to be investigated properly.

The Commission will usually consider complaints reported within six months of the issue having arisen or being discovered. Where complaints are made later, the Commission will consider why a complaint was not made within the six month

timeframe and will consider whether the passage of time might preclude a successful investigation from being undertaken. However, the Commission will always deal with complaints thoroughly and fairly.

The Commission must consider whether investigations involving gathering historical information could realistically result in a meaningful outcome. If the Commission determines this would not be achievable, it may decide 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 record any such information for future inspections.

The Commission will not usually investigate historical complaints relating to concerns arising before 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 any other body, such as Health and Community Services, unless there is evidence of ongoing risk or harm.

13.3. Making a Complaint: complaining directly to a service provider

The Commission always encourages a complainant to raise any concerns directly with the service provider in the first instance. This is because the outcome and resolution of the complaint are likely to be better where the complaint is made directly to the service provider.

The Regulations require that all regulated services have adequate procedures for appropriately identifying, receiving, handling and responding to complaints and comments. These procedures must include keeping adequate records about the nature of any complaint, the investigation and the outcome.

The service provider must inform the complainant of the outcome of any complaint investigation and, where appropriate, any action taken to remedy the complaint.

This outcome should be provided within 15 working days, or, in more complex cases, the complainant will be contacted and advised of the reason for the delay. This information must also be made available to the Commission on request.

In meeting the requirements set out within the Regulations, the service provider must ensure that their complaints process is clear 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 about 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 about making complaints is available in various accessible formats, including languages other than English. The service providers' complaints information should include guidance for a complainant who is dissatisfied with the outcome.

If the complainant is prepared to complain 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 Commission deems it appropriate, it may offer support or advice to those wishing to complain about a service provider. In such cases, the Commission's role will be neutral and limited to ensuring that complainants are supported in providing appropriate information to ensure their complaint is fully considered.

If the complainant does not wish to raise a complaint directly with the service provider or has already done so but is dissatisfied with the service's response, the Commission will ask the complainant to explain why this is the case or what the response was. This is to encourage using a service provider's complaints process to its conclusion and to ascertain whether the complainant has made any previous attempts to resolve the matter directly with the service in question.

In such cases, the Commission may consider undertaking an investigation. However, where a complainant has used a Service Providers complaints process to its conclusion, the Commission is likely to see its role as ensuring the Service Provider has followed an adequate complaints investigation process and that the complaint has been dealt with appropriately.

The Commission expects and requires that service providers treat care receivers and their representatives with courtesy and respect and that concerns and complaints are listened to and appropriately managed.

Irrespective of whether a person 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. If the Commission determines that this is an appropriate response, it will refer the matter back to the service provider, will inform the complainant accordingly and will explain why it has reached this conclusion.

Where a complaint is made by or on behalf of a child or young person, the Commission strongly recommends the child or young person is supported by an appropriate independent advocate. If the child or young person does not appear to have appropriate support the Commission will consider whether it is appropriate to refer them to the Children's Commissioner or an independent advocacy service. To support children and young people the Commission will develop a child friendly guide to the complaints process.

14. Investigations

In some cases, it will be appropriate for the Commission to undertake a complaint investigation, and the Law empowers the Commission to undertake such investigations.

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

14.1. 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 complete, the complainant will be provided with a written response which is proportionate, thorough and objective.

The Commission will also ensure that the outcome includes a clear indication of whether the complaint, or any part of it, is upheld, partially upheld, or not upheld.

14.2. Investigations: Outcomes

In investigating a complaint, there are three possible outcomes, i.e., the complaint is upheld, partially upheld, or not upheld.

If a complaint is upheld or partially upheld, the Commission has found evidence to substantiate the complaint, either wholly or in part. If this is the case, the Commission will inform the complainant in writing of any specific findings or requirements regarding the service.

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

14.3. Investigations: Further submissions

If the complainant is dissatisfied with any aspect of the complaint investigation or the outcome, they may write to the Chief Inspector expressing the reasons for their dissatisfaction. Any correspondence to the Chief Inspector should usually be made within 15 working days from the date the outcome of the investigation is notified to the complainant.

The Chief Inspector may determine what further action should be taken regarding any representation received from the complainant. They will notify the complainant in writing within 15 working days of receipt of their letter. Any decision by the Chief Inspector will be considered final.

15. Complaint Investigation Report

As part of an investigation undertaken by the Commission, the Commission will prepare a formal Complaint Investigation Report. The report will detail the concerns relating to the complaint, the action taken to investigate the complaint, the evidence sourced as part of the investigation, and the outcome. It will also outline any

recommendations relating to areas of improvement, as well as any action the service provider must take to meet the care Standards or comply with the Regulations.

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

A copy of the final report will be sent to both the service provider named in the complaint and the complainant. The Commission reserves the right to redact aspects of a report where there is, for example, a concern relating to confidentiality, data protection or privacy.

17. 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, ask any questions, or raise any concerns.

18. Monitoring/Evaluation

The Commission will monitor the effectiveness of this policy 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.

19. Review of the Policy

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

20. 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.