

Manx Care

Operational Independence

Position paper

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1. Executive Summary

- 1.1 The operational independence of Manx Care is a core component of the new health and care system for the Isle of Man and is underpinned by legislation.
- 1.2 Unless otherwise specified, references to Clauses in this document refer to this legislation: the Manx Care Bill 2020 (“the Bill”).
- 1.3 Manx Care, as a new Statutory Board, will be responsible for delivering publicly-funded, universal health and care services to the population of the Island (in addition to private care, if mandated to do so).
- 1.4 There will remain a need for a strong relationship between, and accountability for, the work of Manx Care and the rest of government in relation to health and care.
- 1.5 As specified in the Bill, the Department of Health and Social Care (“the Department”) will retain responsibility to Tynwald for the provision of health services and social care services, whether those services are provided in the Island or elsewhere (Clause 4).
- 1.6 Within the Isle of Man Government, the Department will be responsible for developing and translating into the annual mandate to Manx Care the overall policies, strategic objectives and priorities for health and care services for the Island (the “what”) as well as assuring delivery of these policies, strategies and priorities. In doing so the Department will consult and give due regard to the views of Manx Care on the related objectives and requirements (Clause 14).
- 1.7 Once the mandate is agreed by the Department and Manx Care, it is for Manx Care and the Manx Care Board to lead and manage operational delivery, including related transformational activity and corporate, clinical and care governance (the “how”).
 - 1.7.1 Manx Care’s areas of overall service responsibility will be set out in the mandate and will include primary care, acute care, adult social services, children and young people’s services, community care and mental health services covering the Island’s population as a whole; as well as integration of care between and across these areas.
- 1.8 To achieve this, the Bill empowers Manx Care to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions under the Bill (Clause 16); and in how it organises those functions (Clause 28).
- 1.9 Manx Care has full operational financial independence within its overall agreed financial envelope for the year, in order to determine how best to spend allocated funding to achieve the aims as set out in the mandate.
- 1.10 This includes the ability of the Manx Care Board, whilst operating within the mandate and associated budget envelope, to move money between operational units and approve specific exemptions from Isle of Man Financial Regulations (for example, in procurement related to the provision of clinical and care services) without the requirement for further Treasury approval.

- 1.11 The composition of the Manx Care Board is set out in Schedule 1 Part 1 of the Bill. Schedule 1 specifies the process for appointing the chair and non-executive directors, including final appointment by the Department subject to approval from Tynwald; and the process for appointing the chief executive director and director of finance by the Public Services Commission, under the Public Services Commission Act 2015.
- 1.12 Additional appointments and the overall management of Manx Care staff and resources are the responsibility of Manx Care, subject to the number of non-executive members on the Board continuing to exceed the number of executive members on the Board; Departmental approval of any changes to the Board's composition; and compliance with all other relevant local legislation.
- 1.13 It is important that Manx Care both operates, and is seen to be operating, free from day-to-day political involvement. To achieve this, it is proposed that:
 - 1.13.1 the relationship between Manx Care and other government departments, boards and offices will be managed through the Department, except in relation to shared service provision.
 - 1.13.2 broader enquiries and contact between the elected members and Manx Care will be managed through the Department, except where this relates to individual constituents (where a policy will be in place to support elected members and Manx Care setting out how queries and responses will be managed).
 - 1.13.3 Manx Care is, and is seen to be, an equal partner in the Health & Care Partnership Board being established to enable cross-Government collaboration in support of overall health and care outcomes for the Island.
- 1.14 The exceptions (as set out in the Bill) to Manx Care's operational autonomy are listed below:
 - 1.14.1 The Department may specify in the mandate that Manx Care makes use of government shared services on the Island, for example in areas such as information technology or human resources (Schedule 2).
 - 1.14.2 In mandating use of government shared services, the Department must set out how any concerns about the performance of those shared services, and related service level agreements, may be raised by Manx Care with the Department for resolution.
 - 1.14.3 The use of shared services should also not preclude Manx Care, in consultation with representatives of those functions, from developing its own requirements, strategies and approaches in areas such as digital health and care which are critical to the future shape and delivery of Manx Care's services.
 - 1.14.4 The Department may make in-year revisions to the mandate to Manx Care, without Manx Care's agreement, in "exceptional circumstances" (Clause 15). Whilst it is difficult to define in advance what circumstances might qualify as exceptional, the Covid-19 pandemic provides an example of an event which has required significant and immediate changes to the operation of health and care systems around the

world. It is anticipated that any such future circumstances would be subject to the same joint engagement process between the Department and Manx Care, in identifying the need for change and in developing the response, as is envisaged in the development of the annual mandate.

- 1.14.5 The Department may issue a direction to Manx Care in the event the Department judges Manx Care to be failing to meet its responsibilities, either in response to an independent inspection report or otherwise, to rectify those failings (Clause 30).
- 1.14.6 It is recognised that there are likely to be a number of legacy issues, including those highlighted in Sir Jonathan Michael's report, which may initially affect Manx Care's performance. In addition, currently unrecognised, historic issues may be identified by Manx Care as improved systems and ways of working are introduced. It is important that failure in this context is judged not simply against absolute levels of performance, but against the effectiveness of the response by Manx Care to issues as they are identified, and the demonstrable plans and progress being made in resolving them.
- 1.15 Manx Care and the Department commit in all of the above to all reasonable endeavours in resolving any disagreements that arise between them.
- 1.16 In the event of a fundamental disagreement that cannot be resolved either bilaterally or through discussion at the Health & Care Partnership Board, this will need to be escalated to the Council of Ministers for resolution (Clause 30).
- 1.17 The Council of Ministers has the power under the Bill to issue a direction to Manx Care if they determine there is a significant failing; and, should Manx Care fail to comply, to empower the Department:
 - 1.17.1 to discharge the functions to which it relates; or
 - 1.17.2 make arrangements for any other person to discharge them.

2. Context

- 2.1 The operational independence of Manx Care is a core recommendation of Sir Jonathan Michael's Final Report, as part of the Independent Review of the Isle of Man Health and Social Care System, and as approved by Tynwald on 21st May 2019:

"The setting of priorities and the development of policy in both health and social care should be separate from the delivery of services. A comprehensive governance and accountability framework should be established aligned to agreed standards and underpinned, where necessary, by legislation. A single public sector organisation, perhaps to be known as "Manx Care", should be responsible for the delivery and/or commissioning from other providers of all required health and care services."

- 2.2 This requirement is enshrined within the Manx Care Bill 2020:

Clause 6 Promotion of autonomy

(1) The Department must, in the exercise of its functions, have regard to the desirability of securing so far as consistent with the interests of the health and social care service —

(a) that any other person (P) —

(i) exercising functions in relation to that service; or

(ii) providing services for the Department's purposes,

is free to exercise those functions, or provide those services, in the manner P considers most appropriate; and

(b) that unnecessary burdens are not imposed on P.

(2) Where the Department considers that there is a conflict between the requirements under this section and those under section 4 [Promotion of comprehensive health and social care service], it must give priority to the latter.

- 2.3 The Manx Care Bill sets out the corresponding responsibilities of the Department, prior to the start of each financial year, to publish and lay before Tynwald a document known as "the mandate" (Clause 14) having consulted and having given due regard to the views of Manx Care on the related objectives and requirements.
- 2.4 Once agreed, the Department can only make a revision to the mandate in a financial year if Manx Care agrees to the revision; or the Department considers that there are exceptional circumstances that make the revision necessary. In either case, the revision must be published and laid before Tynwald (Clause 15).
- 2.4.1 Whilst the Bill does not define the exceptional circumstances which would permit an in-year revision to the mandate, an example would be the Covid-19 pandemic of 2020 which required health and care systems around the world to undertake significant and immediate re-prioritisation of efforts and resources.

- 2.4.2 It is anticipated that should such circumstances arise in future, the Department and Manx Care will work jointly to develop any revision, with support from the Health & Care Partnership Board as required.
- 2.4.3 Were a fundamental disagreement to arise in relation to any in-year revision to the mandate, one that could not be resolved by any other means, this would need to be escalated to the Council of Ministers for resolution.
- 2.5 The Bill empowers Manx Care to act in the delivery of the mandate and its broader responsibilities as specified in the Bill:
- Clause 16 General Power*
- Manx Care may do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions under this Act.*
- 2.6 The membership of the Manx Care Board is set out in Schedule 1 Part 1 of the Bill.
- 2.6.1 Manx Care is required to have a chair and at least four other non-executive members, one of whom will hold the post of vice-chair. It is proposed that there will be five non-executive directors, in addition to the chair, at the launch of Manx Care.
- 2.6.2 The chair will be appointed by the DHSC, subject to approval from Tynwald. Other non-executive members will be selected by a panel convened by the chair in consultation with the Department; and appointed by the Department, subject to approval from Tynwald.
- 2.6.3 Non-executive members cannot be a member of the Legislative Council, a member of the House of Keys, an employee of the Public Services Commission or an employee of a Department, an office of Government or a Statutory Board. Non-executive members are appointed for a fixed term of not less than 3 years and not more than 5 years and may be removed by the Council of Ministers at any time on the grounds of incapacity, misbehaviour, or failure to carry out their duties.
- 2.6.4 The remuneration of the chair will be determined by the Department. The remuneration of other non-executive members will be determined by the chair, advised by the chief executive and director of finance. Yearly expenditure on non-executive remuneration will be published as part of the Manx Care annual report to the Department and Tynwald.
- 2.6.5 The Manx Care Board executive members consist of a chief executive and director of finance with two or more other appropriately qualified persons. The chief executive and the director of finance are appointed by the Public Services Commission under the Public Services Commission Act 2015. Additional appropriately qualified person may be appointed as an executive director by the Public Services Commission or by Manx Care on such terms and conditions as Manx Care should determine. It is proposed that there will be five voting executive directors, including the chief executive, at the launch of Manx Care.

- 2.6.6 Manx Care has the power to dismiss its directors, although in the case of the chief executive and / or director of finance this would need to be done in conjunction with the Public Services Commission.
- 2.6.7 The remuneration of the chief executive and executive directors will be determined by a remuneration committee comprised of the chair and non-executive directors. Yearly expenditure on executive remuneration will be published as part of the Manx Care annual report to the Department and Tynwald.
- 2.6.8 The number of non-executive members must exceed the number of executive members. Within this, Manx Care may vary the composition of its Board, subject to Departmental approval.
- 2.7 Under the Bill, Manx Care has the power to make arrangements for the exercise of any of its functions:

Clause 28 Exercise of functions

(2) Manx Care may arrange for the exercise of any of its functions on its behalf by —

(a) any of its executive or non-executive members (see paragraph 1 of 30 Schedule 1), or

(b) any member of its staff (see paragraph 6 of Schedule 1).

(3) Manx Care may also arrange for any of its functions to be exercised by or jointly with another person or body.

- 2.8 If the Department considers that Manx Care is failing in the discharge of its functions, applicable regulations and directions (following an inspection or otherwise) then the Department may direct Manx Care to rectify those failings.

Clause 30 Failure by Manx Care to discharge any of its functions

(2) Directions under subsection (1) may (in particular) include directing Manx Care —

(a) to rectify the failure within a given period;

(b) to engage experts (named or otherwise) to assist in addressing and rectifying the failure; and

(c) to provide the Department with periodic reports on its progress in rectifying the failure.

(3) Where Manx Care fails to comply with a direction given to it by the Department, and the Department considers that the failure on the part of Manx Care is significant, it must notify the Council of Ministers in writing as soon as practicable.

(4) Where notified in accordance with subsection (3), the Council of Ministers may give a direction if, and not otherwise, it considers that there is a failure on the part of Manx Care and it agrees with the Department's assessment that the failure is significant.

(5) A direction given by the Council of Ministers under subsection (4) may direct Manx Care to discharge such of its functions, and in such manner and within such period or periods, as may be specified in the direction.

(6) If Manx Care fails to comply with a direction given under subsection (4), the Council of Ministers may direct the Department —

(a) to discharge the functions to which it relates; or

(b) make arrangements for any other person to discharge them.

3 Implications for Manx Care's operational independence

- 3.1 The operational independence of Manx Care is a core design principle which has informed the work of the Health and Care Transformation Programme and associated projects to Establish Manx Care, to put in place New Funding Arrangements, and to implement frameworks for future Governance and Accountability of the Island's health and care services.
- 3.2 Examples of this independence include, but are not limited to:
 - 3.2.1 the right to develop and set its own strategy;
 - 3.2.2 the right to develop and set its own policies and procedures;
 - 3.2.3 the right to communicate publicly, as it sees fit;
 - 3.2.4 the right to conduct day-to-day operational management of services;
 - 3.2.5 the right to set up and amend internal structures.
- 3.3 Manx Care is a publicly funded organisation and, as such, whilst being granted broad powers to act in the commissioning and provision of health and care services and in the use of public resources, remains accountable democratically to the population of the Island.
- 3.4 Specifically, within the Manx Care Bill the Department of Health and Social Care retains responsibility to Tynwald for the provision of health services and social care services whether those services are provided in the Island or elsewhere (Clause 4).
- 3.5 However, in advance of the start of the relevant financial year, the Department will agree an annual mandate with Manx Care which includes (as per Schedule 2 of the Bill):
 - 3.5.1 the objectives that the Department considers Manx Care should seek to achieve;
 - 3.5.2 the services that Manx Care must provide, or secure the provision of;
 - 3.5.3 the amount of funding that the Department will allocate to Manx Care;
 - 3.5.4 the service levels and quality standards Manx Care must comply with;
 - 3.5.5 the information to be provided to the Department;
 - 3.5.6 requirements, including (but not limited to) compliance with or regard to specified standards and guidance, use of government shared services and entering into service level agreements;
 - 3.5.7 how concerns about the performance of others under government shared services and service level agreements may be raised with the Department for resolution;
 - 3.5.8 the matters by which the Department proposes to assess Manx Care's performance under the mandate;

- 3.5.9 the procedure to be followed in the event of a dispute between the Department and Manx Care;
- 3.5.10 charges in respect of the provision of services by Manx Care or any other person in accordance with the Bill, including determination of the amount, remission, repayment and methods of recovery;
- 3.5.11 the schedule of inspections provided under the mandate;
- 3.6 Once the Manx Care Board has been established, and Manx Care duly mandated, it becomes the responsibility of Manx Care and the Manx Care Board to make appropriate arrangements for the operational management and delivery of these functions including in relation to the management of all associated funding and resources.
- 3.7 In line with the policy covering new funding arrangements for Manx Care, the Manx Care Board will be able under the financial regulations for Manx Care to approve:
 - 3.7.1 use of external, non-Government, providers if existing shared services repeatedly breach SLAs - subject to Council of Ministers approval.
 - 3.7.2 movement of money between operational units, so long as it does not compromise its ability to meet its obligations under the mandate.
 - 3.7.3 exemptions from financial regulations section C - Buying and Making Payments in relation to the mandate and associated budgets, without the need for further Treasury approval.
 - 3.7.4 exemptions from financial regulations section B - Managing Resources in relation to the mandate and associated budgets, without the need for further Treasury approval.
- 3.8 As currently applies to departments and statutory bodies, any borrowing of money would need to relate to specific capital schemes, from Treasury Capital via the Consolidated Loans Fund. It is expected that Manx Care will obtain capital funding through the current bidding process via the Department, with the opportunity for joint engagement at the Health & Care Partnership Board.
- 3.9 Borrowing for any other purpose or from any other lender would require Treasury approval.
- 3.10 Whilst the Isle of Man Treasury will continue to play an important role in the development and agreement of overall revenue and capital plans, the formal relationship between the Treasury and Manx Care will be managed through the Department (as the funding department, and as per other government departments) rather than directly with Manx Care; except where Treasury is providing services to Manx Care, as part of broader government shared services.
- 3.11 Any changes to the broader mandate in-year would require the consent of the Manx Care Board or necessarily relate to "exceptional circumstances".
 - 3.11.1 Exceptional circumstance are generally held to be those which could not have been reasonably foreseen and / or where the impact of their occurrence is of

sufficient magnitude that it requires an immediate change to standard operating practices in response. An example of exceptional circumstances in relation to health and care services would be the Covid-19 pandemic.

- 3.11.2 In such circumstances, it is assumed that Manx Care would not, un-reasonably, withhold consent to changes to the mandate. It is anticipated that Manx Care and the Department would be involved in jointly developing the proposed response, in line with the broader process and principles for setting of the annual mandate.
- 3.11.3 In the event of any dispute that cannot be resolved between the Department and Manx Care or through discussion at the Health and Care Partnership Board, it would be for the Council of Ministers to resolve, with any changes to the mandate required to be then laid before Tynwald.
- 3.12 If the Department considers Manx Care is failing to deliver one or more aspects of the mandate, and is not able to resolve these concerns in discussion with Manx Care, then it may take action which would affect Manx Care's operational independence.
 - 3.12.1 It is recognised by both the Department and Manx Care that there is likely to be an initial transitional period where Manx Care will need to address a number of inherited "legacy" issues, including those highlighted in Sir Jonathan Michael's Final Report; and potentially additional areas, identified through the introduction of improved systems and ways of working, including an enhanced inspection regime.
 - 3.12.2 For both legacy and newly-identified issues, it is important that any future approach to performance management and intervention by the Department reflects the extent to which Manx Care has or is able to put in place effective action plans and mitigations in response, and is achieving progress in improving the associated quality and outcomes of care; and not just absolute performance standards which exceed those being delivered prior to Manx Care's existence and those which could reasonably be expected to be achieved in the first period of Manx Care's independent operation.
 - 3.12.3 The following sections should be read in the context of this section 3.12.
- 3.13 The Department has the power and statutory responsibility to organise independent inspection of Manx Care services which includes the requirement to report on the quality, efficiency and effectiveness of the services provided or commissioned by Manx Care, and Manx Care is required to provide an action plan to address recommendations and findings (Clause 9).
- 3.14 The Bill makes provision for the Department to issue direction to Manx Care following inspection findings "or otherwise". In the event that the Manx Care Board disagreed with the direction being issued and the dispute could not be resolved through established dispute resolution processes, as specified in the mandate, the Bill specifies that the Council of Ministers would need to issue direction to Manx Care and could empower the Department to either discharge the related functions or appoint someone else to discharge them (Clause 30).

- 3.15 Examples of failures which might trigger the Department's intervention might include:
- 3.15.1 A material deviation from annual financial plans, in the absence of clear and agreed proposals for bringing Manx Care back into financial balance.
 - 3.15.2 Evidence of systematic failures in the quality or safety of care being provided.
 - 3.15.3 A repeated failure to provide services as specified in the mandate.
 - 3.15.4 A failure to uphold Manx Care's statutory duties, for example, the Duty of Candour.
- 3.16 Elected members will continue to play an important role in supporting, representing and advocating for their constituents, including in relation to their individual health and care.
- 3.17 A separate policy will set out the process for elected members raising individual concerns and feedback from constituents with Manx Care, and the processes Manx Care will have in place to respond.
- 3.18 In enabling Manx Care's future independence from day-to-day politics, any interaction between elected members and Manx Care in relation to broader health and care policies and strategies will be managed through the Department, rather than directly with Manx Care.
- 3.19 Similarly, whilst the new Health & Care Partnership Board provides a forum for all relevant parts of Government to come together to support improved population health and wellbeing with the Department (including the Minister) and Manx Care in attendance, the success of the Partnership Board will rely on a shared understanding that the Chair and Chief Executive of Manx Care are attending as equal partners to other board members in those discussions.

4 Conclusions

- 4.1 Manx Care has full operational autonomy and this is guaranteed by statute. Manx Care is directed by and answerable to the Manx Care Board.
- 4.2 Manx Care and its Board operates within the terms set out in the Mandate, their statutory responsibilities as per the Manx Care Bill 2020 (to become the Manx Care Act 2021) and in accordance with all other relevant laws and regulations as apply on the Island, including both general and specific financial regulations.
- 4.3 Whilst doing so, Manx Care will be able to provide and, as required, sub-contact provision of health and care services at their full discretion.
- 4.4 There are a limited number of specific exceptions to this autonomy which are described in this paper, relating primarily to the appointment and dismissal of certain Manx Care Board positions; the use of shared services; and the ability to access external funding.
- 4.5 In general, including through the specific financial regulations for Manx Care, the Manx Care Board has broad powers to structure and oversee delivery of health and care services.
- 4.6 The circumstances where the Department can legally intervene, in-year, in a way which would affect the operational independence of Manx Care are:
 - 4.6.1 in “exceptional circumstances”, to modify the mandate to Manx Care without the consent of the Manx Care Board.
 - 4.6.2 in the event the Department judges Manx Care to be failing to meet its responsibilities, to issue direction to the Manx Care Board.
- 4.7 In either scenario, were a fundamental disagreement to arise between the Department and Manx Care around the discharge of Manx Care’s responsibilities, which could not be resolved by any other means, it would be for the Council of Ministers (as required) to issue direction to Manx Care.
- 4.8 If this direction was not complied with, it would then be for the Council of Ministers to empower the Department to take on specified responsibilities or to appoint someone else to undertake them.