

FIT FOR HSCOB

Accepting and Onboarding Complaints for Review

This tool has been developed to help and support decision making concerning the processing and administration of complaints received by the Health & Social Care Ombudsman Body (HSCOB) under **Part 3** of the following regulations:

- **National Health Service (Complaints) Regulations 2022**
- **Social Services (Complaints) Regulations 2022**
- **Social Services for Children (Complaints) Regulations 2022**

Part 3 sets out the statutory duties and powers of HSCOB for the review of complaints about service providers made previously under **Part 2** of the regulations. Before accepting a complaint for review, a determination must be made about whether the complaint meets a number of tests (whether or not the complaint is 'Fit for HSCOB'). These address the following key matters:

- **Jurisdiction** (is the body and/or matter complained about within statutory scope?)
- **Eligibility** (can the person complaining request a review under Part 3?)
- **Timeliness** (has the complaint been referred to HSCOB within the prescribed period?)
- **Remedy & Redress** (do alternative avenues for dispute resolution exist?)
- **Prematurity** (has the complaint exhausted Part 2 arrangements?)

In deciding whether a complaint can be accepted for review, it will also be necessary to consider the following supplementary matters:

- **Desired Outcome** (can the expressed wishes of the complainant concerning a resolution be achieved?)
- **Review Merits** (is a HSCOB intervention likely to result in a materially different outcome to that arrived at under Part 2 of the regulations?)
- **Public Interest** (is the subject matter of the complaint such that a review by HSCOB would be in the wider interests of the public?)

The following pages provide a step by step guide and checklist which can be used as an administrative tool for deciding whether a complaint should be accepted for review by HSCOB.

1. JURISDICTION

Section 8 of Regulation 14 under **Part 2** of the combined complaints regulations explains the meaning of ‘**relevant service provider**’:

‘In this regulation, “relevant service provider” means a service provider which is providing services under arrangements made with (a) Manx Care in accordance with the Manx Care Act 2021; or (b) the Department and novated to Manx Care by virtue of Section 13(5) of the Manx Care Act 2021’

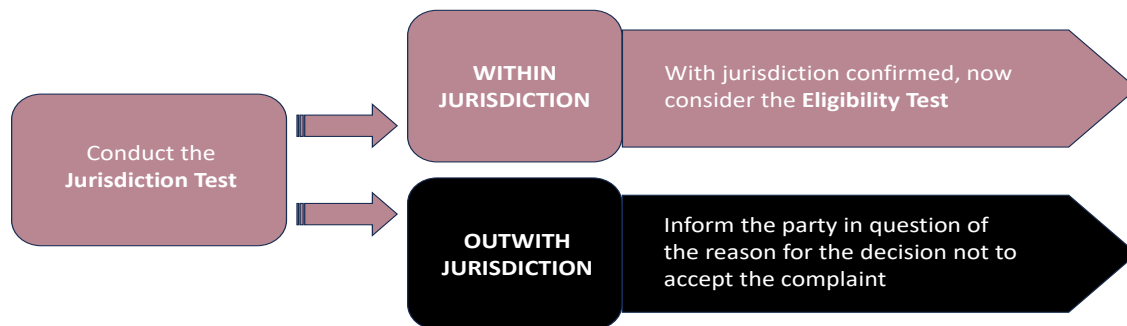
Subject to stated exclusions under **Section 1 of Regulation 8 of Part 2** (see below), a complaint will fall within the jurisdiction of HSCOB if the body complained about meets the definition of being a service provider for the purposes of Section 8 of Regulation 14. This will most commonly be Manx Care, but may also include independent bodies commissioned to provide health and social care services on behalf of Manx Care.

Exclusions: Complaints made by a service provider that relate to the contract or arrangements under which it provides services are excluded, as are complaints made by employees about contractual matters relating to their employment. By definition, a complaint about a body or matter not falling within the jurisdictional scope of HSCOB will also render the person making the referral ineligible under **Regulation 17**.

Is the complaint within jurisdiction?

YES NO

Summary of the rationale for the decision



2. ELIGIBILITY

Regulation 17(1)	Defines eligibility to make a complaint where: <ul style="list-style-type: none"> (a) a person is ‘receiving or has received’ a service. (b) where a person is ‘affected or likely to be affected by any act, omission or decision of a service provider’.
Regulation 17(2)	A ‘representative’ may make a complaint on behalf of a person mentioned in 17(1) who: <ul style="list-style-type: none"> (a) has died; (b) is a child; (c) does not have capacity (physical or mental); (d) has requested a representative to act on their behalf.
Regulation 17(3-7)	HSCOB has the power to inform a ‘representative’ that it will not consider a complaint made on behalf of a person mentioned in 17.1 where: <ol style="list-style-type: none"> 1. In respect of a child, no reasonable grounds to do so are made out under the scope of 17(3)(a-b). 2. The representation is deemed not to be in the person’s best interests under 17(4)(a-b) having applied the relevant test set out in 17(7).

Eligibility under **Regulation 17(1)(a)** is defined by the person’s status as a current or former patient or service user. The substance of the complaint and the person’s proximity to the service provider’s act, omission or decision will be determinative in respect of eligibility under **Regulation 17(1)(b)**.

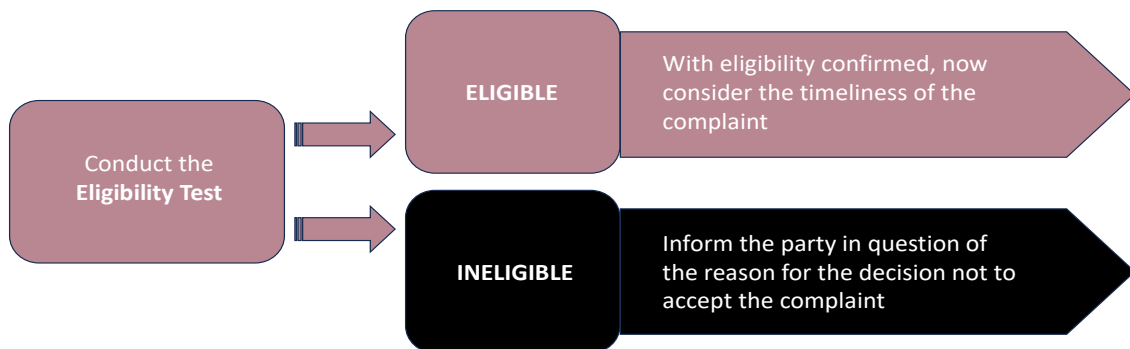
Best Interests

In considering whether a representative is conducting a complaint in a person's best interest, HSCOB must consider, so far as is reasonably ascertainable, whether the representative is acting in a way that is consistent with the person's beliefs, values, wishes and feelings whether expressed orally, in writing or by behaviour in the past or present.

Is the complainant an eligible person?

YES NO

Summary of the rationale for the decision



3. TIMELINESS

Regulation 20(1)	Stipulates the time limit for making a complaint (not later than 12 months after date the complainant became aware of the matter or 6 months after a decision in writing). However, HSCOB does have discretion under Regulation 20(2) to disapply the time bar in particular circumstances
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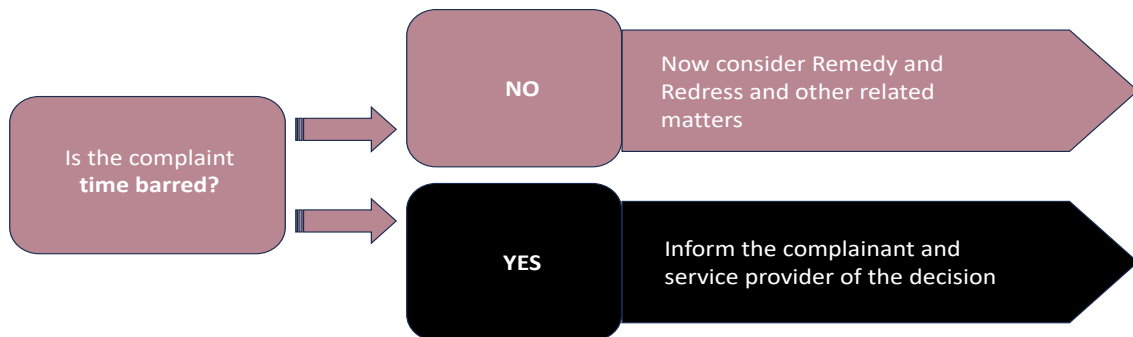
Has the complaint been made to HSCOB within the prescribed period, or if not, have particular circumstances been presented by the complainant that merits the disapplication of the time bar? Decisions to apply or disapply the time bar will by definition be fact specific and subject to the overriding principle of reasonability.

Is the complaint time barred?

YES		NO	
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Summary of the rationale for the decision

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4. REMEDY & REDRESS

Whilst the matters of jurisdiction, eligibility and timeliness will largely be objective factors that in most cases will be self-evident from the initial information provided by the complainant, the next step (Remedy & Redress) also contains a number of subjective elements that require triangulation with the objective considerations to arrive at an overall judgement as to whether the complaint is 'Fit for HSCOB'.

Regulation 22(1)	<p>Sets out the obligation to give regard to the following:</p> <ul style="list-style-type: none"> (a) the views of the complainant; (b) the views of the service provider; (c) any previous investigation and action taken; (d) the Standard Considerations prescribed under Regulation 22(3); and (e) any other relevant information.
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Regulation 22(1) engages the need to look at opportunities, options and alternatives for achieving remedy and redress both within and outside of the HSCOB review process.

Regulation 22(1)	
(a) The views of the complainant	<p>The desired outcomes (expressed wishes) of the complainant concerning a settlement that would be acceptable to them are key in determining whether a review is appropriate. The following are two illustrative examples of outcomes that a HSCOB review cannot deliver:</p> <ul style="list-style-type: none"> • Claims for financial compensation and consolatory awards • Dismissal of staff from employment with a service provider or other disciplinary action <p>Where a complainant indicates a willingness to enter into mediation and conciliation with a view to a resolution of their concerns, the use of a review to achieve this outcome should be considered.</p> <p>The overall views of the complainant, both in terms of the substance of their concerns and the service provider’s complaint handling, should also be considered.</p>
(b) The views of the Service Provider	<p>Where a service provider indicates a willingness to enter into mediation and conciliation with a view to a resolution of the complainant’s concerns, the use of a review to achieve this outcome should be considered.</p> <p>The overall views of the service provider, both in terms of the substance of the complainant’s concerns and complaint handling matters should also be considered.</p>
(c) Any previous investigation and action taken	<p>This will be addressed under Step 5 (the Prematurity Test).</p>
(d) The Standard Considerations	<p>Page 8 provides guidance on the application of the Standard Considerations.</p>
(e) Any other relevant consideration	<p>This is a ‘catch all’ provision for any matters not addressed elsewhere under the regulations. The proviso here is that the matter must be materially relevant to the complaint.</p>

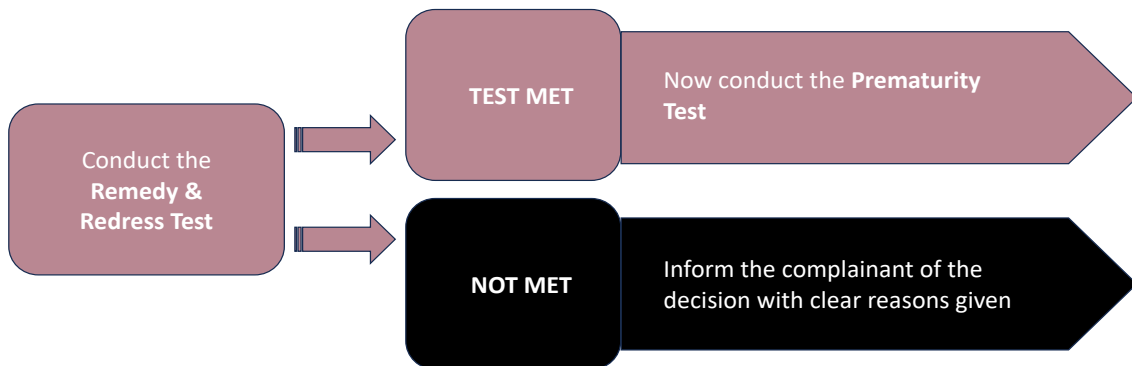
Regulation 22(3) : The Standard Considerations	
A ✓	<p>Whether or not the complainant is directly affected, or likely to be affected, by the subject matter of the complaint.</p> <p>Standard Consideration A (relevant to Regulation 17(1)(b)) will have been addressed under Step 2 (the Eligibility Test).</p>
B ✓	<p>Whether or not the complaint has been made to the HSCOB within the time limit in Regulation 20.</p> <p>Standard Consideration B will have been addressed under Step 3 (Timeliness).</p>
C ?	<p>Whether or not HSCOB is satisfied that the service provider has reached a resolution with the complainant which is fair and reasonable in the circumstances.</p> <p>This will be fact specific on a case by case basis. Condition A of Regulation 18 and Regulation 22(1)(a-c) will be relevant to reaching a determination on reasonability.</p>
D ?	<p>Whether or not the complaint has been the subject of a decision on the merits in proceedings in any court, tribunal or arbitration.</p> <p>This will be fact specific on a case by case basis.</p>
E ?	<p>Whether or not the complainant has, or had, a right of appeal, reference or review to, or before, a tribunal or any other body or person under any enactment in respect of another complaint the subject matter of which arises out of the same facts as that of the complaint.</p> <p>This will be fact specific on a case by case basis.</p>
F ?	<p>Whether or not the complaint has been properly considered under any enactment or arrangement providing for the resolution of disputes or the investigation of complaints other than under these Regulations.</p> <p>This will be fact specific on a case by case basis.</p>
G ?	<p>Whether or not the complaint would more suitably be dealt with by a court or under an enactment or arrangement referred to in any other standard consideration in this paragraph.</p> <p>This will be fact specific on a case by case basis.</p>
H ?	<p>Whether or not the complaint may be made to the Health and Social Care Ombudsman Body under Regulation 18.</p>

	Standard Consideration H will be addressed under Step 5 (the Prematurity Test).
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Having tested remedy and redress matters, Is the complaint fit to be considered further?

YES		NO	
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Summary of the rationale for the decision



5. PREMATUREITY

As a matter of agreed principle, HSCOB will normally expect a complaint to have been thoroughly considered under **Part 2** of the regulations. This is consistent with the statutory expectation that service providers have primary responsibility for the investigation of complaints. HSCOB is responsible exclusively for their review where a complainant remains dissatisfied and meets all the relevant criterion. HSCOB is not an investigative agency of first choice or an alternative option to a **Part 2** investigation. Therefore, the question of whether a complaint is premature or not is an important component in determining its fitness for review.

With all of the aforementioned in mind, **Regulation 18** provides the statutory basis for considering the following key matters:

- 1) Has the complaint been properly made by the complainant to the service provider and have they been given an adequate opportunity to respond?
- 2) Has the complaint been investigated to an acceptable standard by the service provider?
- 3) Has a decision to reject a complaint on 'time bar' or other reasons been clearly given and is the decision reasonable in all the known circumstances?

Regulation 18	<p>Prematurity refers to a circumstance where a complaint is referred to HSCOB prior to its consideration and/or completion by a service provider.</p> <p>Regulation 18 prescribes three essential Conditions that must be demonstrated for a complaint to be accepted for review.:</p> <p>(A) Dissatisfaction with the outcome of an investigation under Part 2;</p> <p>(B) An investigation under Part 2 not being completed within 3 months of the complaint being made;</p> <p>(C) That the complainant:</p> <ol style="list-style-type: none">1. Believes the separate conditions under Regulation 9(2)a-b of Part 2 are met with respect to a decision by the service provider to 'time bar' their complaint, or...2. Is dissatisfied with a decision of the complaints manager under Regulation 8(1) of Part 2 that 'the complaint was not required to be investigated'.
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Condition A

Evidence of an investigation having taken place and a response being provided will be suggestive of the threshold for review having been met. However, it will also be necessary to consider the following:

- Whether or not the service provider's investigation is of a sufficient standard and quality to enable a review to be conducted using a desktop style investigative approach;
- Whether or not the service provider's response has adequately addressed the complainant's expressed concerns and clearly communicated the outcome of inquiries into the matter;
- Whether or not any recommendations have been implemented or other appropriate action taken (including any proposals for remedy and redress).

The general principle to be applied in respect of **Condition A** is that a complaint should be remitted back to the service provider for their completion in instances where it is not possible to conduct an effective review on the basis of the information presented. This is consistent with the statutory expectation under **Part 2** of the combined complaints regulations that service providers are responsible for the investigation of complaints.

However, **Regulation 23(6)** states ‘HSCOB may govern its own procedure in any manner which seems to it to be appropriate’. Therefore, and in circumstances where a complainant may experience clear detriment as a consequence of applying the general principle, HSCOB can elect to accept a complaint for review. In these circumstances it is likely that a more forensic style investigation will be required.

Condition B

Where the completion of an investigation and provision of a response by a service provider under **Part 2** is reasonably imminent, the general principle attached to **Condition A** is similarly applicable. However, the purpose of **Condition B** is to provide a safety net in instances where unreasonable delay is being experienced by the complainant, and which moreover may be indicative of poor complaint handling practice on the part of the service provider. A determination on acceptance for review in these circumstances will by definition be fact specific.

Condition C(1)

Regulation 9(1)(a-b) of **Part 2** prescribes that a complaint must be made not later than 12 months after the date on which the subject of the complaint occurred, or (if later) when the subject of the complaint came to the notice of the complainant. However, under **Regulation 9(2)**, the ‘time bar’ can be disregarded where the complaints manager is persuaded that the complainant had good reasons for not making the complaint within the time limit and it is still possible to investigate the complaint effectively and fairly. **Regulation 9(3)** makes provision for a complaint to be ‘time barred’ where a case for the application of **Regulation 9(2)** is rejected by the Complaints Manager.

A determination on acceptance for review in these specific circumstances will by definition be fact specific and should be guided by the principle of reasonableness (i.e. can the service provider’s decision to ‘time bar’ the complaint be justified on the basis of all the available known facts?)

Condition C(2)

Where a complainant is dissatisfied with a decision under **Regulation 8(1) of Part 2** that their complaint does not require investigation by the service provider, they may request a review of that decision. A determination on acceptance for review in these circumstances will by definition be fact specific and should be guided by the principle of reasonableness (i.e. can the service provider's decision to reject the complaint be justified on the basis of all the available known facts?).

HSCOB PRACTICE NOTE: REACHING A DECISION ON PREMATURETY

Experience in piloting the 'Fit for HSCOB' acceptance and onboarding tool identified that in certain circumstances it will be necessary to request information from the service provider about their handling of the complaint under **Part 2** in order to reach a determination.

This is because the complainant may provide only partial information, or because the material made available to HSCOB is not suggestive of the service provider having conducted an investigation of an acceptable standard, and/or their response presenting as inadequate for the purposes of resolving the complaint.

It is important to note that any request for information from the service provider must at this point be focused on their complaint handling rather than the substance of the complaint. Evidence of a credible investigation having taken place and fulsome response provided will normally indicate that the complaint is mature.

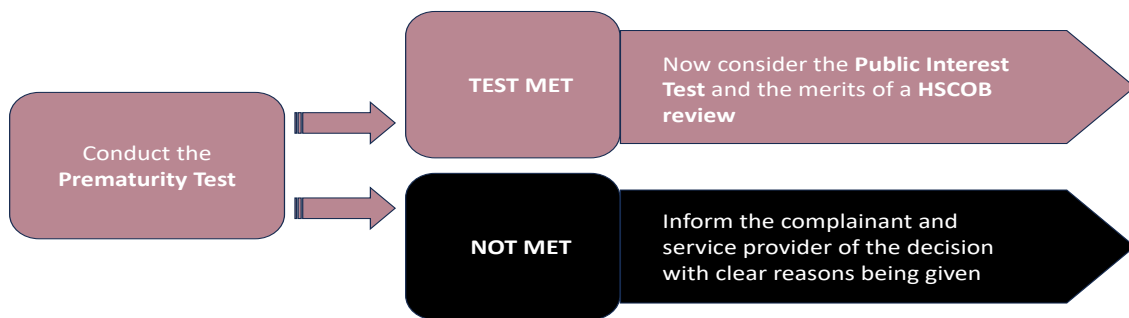
Using the 'Fit for HSCOB' tool is an iterative process requiring a linear consideration of each step. Consequently, it may be necessary in certain circumstances to hold a decision on Prematurity pending whilst the necessary information is obtained. This will support the overarching policy aim of ensuring that the service provider discharges their responsibilities under **Part 2**, whilst balancing the need to ensure any detriment experienced by the complainant is properly considered.

Where a complainant provides fulsome information including material that clearly indicates how the complaint was investigated by the service provider and which includes a response that addresses their concerns, this should be sufficient for the purposes of reaching an immediate determination on Prematurity. In all other circumstances, and once the information requested from the service provider is supplied, a deferred final determination can be made.

Is the complaint premature?

YES NO

Summary of the rationale for the decision



6. REVIEW MERITS & PUBLIC INTEREST TEST

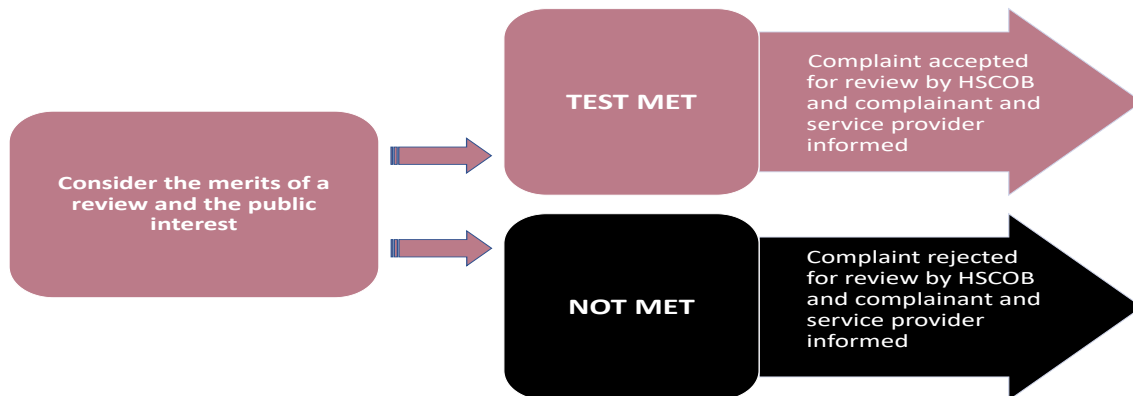
The final step in the onboarding process is to consider the merits of conducting a review and the public interest. The guiding principle in relation to the former should be whether or not a HSCOB review is likely to result in a materially different outcome to that already achieved under **Part 2** of the combined complaints regulations.

Where the public interest is concerned, the presumption will apply that a complaint highlighting matters of importance about the Island's health and social care system should be subject to a review. The two are not mutually exclusive and satisfaction on one or both counts will be sufficient for the purposes of accepting the complaint for a review by HSCOB.

Having considered the merits of a review and the wider public interest, is the complaint 'Fit for HSCOB'?

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
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Summary of the rationale for the decision



7. DECISION LETTER

Having completed the onboarding process, **Regulation 22(4)** requires that HSCOB must give the complainant a written **Decision Notice** stating whether it has decided:

- (a) to take no further action in respect of the complaint;
- (b) to review the decision on the complaint under **Part 2** to recommend what action (if any) may be taken to resolve the complaint; or
- (c) to refer the complaint to a health or social care regulatory body