

Redress and Accountability Systems in Jersey

Consultation Response: The Jersey Care Commission

The Care of Children in Jersey Review Panel is conducting a scrutiny review in respect of complaints processes, accountability systems and redress across the Government of Jersey, States Assembly, Court System and the Parish Administrations. The Commission welcomes the opportunity to contribute to this review.

As a general principle, the Commission fully supports reforms which provide greater and enhanced opportunities for islanders to seek redress in cases where the provision of any service has fallen below anticipated standards.

Over the course of the past 12 months, the Commission has undertaken a range of activities related to matters associated with complaints processes, accountability and redress.

The role of the Jersey Care Commission

The Regulation of Care (Jersey) Law 2014 established the Jersey Care Commission as the statutory body responsible for the regulation of activities involving or connected with the provision of health or social care. Article 30 of this law stipulates that,

The Commission shall 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.

(and)

The Commission shall decide and publish its procedures for dealing with and investigating complaints.

The Regulation of Care (Standards and Requirements) (Jersey) Regulations 2018 (Regulation 20) stipulates that,

A registered person must have in place effective procedures for identifying, receiving, handling and responding appropriately to complaints and comments.

(and)

The procedures must include the keeping of adequate records of the nature of any complaint, the investigation and the outcome.

(and)

The registered person must inform the complainant of the outcome of his or her complaint and, where appropriate, any action taken as a consequence of it and must make this information available to the Commission on request.

Therefore, the provider of each of the regulated activities (care homes services, home care services, adult day care services), must ensure that the activity has arrangements in place for the management of complaints. Care receivers should know how to make a complaint and what to expect if they need to make a complaint. The service's staff should be familiar with the complaints management procedures and service providers should closely monitor their implementation.

The Commission is required to undertake a minimum of one inspection visit per annum to each regulated activity. As part of this inspection visit, the extent to which the provider has met this requirement is assessed and forms part of the inspection report.

Complaints Policies

The Commission has two complaints policies. One is in relation to complaints received about a regulated activity. The other is in relation to complaints received about the Commission. Both policies are available on the Commission's website.

In relation to complaints concerning regulated activities, the Commission has adopted 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

The Commission requires that a complainant exhausts the activity's own complaints processes in the first instance. There are occasions where the Commission may intervene prior to these processes having become exhausted (such as where a complainant or their relative might justifiably conclude that they are unable to pursue this avenue themselves). However, in general, the Commission would become involved once a regulated activity had undertaken an internal investigation into the matters pertaining to the complaint.

In relation to complaints concerning the Commission itself, the Commission adopts the following principles,

- The complaints process should be easy to access, and a complainant should be supported in making their complaint, if necessary.
- A complainant will be listened to and taken seriously.
- A complainant will have the opportunity to discuss the way the complaint will be handled and know when to expect a response.
- Complaints will be investigated and reviewed by someone who was not previously involved in the actions complained about.
- A complainant will be kept informed of progress and know the outcome of their complaint.
- If a complaint is upheld, the complainant will be offered an appropriate remedy, which could include an apology, an explanation and/or remedial action.

- The Commission will have systems in place to record, analyse, monitor and report on complaints and the learning from them.

A two-stage approach is applied in respect of complaints made about the Commission. At the first stage, the Commission will seek to resolve the complaint informally and, if that is not possible, will undertake a formal investigation and provide a report. If the complainant remains dissatisfied at the end of the first stage, the Commission will offer a second stage review by someone other than the person who carried out the stage one formal investigation. If necessary, the Commission can decide to engage the services of an external agency or individual to conduct the review. The Reviewer will prepare a report setting out the conclusions of the review for consideration by a Review Panel, which will normally of two Commissioners, who have not been involved in the investigation into the complaint and who are not themselves, the subject of the complaint.

Adherence to the Seven Principles of Public Life ('the Nolan Principles'), is a requirement of all members of Commission staff, including the Commissioners, in respect of responding to complaints.

If a complainant has exhausted the Commission's complaints process and remains dissatisfied, they can direct their complaint to the Chief Minister for consideration, via the offices of the Director General, Strategic Policy, Planning and Performance. However, the Commission is independent of the Government of Jersey and the States Assembly. It is therefore likely that, if a complaint was escalated to the Chief Minister, that an independent body would be engaged in investigating the Commission's handling of a complaint.

Public Services Ombudsman

In the event of the establishment of an independent Public Services Ombudsman in Jersey, the outcome of any complaint investigation about the Commission may be referred by the complainant to that office for further consideration. A complainant would need to be made aware of their right to bring the outcome of their complaint investigation to that office, if they remain dissatisfied.

The Commission has been involved in the extensive exercise in consultation on the creation of a Public Services Ombudsman. In addition, the Government of Jersey has also published its own response to the consultation which summarises the responses and indicates the proposed direction of travel in several areas.

The Commission welcomes the proposal to establish the office of a Public Services Ombudsman in Jersey (JPSO) and provided detailed feedback during the period of the consultation response. In particular, in reflecting upon its experience as the health and social care regulator, the Commission concluded that the need to provide for the independent investigation into complaints about public services and the expert oversight of how public bodies design and operate their complaints policies and procedures were each clearly evidenced.

In ensuring that the JPSO is fully independent and possesses both authority and effectiveness, the Commission recommended that Jersey should follow recognised good practice in the establishment of an Ombudsman scheme. The Commission welcomes the proposal that the JPSO would be established in such a way as to meet the membership criteria of the Ombudsman Association.

Conclusion

The Commission welcomes the work of the Care of Children in Jersey Review Panel in undertaking a review of this area. However, it is recommended that the review is triangulated with the major consultation which has taken place in respect of the proposed establishment of a Public Services Ombudsman for Jersey, particularly as this consultation is relatively recent. The Commission would caution against the diverting of energies and resources into a separate strand of work given the opportunities which the establishment of the JPSO would represent. The Commission encourages the creation of the JPSO and is hopeful that this reaches a conclusion soon.