

**4.2. Manx Care Bill 2020 –  
Second Reading approved**

Mr Ashford to move:

*That the Manx Care Bill 2020 be read a second time.*

3235 **The Speaker:** Fastyr mie, good afternoon, Hon. Members.

Now, we pick up our Order Paper at Second Reading and the Manx Care Bill 2020. I call on Mr Ashford to move.

**Mr Ashford:** Thank you, Mr Speaker.

3240 I am pleased to be able to move the Second Reading of the Manx Care Bill 2020.

On 21st May 2019 Tynwald unanimously approved and accepted all 26 recommendations made by Sir Jonathan Michael following his independent review of the Isle of Man Health and Social Care system. It was the view of the Hon. Court at the time that implementation of all 26 interlinked recommendations together would secure the benefits Sir Jonathan had outlined in his final report and would enable the Island to achieve the health and care system we strive for.

3245 Following on from this, the Health and Care Transformation Programme was formed within the Cabinet Office to implement the 26 recommendations, the end goal being to provide the people of our Island with a modern, fit-for-purpose health and social care system. Sir Jonathan Michael remains as an independent adviser to the Transformation Programme to provide assurance that both the spirit and the letter of his recommendations are being followed through effectively. (**A Member:** Hear, hear.)

3250 Hon. Members, the passing of this Bill is a matter of national importance and goes a long way to accomplishing several of these recommendations and laying the groundwork for several others. Central to the purpose of the Bill is the recommendation that:

The setting of priorities and the development of policy ... 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 ... should be responsible for the delivery and/or commissioning from other providers of all required health and care services.

3260 This legislation will establish the structure for a separate arm's-length body called Manx Care which will be responsible for the provision of health and social care services as mandated by the Department of Health and Social Care. It is planned that Manx Care will be established as a Statutory Board from 1st April 2021. By distancing the Department of Health and Social Care away from managing day-to-day operational issues, policymakers within the Department will be able to focus instead on strategic direction-setting and policy development allowing for a better understanding of what services are required now and for the future, and to make better longer-term planning and, importantly, evidence-based decisions.

3265 The Department will also oversee the performance of Manx Care and will be required to provide regular reports to Tynwald. This reformed structure and additional statutory duties on both the Department and Manx Care will pave the way for putting the needs of patients and service users firmly at the centre of the Island's Health and Social Care Service by providing space for an effective governance and accountability framework with clear responsibilities detailed, and where there will no longer be one body acting as both service provider and service regulator. Indeed this Bill introduces a requirement for regular independent and external inspections of all health and care services.

3270 A key component to this governance and accountability framework is the requirement set out in this Bill for the Department to obtain health and social care services via a written agreement with Manx Care, known as 'the mandate', and for the Department to lay the agreed

3275 mandate before Tynwald prior to the start of each financial year. The mandate will set out the detail of what is expected of Manx Care by the Department in terms of services, quality and performance as well as the overall level of funding to be provided to Manx Care for the provision of all those services.

3280 Whilst the Department has for a long while sought to adopt best practice in relation to transparency and accountability for mistakes made, this Bill will for the first time make transparency a statutory duty by introducing a duty of candour for the Department and Manx Care. Regulations will follow the introduction of this duty which will set out the process by which a service user must be notified about incidents affecting their safety. The aim is that these will be prepared to come into operation at the same time that Manx Care is established.

3285 The Bill also introduces other important statutory duties for the Department and Manx Care including a duty to reduce inequalities in access to and outcomes of services provided; the duty to promote public involvement and consultation in the planning, development and operation of health and social care services; and a duty to promote education and training of those working in or seeking to work in the Health and Social Care Service.

3290 Manx Care also has duties specific to it which focus on effectiveness and efficiency, and having enhanced clinical and care governance so that those delivering services are held to account for quality of outcomes. The Bill delivers the legal foundations to enable a future structure that gives autonomy to Manx Care to deliver high-quality, integrated, person-centred care in the best possible way for our Island.

3295 I look forward to engaging with all Hon. Members over the summer months before we move to clauses stage in October, assuming Second Reading is approved today, Mr Speaker.

So, Mr Speaker, I beg to move that the Manx Care Bill 2020 be read for a second time.

**The Speaker:** I call on the Hon. Member for Glenfaba and Peel, Mr Harmer.

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**Mr Harmer:** Thank you, Mr Speaker.

I beg to second and reserve my remarks.

**The Speaker:** Hon. Member for Ramsey, Mr Hooper.

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**Mr Hooper:** Thank you very much, Mr Speaker.

I quite welcome this Bill. I think it is about time – past time, actually. It is great that we are looking to set up an arm’s-length structure that kind of more separates some of the Departmental decision-making from actual delivery. But I think there are some real risks here which I think the Minister needs to take away and think about in the context of this Bill.

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The first area obviously is the mandate, which he mentioned. The Department will be responsible for the mandate for funding, but the organisation is responsible for its own operating plan. I think the challenge for me in reading this Bill is that they all seem to be set at slightly different timescales. So the mandate is an annual mandate that is set following consultation and engagement and the funding is annual, but actually the operating plan is multi-year. And I think if we really do not want to risk undermining this new structure, this proposal, those three need to be better aligned. So a multi-year mandate, a multi-year funding strategy and a multi-year operating plan that are all capable of being amended *in situ* to deal with changed circumstances would seem to be a much more appropriate way of dealing with this than trying to mismatch, which is the approach that it currently sets out.

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I think also in the context of the mandate that the remit of that is going to be very important. So the Minister has talked in the past about the mandate setting out exactly how services will be delivered, setting out the remit for that, but there is a real risk that in setting this mandate the Department gets too invested and too involved in the level of detail in the delivery. And an example of that is in the Bill where the Department is still responsible for setting fee schedules, for example deciding how much Manx Care can charge private patients, and that is very

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operational. Whereas, actually, is that really what we want the Department of Health to be doing? I thought we were looking at stepping back from that detail and deciding on the big picture strategy. It does not feel like we have quite found the right balance with some of the clauses in that Bill.

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The other area I have some concern over here is the oversight of the structure, the proposed inspection regime. It was great to hear the Minister talk about the requirement for regular external inspection, but it does not go quite as far as the Programme for Government statement 'to investigate establishing an independent health regulator', but I think it is a positive step in the right direction.

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Inspection operations in the Bill enable the inspection of Manx Care and the delivery within Manx Care, but there do not appear to be any provisions to deal with inspection of the Department and of how the Department's oversight structure works. And that is something probably worth considering. I think ideally, from my perspective, we need an independent audit office that does this function for *all* of Government and all of the arm's-length bodies we are looking to set up – that is clearly outside the remit of this Bill. But whilst we do not have such a body in force actually we need to make sure that the inspection powers that do exist in the Bill are broad enough to give the inspection team, the regulator that we appoint, the powers to come in and make their own decisions about what needs inspecting, and how and when.

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At the moment, the Bill only allows for inspections to be done at the request of the Department or at the request of Manx Care. That is very one-sided in terms of the balance of power here. If the Department does not want a service inspected, aside from having to have it inspected once every five years, there is nothing in here that lets the independent regulator step in and say, 'Actually, we think there's a problem here. We think something needs to be inspected more frequently'. The Minister is already aware of some of these concerns and I really think it needs to be addressed.

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I think the challenge for me, then, the one thing that is missing is really in that slightly high-level context of how we make sure that the relationship between the Department and the new Manx Care body is assessed, is externally reviewed and is independently validated, and how we make sure that Tynwald actually retains proper oversight. I appreciate in the Bill there is talk of annual reports and letters being laid, but actually that is very much 'after the fact'. It is very high level, you are still very reliant on the Department when you are getting your information through and you are very reliant on the Department making a determination of effectiveness of how well something has been delivered. Whereas Tynwald really needs that ability to have an independent look, an independent oversight, without having to rely overmuch on Government and Government positions on a particular issue.

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So, a few very specific concerns with the Bill. The last one I will touch on is the general powers in the Bill. So obviously this is instead of using a statutory board framework, but a slightly different statutory board framework. At the briefing the other day I raised a concern in respect of the limitations that are presented by a statutory board structure. And the answer I got back was: 'Actually there aren't really any limitations in this context because there is a general power in the Bill that enables Manx Care to do anything which it needs to do in order to make sure it can deliver its services'.

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That sounds all well and good, but if you take that a step further I think the question that has to be asked now is: is there a requirement to limit some of that general power? For example, could Manx Care decide to borrow if it felt it was important, in order to fund something to deliver its functions? The general power seems to say actually they can do *anything* within that structure. So I would like some clarity from the Minister on exactly what limitations there are on that general power and where we can find them.

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Thank you very much, Mr Speaker.

**The Speaker:** Hon. Member for Douglas Central, Mr Thomas.

I believe you had a couple of questions.

3380 **Mr Thomas:** Thank you, Mr Speaker. Three in the end!

The first question is that I welcome the statement from the Minister that Sir Jonathan Michael's Report was unanimously approved, but that he welcomed detailed engagement with this Bill. And I would want him to affirm that.

3385 But the question arising from that is, the consultation happened at a difficult time for the Manx public because it was during the COVID-19 pandemic, and the consultation was followed by stakeholder engagement. I think it might be helpful if the Minister could lay down exactly what happened during the consultation and what happened in the stakeholder engagement *after* the consultation, because there might be some confusion that comes up later on about that very point.

3390 The second question I have is to do with the National Health and Care Service Act 2016 which had that killer amendment in it whereby it was not going to come into force until the major scheme had been introduced. Well, there are some people who were inside the mind of the former chief executive of the Department back in 2015 and 2016, who had the view that the National Health and Care Service Act 2016 was going to do everything that this Bill is now going to do. So I would like a very clear description, an exposition about why this Bill will be successful where the National Health and Care Service Act 2016 was not, and which would have been in force now if there had not been yours truly's killer amendment in place to section 2 of the Act.

3395 The final question, the third question, is about the questions I am beginning to get asked about how this proposal, the Manx Care proposal, which I fully support and I have been supporting actively in public for months and will continue to do so ... I want the Minister to clearly lay out why it is different from Sir Andrew Lansley's conservative coalition proposal of 2010 to 2012 in respect of privatisation, in respect of terms and conditions, in respect of the issues that my friend from Ramsey, Mr Hooper raised in terms of financial matters *ex ante* and *ex post*. Is this just a precursor for something different in the future?

3400 So it would be really helpful if the Minister as early as possible, if not today, but as early as possible, to lay out very clearly why this is not just Sir Jonathan Michael's re-running 2010 to 2012 and the Sir Andrew Lansley approach that resulted in the 2012 Act across.

3405 Thank you, Mr Speaker.

3410 **The Speaker:** Mover to reply. Mr Ashford.

**Mr Ashford:** Thank you, Mr Speaker.

Turning to Mr Hooper's comments first, if I may? Can I first of all, Mr Speaker, agree with the Hon. Member for Ramsey, it *is* about time. It is about time this took place.

3415 Turning to his comments around the mandate, the relationship between the mandate and the operating plan, the mandate is to be prepared annually but covers objectives, services and the amount of funding for that financial year and also, crucially, such subsequent financial years as the Department considers appropriate – and bearing in mind that the mandate has to be drawn up in consultation with Manx Care when preparing it. So it will at the start be a bit difficult to go too far ahead with this due to the lack of data that we have available, and I think we have had many discussions both here in this Hon. House and in another place, Mr Speaker, about DHSC's lack of data that we are now trying to correct and build up.

3420 So the crucial thing is that the operating plan that Manx Care must put together, which will be multi-year, is in detail for the first year and then in outline for the following two years to begin with. And again obviously being published annually, in the first two years the operating plan will only be for one year at a time and this is to allow the relationship data to develop once Manx Care is established. Going forward we would expect that the mandate would cover a three-to-five-year period to fit with the proposed financial settlement recommended within the Sir Jonathan Michael's Report. However, it was considered important that it should still be updated and reviewed on an annual basis in terms of objectives and services for the forthcoming

year, because we know within Health and Care things move very, very quickly. In fact I have got to say, I think one of the failings of the DHSC in the past is we have not been quick enough in being able to move swiftly to update our services. So there is that flexibility in there and we would expect the mandate not to just take a one-year look but take a three-to five-year look eventually. But we do have to start off with that slow process.

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Turning to Mr Hooper's comments in relation to the payment schedules and private services. In relation to charging for services the policy that we have worked to is that DHSC will set the charges – so that is prescription charges, social care charges, etc. – and that Manx Care will charge service users based on those set charges. That is the same with private, we have taken exactly the same approach.

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Now, Hon. Members may when we get to clauses stage decide with private there should be a different approach. But we have worked with the same principle that we have for all other charges that it should be set by the Department to ensure that you do not have a body that can just ramp up the charges without any form of control over that. So obviously we will be discussing it with Manx Care once it is set up as well. And again things will be done in discussion in terms of the charges that are levied and it will be no different in those terms with private patients.

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In terms of the inspection powers we are already looking – and I have had several conversations with the Hon. Member for Ramsey – we will be looking over the summer period – and I look forward to engaging with him on this – at how we can provide more independence to allow the regulator more of a free hand to be able to look at services that they might deem need inspection. One of the important things that I am very keen to make sure that we do not end up doing, is going back to that old thing of looking at things in silos; because a regulator may go in and examine one service but as a result find there are issues with another particular service that overlaps, that they want to inspect as well.

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It is important that we do allow that flexibility to happen; but, equally, that we do not allow such flexibility that we end up in the mess that to be frank we see across the water with their inspection regimes.

One of the key things to say is that the inspector, though, would be party to agreeing the programme of inspection with the Department; and any findings from those inspections will also be public as well. So there is that level of engagement between the inspector and the Department when we are setting it up in the first place.

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In terms of Manx Care and the statutory board point that Mr Hooper raised, there *are* limitations because the Statutory Board Act in many parts does apply and there are just specific exclusions and changes for that in the Bill. So in terms of borrowing power – and I dread to use the phrase, Mr Speaker, but I know that Mr Hooper in the back of his mind is probably thinking 'MEA' and what happened several years ago. There would not be that ability for Manx Care to just unilaterally do borrowing without the Department and obviously without Treasury and ultimately Tynwald's consent, so there is not going to be that flexibility where they can just go off and leverage the entire estate on black, or something like that. That ability is not going to be there for them.

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Turning to Mr Thomas. Yes, I have said in my opening remarks 'detailed engagement'. That is deliberately why we have aimed to get Second Reading to this sitting and then pause to allow for more engagement with Members. Because one of the things I do appreciate, Mr Speaker, is because of the issues around COVID-19 and Members having their attention quite naturally directed elsewhere, they perhaps did not have the level of engagement that I personally would have liked to have seen. So I do want to give that opportunity over the summer for Members to be able to go through the Bill in absolute detail, come back with suggestions and come back with any issues they may have so we can talk about it ahead of the clauses stage.

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In relation to the consultation, Mr Speaker, I thank the Hon. Member for Douglas Central for raising this. As he will know as a former Member of the Political Board and also as the Minister at that time within the Cabinet Office, the view that was taken by Cabinet Office was we needed

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to get the Bill into the Branches to ensure that we could meet the ambitious target which all Members signed up to, which is having Manx Care live for the start of the next financial year.  
3485 Hon. Members will remember that the original timescale was to have Manx Care in shadow form for October, for the go-live in April. We are now going to have the shadow form in January for the go-live in April. So we have had to condense it. But again the crucial thing is that I want to engage with Members over the summer because we get one shot at this to get it right, and it is important that we do get it right.

3490 In terms of wider stakeholder engagement the Hon. Member is also correct that organisations, including the Health Services Consultative Committee, have been engaged with and since the consultation has finished as well we have continued to talk to those bodies about any issues they may have and in fact they have been exceptionally supportive, the bodies that we have engaged with in relation to this Bill.

3495 Turning to the 2016 Act now, Mr Speaker, and yes the rather interesting clause in there about the scheme coming forward which, as we know, has in many cases been too hard to manage, the Hon. Member asks what makes this Bill different? Well, the difference is that this Bill does something that from my point of view should have been done a long time ago, which is it separates out the delivery model from the policy-making. The DHSC for too long has been  
3500 concentrating on both and it has been getting swamped into the day-to-day delivery.

That includes myself, as Minister, and anyone who has observed as a political Member in DHSC will know that as well, that you lose the strategic direction eventually because you are so busy firefighting the day-to-day. You need to take a step back and have that space to look at the strategic direction and the policy-making. And that is what this Bill allows. That is the difference I  
3505 think with the 2016 Act – the 2016 Act was trying to put sticky plasters over a system that was not necessarily working. This is basically saying this is a brand new system and a new way of doing things.

In relation to the Lansley reforms in the UK which were 2010 to 2012, if my memory serves me correct, I can categorically say no, we are not trying to mirror the Lansley reforms. In fact  
3510 one of the things I joke about with Sir Jonathan Michael is that what he is proposing here is a bit like the UK trust structure but without the problems and the errors. What he has actually done is try to design a system that actually works in practice based on experiences elsewhere, and that is what I believe he is delivering with this model.

It is not about privatisation. I have said that *many* times both in this Hon. House and in the  
3515 Hon. Court. We have a national healthcare system and that is exactly what it will remain. It will remain a national healthcare system free at the point of delivery for people to access. And in fact I lose track of time these days, Mr Speaker, but I think it was about two years ago when Hon. Members in another place actually reaffirmed the principles of the NHS, supporting an amendment from myself in relation to a motion, and the Hon. Member for Douglas South, Miss  
3520 Costain, and we reaffirmed that we were committed to those principles. And that commitment still stands, Mr Speaker.

And I think, with that, I will cease.

**The Speaker:** I put the question that the Manx Care Bill 2020 be read a second time. Those in  
3525 favour, please say aye; against, no. The ayes have it. The ayes have it.