

**6.3. Manx Care Bill 2020 –
Clauses considered**

Mr Ashford to move.

4050 **The Speaker:** That moves us neatly on to the next Item on our agenda, which is the Manx Care Bill 2020. I call on Mr Ashford to move.

Mr Ashford: Thank you, Mr Speaker.

4055 I would like to start, Mr Speaker, by thanking Hon. Members for their helpful suggestions and engagement, both at Second Reading and over the summer period, which have led to some of the Government amendments that will be put forward today.

Turning to each of the clauses within the Bill, with your permission, Mr Speaker, I wish to move clauses 1 to 3 together.

Clause 1 gives the short title for the resulting Act.

4060 Clause 2 deals with the Bill's commencement, with the Bill's provisions to be brought into operation by the Department in the usual way by Appointed Day Order.

To assist with the reading and interpretation of the Bill, clause 3 defines a number of terms used and signposts the location of several other defined terms.

I beg to move that clauses 1, 2 and 3 do stand part of the Bill.

4065 **The Speaker:** Hon. Member, Mr Harmer.

Mr Harmer: I beg to second and reserve my remarks.

The Speaker: Mr Hooper.

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Mr Hooper: Thank you very much, Mr Speaker.

I just want to ask the Minister in terms of the commencement provisions; obviously this allows the Department to bring in the Act in stages if it so desires.

4075 The establishment of Manx Care and the establishment of the independent regulatory framework around Manx Care are two sides of the same coin, and I would very much like the Minister to confirm that one will not be brought in without the other.

The Speaker: Mr Thomas.

4080 **Mr Thomas:** Thank you.

In the interpretation section, the health and social care service – I have absolutely no problem with that, but the health services means the services referred to in the National Health Service Act. There is no mention of the Mental Health Service Act 1998 nor mention of the National Health and Care Act 2016, which are both mentioned later. My understanding of 'health' is that it includes mental health and physical health, and it includes everything like that, but I want the Minister to look again at whether or not the other Acts need to be mentioned at that point in the definition.

4090 **The Speaker:** Mover to reply.

Mr Ashford: Thank you, Mr Speaker.

Taking Mr Thomas first, I am happy to have it looked at again. My understanding is that the definitions do cover across all the services, but I am happy to take it away and look at it, and if necessary, we can have it amended in the Legislative Council.

4095 In relation to Mr Hooper, I am happy to confirm that, yes, they are two sides of the same coin and they need to be brought together.

The Speaker: I put the question that clauses 1, 2 and 3 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

4100 Clause 4, Mr Ashford.

Mr Ashford: Thank you, Mr Speaker.

4105 Clause 4 requires the Department of Health and Social Care to ensure there was a comprehensive health and social care service in the Island. It also confirms that the Department has the duties conferred on it by the relevant primary legislation as listed within this clause and the secondary legislation made under those Acts.

Subsection (3) of the clause further provides that the Department remains responsible to Tynwald for the provision of the Island's comprehensive Health and Social Care Service.

I beg to move that clause 4 do stand part of the Bill.

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The Speaker: Mr Harmer.

Mr Harmer: I beg to second.

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The Speaker: Mr Thomas.

Mr Thomas: Thank you.

4120 This is a really excellent clause, and I want to applaud it particularly, because it has got the purpose and the principles of the National Health Service, which are sadly lacking from the National Health and Care Bill, which I queried back in 2015-16. It is great that it is here now.

Two small points: the first one is that the legal reference to the National Health Service Act 2016 should perhaps possibly be the National Health and Care Service Act 2016.

4125 Secondly, another thing that was in that Act was the National Health and Care Service charter – about its preparation, its maintenance, its character, its revision and its amendment. So will there be a statutory based charter for Manx Care and the wider Manx Health and Care Service? Perhaps that is something that will be dealt with in the forthcoming National Health Service Reform Bill.

The Speaker: Mover to reply.

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Mr Ashford: Thank you, Mr Speaker.

The Hon. Member has pretty much answered his own question, which is the charter will be looked at in the subsequent Bill.

4135 **The Speaker:** I put the question that clause 4 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 5, Mr Ashford.

Mr Ashford: Thank you, Mr Speaker.

4140 Clause 5 details the duties of the Department in respect of continuous improvement in the outcome of services, particularly in regard to effectiveness, safety and quality, and this clause requires the Department to have regard to principles of generally accepted evidence-based practice in doing so.

I beg to move that clause 5 do stand part of the Bill.

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The Speaker: Mr Harmer.

Mr Harmer: I beg to second.

The Speaker: Mr Thomas.

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Mr Thomas: Thank you very much, Mr Speaker.

In the list in subclause (1)(c), there is an assessment included:

the assessment and provision of social care services ...

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That assessment does not actually appear in that roughly the same list that is in clause 4 and later on, in clause 7, the ones about promotion and the one about obtaining appropriate advice. So I hope the Minister can look into why that assessment is there – or perhaps can advise today why assessment is there, but is not in those other two places.

The Speaker: Mover to reply.

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Mr Ashford: Thank you, Mr Speaker.

This is obviously a clause in relation to the improvement of quality of services, and if we are going to move the improvement of quality of services on, then we need to take into account the assessments that are undertaken in the provision of the social care services.

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There are also, of course, provisions that still are in place from the Social Services Act, if my memory serves me correctly, around actual physical assessments, and those will be remaining in place as far as I am aware, Mr Speaker.

The Speaker: I put the question that clause 5 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

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Clause 6, Mr Ashford.

Mr Ashford: Thank you, Mr Speaker.

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Clause 6 imposes a duty on the Department to promote autonomy in any provider of health or social care services and any other person or body that is engaged in exercising functions in relation to the Health and Social Care Service in the Island. That was a key component of the Sir Jonathan Michael recommendation that there should be an independent, arm's-length body set up to provide separation between the provision of services and the strategic direction setting.

I beg to move that clause 6 do stand part of the Bill.

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The Speaker: Mr Harmer.

Mr Harmer: I beg to second.

The Speaker: Mr Hooper.

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Mr Hooper: Thank you very much, Mr Speaker.

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This clause talks about the promotion of autonomy within Manx Care, largely, but if you read the mandate section at the back of Schedule 2, which we will be talking about later, there is an ability in there for the Department to impose requirements on Manx Care to use things like Government shared services. So those two seem to be entirely in conflict with each other. If Manx Care decides the most efficient and effective way of delivering its services, autonomously, might be to use private sector providers, might be to do something itself, but the Department still retains the power to say, 'We disagree with you. We are going to tell you to do it our way',

4195 does the Minister not see the inherent conflict there between those two positions and actually, will he take that away and have another think?

The Speaker: Mover to reply.

Mr Ashford: Thank you, Mr Speaker.

4200 While I can see where the Member is coming from about there being conflict, I do not necessarily see that. I think it is sensible that if shared services can be used across Government, the Manx Care should use them, but ultimately, DHSC as a Department is not ... although there is a reserve power there, it is highly unlikely DHSC would instruct Manx Care and force them down that route, if they can actually put together a case to show that it is more efficient and it is better value for money than going elsewhere.

4205 There is also the provision, of course, as well, Mr Speaker, that if, for whatever reason, shared services cannot be delivered and there will also need to be service-level agreements between Manx Care and those shared services, that if those service level agreements are not honoured, then Manx Care can step outside and source things themselves. But where there are shared services within Government and where those can actually be delivered in a cost-effective way and are practical to do so, it is right that Manx Care should be using them.

Mr Thomas: Hear, hear.

4215 **The Speaker:** I put the question that clause 6 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 7, Mr Ashford.

Mr Ashford: Thank you, Mr Speaker.

4220 In exercising its functions, the Department is given a duty in clause 7 to obtain advice from appropriately qualified persons who have a broad range of relevant professional expertise.
I beg to move that clause 7 do stand part of the Bill.

The Speaker: Mr Harmer.

4225 **Mr Harmer:** I beg to second.

The Speaker: I put the question that clause 7 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 8, Mr Ashford.

4230 **Mr Ashford:** Thank you, Mr Speaker.

4235 Clause 8 places a duty on the Department to involve and consult the public in planning new services or making changes that might impact on existing services. This is to bring in strengthened patient and service user representation in policy-making and strategic planning in relation to service provision for the Island.
I beg to move that clause 8 do stand part of the Bill.

The Speaker: Mr Harmer.

4240 **Mr Harmer:** I beg to second and reserve my remarks.

The Speaker: I put the question that clause 8 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 9, Mr Ashford.

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Mr Ashford: Thank you, Mr Speaker.

Clause 9 imposes a duty on the Department to promote the education and training of those employed in connection with the provision of health services or social care services.

I beg to move that clause 9 do stand part of the Bill.

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The Speaker: Mr Harmer.

Mr Harmer: I beg to second.

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The Speaker: I put the question that clause 9 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 10, Mr Ashford.

Mr Ashford: Thank you, Mr Speaker.

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Clause 10 places a duty on the Department to reduce inequalities between service users. This requires the Department to have regard to reducing inequalities with respect to access to health services and social care services and to the outcomes achieved for service users by the provision of these services.

I beg to move that clause 10 do stand part of the Bill.

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The Speaker: Mr Harmer.

Mr Harmer: Thank you, Mr Speaker. I beg to second.

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The Speaker: I put the question that clause 10 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 11, Mr Ashford.

Mr Ashford: Thank you, Mr Speaker.

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Clause 11 places a duty of candour on the Department, which requires it to be open and transparent in the exercise of its functions.

This clause also requires that the Department make regulations setting out the circumstances under which information should be given and what information should be given in relation to an incident that has occurred which affects a service user's safety.

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The draft duty of candour regulations are being worked on by the Transformation team currently, with the intention that they will be in place when Manx Care goes live. As Hon. Members will have seen under the Bill a similar duty of candour applies to Manx Care, and I will remove that provision when we come to clause 21.

I beg to move that clause 11 do stand part of the Bill.

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The Speaker: Mr Harmer.

Mr Harmer: Thank you, Mr Speaker. I beg to second.

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The Speaker: Thank you very much.

Amendment 1, Mrs Barber.

Mrs Barber: Thank you, Mr Speaker.

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I beg to move an amendment to clause 11, the purpose of which is to provide that where an apology, offer of additional treatment or other redress is offered to a patient or service user as

part of complying with the duty of candour, this will not of itself amount to an admission of negligence or a breach of a statutory duty by the service provider.

4300 This will provide reassurance to the organisations providing health and care services so that they feel able to support their staff to express apologies to a service user when it becomes clear that something has gone wrong which has caused or may cause harm to the individual, but without such a statement later being used against them in a legal claim. Similar legislative provisions already exist in neighbouring jurisdictions.

4305 This provision along with the duty of candour or regulations that are expected to follow shortly are designed to ensure that whenever someone has suffered unintended harm in a health or social care setting that they will always be offered an apology at an early stage.

Mr Speaker, I beg to move the amendment standing in my name:

Amendment to clause 11

1. Page 17, after line 5 insert —

“(4) Any apology, offer of treatment or redress offered by the Department pursuant to this section or otherwise, shall not of itself amount to an admission of negligence or breach of statutory duty.”

The Speaker: Mr Moorhouse.

4310 **Mr Moorhouse:** Thank you, Mr Speaker. I beg to second.

The Speaker: Mr Robertshaw.

Mr Robertshaw: Thank you, Mr Speaker.

4315 On the basis that the reply, I am sure, will be recognising candour, could the mover of the amendment be kind enough to explain why the Department itself is bringing so many amendments before us after the Bill itself was brought to the floor of the House? It begs the question, why were most of these not sorted out before it actually got here?

One welcomes the fact that the amendments are here but did the process fall down somewhere? Was there some sort of omission?

4320 Thank you, Mr Speaker.

The Speaker: Mrs Barber to reply to the amendment.

Mrs Barber: Thank you, Mr Speaker.

4325 In the interests of candour, I would be happy to tell the Hon. Member that it has been a challenge within the Department of Health and Social Care, with the work that we have had ongoing with creating the move to Manx Care, alongside the business-as-usual work. The amendments that we see before us today are a combined result of work from the Manx Care team, Department of Health and Social Care and the AG's, some being typographical errors, 4330 some being oversights and some areas where the wording simply can be made clearer and improved.

So with that, I beg to move.

4335 **The Speaker:** Mr Ashford.

Mr Ashford: Thank you, Mr Speaker.

4340 Could I also add to that, as well, the fact that the Hon. Member for Douglas East, Mr Robertshaw may well remember that obviously the consultation on Manx Care was affected by the pandemic period and one of the pledges I gave when we brought this Bill in at Second Reading was that over the summer period we would listen to Members, and if Members wished

to come forward and discuss the Bill with me, then we would take that on board. Several Members did so and raised certain points, and they have helped result in these amendments now, so part of this has been listening to Members as well, when the consultation was held on the original Bill.

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The Speaker: Putting to Members first amendment number 1 in the name of Mrs Barber. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 11, as amended: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

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Clause 12 and Schedule 1, Mr Ashford.

Mr Ashford: Thank you, Mr Speaker.

You have pre-empted me: I was just about to ask your permission to move them both together.

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Clause 12 provides that Manx Care is established as a Statutory Board, and it gives effect to Schedule 1.

Schedule 1 is divided into three parts. Part 1 deals with the membership of Manx Care. It sets out the number of executive and non-executive members, how they are appointed, the length of tenure for non-executive members, what constitutes a quorum in meetings of the board, and how voting shall be taken on decisions by the board.

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Part 2 deals with Manx Care's staff. It provides that Manx Care's staff may consist of transferred employees of the Public Services Commission, other staff who have been transferred to Manx Care under a staff transfer scheme, new employees, of the Public Services Commission and any direct appointees.

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Part 3 deals with inspections of Manx Care and of service providers that have entered into arrangements with Manx Care by independent inspectors, who will inspect and report on the provision of services against quality indicators and agreed requirements.

The Department is required each year to draw up a Schedule specifying the services that will be inspected during the year and a list of services which the Department plans to arrange inspections of in each of the next two years. The Department is required to ensure that every service provided under the mandate is subject to an inspection at least once every five years.

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Provisions are included for determining the date when scheduled inspections will take place and also for the Department to be able to arrange unscheduled inspections of services, as long as they do not unreasonably impede upon the service itself.

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Manx Care may arrange inspections in addition to those arranged by the Department, and in all cases the service provider, subject to any inspection, is required to assist inspectors and provide any necessary information.

Inspectors are required to provide reports on the inspections carried out. These reports are required to be published with the expectation that all or part of the report may be withheld from publication by the body that commissioned the inspection, where publication would jeopardise the safety of any person or data protection or confidentiality principles.

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Where a report shows that Manx Care is failing or has failed in carrying out its functions, the Department has the power to issue directions under clause 30.

Mr Speaker, I beg to move that clause 12 and Schedule 1 stand part of the Bill.

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The Speaker: Mr Harmer.

Mr Harmer: Thank you, Mr Speaker. I beg to second and reserve my remarks.

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The Speaker: I call on Mrs Barber to move amendment number 3.

Mrs Barber: Thank you, Mr Speaker.

I beg to move an amendment to Schedule 1.

4395 During the Second Reading debate on this Bill, there was discussion about the proposed inspection regime and the ability of the external inspectors to influence what needs inspecting and when. The proposed amendment seeks to achieve the right balance in addressing this matter, whilst ensuring that there is transparency in the arrangements as a conflict could occur here for the independent inspectors, given that we will be paying for the inspections to be carried out.

4400 The proposed amendment requires the independent inspectors to report not only on matters relating to the service that they have been instructed to inspect, but also on other matters of concern that may come to their attention during an inspection and that they believe might benefit from a further inspection. The issues raised by the inspectors may then be inspected as part of a non-scheduled inspection, which is already allowed for under the Bill or within the next year's schedule of inspections, depending on the severity of the issues raised.

4405 The amendment also sets out that if the Department is made aware of an issue by the independent inspectors, it must publish its response to that.

Mr Speaker, I beg to move the amendment standing in my name:

Amendment to Schedule 1

3. Page 35, after line 13 insert —

“10 Inspections: additional

(1) Where, in carrying out an inspection referred to in paragraph 7 or 8, the inspector identifies a matter which is not within the remit of the inspection being undertaken but which the inspector considers should or could be the subject of an inspection, the inspector must —

(a) immediately notify the Department and Manx Care in writing of that fact including the reasons why the inspector considers that matter should or could be the subject of inspection; and

(b) make express reference to that matter in the inspector's report together with the reasons why the inspector considers that matter should or could be the subject of inspection and any recommendations or suggestions in respect of it.

(2) Where Manx Care receives such a notification, it must address the matter identified as part of its observations and responses under paragraph 9(5) to the inspector's report.

(3) Where the Department receives such a notification it must —

(a) consider what steps are necessary to deal with the matter identified and, in particular, determine whether it should be dealt with as part of the next scheduled inspection or should be the subject of a non-scheduled inspection; and

(b) publish a response addressing that matter and associated recommendations or suggestions which may be in the form of a separate document or may form part of the publication referred to in paragraph 9(6).”

Re-number existing paragraphs 10 and 11 of Schedule 1 as paragraphs 11 and 12 respectively.

The Speaker: Mr Moorhouse.

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Mr Moorhouse: Thank you, Mr Speaker. I beg to second.

The Speaker: Mr Hooper.

4415 **Mr Hooper:** Thank you, Mr Speaker.

I was not sure when to raise this issue because the Schedule references back to other provisions in the Bill in respect of what happens when something goes wrong. I am not overly happy – well, I am not happy at all – with what is in the Bill as drafted. This amendment is an improvement, but I am still not quite sold on this because it talks about the Department still

4420 being the body that makes the decisions. So the inspectors can come in and say, 'We have found a real problem here; you need to do something about it', and the Department can just say, 'Thanks very much. We are deciding not to take action.' The regulator themselves actually have no power. They cannot say, 'You *must* take action.' The Department is the body that says, 'Actually, we must take action'.

4425 Then, even when the Department says, 'Yes, we must take action. Manx Care, you must do this', Manx Care can say, 'No, I am not going to do that. Thanks very much', and the Department can issue them with a direction. 'You *must* do this.' If Manx Care do not do that? Actually, there is not really much in the Bill about what happens next. There is not much in the Bill that talks about what happens when they fail to follow a direction. All it seems to say is, 'Well, the
4430 Department can decide to do it themselves.' Great okay, but if Manx Care have been provided with funding, does that funding then get cut? Does that go back to the Department? How do you pay for the services the Department is now providing itself because Manx Care has failed to provide them?

4435 There seems to be a bit of a gap here, in terms of actually, how do you make this supposedly arm's-length body do the things it is supposed to be doing?

4440 Everything has been put together in very much a gentlemen's agreement-style way. It all works, because everyone is honest and truthful and everything is going to be fine; but actually my concern is that there are currently serious problems in the Health Service. We know there are going to continue to be serious problems in the Health Service and I am not convinced this inspection and regulatory regime the Bill sets out is actually robust enough to help tackle some of those problems that we are facing.

4445 So I would appreciate something from the Minister that gives me some assurances that I am wrong here and that actually this is going to be an absolutely robust mechanism to deal with failures or suspected failures or perceived failures in service delivery.

The Speaker: You will have the opportunity to sum up, Minister.
Mrs Barber to respond to the amendment.

Mrs Barber: Thank you, Mr Speaker.

4450 I think one of the key levels of assurance is around the publication of the response, so that will be made in the public domain, which is absolutely where it should be. If something is raised as a concern from the inspectors, it will then be published.

4455 In terms of the way in which those inspection rotas are carried out, it is not just that it can be inspected in a future year; there is also the ability to have those additional inspections at that time, where it is felt it is an appropriate need.

So with that, I beg to move the amendment.

The Speaker: Mr Ashford to sum up.

Mr Ashford: Thank you, Mr Speaker.

4460 Hopefully I can address some of the Hon. Member for Ramsey, Mr Hooper's points, which are very good points that he has raised.

4465 In relation to the inspection regime, the Hon. Member for Douglas East, Mrs Barber, has already touched on this, that if DHSC is going to turn round and say, 'Well, thank you very much for this issue with us, but we do not believe it is worthy of investigation', the Department has to publish why it believes it is not worthy of investigation. It is out there in the public.

4470 I think what we have to remember as well is that what this Bill is doing is separating out the delivery from the policy and everything else, so Manx Care becomes the delivery body. I would say there is no incentive in DHSC, if something is actually discovered, to try and say we will not investigate. If anything, the incentive is the other way round for DHSC to actually say, 'This is a serious matter and it should be investigated. Thank you for raising that.'

That is the whole point of the separation so that we are not trying to be poacher and gamekeeper, which the Department, let us be frank, *is* at the moment. It is doing both. It is doing the oversight side and it is doing the delivery of services. This is what is being separated out.

4475 What we do not want to go down the route of – myself and Mr Hooper have had conversations about this before and I will be quite frank – is the situation you have in the UK where you have the Care Quality Commission (CQC) or other organisations that can simply go in and do whatever inspections they want, at whatever level, with penalties in place that they decide to impose that do not actually end up benefiting the system. If you go out there, you can
4480 find examples of where that has not worked.

So I think that the system we do have in place is robust. The Department can issue direction notices to Manx Care. If Manx Care does not then follow those direction notices, there can be a direction notice from the Council of Ministers as well, and the *ultimate* sanction, which hopefully we would never get to, is that services can be removed from Manx Care if necessary. We would
4485 hopefully not get to that point, but if necessary there is provision in there.

So it is a balance, Mr Speaker, because we have got to balance off the autonomy of Manx Care along with having appropriate sanctions in place. What we do not want to end up doing is treating Manx Care as just another Statutory Board under the Statutory Boards Act, because this whole thing has been set up deliberately to give Manx Care as much autonomy as possible
4490 within the system. What we do not want to do is change that, so that we end up with it just being an offshoot of DHSC, because that would completely unravel the entire thing of what we are trying to achieve here.

The Speaker: Putting to Members first the amendments in the name of Mrs Barber: those in
4495 favour, please say aye; against, no. The ayes have it. The ayes have it.

Putting clause 12 and Schedule 1, as amended: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 13, Mr Ashford.

4500 **Mr Ashford:** Thank you, Mr Speaker.

Clause 13 gives Manx Care its function, which is to arrange for the services specified in the mandate to be provided on behalf of the Department. In doing so, it must operate within the mandate, applicable regulations and directions that are given to it. This clause also clarifies that the Department retains accountability for all its functions, even if these are being discharged by
4505 Manx Care.

I beg to move that clause 13 do stand part of the Bill.

The Speaker: Mr Harmer.

4510 **Mr Harmer:** I beg to second and reserve my remarks.

The Speaker: We turn to amendment 2 in the name of Mrs Barber.

Mrs Barber: Thank you, Mr Speaker.

4515 This amendment is required to automatically transfer all arrangements that currently exist between the Department of Health and Social Care and its existing partners who work to provide the Island's health and social care services to Manx Care. As currently drafted, Schedule 3 of this Bill allows that the Department may make a scheme providing for the transfer to Manx Care of any interests, rights or liabilities of the Department.

4520 However, to be effective, this would require a scheme to be drafted that exhaustively sets out the current arrangements to which it would apply, and the Department does not currently

have a comprehensive record of all arrangements that are in place between it and its service providers, and such a list cannot reasonably be collated between now and 1st April 2021.

4525 The amendment is worded in such a way that it only captures arrangements that relate to services to be provided under the mandate and it is needed in order to ensure continuity of arrangements between Manx Care and the existing partners of the Department. The effect of the proposed amendment is that Manx Care takes over the rights and obligations of the Department under the arrangements. The Department will remain the relevant party in contracts where the context is suited to the Department and its functions as opposed to Manx
4530 Care. This is allowable because the financial standing of Manx Care will be equivalent to that of the DHSC and so no contracted party would be disadvantaged by the transfer.

Mr Speaker, I now beg to move the amendment standing in my name.

Amendment to clause 13

2. Page 17, after line 24 insert—

“(5) Any contracts or agreements entered into by the Department which are connected to, or dependent on, or have as their subject matter a function of the Department which is the subject of the mandate are deemed to be novated to Manx Care and references to the Department in such contracts and agreements are (unless the context otherwise requires) to be read as references to Manx Care.”

The Speaker: Mr Moorhouse.

4535 **Mr Moorhouse:** Thank you, Mr Speaker. I beg to second.

Mr Hooper: I am sorry, I have just been thrown by something the Hon. Member said. ‘The Department of Health and Social Care does not know what agreements and contracts are in place with all of its providers.’ I just did not want to let that comment slide by without drawing
4540 attention to it, because that is absolutely insane.

The comment I was originally going to make about this amendment is the language ‘unless the context otherwise requires’. That language came up in an amendment earlier today and it was advised that that actually provides for some uncertainty and some potential risk, in that you have two identical provisions being interpreted differently. (**Mr Thomas:** Hear, hear.) So I am
4545 just curious as to why the Department feels that language is appropriate now.

Setting aside the fact that it really doesn’t have a clue what it is doing.

The Speaker: Mr Baker.

4550 **Mr Baker:** Thank you, Mr Speaker.

I have been brought to my feet by the comments of my hon. friend from Ramsey. Whilst I understand the sentiments that he is expressing, I think to provide a bit of balance for the Department – I am sure they can answer themselves – that must cover a huge range of contracts from the very strategic contracts, which I am sure they probably do know what they have got in
4555 terms of contracts with the NHS etc., down to individual contracts around maintenance and cleaning and provisions of all sorts of consumables, etc., which would normally be drawn out in any sort of due diligence exercise.

So to be honest, while the headline is very clear around this, I think the reality is that it is an organisation that has been going for an awful long time. It is very complex. It has probably not
4560 got everything as beautifully documented and i’s dotted and t’s crossed across some of these more minor items. It will be interesting to hear the Minister’s comments on that, but I think that is the reality of it, and I suspect it may well apply to many other organisations, not just the Department.

4565 **The Speaker:** Mrs Barber to respond to the amendment.

Mrs Barber: Thank you.

If I can take Mr Hooper's points in reverse order, the point around the context in which ... I cannot remember the wording now! The context – the one that we mentioned that was discussed earlier in this Hon. House – is because it does not relate to amending of legislation; it is specifically relating to contracts, so there is a comfort that that is appropriate in this regard.

In terms of the contracts, I think Mr Baker has touched on an element of it, certainly from my experience of having worked in the Health Service for many years, you end up with contracts where you are buying one small £20 item once every two years, and the reality is that with the scale of contracts and the level of detail that we have, from the very small to the very big strategic contracts, we simply could not have gone through with the absolute certainty that we had captured all of those. It was felt far better to do a catch-all rather than take the risks that we would inadvertently miss something and therefore cause a difficulty within the way the DHSC are engaging with Manx Care and therefore with those contractors. So this was felt to be the most appropriate way to manage that.

4580 With that, I beg to move the amendment standing in my name.

The Speaker: Mr Ashford.

4585 **Mr Ashford:** Thank you, Mr Speaker.

Yes, there is a wide range of contracts across DHSC and one of the things we have also got to remember, Mr Speaker, is that some of this is going back not just years, but even decades, some of these contracts that are in place, particularly small ones.

And the Department has been in many iterations over the years. The Hon. Member for Douglas East, Mr Robertshaw, was Minister for Social Care when there was the Social Care Department. There has been the Health Department. There has been the Health and Social Security Department. All of this has been pulled together to form what is now DHSC and we are going through – it is a huge amount of work, I do need to point that out – we are going to identify every single contract, but it is going to take time. What we did not want – again, we talk about duty of candour and we wanted to be perfectly up front with Members – is to actually have a situation where we transfer those we know about, but those that we do not know about end up sticking with the Department because they have not been done under this legislation. So we needed a catch-all to actually capture that.

4600 One thing, Mr Speaker, if you bear with me one moment, that I should have mentioned on the previous clause – because you know me, I always miss a point – is I meant to state to Mr Hooper that, of course, the Council of Ministers also has the ability to dismiss the Manx Care board.

The Speaker: Putting to Hon. Members first the amendment in the name of Mrs Barber: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Putting clause 13, as amended: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 14 and Schedule 2, Mr Ashford.

4610 **Mr Ashford:** Thank you, Mr Speaker.

The purpose of clause 14 is to require there to be a mandate published each year, which is to be agreed between the Department and Manx Care. This mandate will set out what services should be provided, to what standard and the amount of funding available to provide those services to address the needs of the population.

4615 The Department is required to monitor Manx Care's performance against the requirements of the mandate. The Department is also required to lay the mandate before Tynwald ahead of the start of each financial year.

This mandate must include the matters specified in Schedule 2, which is essentially a list of the information that must be included within the mandate as a minimum for that financial year, and subsequent financial years if appropriate. With the approval of Tynwald, Schedule 2 can be amended by regulations to add to, omit or vary the matters that must be covered by the mandate. This provides flexibility for the future, while ensuring there is appropriate oversight of any changes.

I beg to move that clause 14 and Schedule 2 stand part of the Bill.

4625

The Speaker: Mr Harmer.

Mr Harmer: I beg to second and reserve my remarks.

4630

The Speaker: Mr Hooper.

Mr Hooper: Thank you very much, Mr Speaker.

During the Second Reading debate, I raised a concern about the disconnect between having an annual budget process and a multi-year operating plan and a multi-year mandate. That does not appear to have been resolved. It still seems like the Department can place in the mandate for Manx Care things which will span multiple financial years but obviously will have no funding associated with it because funding is allocated on an annual basis.

So we run the risk here of creating an organisation where we are telling you, 'You must do something next year' and Treasury saying, 'Actually, we are not going to give you the money for that. What are you talking about? Sorry.' So I would like to get some more clarity from the Minister on exactly what he means by including in the mandate things about subsequent financial years.

I am also concerned that the way that we operate on a day-to-day basis in Government is actually going to restrict the intended operation of these provisions. So if the plan is to have a multi-year financing plan, a multi-year mandate, actually Government does not work like that, so the reality on the ground is you are creating provisions that are never going to be properly effective.

I would also like to ask a little bit about some of the requirements that are set out inside Schedule 2. For example, the mandate sets out that it shall include the service and quality standards which Manx Care must comply with while exercising its functions. I would like to get a better understanding of how the Department is going to set those service and quality standards.

Following the debate this morning, where the Minister admitted, quite honestly, the Department simply does not have enough data to collect, to set relevant and appropriate standards, I am just a bit concerned that we are going to end up enshrining the current standards in the mandate, and then they will just roll on forever.

The reason I have a problem with that is actually set out quite clearly on the waiting times website. So the Department's current standard is that they will try to see 100% of patients within 52 weeks for their first out-patient appointment. They do not hit that target, and that is not surprising, but then they have another 52 weeks for you to have your in-patient appointment, following your 52-week wait for your out-patient appointment. So actually, you can be referred to a service and have two full years of waiting and you are still inside the Department's current targets. You still get a big green tick in the box.

I really do not want to see these ... I want to call them targets or standards, because they are not either of those things. They are just nonsense, and I do not want to see these enshrined in the mandate, but equally, I am not convinced the Department has enough data to put proper, meaningful targets and standards inside the mandate.

So if the Minister could talk a little bit about how he sees that process unfolding, that would be greatly appreciated.

4670 **The Speaker:** Mover to reply.

Mr Ashford: Thank you, Mr Speaker.

4675 First of all, can I take the first point that the Hon. Member for Ramsey raised, which is around the multiple years and the financing: we have been having discussions with our Treasury colleagues about that, because I think there has been a recognition that in relation to health services, there needs to be some sort of certainty over a period of time. We also this year have been drawing up with the Transformation team, going back to the actual cost of services, and that will form the Department's bid to Treasury this year. So we have been doing a lot of work in that area as to what the true cost of our service provision actually is.

4680 I would like to put on record my thanks to the Transformation team, and everyone across the DHSC has been involved in that piece of work, because it is an absolutely massive one.

4685 In relation to standards, I will be perfectly frank: that is something that is going to have to evolve over multiple years. The Hon. Member is right, and as I stated this morning during Question Time, we do not have an awful lot of data. We are starting to rectify that now, but obviously, in order to have data that is useful, you have to have multi-years' worth of data, realistically. It is not worth having just 10 months, so in terms of the standards and so on, that will be something that will have to evolve over time.

4690 In terms of the mandate, I know at Second Reading the Hon. Member raised the point around the mandate being laid every year. I think it is still important that that actually happens. Even if there have not been any changes to the mandate, it is important that Tynwald each year gets that mandate back.

4695 There will be things in the mandate that may stretch over three, four or five years, but we also know, Mr Speaker, how quickly things change in the health arena. So it is important that we have that annual review to check that what is actually there is still appropriate, even if it is something that may stretch over three or five years.

4700 In terms of the standards, they will have to evolve. It is not the intention, I must say to Mr Hooper though, to simply pick up the standards that are there now and shove them in. There is already work going on within the Transformation team and DHSC wider as an organisation to actually look at the new standards that we will need to bring in, but I have to be honest, it will be something that will evolve over multiple years.

The Speaker: I put the question that clause 14 and Schedule 2 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 15, Mr Ashford.

4705

Mr Ashford: Thank you, Mr Speaker.

4710 Clause 15 provides a mechanism for the Department to revise the mandate during the year. Normally this must be done by agreement with Manx Care, but in exceptional circumstances, where considered necessary, may be done by the Department. Any revision must be laid before Tynwald, together with an explanation of the reasons for making the revision. The mandate must also be published in its revised form.

I beg to move that clause 15 do stand part of the Bill.

The Speaker: Mr Harmer.

4715

Mr Harmer: Thank you, Mr Speaker. I beg to second.

The Speaker: I put the question that clause 15 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

4720 Clauses 16 and 17, Mr Ashford.

Mr Ashford: Thank you, Mr Speaker

Clause 16 provides that Manx Care has a general power to take actions relevant to carrying out any of its functions under the Act.

4725 Clause 17 confirms that this power allows Manx Care to enter into arrangements with other health and social care providers in order to discharge its functions under the Act. In doing so, this does not take away any liability for Manx Care with respect to those functions. It will allow Manx Care to commission health and social care services that it cannot provide directly.

I beg to move that clauses 16 and 17 do stand part of the Bill.

4730

The Speaker: Mr Harmer.

Mr Harmer: Mr Speaker, I beg to second.

4735 **The Speaker:** I put the question that clauses 16 and 17 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 18, Mr Ashford.

Mr Ashford: Thank you, Mr Speaker.

4740 Clause 18 allows Manx Care to make private health services available on the Island with written approval from the Department and providing that such services do not interfere with Manx Care's functions under the Act or cause any disadvantage to non-private patients. This is similar to the Department's existing duty in relation to private health services and allows for such services to be contained within the mandate.

4745 The clause also stipulates that the Department remain the body that will determine the charges payable for private patients.

I beg to move that clause 18 do stand part of the Bill.

The Speaker: Mr Harmer.

4750

Mr Harmer: Thank you, Mr Speaker, I beg to second.

The Speaker: I put the question that clause 18 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

4755 Clause 19, Mr Ashford.

Mr Ashford: Thank you, Mr Speaker.

Clause 19 makes provision to allow Manx Care to have facilities within its hospitals that sell refreshments, gifts and similar items.

I beg to move clause 19 do stand part of the Bill.

4760

The Speaker: Mr Harmer.

Mr Harmer: Mr Speaker, I beg to second.

The Speaker: Mr Hooper.

4765

Mr Hooper: Thank you, Mr Speaker.

Sorry, the Minister said this is the clause that allows Manx Care to *have* a shop; actually, it says this is the clause that allows them to run, manage or supervise such a facility. I would have

4770 thought that the most appropriate way for a café or whatever, or a shop, to be run on hospital premises would be to lease the space to a private provider. I am not sure that the clause does that.

So I would like the Minister to clarify his remarks.

The Speaker: Mover to reply.

4775

Mr Ashford: Thank you, Mr Speaker.

I will take it away and have it looked at. My understanding was it does allow for them to have lease arrangements. I think people know my personal views on this. I have expressed them in this House when I was a grumpy backbencher in relation to services.

4780

So I will have it absolutely checked, but my understanding is it does not prevent them entering into a lease arrangement for those kinds of services.

The Speaker: I put the question that clause 19 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

4785

Clause 20, Mr Ashford.

Mr Ashford: Thank you, Mr Speaker.

Clause 20 requires Manx Care to be effective, efficient and economical when carrying out its functions.

4790

I beg to move that clause 20 do stand part of the Bill.

The Speaker: Mr Harmer.

Mr Harmer: Thank you, Mr Speaker. I beg to second.

4795

The Speaker: I put the question that clause 20 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 21, Mr Ashford.

4800

Mr Ashford: Thank you, Mr Speaker.

Clause 21 places a duty of candour on Manx Care similar to that placed on the Department under clause 11 and it also requires Manx Care to comply with any regulations that are made by the Department under that clause.

I beg to move that clause 21 do stand part of the Bill.

4805

The Speaker: Mr Harmer.

Mr Harmer: Thank you, Mr Speaker. I beg to second.

4810

The Speaker: I put the question that clause 21 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 22, Mr Ashford.

Mr Ashford: Thank you, Mr Speaker.

4815

Clause 22 requires Manx Care to establish, operate and promote such a clinical and social care governance framework and ensure that any other service provider which has made arrangements with Manx Care is required to operate either that same framework or an equivalent.

I beg to move that clause 22 do stand part of the Bill.

4820

The Speaker: Mr Harmer.

Mr Harmer: Thank you, Mr Speaker. I beg to second and reserve my remarks.

4825 **The Speaker:** I call on Mrs Barber to move her amendment.

Mrs Barber: Thank you, Mr Speaker.

4830 This amendment will correct the terminology used in this instance so that it refers to a clinical and social care governance framework, which ties in with the terminology used in the subsequent subparagraph and defines what is meant by a clinical and social care governance framework.

Mr Speaker, I beg to move the amendment standing in my name:

Amendment to clause 22

Page 20, in line 5, after 'social' insert 'care'.

The Speaker: Mr Moorhouse.

4835 **Mr Moorhouse:** Thank you, Mr Speaker. I beg to second.

The Speaker: I put the amendment first in the name of Mrs Barber. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

4840 I put the clause as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 23, Mr Ashford.

Mr Ashford: Thank you, Mr Speaker.

4845 Clause 23 deals with a duty placed on Manx Care to improve the quality of services it provides, similar to the duty that is placed on the Department under clause 5.

With the approval of Tynwald, the Department may impose requirements and standards in relation to Manx Care's duty with a view to ensuring that services are of an appropriate quality.

I beg to move that clause 23 do stand part of the Bill.

4850 **The Speaker:** Mr Harmer.

Mr Harmer: Thank you, Mr Speaker. I beg to second and reserve my remarks.

4855 **The Speaker:** I put the question that clause 23 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 24, Mr Ashford.

Mr Ashford: Thank you, Mr Speaker.

4860 Clause 24 imposes a duty on Manx Care to reduce inequalities, similar to the duty that is placed on the Department under clause 10.

I beg to move that clause 24 do stand part of the Bill.

The Speaker: Mr Harmer.

Mr Harmer: Thank you, Mr Speaker. I beg to second.

4865

The Speaker: I put the question that clause 24 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 25, Mr Ashford.

4870 **Mr Ashford:** Thank you, Mr Speaker.

Clause 25 imposes a duty on Manx Care to promote autonomy as the Department will be required to provide Manx Care with the freedom to deliver services how it sees fit, whilst meeting the stated needs, quality and financial standards. Manx Care will do the same when contracting with other service providers.

4875 I beg to move that clause 25 do stand part of the Bill.

The Speaker: Mr Harmer.

Mr Harmer: Thank you, Mr Speaker. I beg to second.

4880

The Speaker: I put the question that clause 25 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 26, Mr Ashford.

4885 **Mr Ashford:** Thank you, Mr Speaker.

Clause 26 imposes a duty on Manx Care to promote education and training, similar to the duty that is placed on the Department under clause 9.

I beg to move that clause 26 do stand part of the Bill.

4890 **The Speaker:** Mr Harmer.

Mr Harmer: Thank you, Mr Speaker. I beg to second.

4895 **The Speaker:** I put the question that clause 26 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 27, Mr Ashford.

Mr Ashford: Thank you, Mr Speaker.

4900 Clause 27 places a duty on Manx Care to promote the involvement of service users, their carers and representatives in decisions relating to that person's diagnosis and treatment.

I beg to move that clause 27 do stand part of the Bill.

The Speaker: Mr Harmer.

4905 **Mr Harmer:** Thank you, Mr Speaker. I beg to second.

The Speaker: I put the question that clause 27 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 28, Mr Ashford.

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Mr Ashford: Thank you, Mr Speaker.

4915 Clause 28 provides Manx Care with flexibility in how it chooses to exercise its functions. This clause allows Manx Care to exercise its functions through its members and staff, jointly with another service provider or via a joint committee. Manx Care is also allowed to agree the terms and conditions on which it makes such arrangements.

I beg to move that clause 28 do stand part of the Bill.

The Speaker: Mr Harmer.

4920 **Mr Harmer:** Thank you, Mr Speaker. I beg to second and reserve my remarks.

The Speaker: Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.

4925 Just with respect to subclause (4), why is a joint committee specified? It sounds quite local authority-ish – ‘joint committee’ – (*Laughter*) and I can imagine ... I know some pretty well-functioning Statutory Boards that do all sorts of exciting things with partners and different arrangements than setting up a joint committee, so why is the statute limiting the partnership arrangement to a joint committee?

4930 Also, perhaps the Minister could clarify what he meant by Manx Care is ‘not just another Statutory Board’, when he sums up, because I have been thinking about that ever since. It has been worrying me greatly.

The Speaker: Mover to reply.

4935

Mr Ashford: Well, I am sorry to have worried the Hon. Member for Douglas Central, Mr Speaker. It is never my intention to worry him.

4940 In relation to the Manx Care and saying it is not just another Statutory Board, that will be because – as I am sure Mr Thomas is aware – there are certain provisions that do not necessarily apply to Manx Care. We have done things slightly differently with Manx Care to ensure that things are different in terms of the autonomy and everything else.

I can dig my own hole, Mr Thomas, and I will keep going! (*Laughter*)

We have done things slightly differently compared to if it was a pure Statutory Board under the Statutory Boards Act, and that is what I was actually referring to, Mr Speaker.

4945 In relation to Mr Thomas’s other point, which I have now completely forgotten while doing that – (**Mr Thomas:** Joint committee.) Joint committee: obviously, that is one of the options available. It does sound maybe a bit local authority-ish and maybe they have not got a good history, joint committees, when it comes to local authorities, but certainly in this it is one of the options available to Manx Care, but obviously there is the ability to do it through another service provider as well, and that is the key point on this. We would expect that joint committees would be used *very rarely*, in extreme circumstances, Mr Speaker.

4950

The Speaker: I put the question that clause 28 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

4955 Clause 29, Mr Ashford.

Mr Ashford: Thank you, Mr Speaker.

4960 Clause 29 gives the Department power to make regulations for the purpose of conferring additional functions on Manx Care, so long as the additional function is connected to an existing Manx Care function. This provision is included to future-proof the legislation in case there is a specific function that needs to be placed on Manx Care that has not been considered at this time.

Tynwald approval is required for regulations under this clause.

I beg to move that clause 29 do stand part of the Bill.

4965

The Speaker: Mr Harmer.

Mr Harmer: Thank you, Mr Speaker. I beg to second.

4970 **The Speaker:** I put the question that clause 29 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 30, Mr Ashford.

Mr Ashford: Thank you, Mr Speaker.

4975 Clause 30 gives the Department powers and a process for acting to ensure that issues are rectified in situations where the Department considers that Manx Care is failing or has failed to comply with its obligations. In such cases, the Department will direct Manx Care to take steps to rectify that failure and to prevent its recurrence, such as requiring Manx Care to engage experts to assist or to provide periodic reports to the Department.

4980 There is an escalation process outlined for cases where the Department believes that Manx Care has failed in some significant respects to comply with such a direction from the Department. Escalation would be to the Council of Ministers and the Council of Ministers is given the power to direct Manx Care, similar to its powers in relation to other Statutory Boards. If Manx Care fails to comply with a direction from the Council of Ministers, the last resort will be for the Council to require the Department to discharge the relevant function or to make
4985 arrangements for another provider to do so.

I beg to move that clause 30 do stand part of the Bill.

The Speaker: Mr Harmer.

4990 **Mr Harmer:** Thank you, Mr Speaker. I beg to second and reserve my remarks.

The Speaker: I put the question that clause 30 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 31, Mr Ashford.

4995

Mr Ashford: Thank you, Mr Speaker.

5000 Clause 31 requires Manx Care to publish an operating plan that sets out how Manx Care proposes to operate and to comply with the mandate in that particular financial year and also set out a forward plan in outline of how it proposes to operate in the subsequent two financial years. The operating plan must be laid before Tynwald by the Department, along with the mandate before the start of that financial year from its third year of operation and every year thereafter.

5005 The clause allows the operating plan to be revised mid-year and requires that any revisions are published and sent to the Department and to other appropriate persons. The clause also allows Manx Care to publish an overview document instead of a full operating plan for each of the first two years. As a brand new organisation, it would be very difficult for Manx Care to publish a meaningful operating plan from day one. This two-year grace period gives Manx Care the time to consider its medium-term approach and begin to gather the information required to be able to prepare an operating plan from its third year of operation.

5010 I beg to move that clause 31 do stand part of the Bill.

The Speaker: Mr Harmer.

Mr Harmer: Thank you, Mr Speaker. I beg to second and reserve my remarks.

5015 **The Speaker:** I put the question that clause 31 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 32, Mr Ashford.

Mr Ashford: Thank you, Mr Speaker.

5020 Under clause 32, Manx Care is required to publish an annual report within six months after the end of each financial year, covering how it has discharged its functions in line with any

objectives or requirements specified in the mandate and the proposals it had set out in its operating plan for that year. The Department is required to provide a letter to Manx Care containing its assessment of Manx Care's performance over the year in question, to publish the letter of assessment and lay it before Tynwald, along with Manx Care's annual report.

I beg to move that clause 32 do stand part of the Bill.

The Speaker: Mr Harmer.

Mr Harmer: Thank you, Mr Speaker. I beg to second and reserve my remarks.

The Speaker: Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.

Did the Transformation Board consider putting into this clause an annual debate on the annual report, like there is for the Chief Constable's report, say; or was the plan something like every time there was a disgruntled group of MHKs we debate the Manx Care situation, every six months or every three months, or something like that?

It might be better to go back to Mr Cannan's idea, which is that we have a structured annual debate on the Manx Care report as preference, (**Mr Shimmins:** Hear, hear.) rather than a regular occurrence. So perhaps that is something that the Department, the Council of Ministers, the Transformation Board can think about and then upstairs they can perhaps do some damage to it in the Legislative Council.

The Speaker: Mover to reply.

Mr Ashford: Thank you, Mr Speaker.

If Hon. Members want to have an annual debate on Manx Care, personally I do not have a problem with that – debating the annual report. I think, personally, it could be a very good idea.

Several Members: Hear, hear.

The Speaker: I put the question that clause 32 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 33, Mr Ashford.

Mr Ashford: Thank you, Mr Speaker.

Clause 33 gives the Department power to require Manx Care to provide it with information relevant to the Department's functions, and it requires Manx Care to provide that information by the date requested or provide an explanation for not being able to do so.

I beg to move that clause 33 do stand part of the Bill.

The Speaker: Mr Harmer.

Mr Harmer: Thank you, Mr Speaker. I beg to second.

The Speaker: I put the question that clause 33 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 34, Mr Ashford.

Mr Ashford: Thank you, Mr Speaker.

Clause 34 brings in the duty to share information specifically recommended by Sir Jonathan Michael, who requires the Department, Manx Care and any service provider with whom Manx

5075 Care has entered into arrangements to share information about a service user, where the disclosure of information is necessary for the provision of health or social care services to that service user and is in their best interests. When implementing this requirement, the organisations must give regard to the wishes of the service user in respect of the disclosure of their information as well as data protection principles and the duties of care or confidence that are established in law.

5080 I beg to move that clause 34 do stand part of the Bill.

The Speaker: Mr Harmer.

Mr Harmer: Thank you, Mr Speaker. I beg to second and reserve my remarks.

5085

The Speaker: Mr Hooper.

Mr Hooper: Thank you very much, Mr Speaker.

5090 On reading this, it is a bit of a convoluted section, but I would just like to draw the Minister's attention to one particular phrase in here. Subsection (2) deals with 'a relevant person must disclose information in an appropriate and timely manner' – great. Then it has a lot of reasons why you do not have to do that.

One of those reasons, which I find particularly entertaining, is that it says:

A relevant person need not comply with subsection (2) if that person reasonably considers that [...] (b) for any other reason the relevant person is not reasonably able, or should not be required, to comply ...

5095 So if the relevant person reasonably considers they should not have to do it, they do not have to do it. That seems to me to be a gaping hole in the provision of information section, and I wonder if the Minister would comment on that.

The Speaker: Let's be reasonable. *(Laughter)*
Mover to reply.

5100

Mr Ashford: Thank you, Mr Speaker.

5105 I think what that is getting at in terms of the 'should not be required' – although I will have it again clarified for the Hon. Member – I think that there is certain information sometimes that if shared with another thing and then shared back to the service user, it can actually cause more problems and more issues, so it can cause distress to the individual under certain circumstances, particularly around things such as mental health.

5110 I will have that clarified for the Hon. Member, but I assume it is referring to that. It is not a catch-all for someone to turn round and actually say, 'Well, I do not believe I should have to share information' about that person, because let's not forget, the other provisions that have gone into this Bill are all around duty of candour or duty of care and ensuring that the interests of the patient are at the heart. So if someone, in the Hon. Member's words, just turned round and said, 'Well, actually, I am deciding to exempt myself. I do not have to share', they would be in multiple breach of other parts of this Bill.

5115 **The Speaker:** I put the question that clause 34 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 35 and Schedules 3 and 4. Mr Ashford.

5120 **Mr Ashford:** Thank you, Mr Speaker.
Clause 35 gives effect to Schedules 3 and 4.

Schedule 3 makes provision for the Department to make a scheme to transfer interests, rights and any liabilities of, or pertaining to, the Department over to Manx Care. This is so that the varied responsibilities that currently lie with the Department and the interests, rights and liabilities that come along with those responsibilities may be retained or otherwise assigned as appropriate to Manx Care to fit in with the functions of the new body.

5125

Schedule 4 makes provision for the Department to make a scheme to transfer staff to Manx Care. The Department currently directly employs much of its front-line staff, and these staff will be formally transferred to Manx Care by such a scheme.

I beg to move that clause 35 and Schedules 3 and 4 do stand part of the Bill.

5130

The Speaker: Mr Harmer.

Mr Harmer: Thank you, Mr Speaker. I beg to second.

5135

The Speaker: I put the question that clause 35 and Schedules 3 and 4 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 36, 37, 38 and Schedule 5, Mr Ashford.

Mr Ashford: Thank you, Mr Speaker.

5140

Clause 36 allows references to the Department of Health and Social Care and its officers in written documents, including legislation, to be read as references to Manx Care and its officers, or to a service provider that has entered into arrangements with Manx Care, as the context requires.

5145

Clause 37 amends the Statutory Boards Act 1987 to insert Manx Care as a Statutory Board with the effect that the Act applies to it.

Clause 38 gives effect to Schedule 5, which makes several other consequential amendments to existing legislation to allow Manx Care to assume the responsibilities of the Department where it is required to do so under the mandate.

5150

Mr Speaker, I beg to move that clauses 36, 37 and 38, along with Schedule 5, do stand part of the Bill.

The Speaker: Mr Harmer.

Mr Harmer: Thank you, Mr Speaker. I beg to second and reserve my remarks.

5155

The Speaker: I call on Mrs Barber to move amendments 4 to 12.

Mrs Barber: Thank you, Mr Speaker.

5160

I beg to move amendments 4 to 12 to Schedule 5, which include a few corrections and additions to those consequential amendments that had been identified early on.

Since that time, there has been much ongoing correspondence between the Transformation Programme's legislation team and Chambers in order to make certain that all of the existing legislation has been captured, with consequential amendments as required, to ensure that legal provisions apply to Manx Care where appropriate, and these changes made to Schedule 5 reflect the amount of work that this has entailed.

5165

Mr Speaker, I now beg to move the amendments standing in my name:

Amendments to Schedule 5

4. Page 42, for lines 7 to 9 substitute —

“1 The Local Government Act 1946 is amended as follows.

2 In section 23 (provision for early notification of births) —

(a) in subsection (1) after “the Department)” insert “or, as the case may be, Manx Care (a Statutory Board established under the Manx Care Act 20XX)”;

(b) for subsection (2) substitute —

“(2) Notice under this section shall—

(a) be given within thirty-six hours of the birth;

(b) contain the required information;

(c) be given to the Department, or as applicable, Manx Care (“the applicable addressee”) either —

(i) by a prepaid letter or postcard addressed to the applicable addressee at its office, or

(ii) by delivering a written notice to the applicable addressee at its office.

The applicable addressee shall, upon application being made to it, supply without charge to any medical practitioner or midwife residing or practising within this Isle addressed and stamped postcards containing the form of notice”.

3 In section 24 (inspection) after “the Department” insert “or, as the case may be, Manx Care (a Statutory Board established under the Manx Care Act 20XX)”.

Re-number subsequent provisions accordingly.

5. Page 42, after line 18 insert —

“Family Law Reform (Isle of Man) Act 1971

5 In section 14(1) of the Family Law Reform (Isle of Man) Act 1971 (power to provide for manner of giving effect to direction for the use of scientific tests) in paragraph (a) and (e) after “Department of Health and Social Care” insert “or, as the case may be, Manx Care (a Statutory Board established under the Manx Care Act 20XX).”

Re-number subsequent provisions accordingly.

6. Page 43, after line 20 insert —

“15 In section 28(12) (anti-social behaviour orders) after “the Department of Health and Social Care,” insert “Manx Care,”.

Re-number subsequent provisions accordingly.

7. Page 43, in line 21 for “35(10)(b)” substitute “35(10)(b)”.

8. Page 43, line 28, before “Manx Care (a Statutory” insert “or, as the case may be,”.

9. Page 44, for lines 11 to 16 substitute —

“(b) for paragraph (b) substitute —

“(b) arrangements to be made by the Department for dealing with complaints made by or on behalf of persons who are or have been provided with services under a mandate referred to in the Manx Care Act 20XX;

(c) the procedure for the making of a complaint including to whom it may be made and the matters in respect of which it may be made;

(d) the steps to be taken by the Department for publicising arrangements under this section.”

10. Page 44, for lines 18 to 25 substitute —

“22 The Education Act 2001 is amended as follows.

23 In section 30 (education supervision orders) —

(a) in subsection (1) after “DHSC” insert “or, as appropriate, Manx Care”;

(b) in subsection (3) after “DHSC” insert “or, as the case may be, Manx Care”;

(c) in subsection (4) after “DHSC” insert “or, as the case may be, Manx Care”;

(d) after subsection (5) insert —

“(6) “Manx Care” means the Statutory Board established under the Manx Care Act 20XX.”

24 In Schedule 5 (education supervision orders) —

(a) in paragraph 1(1) (effect of orders) after “DHSC” and “that Department” insert “or, as the case may be, Manx Care”;

(b) in paragraph 3(a) (cancellation of school attendance order) after “DHSC” insert “or, as appropriate, Manx Care”;

(c) in paragraph 5(2) (duration of orders) after “DHSC” insert “or, as appropriate, Manx Care”;

(d) in paragraph 7(c) (revocation of orders) after “DHSC” insert “or, as appropriate, Manx Care”.

Re-number subsequent provisions accordingly.

11. Page 45, after line 5 insert —

“(1B) Notwithstanding subsections (1) and (1A), a person aggrieved by a decision of Manx Care in respect of social care services or carer support provided by it under the Manx Care Act 20XX may complain directly to the Independent Review body constituted under this section without first complaining to the Department.

(1C) Notwithstanding subsections (1) and (1A), a person aggrieved by a decision of a person with whom Manx Care has entered into an agreement under section 17 of the Manx Care Act 20XX (a section 17 provider) in respect of social care services or carer support provided by that section 17 provider under that agreement, may complain directly to the Independent Review body constituted under this section without first complaining to Manx Care.”

12. Page 46, insert as new line 1—

“36 In section 140(1) (what is “social care work” and who is a “social care worker”) after “Department” insert “or Manx Care”.

Re-number subsequent provisions accordingly.

The Speaker: Mr Moorhouse.

Mr Moorhouse: Thank you, Mr Speaker. I beg to second.

5170

The Speaker: Putting to Hon. Members first the amendments in the name of Mrs Barber, those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Putting to you clauses 36, 37, 38 and Schedule 5 as amended, those in favour, please say aye; against, no. The ayes have it. The ayes have it.

5175

That concludes consideration of the Manx Care Bill.