

## Order of the Day

### 1. Manx Care Bill 2020 – First Reading approved

Mrs Sharpe to move:

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

**The President:** Turning to our Order Paper, Item 1 is the Manx Care Bill 2020 for First Reading, and I will call the Hon. Member, Mrs Sharpe, to move.

**Mrs Sharpe:** Thank you, Mr President.

Hon. Members, I am pleased to move the First Reading of the Manx Care Bill 2020. The passing of this Bill is a matter of national importance and goes a long way to accomplishing several recommendations made by Sir Jonathan Michael in his Independent Review of the Isle of Man Health and Social Care System. All 26 interlinked recommendations were unanimously approved by Tynwald Court on 21st May 2019 with the aim of providing the people of our Island with a modern, fit-for-purpose health and social care system.

Central to the purpose of the Bill is the recommendation that, and I quote from the Review:

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.

This legislation will establish a new Statutory Board 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. By distancing the Department 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 and to make evidence-based decisions. It would also allow Manx Care to focus exclusively on the delivery of high-quality, integrated care based on clinical need.

An effective governance and accountability framework in which responsibilities will be clearly defined will be established between Manx Care and the Department of Health and Social Care. A key component to this governance and accountability framework is the requirement set out in the 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 hold Manx Care to account for its performance under the mandate.

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 level of funding to be provided to Manx Care for the provision of those services. The Department will be required to lay the mandate before Tynwald prior to the start of each financial year, and to lay before Tynwald an annual report on Manx Care's performance against its mandate within six months after the end of each financial year. As a result, transparency and public accessibility to information and to regular reports in relation to our Island's Health and Social Care Services will be increased.

Whilst the Department has for a long while sought to adopt best practice in relation to transparency and accountability this Bill will, for the first time, make openness and transparency a *statutory duty* by introducing a duty of candour for the Department and Manx Care. Regulations for the duty of candour are currently being drafted and will set out the process by which a service user must be notified about incidents affecting their safety. The aim is that these

45 regulations will come into operation at the same time that Manx Care is established on 1st April  
2021.

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; a duty to  
promote public involvement and consultation in the planning, development and operation of  
50 health and social care services; and a duty to promote education and training of those working  
in health and social care services. Manx Care also has duties specific to it which focus on  
effectiveness and efficiency, and having enhanced clinical and care governance.

The Bill seeks to deliver the 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  
55 our Island.

As Hon. Members will be aware, a number of Government amendments were made to the  
Bill in another place. These amendments addressed additional detail, worked through by the  
Health and Care Transformation Programme, as well as addressing concerns that Hon. Members  
had raised, particularly in relation to independent inspections of health and social care services.

60 Mr President, I beg to move that the Manx Care Bill 2020 be read for the first time.

**The President:** Mrs Lord-Brennan.

65 **Mrs Lord-Brennan:** Thank you, Mr President. I am very happy to second this Bill and  
supportive of Mrs Sharpe and the Bill. I am very interested in the progress and the success of  
healthcare transformation. I will keep my comments very brief.

I think in checking this Bill I feel sure that Legislative Council will use this opportunity well to  
question that which needs to be questioned and to remedy anything which needs to be  
remedied.

70 Thank you, Mr President.

**The President:** Mrs Poole-Wilson.

75 **Mrs Poole-Wilson:** Thank you, Mr President.

I very much welcome this Bill. As the Member of the Legislative Council who sat on the  
Health Care Transformation Review process I feel passionately strongly that what the Sir  
Jonathan Michael Review seeks to achieve is important, and this Bill is a critical part of delivering  
that.

80 At First Reading I do just have a couple of questions for the hon. mover, so if I flag those up  
and if there is something that she is able to answer today then that is great; or if not, perhaps  
she would be kind enough to provide the answers at our next sitting.

The first question is in relation to clause 13(5), which was a new provision inserted in another  
place, and it specifically is the provision that novates contracts and agreements that exist  
currently with the Department and which will be the subject of the mandate. Having listened to  
85 the debate in another place around this clause with questions being asked about knowledge of  
all the different agreements and contracts that may exist, it was openly acknowledged that  
unfortunately there is not a definitive list of every single contract and agreement that may exist  
at the moment.

90 My question for the mover is that whilst that may be the case and it is understood that there  
will be a lot of agreements out there, perhaps some of them very historic, is there a due  
diligence process ongoing to at least try to capture as comprehensively as possible what  
agreements and contracts may exist?

95 My second question is also just to follow up on a matter that I know was raised in another  
place, but I do not recall quite hearing the full answer to the question. That relates to clause 32,  
which is the provision in the Bill that provides for the Department to lay the annual report and  
publish its letter before Tynwald.

I had a look at the Police Act 1993 and there is express provision in section 4A(2) of the Police Act that actually requires that the Chief Constable's annual report not only is laid before Tynwald, but actually that the Minister for Home Affairs is required to move a resolution that the report be received. So there is an active trigger in the legislation for a debate. We do not have an active trigger in this Bill.

I fully welcome the amount of transparency that the Bill provides for in both laying the mandate before Tynwald and the annual report, but I wonder whether it would be helpful to provide a specific annual trigger point for a Tynwald debate? My worry would be each time something is laid before Tynwald, and there is nothing to stop this, but we could have multiple debates and perhaps it would be preferable to have a point in the cycle which is a natural trigger for a Tynwald debate, and perhaps that might be after the annual report and the Department's response each year.

My final question for now, Mr President, is a question that I raised at the very helpful presentation we had last week on the Bill. That is just to double-check that clause 36, which is the read-across provision that says that every time there is a reference to 'the Department' you should read in 'Manx Care', is robust enough to capture things like the duty of candour. My reason for raising this is that in another place there was an amendment made to the duty of candour to be expressed that any apology offered by the Department would not of itself be sufficient to be an admission of liability, for example. I just want to check that if Manx Care were to provide an apology as part of *its* duty of candour, that *it* would have the benefit of that provision earlier in the Bill that applies to the Department. So I just would like the reassurance that this read-across provision in clause 36 is enough to make sure that everything that applies to the Department in this Bill absolutely will apply to Manx Care where it is appropriate.

Thank you, Mr President.

**The President:** Miss August-Hanson.

**Miss August-Hanson:** Thank you, Mr President.

I, too, am very supportive of seeing the Manx Care Bill in Legislative Council, and I am sure we will do just as good a job as we always do in going through this in detail. I thank the mover for already engaging with us at such an early stage as well, organising a briefing and being so open to having conversations with us about various parts of the Bill, even before this stage that we are now at.

I have spent some time in Keys and I have watched this Bill go through the clauses stage in the Keys, and there were a few different things that have been picked up particularly by Mr Thomas and Mr Hooper, the Hon. Members downstairs. I have some comfort from the mover that perhaps those might or might not, or are being considered for being addressed at this point in time, particularly certain things like, for example, in 4(2)(a) of the Bill, the National Health Service Act 2016 is made reference to – it is the National Health *and Care* Service Act 2016. So things that perhaps need to be tidied up within the Bill. But there are obviously other much larger matters that came to the fore in Keys as well regarding autonomy and the matter that my colleague on Council, Mrs Poole-Wilson has just raised regarding the annual report.

I am hopeful as well that Tynwald will get an opportunity to debate an annual report from Manx Care and would very much welcome and encourage that. I think that Mr Thomas in another place asked specifically about the Chief Constable's Report, and planning something very similar to that being laid in a very similar way, so that Tynwald Members have the opportunity to debate it. The Minister for Health and Social Care responded by saying, 'I do not have a problem with that at all, debating the annual report. I think it is a very good idea'. So I would hope perhaps that might be something that would be under consideration, and if the mover would be so kind as to feed that back in I would be very grateful. Perhaps it might be considered that we change that and actually put it into the legislation itself.

150 There are some questions on autonomy regarding clause 6(2) that I would not mind bearing out, but I am hoping that the mover will be open to those discussions down the line. I wish her a very easy and very detailed passage of this Bill from one end to the other and then back into another place.

Thank you, Mr President.

**The President:** Thank you.

155 Mrs Sharpe, I have Mr Henderson. Would you like to respond at this stage or deal with everything at the end?

**Mrs Sharpe:** I can deal with everything at the end.

Thank you, Mr President.

160 **The President:** Okay. Mr Henderson.

**Mr Henderson:** Gura mie eu, Eaghtyrane.

165 I am very supportive of the Bill before us. I have no problems with that. I have been a keen follower of the Sir Jonathan Michael Review from day one, as it were. I have made it my business to meet this gentleman several times, and I have made it my business to be in considerable communication with the AG's Chambers over the construction of this Bill and what it contains and what it does not contain.

170 I have produced a consultation document with regard to the Sir Jonathan Michael Review, as called for, a *substantial* consultation document I may add, Eaghtyrane, that took many, many, many, *many* hours to put together and reference in relation to issues with the current Isle of Man Health Service, shall we say. So to see the fruits of Sir Jonathan's Review, or some of them anyway here today, is very encouraging.

175 What I would like to point out, Eaghtyrane, though, I understand – and I do not expect the mover to come back with the answers today, but maybe at the next sitting – that the legislation will be coming in two slabs: this one, and there will be another one following; and in special regard to my enquiries in relation to consultant medics who work for our Health Service and line management accountability.

180 Currently, consultant doctors do not have a line management accountability to the senior management team within our Health Service. That, to me, has been one of the single largest failings within our Health Service, where consultants and others have been able to ostensibly run their own empires and run their own budgets, and run their own way of doing things – which is fine usually. But what we have is a large number of staff employees who are currently only accountable to their own professional body, as far as I understand it, and with my own experience within the Health Service, thereby giving rise to many management issues, confrontations, budgetary matters and so on.

190 I would just like the mover to confirm that there is a second tranche of legislation on the way, when she is able, which addresses line management accountability or line management structure that lassoes the consultants into that line management structure. I am aware that this was being looked at, and I am aware that the forthcoming second wave of legislation, if I can call it that, will address this to some point, but I would like some sort of confirmation.

195 The reason I labour those points, Eaghtyrane, is the fact that if we are going to get this right – and I applaud everyone's efforts in trying to get this right, and their enthusiasm and so on – that if we do not get the legislative framework in for a proper line management structure, as we see in other jurisdictions to lasso everyone into the organisational structure with proper line management accountability, if I can put it like that, then this will not work as well as we hope. Absolutely not.

So we need confirmation of that and the forthcoming legislation. But this is the first step on the journey, Eaghtyrane, and I am fully supportive.

200 **The President:** Mrs Maska.

**Mrs Maska:** Thank you, Mr President.

I will be brief. I would like to express my support and I am heartened that this Bill is coming forward, and I thank the hon. mover for arranging for briefings and for prior information on this. It is a very difficult climate to be bringing such a major transition forward, given our experience in the last nine months, so I do look forward to seeing the progress and the scrutiny of this Bill as we go through the clauses.

One of the matters that has been evident for a long time is the lack of evidence-gathering and scrutiny and transparency, so hopefully the process that has been identified in the separation of policy and the delivery of service is going to enable even more ability to scrutinise the operation and delivery of that service.

One of the major concerns I have focused on in recent years is mental health, and the difficulties of access to appropriate levels of service for those who are going through mental health difficulties. I really hope with the separation and the evidence, as has been mentioned in another House, that it will be possible to really have a first-class service that is fit for purpose in its delivery to our community.

I look forward to seeing the progress of the Bill through this Hon. Court. Thank you, Mr President.

220 **The President:** I call on the mover to reply, Mrs Sharpe.

**Mrs Sharpe:** Thank you, Mr President.

I would like to thank all Hon. Members for their contributions this morning. Turning individually to Mrs Lord-Brennan, I would like to thank her for her support in seconding this Bill.

Mrs Poole-Wilson, who I know has worked very hard behind the scenes with her involvement with Sir Jonathan Michael and Transformation, I would like to thank her for all her efforts. Specifically, she mentioned the provision which novates contracts, and she would like to know if there is a due diligence process going on. I will feed that back to her at the next sitting with confirmation on that.

She also mentions clause 32, which is the provision for the Department to lay the annual report before Tynwald and that there is no active trigger in the Bill in terms of triggering a debate which we see with the Police Constable's report, for example. Miss August-Hanson also mentions this and reminds us that in another place the Minister did say he would not have any problems with the idea of putting in some kind of trigger to the Bill. It is a question that has been raised over the past few weeks.

The Department felt that because any Member *could* put forward a motion in order to trigger a debate that it would not necessarily be a problem. However, obviously, if it is the will of Members that there should be a trigger inserted into the Bill, it seems that there would not be any problems. But I will come back to the Hon. Member next week with more news on that.

Clause 36, she would like some reassurance that when it comes to duty of candour Manx Care would have the benefit of this clause as well as DHSC. It should do, but I will come back to her to confirm that so that she has some comfort on that issue.

Miss August-Hanson, I would like to thank her very much for her comments. She referred to Mr Hooper and Mr Thomas who both had comments and queries in another place. I can confirm that there are some changes yet to be considered and agreed by the Council of Ministers, which would be put forward at the clauses stage of this Bill, but I will keep Members informed of that.

Mr Henderson, I would like to thank him for his support. I know that he has been a very keen follower of the Sir Jonathan Michael Report, especially bearing in mind his past career in the Health Service and his personal interest there. I can confirm that legislation will be coming forward in two slabs, as he put it; and that the legislation project within the Transformation

Programme is dealing with that and we will be seeing the National Health Service Reform Bill coming forward in due course, and any further legislation which is needed to support the overall framework.

255 Specifically, he mentioned line management accountability and the scenario where consultants, as he puts it, have been running their own empires. You would hope that is not something we would be seeing with Manx Care in place, and the degree of scrutiny which separating out delivery and policy and strategy and so on should have. I will come back to him with confirmation, (**Mr Henderson:** Yes, please.) because he makes a really good point, and that is certainly something which, going forward, we would not want to see in our Health Service.  
260 (**Miss August-Hanson:** Hear, hear.)

Mrs Maska, I would like to thank her for her support. She is right: it is a major achievement for DHSC and the Transformation Programme to have brought this Bill here to this Hon. Chamber today because they have all worked so hard. DHSC has been the Department which has borne the full brunt of the COVID-19 pandemic, and yet they have still committed to  
265 delivering Manx Care on 1st April. They have been working so hard and I would like to thank all officers for their work on the Transformation and also on this Bill.

Mrs Maska mentions that in the past there has been a lack of transparency in DHSC, and she is quite correct. It is hoped that this separation will improve scrutiny. Mental health, she mentioned specifically, and I will talk to the Department to bring Mrs Maska some more  
270 information on the future of Health Services and how that will fit into the round.

So I would just like to thank officers and thank Members for all their support. Thank you.

**The President:** Thank you, Hon. Member.

I put the question that the Manx Care Bill 2020 be read for the first time. Those in favour, say  
275 aye; against, no. The ayes have it. The ayes have it.