

# STATES OF JERSEY



## JERSEY ETHICAL CARE CHARTER (P.48/2017): AMENDMENT

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Lodged au Greffe on 27th June 2017  
by the Minister for Health and Social Services

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STATES GREFFE

JERSEY ETHICAL CARE CHARTER (P.48/2017): AMENDMENT

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**1 PAGE 2, PARAGRAPH (a) –**

For the words “in principle that all providers of domestic care should meet the standards set out in the” substitute the words “that the Minister for Health and Social Services should, in consultation with the Jersey Care Commission and key stakeholders, investigate whether the standards set out in the proposed”; and after the words “paragraphs (i) to (xi)” insert the words “are appropriate for Jersey”.

**2 PAGE 3, PARAGRAPH (b) –**

For the words “all of the providers on the approved provider framework for homecare agencies” substitute the words “all providers of domiciliary care”; and after the word “Charter” insert the words “as may be agreed by the Assembly after the investigation described in paragraph (a)”.

**3 PAGE 3, PARAGRAPH (c) –**

Delete paragraph (c).

**4 PAGE 3, PARAGRAPH (d) –**

For the words “the necessary legislative changes to implement paragraph (c) above” substitute the words “a proposed Charter for consideration by this Assembly by the end of Quarter One 2018”; and re-designate paragraph (d) as paragraph (c).

MINISTER FOR HEALTH AND SOCIAL SERVICES

## REPORT

The Minister for Health and Social Services (“the Minister”) welcomes Deputy G.P. Southern of St. Helier’s proposal for the introduction of an ethical care Charter for Jersey (a “Charter”) that will complement the [Regulation of Care \(Jersey\) Law 2014](#). As stated by the Minister, the Chief Minister, the Minister for Housing and the Assistant Chief Minister, in the [P.29/2017](#) debate, there is a very real desire to ensure that Islanders receive the best possible care and widespread recognition of the role that a Charter could play in articulating and promoting a set of locally agreed standards.

Whilst Ministers are supportive of the concept of a Jersey Charter, it is proposed that [P.48/2017](#) is amended in order to –

- provide key stakeholders, including the Jersey Care Commission, local care providers and care recipients, with an opportunity to consider the contents of the proposed charter;
- maintain the concept of a voluntary charter, as opposed to a statutory charter; and
- protect the independence of the Jersey Care Commission.

### **Jersey relevance**

The standards set out in paragraphs (i) to (xi) of P.48/2017 are taken from the Ethical Care Charter issued in 2012 by Unison, a UK-based trade union. Whilst these provide a basis on which to consider development of a Jersey Charter, there has been no consultation with any local stakeholders about the proposed standards, including any potential omissions or amendments to ensure Jersey relevance.

P.48/2017 picks up a UK document and proposes that it is enshrined in primary law in Jersey without any reference at all to the local care market, the needs of local care recipients, and without any public consultation.

### **Regulation of Care (Jersey) Law 2014**

It is anticipated that the [Regulation of Care \(Jersey\) Law 2014](#) (“the 2014 Law”) will come into force in late 2017. That Law represents a significance advance for Jersey – for the first time all domiciliary care providers will be subject to regular inspections and held to a set of standards determined by the independent Jersey Care Commission. Domiciliary care providers who fail to meet those standards will be struck off by the Commission, will not be able to benefit from payments made under the Long-Term Care scheme, and may be prosecuted.

The 2014 Law provides a clear quality framework within which all domiciliary care providers, and others, must work. This already incorporates many of the 11 standards proposed by Deputy Southern.

### **Voluntary Charter**

Paragraph (c) of P.48/2017 proposes that it should be a requirement under the “2014 Law” for care providers to sign up to the Charter, thereby making the Charter a statutory requirement. This represents a significant departure from the UK Unison

Charter, on which Deputy Southern has based his proposition, as the Unison Care Charter is a voluntary Charter.

Extending the scope of the 2014 Law to make it a requirement for providers to sign up to the Charter will fundamentally change the nature of the Law, particularly in relation to matters regarding terms and conditions of employment and the commissioning of services.

#### Terms and conditions of employment

As set out in the [Minister's comments on P.29/2017](#), the 2014 Law, as adopted by the States Assembly, does not provide powers to regulate employment standards.

Article 14(3)(c) of that Law provides powers to regulate “*the recruitment, management and training of workers who work in any service provided in the carrying on of a regulated activity*”, but these powers do not expressly extend regulating the terms and conditions of employment of workers, because it was never intended that the Care Commission, as established under the 2014 Law, would be charged with looking at employment standards.

The [Employment \(Jersey\) Law 2003](#) (the “2003 Law”) was introduced to consolidate enactments relating to matters such as terms of employment and the payment of wages. The 2003 Law, and the associated Regulations, make provision in relation to the minimum wage and who qualifies for the minimum wage. The 2003 Law provides the States Assembly with powers to change who qualifies for the minimum wage, but those powers cannot be used to treat different areas of Jersey, sectors of employment, or occupations differently – i.e. there is no ability to make different provisions in relation to particular industries.

Even if it were provided for in the 2014 Law, using the powers in that Law to set employment conditions and wages via a statutory Charter would, to all intents and purposes, establish a minimum wage for those working in domiciliary care services. That would appear to conflict with the prohibition in the 2003 Law on setting sectoral minimum wages.

Whilst the 2014 Law should not be used to set terms and conditions of employment, it does ensure that employers ensure quality of care through appropriate recruitment and training practices. It is intended that the draft Regulations (*not yet lodged for debate*) to be made under the 2014 Law should place a specific duty on employers to ensure that, at all times, suitably qualified, skilled, competent and experienced people are working in the regulated activity, in such numbers as are appropriate and sufficient to meet the needs and ensure the health, welfare and safety of care receivers. In addition, those draft Regulations also require employers to ensure that workers receive appropriate training, professional development, supervision and appraisal to enable them to provide care and treatment to care receivers to a safe and appropriate standard.

#### Commissioning of services

Paragraph (a)(i) of P.48/2017 sets out that the “starting point for the commissioning of visits will be client need”. The 2014 Law does not, however, provide the Care Commission with powers to regulate service commissioners, i.e. incorporating P.48/2017 into the 2014 Law would be *ultra vires*.

To incorporate a Charter, along the lines proposed, into the 2014 Law, would require major amendments to that Law. This would substantially delay implementation of the 2014 Law, which is expected to come into force in late 2017. The 2014 Law will establish a comprehensive set of care standards across all care sectors, covering both care homes and care provided at home; and a delay to implementation would increase the risk that unsatisfactory levels of care will be provided to Islanders.

It is important to note, however, that non-incorporation of the Charter into law does not detract from the powers already provided in the 2014 Law to ensure quality of care. The 2014 Law already makes extensive provisions to help ensure the quality of care, including provisions relating to staff training, requirements for staff supervision to combat professional isolation, requirements to follow up on staff concerns about clients' well-being, and the necessity to ensure that visits are based on client need – all of which are touched upon in P.48/2017.

In addition, whilst the 2014 Law does not regulate the commissioning of services it will, via the Regulations to be made under it (*currently in draft form*), place a requirement on providers which have been commissioned by third parties, to report to the Care Commission any deficit in care that arise as a result of the commissioning contract. Whilst the Care Commission does not have the power to force the service commissioner to bring forward changes, they do have the power to publicly report on these issues.

The draft Regulations are a unique feature of Jersey law and one which the Care Commission perceives to be highly innovative, because they go beyond the legislation in other UK jurisdictions.

### **Independence of Jersey Care Commission**

The 2014 Law establishes the Jersey Care Commission. Over the last few months, an independent Chair plus 4 Commissioners have been appointed, including one local service user representative. The Law provides for the independence of the Commission, which is essential if the Public and care providers are to have confidence in its work. If the States Assembly were to agree the proposed standards set out in P.48/2017 and, without consultation, impose them on all care providers, it is highly likely to erode the Commission's standing, as they will not be seen to be independent of the States. Conversely, it may also raise legitimate concerns amongst commissioners about their ability to deliver a regulatory regime shaped first and foremost by the views and needs of service users, as opposed to other parties.

### **UK position**

The Unison Charter – which was developed in response to a survey of homecare workers that attracted only 431 responses – has been in place for over 5 years. As of last year, it had only 32 signatories – a combination of local authorities and care providers. Its penetration is limited and, even amongst signatories, there are areas of non-compliance, often for budgetary reasons. This indicates that, contrary to what is stated in P.48/2017, there are financial implications arising from the standards.

By contrast, the UK Home Care Association's Code of Practice, which includes both care standards and employment standards, is a far more widely adopted code and is recognised by Care Regulators in all UK jurisdictions. It includes a more in-depth range of standards which local stakeholders may consider to be of relevance in Jersey.

It is noted that the Welsh Assembly recently launched a public consultation on workforce matters which potentially fall within its Regulation and Inspection of Social Care (Wales) Act 2016. The Welsh Law is, however, markedly different from that in Jersey, and hence is not directly comparable. Even so, and whilst maintaining that a Jersey Charter is not capable of being incorporated into Jersey law, the Welsh consultation may generate interesting solutions. Ministers will, in partnership with local stakeholders, review the outcomes and findings of the Welsh consultation.

### **Proposed amendments**

It is therefore proposed that P.48/2017 is amended in the following ways –

- Paragraph (a) is amended to allow for a Charter to be developed in consultation with the Care Commission and key stakeholders, including care recipients and providers. In developing that Charter, consideration will be given to all of the standards set out in P.48/2017.
- Paragraph (b) is amended to remove reference to the Approved Provider Framework (“APF”). In 2013, the States Assembly agreed that an individual could only receive payments from the Long-Term Care (“LTC”) scheme if they received care from an approved care home or an approved domiciliary care provider. At that point in time, there was no comprehensive regulatory framework that included domiciliary care, and hence the APF was introduced. The APF was only ever intended as an interim measure, and will fall away in its current form at the point at which the 2014 Law comes into force at the end of 2017. Reference to the APF is therefore not required.
- Paragraph (c) is removed in its entirety, as it is that paragraph, as proposed by Deputy Southern which, pre-emptive of any consultation, asks the Assembly to agree in principle to primary law changes.
- Paragraph (d) is amended to delete a reference to a statutory Charter, as would be necessitated by the removal of paragraph (c) but, in its place, requiring the Minister for Health and Social Services to bring forward a proposed Charter by the end of Quarter One 2018.

**The Minister for Health and Social Services and others are supportive of the concept of a voluntary Charter and would urge the States Assembly to adopt the proposed amendments to P.48/2017.**

### **Collective responsibility under Standing Order 21(3A)**

The Council of Ministers has a single policy position on this proposition, and as such, all Ministers, and the Assistant Ministers for Health and Social Services, are bound by the principle of collective responsibility to support the proposition, as outlined in the Code of Conduct and Practice for Ministers and Assistant Ministers ([R.11/2015](#) refers).

### **Financial and manpower implications**

P.48/2017 states that there are no direct financial implications for the States arising from 'in principle' adoption of the Charter. This statement is not correct.

If the Charter were to be incorporated in any meaningful way into legislation, there would need to be extensive changes to that Law. This would divert limited resources away from ongoing delivery of the existing regulatory regime. In addition, there would be costs associated with compliance inspections, thus further increasing overheads.

Furthermore, implementing all of the proposed standards in P.48/2017 would raise the costs of at least some care providers, some of which would have to be borne by the Long-Term Care scheme. The cost pressures would ultimately fall to the taxpayer through higher Long-Term Care contributions.

The financial implications of the amended proposition are restricted to the cost of undertaking a comprehensive survey of local care users and care providers to establish the appropriate format and content for a locally-based voluntary Charter. Any costs associated with this will be managed from within existing departmental budgets.