

**WRITTEN QUESTION TO H.M. ATTORNEY GENERAL
BY DEPUTY K.G. PAMPLIN OF ST. SAVIOUR
ANSWER TO BE TABLED ON TUESDAY 21st MAY 2019**

Question

Will H.M. Attorney General advise what legal duties and roles the States of Jersey and the Government of Jersey have in respect of providing facilities to support Islanders' mental health; and what the legal consequences are in the event that any such facility is adjudged to have failed in relation to Human Rights standards or regulations?

Answer

Duties:

Under the Mental Health (Jersey) Law 2016 (Article 2) the Minister for Health and Social Services ("the Minister") has the primary duty to "*make provision in Jersey for the care and treatment of persons suffering mental disorder*". This includes the duty to approve establishments and premises for the purpose of care and treatment of patients suffering from mental disorder (Article 5). Further, the Minister has a power (under Article 3) to do anything which appears to him "*to be necessary, conducive or expedient*" to properly discharge the duty imposed by Article 2. For instance: the Minister may, under Article 3:

"provide or secure the provision of, establishments and facilities for care and treatment, and management and general supervision of such establishments and facilities";

"make arrangements for the treatment, care detention of patients in such establishments";

"make arrangements for ... the treatment and care of patients who are not admitted to nor liable to be detained in approved establishments";

And,

"provide, or secure the provision of, ancillary or supplementary services designed for - the promotion of better mental health, the prevention of mental disorder, promoting better care and treatment of patients, and the welfare of patients."

Legal consequences in the event a facility is adjudged to have failed in relation to Human Rights standards or regulations?

The Mental Health Law is designed to ensure that mental health services are provided in a way compatible with human rights. Under the Human Rights (Jersey) Law 2000, if there was an allegation that the Minister has acted in a manner that is in contravention of an individual's Convention rights (under the European Convention on Human Rights), e.g. protection from inhuman or degrading treatment, proceedings could be brought against the Minister by the individual concerned. If the Court found that the Minister had breached an individual's rights the Court could grant such relief or remedy within its powers which it finds just and appropriate. This could include an award for damages.

Further, if an "*approved establishment*" was found to contravene duties owed under the Health and Safety at Work (Jersey) Law 1989 this could lead to the issue of advice, improvement or prohibition notices, or prosecution where appropriate, of the States Employment Board as an employer.