
STATES OF JERSEY



**STATES OF JERSEY COMPLAINTS
BOARD: FINDINGS – COMPLAINT BY
MR. B. HUDA AGAINST THE MINISTER
FOR HEALTH AND SOCIAL SERVICES
REGARDING AN UNRESOLVED
COMPLAINT AND ALLEGATIONS OF
RACISM (R.148/2018) – RESPONSE OF
THE MINISTER FOR HEALTH AND
SOCIAL SERVICES (R.148/2018 Res.) –
RESPONSE OF THE
COMPLAINTS BOARD**

**Presented to the States on 18th February 2019
by the Privileges and Procedures Committee**

STATES GREFFE

RESPONSE OF THE COMPLAINTS BOARD TO THE RESPONSE OF THE MINISTER FOR HEALTH AND SOCIAL SERVICES

States of Jersey Complaints Board

On 26th October 2018, a Complaints Board Hearing constituted under Article 9(9) of the [Administrative Decisions \(Review\) \(Jersey\) Law 1982](#) was held to review a complaint by Mr. B. Huda against the Minister for Health and Social Services regarding an unresolved complaint and allegations of racism.

On 5th December 2018, the Privileges and Procedures Committee presented to the States the findings of the Complaints Board Hearing (*see* [R.148/2018](#)).

Response of the Minister for Health and Social Services

The Minister, having reconsidered the decision as required by the Board under Article 9(9) of the Law, presented his response to the States on 12th February 2019 (*see* [R.148/2018 Res.](#)).

PPC now presents to the States the Complaints Board's response to the Minister's response.

Response of the Complaints Board

The Board has noted the response of the Minister, and is disappointed – although not surprised – that a Minister has once again sought to “spin” his response in a manner that seeks to disguise, and even justify, what was a critical failure by the Department to follow its own written procedures. It was that failure which rendered the actions of the Department unjust and contrary to natural justice.

Written procedures are established for a reason, and are there to be followed because it is deemed important for due process that such procedures are followed. In this case, the procedure required that Mr. Huda be informed as soon as the Adult Safeguarding Team had decided to refer him to his professional body. The Minister, in his response to the Board's findings, seeks to pass this failure off as a “procedural error”, for which apologies have been made to Mr. Huda. This was not a “procedural error”, but a failure by the Department to observe and conform to a non-discretionary principle of its own procedure, which deprived Mr. Huda of the basic right to be made aware of accusations made against him.

In his Response, the Minister states that the Complaints Board made “a finding that referral to the GOC was unwarranted or unjustified in all the circumstances”. The Board respectfully suggests that the Minister re-reads paragraph 4.6 of its Findings, where it is stated “The Board offers no comment as to whether the outcome of the investigation by the GOC would have been different if the correct processes had been followed.”. Nowhere in its Findings has the Board suggested that the referral to the GOC was inappropriate in this case. That decision was always a matter for the Adult Safeguarding Team. The Board reiterates that the procedure in making such a referral should have been followed, but was not, and as a consequence Mr. Huda was denied natural justice.

The Board is confused by the Minister's response at paragraph 4.7, where he states "[the referral to the GOC] is not (nor does it purport to be) a disciplinary or regulatory investigation". The Minister is referred to paragraph 2.3 of the Findings, where the Director, Community Care and Health, acknowledged that there were 2 separate strands to the process conducted by the Adult Safeguarding Team, the first dealing with the safeguarding of patients (whether specifically or generally), and the second dealing with professional practice, i.e. disciplinary considerations. The Director further acknowledged that a clear separation of the 2 distinct strands of the process was desirable. The Minister is also reminded of the evidence given at the Hearing by the Medical Officer of Health, who expressed "serious concerns" about "the continuing registration" of Mr. Huda.

Whilst the Board accepts that the Adult Safeguarding Team may have no investigatory powers which could lead to disciplinary action against a practitioner, having the power only to refer a matter to the practitioner's governing body (in this case the GOC), the decision to refer the matter was itself a disciplinary process. It may be argued that had full details of the complaint been included in the referral to the GOC, the outcome of the GOC's investigations might have been different, but that is entirely speculative. What is certain, however, is that the Department and the MOH maintained their "serious concerns" about Mr. Huda's continuing registration, and that "vulnerable clients" were "quite likely" to be placed at risk by Mr. Huda. Referral of Mr. Huda to the GOC was as much as the Department could do as far as the disciplinary process was concerned, but there can be no doubt from the statements made at the Hearing by both the Director and by the MOH that the referral was made as part of a disciplinary process.

The Board finds the Minister's response at paragraph 4.8 ("The Adult Safeguarding Team have no disciplinary locus in respect of a regulated health professional") somewhat disingenuous, and directly contradicting what the Director said at the Hearing, when he acknowledged that there were 2 distinct threads to the referral process, namely safeguarding and professional practice. The decision to refer a practitioner is to set the disciplinary ball rolling, and is thus of itself a disciplinary process. The Board maintains its view that such a decision to refer is to move a complaint to another level with potentially far-reaching consequences, and that therefore such a decision should have independent authorization before it is actioned.

While the failure of the Department to inform Mr. Huda of the intention to refer him to the GOC was unjust as far as he was concerned, given that the Department retained concerns about the continuing risk to "vulnerable clients" from the continuing registration of Mr. Huda, it was incumbent on the Department to ensure that the referral contained all relevant information. The MOH acknowledged that that had not been the case. It could therefore be argued that the Department had failed to address the public health risk that it perceived to exist as fully as it should have done.