
STATES OF JERSEY



STATES OF JERSEY COMPLAINTS BOARD: FINDINGS – COMPLAINT BY MRS. X AGAINST THE HEALTH AND COMMUNITY SERVICES DEPARTMENT REGARDING THE WAY IN WHICH HER COMPLAINT WAS PROCESSED

**Presented to the States on 15th January 2019
by the Privileges and Procedures Committee**

STATES GREFFE

REPORT

Foreword

In accordance with Article 9(9) of the [Administrative Decisions \(Review\) \(Jersey\) Law 1982](#), the Privileges and Procedures Committee presents the findings of the Complaints Board constituted under the above Law to consider a complaint by Mrs. X against the Health and Community Services Department regarding the way in which her complaint was processed.

Deputy R. Labey of St. Helier
Chairman, Privileges and Procedures Committee

STATES OF JERSEY COMPLAINTS BOARD**4th October 2018****Complaint by Mrs. X against the Health and Community Services Department
regarding the way in which her complaint was processed****Hearing constituted under the
Administrative Decisions (Review) (Jersey) Law 1982****Present****Board members –**

G. Crill (Chairman)
J. Eden
D. Greenwood

Complainant –

Mrs. X

Health and Community Services Department –

Professor J. McInerney, Acting Group Medical Director (Hospitals)

States Greffe –

L.M. Hart, Deputy Greffier of the States
K.L. Slack, Clerk

The Hearing was held in public at 10.00 a.m. on 4th October 2018, in the Blampied Room, States Building.

Please note that reference within the report to the Health and Community Services Department should also be taken to refer to the Health and Social Services Department, as that Department was previously named.

1. Opening

- 1.1 The Chairman opened the hearing by introducing the members of the Board and outlining the process which would be followed. He indicated that the proceedings were relatively informal and that Mrs. X would first be asked to outline her complaint, and that the Board would subsequently hear from Professor McInerney on behalf of the Minister for Health and Social Services.
- 1.2 The Chairman clarified that the Board operated in accordance with the provisions of the Administrative Decisions (Review) (Jersey) Law 1982 and was required to consider complaints in respect of any decision made, or any act done or omitted, relating to any matter of administration by any Minister or Department of the States, or by any person acting on behalf of any such Minister or Department. As such, the Board was not in a position to consider any decision of a clinical nature and would only be dealing with matters of administration.

- 1.3 Members of the media who were in attendance were informed that, although the meeting was being held in public, the Complainant would be referred to as Mrs. X in the Board's report, due to the sensitive nature of some of the evidence that would be given. They were asked to respect this when reporting on the hearing, to ensure that they did not reveal any details which could identify the Complainant.

2. Summary of the Complainant's case

- 2.1 In order to put her complaint into context, the Complainant first set out the background to her medical situation, for which she required treatment. In January 2015 she had undergone surgery on her arm in Nottingham, as a 'tertiary' patient, following referral by the Health and Community Services Department. She had travelled alone, because the Travel Office had declined to pay for her to be accompanied, and she had been informed that there was a regular bus service from the hospital in Nottingham to East Midlands Airport. Before travelling to the United Kingdom, the pain in Mrs. X's arm had resulted in her collapsing at home and damaging the tendon in her knee. As a consequence, she had travelled to Nottingham with her knee in a brace. In discussions before the operation, the surgeon had indicated to Mrs. X that he would remove the damaged tendon in her bicep and replace it with an artificial substance, and it had originally been anticipated that following the surgery, she would stay overnight at the Hospital hotel and return to the Island within 24 hours. However, it had subsequently emerged that the surgeon had done '*something completely different*' during the operation, and Mrs. X had been required to stay in the hospital's short-stay surgical unit for 7 days. Since the operation, she had suffered persistent pain.
- 2.2 Having only packed for an overnight stay, Mrs. X had had no clean clothes and had been very uneasy about travelling alone to East Midlands Airport by bus and thence to Jersey with her arm in a sling and her leg in a brace. Ultimately, a family member had paid to fly out, take provisions to Mrs. X and accompany her back to Jersey, using a taxi to get to the airport from the hospital. Mrs. X had subsequently submitted a claim to Patient Travel Services for the travel costs, but the expenses which had been incurred by Mrs. X's family member had not been reimbursed because they had been '*unauthorised*'. Mrs. X informed the Board that this experience had been a '*steep learning curve*', and she had written to the Consultant in Trauma and Orthopaedic Surgery, to notify him that she would not return to Nottingham for a post-operative check-up. Mrs. X was a single parent, in receipt of Income Support, and could not afford to pay upfront for any expenses incurred whilst in the United Kingdom, particularly as, in her experience, the Travel Office did not always reimburse all expenditure.
- 2.3 Mrs. X informed the Board that she felt that the Travel Office demonstrated no flexibility, or understanding of individual patients' requirements. She had previously contacted the Income Support section of the Social Security Department to enquire whether any additional financial support would be available for her in respect of her treatment, but had been referred back to the Travel Office. Accordingly, Mrs. X had received her post-operative care in

Jersey from the Orthopaedic Department, and on discharge she had been sent to the Pain Clinic.

- 2.4 In May 2016, Mrs. X had attended an outpatient appointment at the Pain Clinic with the Consultant in Anaesthetics and Pain Medicine, in order to discuss various options to alleviate the pain that she was experiencing in her arm and knee *inter alia* physiotherapy for the former and injections for the latter. Mrs. X had understood that the Consultant in Anaesthetics and Pain Medicine would liaise with the Consultant in Trauma and Orthopaedic Surgery in respect of the injection option. On 30th June 2016, Mrs. X had received a letter from the Consultant in Anaesthetics and Pain Medicine, informing her that she would be referred to Bath Pain Services, without any further details.
- 2.5 On 4th July 2016, Mrs. X had responded to the letter of the Consultant in Anaesthetics and Pain Medicine, expressing surprise that she was to be referred to Bath as a tertiary patient, because she had previously informed the Consultant in Trauma and Orthopaedic Surgery that she would be unable to travel off-Island for her post-operative treatment in Nottingham due to financial reasons. Although the referral was to a different hospital, the financial difficulties remained, and Mrs. X had decided that it would not be viable for her to travel to Bath. Mrs. X informed the Board that she had taken the decision from a position of knowledge and had not done so lightly. The Consultant in Trauma and Orthopaedic Surgery had replied to her correspondence in late August, suggesting that Mrs. X liaise with the Travel Office. Mrs. X had responded, but had heard nothing further. In October 2016, Mrs. X has been deemed unfit to work by the Medical Board at the Social Security Department, and this remained the case at the time of the hearing.
- 2.6 On 19th December 2016, Mrs. X had attended an outpatient appointment with the Consultant in Anaesthetics and Pain Medicine. The appointment had been changed on 3 occasions to ensure that a 2 hour slot could be allocated, and Mrs. X had made it clear to the receptionists, to whom she had spoken, that she had not been to Bath. Consequently, Mrs. X had been '*shocked and disappointed*' to be asked by the Consultant in Anaesthetics and Pain Medicine, '*how did you get on at Bath?*' She had, once again, explained her financial situation and, in her presence, the Consultant had dictated a letter to the former Divisional Lead, Operational Support Services, who had been responsible for the Travel Office, indicating that if funding was not made available it was possible that Mrs. X would be unable to travel. The Consultant in Anaesthetics and Pain Medicine had also queried whether there were any charitable organisations which could assist Mrs. X, which she had found very embarrassing. Just over half an hour into the 2 hour appointment, the Consultant in Anaesthetics and Pain Medicine had said that he '*had other patients to see*', and had terminated the meeting. Mrs. X had left the Pain Clinic, anticipating that she would hear from the former Divisional Lead, Operational Support Services.
- 2.7 By late January 2017, Mrs. X had heard nothing, so had contacted the Pain Clinic, who had been unable to locate a response from the former Divisional Lead, Operational Support Services to the Consultant in Anaesthetics and Pain Medicine. Mrs. X had subsequently attempted to make direct contact with the former Divisional Lead, Operational Support Services, but he had been on

leave, and staff had been unable to assist as they had not had access to Mrs. X's medical records. The Deputy Divisional Lead, Operational Support Services had then rung Mrs. X and had told her to contact the Travel Office. When Mrs. X had queried why she was being asked to contact them again, the Deputy Divisional Lead, Operational Support Services had ended the call.

- 2.8 In February 2017, Mrs. X had contacted the Travel Office, but they had not received any communication from the former Divisional Lead, Operational Support Services. On the basis that she had the right to access her own records, Mrs. X had then liaised with the Governance and Communications Department to request documents pertaining to her, and had been provided with various pieces of correspondence, albeit no response from the former Divisional Lead, Operational Support Services to the Consultant in Anaesthetics and Pain Medicine. Mrs. X informed the Board that amongst the papers that she had been sent had been a letter, dated 24th August 2016, from the Consultant in Anaesthetics and Pain Medicine to the Royal National Hospital for Rheumatic Diseases in Bath. It had not been until Mrs. X had seen this letter that she had become aware of which hospital in Bath she might be sent to and had been able to research what treatment was available there. Moreover, she had been concerned that the letter merely sought '*advice and opinion*', rather than being a referral letter. On 14th February 2017, the Consultant in Anaesthetics and Pain Medicine had sent a '*re-referral*' letter to Bath. Mrs. X contended that this letter was not a re-referral, but a referral letter, and was frustrated that it had taken 8 months for the referral to be made. Moreover, she indicated that the letter had contained myriad inaccuracies.
- 2.9 The Consultant in Anaesthetics and Pain Medicine had written to Mrs. X in February 2017 to enquire whether she was '*committed*' to Bath. Mrs. X had reiterated that she could not afford to travel, and had indicated that she would be '*naïve to commit to something that [she] knew nothing about*'. In a further letter, the Consultant in Anaesthetics and Pain Medicine had written that '*funding had been agreed*'. On the basis that the letter had not been explicit in respect of exactly what the Health and Community Services Department would fund, Mrs. X had responded on 16th February 2017, repeating that she was not in a position to pay upfront for such things as travel and subsistence and then seek reimbursement. The Deputy Divisional Lead, Operational Support Services had replied to this letter on 27th February 2017, enclosing the Department's travel policy, which made it clear that expenses had to be met by the patient and then claimed back from the Travel Office.
- 2.10 Mrs. X had been all too well aware of the situation in relation to expenses, and the letter from the Deputy Divisional Lead, Operational Support Services had precipitated Mrs. X to complain, via electronic mail, to the Health and Community Services Department on 27th February 2017. Her complaint, which had been directed through the 'feedback' service (feedback@health.je), had been picked up by the Quality Improvement Practitioner, and had set out Mrs. X's experiences since June 2016, expressing frustration at the mixed messages and inaccuracies in the Department's communications with her. Contained within the electronic mail message had been the request, '*please could you put an end to this episode that can only be described as a farce?*' Mrs. X had sought feedback from the Health and Community Services Department on 2 issues, namely funding for expenses whilst in the United

Kingdom and the delay in the referral by the Consultant in Anaesthetics and Pain Medicine and the inaccuracies contained therein. In a message the following day, the Complainant had written, *'the very fact that my referral contains so many errors on my care / treatment history, lends me to believe that I have not been offered the correct and appropriate care / treatment on offer in Jersey'*.

- 2.11 Mrs. X had received an appointment to be assessed by the Royal National Hospital for Rheumatic Diseases in Bath on 21st April 2017. On 30th March 2017, Mrs. X had contacted the Quality Improvement Practitioner, requesting a resolution to the issue of funding, before she could confirm the appointment with Bath. The latter had contacted the former Divisional Lead, Operational Support Services and the Deputy Director Operations, asking for information or for someone to contact Mrs. X, and reminding them that the deadline to respond to her complaint was 4th April 2017. On the same day, the Quality Improvement Practitioner had asked Mrs. X to forward the appointment letter to the Travel Office.
- 2.12 Mrs. X had presented the letter to the Travel Office and had been booked onto a flight to Southampton. Mindful that the Health and Community Services Department's patient travel and related costs policy stated *'In most cases, travel to the UK will be by air and by the most direct route possible'*, Mrs. X had queried why she had not been booked to fly to Bristol, which was much closer to Bath. She had been informed that it was cheaper to fly her to Southampton and that she would have to organise the onward travel herself. To that end she had been provided with a train timetable. Mrs. X had subsequently notified the Quality Improvement Practitioner that when she had raised concerns over the cost of train travel, the staff member at the Travel Office had said *'not my problem'* and had told her to borrow money. Moreover, Mrs. X's name had been spelt incorrectly on her airline ticket.
- 2.13 On 3rd April 2017, Mrs. X had been informed that the Department would not be able to answer her complaint by 4th April 2017 because the Consultant in Anaesthetics and Pain Medicine was the only person who could respond to Mrs. X's queries, and he would need to go through her notes. On 6th April 2017 the Quality Improvement Practitioner had informed Mrs. X that the Travel Office had taken the unprecedented step of booking the train tickets for her appointment in Bath, but that if the flight was delayed and she missed the train she would have to pay for a taxi, which would be reimbursed to her. Mrs. X had again made it clear that she was not in a financial position to do this, and if the plane had been delayed would have had to wait at the airport for the return flight.
- 2.14 In her written submission, Mrs. X described travelling alone to Southampton and on to Bath with reduced mobility as *'incredibly exhausting, painful and stressful'*. Mrs. X indicated to the Board that, in her view, the Travel Office appeared to concentrate on the costs of the initial flights to get patients to the United Kingdom, rather than the whole 'travel package' to get them to the relevant hospital. Train travel was not cheap, and she opined that it might have been cheaper to fly her to Bristol, which was much closer to Bath, rather than pay for the train from Southampton.

- 2.15 At her appointment in Bath, Mrs. X had been offered a place on a 4-week in-patient pain management programme, which ran from 9.00 a.m. to 5.00 p.m. Monday to Friday, with the weekends free. An integral part of the course took place on a Friday afternoon halfway through the programme, when it was anticipated that a family member would attend, to be informed of the care and support that the patient would require after the course. Mrs. X had been asked what dates would suit her, and she had indicated that it would be preferable for her to attend during term-time to enable her to structure her childcare. She had believed that she would be able to return to Jersey at the weekends, and had come away from the assessment with an understanding of an acceptable treatment programme, which she had assumed would have been communicated to the Health and Community Services Department.
- 2.16 Several weeks later, Mrs. X had received a provisional letter from Bath, which had offered her a place on the course commencing on the August bank holiday (28th August 2017). She had been concerned that the first week of the course would take place during the school holidays, which was '*not great*', but had taken the letter to the Travel Office for them to make the necessary arrangements. The Travel Office had informed Mrs. X that they were unable to act on the letter from Bath, because it was only a provisional letter. On contacting the Royal National Hospital for Rheumatic Diseases in Bath, Mrs. X had learned that patients from Jersey were treated as if they were private patients, and that Bath could not send a formal confirmation of a place on the programme until such time as they had received assurances from Jersey that the travel had been arranged and the funding put in place. Mrs. X had felt '*caught in the middle*', but this issue had ultimately been resolved by Bath sending a confirmation letter.
- 2.17 On reviewing the dates of the course, the Travel Office had informed Mrs. X that she would not be entitled to travel home during the programme, because she was only going to be away for 27 days and the policy required a patient to be away for more than 4 consecutive weeks – 28 days – in order to be entitled to additional return flights and associated travel costs. If Mrs. X had wanted to return home at the weekends to see her children, she would have been required to fund the flights herself, which she was not in a position to do. Mrs. X had researched the accommodation that would be provided as part of the residential programme at Bath, which comprised a single room, with a shared bathroom, hospital food and no television, telephone or Internet. '*I couldn't be on my own with no family members for 27 days*', she informed the Board. She had also been notified that the Health and Community Services Department would not provide the funding for a family member to attend the Friday afternoon input session.
- 2.18 On 3rd May 2017, the Health and Community Services Department had written to Mrs. X, indicating that Stage 1 of her complaint had been completed. Mrs. X had responded to this communication on 7th May 2017 and had requested that her complaint be progressed to the second stage, on the basis that she had received either no answer, or an unacceptable answer, to the issues that she had raised. There had ensued a series of electronic mail exchanges between Mrs. X and the Quality Improvement Practitioner, and the latter with the Deputy Director, Operations and the former Divisional Lead, Operational Support Services, to which Mrs. X had subsequently had access. In one of these, the Quality Improvement Practitioner had written to the Deputy Director,

Operations, *'I appreciate that you may have a high volume of work however this complaint has been reopened since 11 May and at no point have we informed the complainant that there will be a delay and / or a reason for it.'* The Quality Improvement Practitioner had apologised on a number of occasions for the Department's delays in responding to Mrs. X's complaint, and on 17th July 2017 had notified her that Stage 2 had been implemented.

- 2.19 On that same day, the Director of Operations had telephoned Mrs. X to acknowledge the delay, and to advise that in the light of this and the complaint remaining unanswered, Stage 2 would be bypassed and the papers would be sent to Guernsey for investigation. However, on 21st August 2017, in response to a request for an update on the complaint, Mrs. X had been informed that the second stage panel had met and that a response was being drafted, which she had found confusing in the light of what she had been told by the Director of Operations.
- 2.20 From the time that she had been given the start date of the residential programme in Bath, Mrs. X had continuously sought to ascertain from the Health and Community Services Department the situation in relation to funding, as she had been desperate to reach a solution to enable her to attend the programme. *'I've never been under the illusion that I would be pain free'*, she informed the Board, but she had believed that the programme would have given her the pain management skills to get through the day both psychologically and physically.
- 2.21 It had been suggested that there might be the possibility of Mrs. X travelling back to Jersey halfway through the programme, but not each weekend. Mrs. X had since obtained copies of electronic mail exchanges between the former Divisional Lead, Operational Support Services and the Income Officer, regarding the possibility of her returning to Jersey during the programme in Bath. On 16th May 2017, the Income Officer had written to the former Divisional Lead, Operational Support Services, *'Mrs. X is asking for a weekend home but she is only off island for exactly 4 weeks for a pain management plan'*. The following day, he had written, *'The feeling on this upstairs is if we say no then we have a complaint to deal with as a result. The cost of processing a complaint to the organisation (in terms of hours lost) may well possible (sic) exceed the cost of a flight. For the sake of a day, if this comes up again with this patient please can I ask you to book it for her without drawing any undue attention to it. If asked you can cite managers (sic) discretion given it was to the day so we have taken a view on it.'* There had been other electronic mail exchanges between staff at the Health and Community Services Department in relation to Mrs. X, which had later been described by Ms. S. Calthorpe, who had conducted an independent investigation into Mrs. X's complaint, as being inappropriate in language, style and tone, and *'which do not meet the level of professionalism that should be expected from staff with a duty of care for vulnerable patients.'*
- 2.22 Mrs. X had been uncertain over what would happen to her at weekends if she was not able to return to Jersey, and she had been unaware whether any accommodation, or meals, would be available to her in Bath. Her efforts to get answers from the Department had intensified as the start date of the course – 28th August 2017 – had approached. She had called on numerous occasions and

had left voicemail messages, but nobody had contacted her, *'they just weren't even responding to the voicemail messages'*, she told the Board. She described the situation as everything *'unravelling'*. *'I couldn't get hold of anybody'*, she said. Ultimately, 28th August 2017 had come and gone, and Mrs. X had not travelled to Bath. She had received no correspondence from the Hospital or the Pain Clinic to ask what had happened.

- 2.23 In relation to her complaint, Mrs. X had contacted the Quality Improvement Practitioner on 13th September 2017 to highlight that, despite being told on 21st August 2017 that a response was being drafted (paragraph 2.19 referred), she had not received a letter. The Quality Improvement Practitioner had sought an update, and on 5th October 2017, the Chief Nurse had written to Mrs. X, *'... the panel has asked me to source additional information in relation to your complaint and this is taking me some time. I apologise for the delay this has caused. I am on leave at the end of this week for two weeks and I am very sorry that I will not be able to get a full response out to you before I go on leave'*. On 9th November 2017, in response to an electronic mail message from Mrs. X, the Quality Improvement Practitioner had written, *'I have made contact with the chief nurse who is sincerely sorry about the delay in your response. Unfortunately she has only just come back from [...] leave which has impacted on finalising your response'*. Later that same month she had again written, *'I am very sorry about this ongoing delay as appreciate it must be very frustrating for you. Unfortunately I do not have a date of when you should expect a reply. I understand that it is currently being reviewed and a response being put together.'*
- 2.24 In December 2017, Mrs. X had received a letter from Bath to inform her that she had been removed from their waiting list. She had forwarded this to the Quality Improvement Practitioner, who had responded, *'I have been informed that a consultant has been requested to review your notes in line with the complaint. I am trying to get a timeframe for you as when this should be completed. I am extremely sorry about the time this is taking. Also due to the time of year and annual leave, I am unsure as to when I will be able to get you a further update.'*
- 2.25 On 28th December 2017, the Quality Improvement Practitioner had again apologised for the delay and had informed Mrs. X that a management meeting had been arranged for the 8th January 2018 to discuss her complaint. A week later, Mrs. X had requested feedback from the management meeting, but had not received a response. She had believed that the meeting had been to discuss the outcomes of the investigation by Guernsey (referenced in paragraph 2.19 above). However, at the end of January 2018, Mrs. X had received a letter from the Chief Nurse, which had offered to send her complaint to Guernsey.
- 2.26 It had subsequently emerged that the Guernsey Health and Social Care Department had believed there to be a conflict of interest, so the Health and Community Services Department had commissioned a United Kingdom investigator, Ms. S. Calthorpe, to undertake the work. Ms. Calthorpe's report had been published in April 2018 and had stated, *'This report finds [Mrs. X's] complaint upheld as a result of this investigation. Her experience during this process is unacceptable and HSSD must ensure lessons are learnt so this does not happen again.'* The report had been highly critical of the way in which the

Health and Community Services Department had managed Mrs. X's complaint and administered its complaints process. Amongst the recommendations made by Ms. Calthorpe was that it was '*essential that HSSD contacts [Mrs. X] at the very earliest opportunity to (a) apologise for the events listed in this report and (b) resolve her long-standing issues.*'.

- 2.27 Mrs. X informed the Board that when she had seen the report by Ms. Calthorpe she had been surprised. She had anticipated that her complaint would be investigated but, in fact, the report had only covered the procedure followed by the Health and Community Services Department in handling her complaint, because Ms. Calthorpe was not a clinician, so could not comment on the actions of the Consultant in Anaesthetics and Pain Medicine. Mrs. X had communicated directly with Ms. Calthorpe, who had indicated that she had only been employed to investigate the complaints procedure. Whilst Mrs. X was pleased with the findings in Ms. Calthorpe's report, she stated that she would have liked someone to have sat down with her, apologised for the breakdown in communications, and offered to copy her in to a new letter to Bath, but in her opinion there had been no interest in doing this.
- 2.28 The Chief Nurse had arranged for Mrs. X to meet with the Group Managing Director on 27th April 2018. During that meeting, Ms. Calthorpe's report had been discussed, in addition to the complaints procedure and a possible way forward. Mrs. X informed the Board that the Group Managing Director had suggested that if she had a complaint about the Hospital, she should engage lawyers to sue the Department. Mrs. X had expressed the wish to '*walk away from it and try to take back control of [her] life rather than waiting for anyone*' because she wanted '*an end to all of this*'. On the basis that the Health and Community Services Department had previously agreed to fund the programme in Bath, Mrs. X had mooted the possibility of the Department giving her the equivalent funds to source her own treatment as soon as possible, because there had been no plan in place for her at that juncture to access treatment in Bath. Mrs. X notified the Board that she had not entered the meeting with that plan in her mind, but that it had evolved during the conversation. She had been aware of the cost of sending her to Bath, because she had been told during previous discussions with the Royal National Hospital for Rheumatic Diseases. The Group Managing Director had told Mrs. X that he was unable to make that decision, but would '*speak to them upstairs*' and revert by 4th May 2018. Mrs. X informed the Board that during the meeting with the Group Managing Director, he had not apologised to her, or shown any concern or responsibility for her welfare. Despite the assurances that he would contact her by 4th May 2018, the Group Managing Director had not had any further correspondence with Mrs. X.
- 2.29 Mrs. X had subsequently been invited to attend an outpatient appointment on 30th July 2018 with the Consultant in Anaesthetics and Pain Medicine. On the basis that she had previously complained about the latter's delays in referring her to Bath, she had been '*wary*' of attending an appointment with him whilst her complaint had still been open, so had been accompanied by the Divisional Lead, Theatre and Anaesthetics, who had offered her services. Mrs. X informed the Board that she had not been sure what to expect at the appointment, and had not even been certain whether she was still considered a patient of the Pain Clinic at that juncture; however, the covering letter inviting her had expressed

the wish to re-engage with her, notwithstanding that her complaint had not been finalised. On attending the appointment, the Consultant in Anaesthetics and Pain Medicine had informed Mrs. X that he had only seen a few pages of Ms. Calthorpe's report, which Mrs. X had found strange. Given that he had booked an appointment with her, she would have expected him to have read the whole document. The possibility of attending Bath had been discussed at this meeting, and Mrs. X had been offered the opportunity to choose suitable dates for attending the assessment and the programme. She had reminded the Consultant in Anaesthetics and Pain Medicine that she would have no control over the dates offered by Bath because she was not a private patient, and reiterated that she could not afford to travel. There had been no definitive plan put to her in respect of her travel, and she found it unusual that the Health and Community Services Department expected her to commit to Bath when they had shown her no commitment. In her written submission, Mrs. X indicated '*I was unsure at this stage of why I had been offered this appointment as it was clear no work had been done by clinicians or senior management team.*'

- 2.30 Mrs. X had left the meeting in the belief that the Consultant in Anaesthetics and Pain Medicine or Divisional Lead, Theatre and Anaesthetics would liaise with the Group Managing Director to discuss with him the possibility of her receiving a sum of money in order to organise her own treatment, and that she would be informed of the decision within a week – 6th August 2018 – but this had not happened. She had not heard substantively from the Health and Community Services Department until she had been sent a letter, dated 5th September 2018, from the Group Managing Director.
- 2.31 In her written submission, Mrs. X highlighted a number of inaccuracies and issues of concern contained within the 5th September 2018 letter, *inter alia* the misspelling of her name and reference to her having pain in her back, from which she had never suffered. Moreover, it had referred to the Department not being '*able to reach a solution to [her] satisfaction through the Health and Community Services complaints procedure*', even though Mrs. X's complaint remained open and no solution had been proposed. The letter had also referenced Mrs. X declining to engage as a candidate for the pain management programme within the local Pain Clinic, or at the Bath Clinic. Mrs. X contended that she had not declined to engage with these programmes: the waiting list for Pain Management Services locally was 12 months, and she had informed the Health and Community Services Department on numerous occasions that she could not afford to attend Bath Pain Management Services. The pain treatment programme on offer in Jersey was not the equivalent of that provided by Bath, which was a more intensive treatment programme.
- 2.32 The letter had continued, '*If you would be prepared to settle the dispute with Health and Community Services, then we would be prepared to recompense you the value of the treatment that would otherwise be provided to you as a public patient of the Bath Clinic.*'. Mrs. X informed the Board that she had never considered herself to be in dispute with the Department, or the Travel Office, albeit she was of the view that the conversations that she had had with those bodies had been policy-focused, rather than customer-focused. She felt that the Travel Office stuck rigorously to the policy, which '*did not work in the real world where people are struggling.*'. Moreover, she did not believe that the amount of money proposed as recompense was accurate, because it would only

have covered the cost of the programme in Bath, not the travel thereto. As a consequence, if she had decided to access alternative treatment in the United Kingdom, she would not have been able to afford the flights.

- 2.33 In the penultimate paragraph of the letter, the Group Managing Director had written, *'As you have chosen to arrange your own medical treatment in relation to your knee, shoulder and back (sic), Health and Community Services accepts no liability for any injury, loss or breach as a direct or indirect result of the treatment. Once you have agreed to this arrangement, as you have requested to make your own arrangements for pain management treatment, the Pain Management Clinic at Jersey General Hospital, and the employees therein, will no longer be responsible for your clinical care.'* Mrs. X took particular exception to this paragraph, and queried how the Health and Community Services Department could decline, or refuse, to care for her in the future.
- 2.34 In offering Mrs. X the equivalent sum of money to the Bath treatment, the Group Managing Director had indicated that it should not be put to any other use than the treatment plan that she decided to arrange, but she queried how this could be managed, as there was no requirement within the letter for her to be accountable therefor.
- 2.35 On 14th September 2018, Mrs. X had been contacted by the Divisional Lead, Theatre and Anaesthetics, to enquire whether she had signed the letter from the Group Managing Director, and informing her that she would then receive a cheque and *'that would be the end of the matter'*. Mrs. X had responded that the letter had contained many inaccuracies and discrepancies and did not contain a deadline. She needed time to consider the implications and did not wish to rush the decision. Despite trying to end the telephone conversation, the Divisional Lead, Theatre and Anaesthetics had persisted. Mrs. X described how the phone call had made her feel *'bullied into signing'* and had left her *'very shaken and intimidated'*.
- 2.36 The Board asked Mrs. X if she would travel to Bath for treatment if there was the option for her to return to the Island each weekend. She indicated that she did not honestly know, because she had lost all faith and trust in the Health and Community Services Department. Moreover, she was concerned that the referral, which had been made to Bath by the Consultant in Anaesthetics and Pain Medicine, had contained so many inaccuracies, that she could not be certain that she had been offered the correct course of treatment.
- 2.37 Mrs. X notified the Board that her General Practitioner prescribed her opioids and having got her pain under more control, she wished to reduce the level of these. However, the Health and Community Services Department had not offered her any alternative treatment and a second opinion had not been proposed. In her submission she had written, *'At no time during this saga was I ever offered any kind of assessment / therapy or care to enable me to get on with my life ... Even though I know that I am certainly no better and actually worse off in some way than I was back in October 2016, I'm also concerned now that the delay in treatment / care will have impacted on my ability to respond to any treatment offered as swiftly as I would have had it been in place two years ago. My greatest fear now is that I am stuck with this constant pain even though I take opiate based painkillers daily...'* Mrs. X was asked by the

Board whether she was at the stage where, in her view, it was preferable to have no treatment, rather than some treatment. She responded, *'you get to that stage of just getting on each day as it comes, without building up your hopes ... you prefer just to run very low, at the bottom, rather than having peaks of hope and the carrot being dangled in front of you and then whipped away. I don't want to be like this.'*

3. Summary of the case of the Health and Community Services Department

- 3.1 Professor J. McInerney, the Acting Group Medical Director (Hospitals), Health and Community Services Department, opened by offering Mrs. X a complete and unreserved apology for the way in which her complaint had been handled. Having read through her submission, he described her experience as *'substandard and unacceptable'*. As the newly appointed Medical Director, he indicated that it was his intention to ensure that it did not happen to any other patient, and in relation to the administration surrounding Mrs. X and her complaint, he acknowledged that communication with her could have been better at some stages.
- 3.2 With regard to the perceived delay by the Consultant in Anaesthetics and Pain Medicine in referring Mrs. X to the Royal National Hospital for Rheumatic Diseases in Bath, Professor McInerney stated that the letter, dated 24th August 2016, which had sought *'advice and opinion'*, was in fact a referral letter. He indicated that he had been a Doctor for 30 years and received similarly worded letters every day in the Emergency Department. In those cases, he was clear that he would need to see the patient, and he had no doubt that Bath would have been of the same view. He made reference to Bath's triage referral form, which was endorsed to the effect that a 'referral' had been made on 16th September 2016 from Jersey. However, Professor McInerney understood why a non-medical person would consider the letter to have been written 'loosely' in terms of linguistics. He apologised if the language had not been *'concrete'*.
- 3.3 Professor McInerney indicated that there had been a great many changes in the Health and Community Services Department, both in terms of the structure and individuals leaving. However, he accepted that *'in every instance we have failed to be exact in our response'* to electronic mail messages and letters. He informed the Board that the Department had taken on board the feedback arising from the report by Ms. Calthorpe and had learnt valuable lessons. It was improving the way in which it communicated, and hoped to establish a Patient Advice and Liaison Service which would ensure that each patient was dealt with as an individual and would be provided with confidential advice, support and information on health-related matters, to ensure that the patient's voice was heard. Moreover, it would be case-managing every complaint.
- 3.4 Professor McInerney made reference to a recent *'scathing report'* which had been written by the Comptroller and Auditor General in relation to governance arrangements for the Health and Community Services Department. *'We accept that we could do much better'*, he conceded.

- 3.5 On a separate note, Professor McInerney informed the Board that when a case was handed over to another team in an organisation of which Jersey was not part, *viz* the National Health Service (“NHS”), there was the expectation that that team would take some responsibility for the communication with the patient. He indicated that he did not know how to improve communication in the light of the current constraints that existed within the NHS, which were greater than in Jersey. When challenged that it must be a regular occurrence for Jersey to send patients to the United Kingdom, he stated that although the Health and Community Services Department had very close links with the hospitals which provided treatment for patients with cancer, he had been unaware that a referral service to the Royal National Hospital for Rheumatic Diseases existed.
- 3.6 Professor McInerney indicated that there had been a lengthy exchange of electronic mail correspondence on the subject of whether Mrs. X was completely engaged with her treatment plan. Although not an expert in this field, he stated that there were a number of issues linked to chronic pain, such as the physical aspects and the psycho-social aspects, which meant that the management of the pain comprised a suite of interventions, including medication, surgery and behavioural therapy. He suggested that these had been offered on-Island to Mrs. X, but that the offer had not been accepted, which, Mrs. X had contended, was because the treatment would not be available for at least a year. Professor McInerney informed the Board that there were 10,000 people in the Island with chronic pain and only 2 pain specialists, so there would always be delays.
- 3.7 It was queried whether there should be liaison between the patient, the relevant consultant and the Travel Office before considering an offer of tertiary treatment to the former, in order to discuss any limitations that might impinge thereon. Professor McInerney indicated that the Travel Office fell under the remit of Clinical Support Services, whereas the consultants were clinicians. The consultant would make a referral in order to get funding, and this would only be offered for treatment that was not available in Jersey. Once agreement had been obtained to finance the treatment off-Island, the Travel Office would become involved. In the case of referrals for cancer treatment, it was a ‘*well-trodden path*’, but Professor McInerney opined that the Pain Team might not have had to make many referrals. If the off-Island treatment was outside the ‘*normal referral pathway*’, it would be discussed at a weekly Directors’ meeting, because they had to work within a budget and the referral would need to be justified.
- 3.8 Professor McInerney informed the Board that he had only been in his current post for 6 weeks, so had not yet had the opportunity to discuss referrals from the Pain Team. Accordingly, he was unaware of whether or not a referral to the Royal National Hospital for Rheumatic Diseases in Bath was outside the normal referral pathway. Mrs. X questioned why Professor McInerney was in attendance at the hearing, having only recently taken up his position, rather than the Chief Nurse, who had prepared the submission for the Health and Community Services Department and had been involved in correspondence with Mrs. X. He indicated that he had been asked to attend because responsibility for clinical governance, which was to be renamed ‘quality and

safety' had transferred from the portfolio of the Chief Nurse to the Group Medical Director, and that was now his role.

- 3.9 When asked what should have happened after Mrs. X had raised concerns over not being able to afford to travel to Bath, Professor McInerney stated that the clinicians' prime responsibility was in relation to the clinical care, and to ensure that the funding was in place to send the patient for tertiary treatment. The Travel Office would have had reference to the travel policy, which, he indicated, was the Health and Social Services Department's policy, which would have been ratified by the Minister for Health and Social Services, and which the clinicians had no power to alter. He accepted that the policy was currently very prescriptive in relation to what costs would be met, which people could be accompanied when travelling and onward travel; and he acknowledged that it should be reviewed to identify any ambiguity which required clarification. He suggested that something should perhaps be written into the policy to cover extenuating circumstances. On a personal level, he agreed that it should be more customer-friendly and considerate of individuals' circumstances, but indicated that it would be for the Minister and the Medical Executive to decide what could be afforded, was fair to everyone, and could work in practice, and he emphasised that any increase in funding would need to be weighed up against other budgetary constraints.
- 3.10 It was questioned why the money offered to Mrs. X had not included any travel costs and was simply the equivalent of the cost of the Bath programme. Professor McInerney stated that he had been informed that it had been meant to be for payment of an on-Island package because, due to extenuating circumstances, Mrs. X was unable to leave the Island. Mrs. X countered that she had never indicated that she could not go off-Island, simply that she could not be away for the whole duration of the programme. He agreed to revisit the level of the offer if it was to be for off-Island treatment.
- 3.11 The Board queried whether there was flexibility in the travel policy, or whether an arbitrary decision had been made to go outside the policy when Mrs. X had been offered one weekend visit home during the Bath programme and, subsequently, every weekend. Professor McInerney conceded that the Department had already exceeded its own policy. He opined that in order for this to have been suggested, the Divisional Lead would have had to have the decision endorsed at a very high level. He described the offer of money to Mrs. X in order for her to source her own treatment as '*a precedent ... which has repercussions and ramifications for all citizens ... we have opened up a Pandora's box*'. He emphasised that, as an Executive, he was required to operate within a budget. A change to the travel policy would need to be agreed at the top level and funding would need to be found.
- 3.12 On the basis that the Health and Community Services Department had already departed from its own policy by offering to fund Mrs. X's return to Jersey on one occasion and then on every weekend, the Board queried why the Department had not suggested this at the outset of the discussions with her, with a view to achieving a resolution at an early juncture. Professor McInerney stated that the Department had sought to be empathetic, but was now at risk that other individuals might complain that they had not been dealt with in a similar

fashion. He conceded that the Department had been flexible with its policy too late in the day in relation to Mrs. X.

- 3.13 He suggested that the Travel Office was perhaps situated in the wrong department, as it was impossible for staff in Health and Community Services to be aware of every facet of individuals' lives, such as the family dynamic and whether they were in receipt of Income Support. He suggested that it might be better located within the Social Security Department, which would have a more holistic view. In relation to the suggestion by the Consultant in Anaesthetics and Pain Medicine that a charitable organisation might assist Mrs. X, Professor McInerney opined that it had not been intended to be pejorative, because there was a significant charitable culture in Jersey, and patient travel was not means-tested. He accepted that Mrs. X had found it very difficult to navigate the travel policy, and acknowledged that it was not '*fit for purpose*' because it was the subject of discussion by the Board.
- 3.14 In respect of the concern that Mrs. X had expressed (paragraph 2.37) that the delay in her receiving treatment would have adversely affected her ability to respond thereto as rapidly as she would have, if it had it been in place 2 years ago, Professor McInerney opined that, whilst he was not an expert, he understood that there was little difference in the ability of a patient to respond to treatment between the first 12 months and later on.
- 3.15 Professor McInerney suggested that part of the reason why the relationship between Mrs. X and the Health and Community Services Department was '*fractious*' was because although the Department had communicated with her, he queried the effectiveness of those communications. He opined that Mrs. X was a very precise person, whereas many clinicians were not. As a result, when they had communicated with her, or provided notes of a meeting, she had amended what they had written. He suggested that this could be resolved by Mrs. X recording her own notes of meetings and requesting the relevant clinician to countersign them as an accurate record. He expressed the wish to improve the relationship between the Department and Mrs. X, and extended sincere apologies to her on both his and the Department's behalf. He indicated that he would do his best to achieve a resolution. '*If I don't succeed, maybe I should stand down*', he added.
- 3.16 Professor McInerney apologised to Mrs. X if the letter, dated 5th September 2018, that she had received from the Group Managing Director, appeared to imply (see paragraph 2.33 above) that the Health and Community Services Department would decline to treat her for other clinical problems. He reassured her that that was not the case, and indicated that he wished to find a solution for her. He suggested that he would discuss with his senior colleagues at the Department either funding a package for her to travel to Bath and return every weekend, or adding an additional sum to the offer that had already been made, to enable Mrs. X to arrange her own treatment, being the equivalent of the cost of travel. He offered to put this proposal in writing to Mrs. X and then to meet with her, if she wished, in order to discuss it further.
- 3.17 The Board suggested that the Chairman and Deputy Greffier should act as the liaison between Professor McInerney and Mrs. X, and requested the former to present a possible solution for her consideration within 2 weeks of the hearing.

4. Closing remarks by the Chairman

- 4.1 The Chairman thanked both parties for their time and contributions.
- 4.2 The Chairman indicated that a report of the hearing would be prepared in due course, which would be circulated to both parties for their input on the factual content. However, this would not be done until such time as the 2 weeks, referenced in paragraph 3.17 above, had elapsed, because if the matter could be resolved to Mrs. X's satisfaction, the report would record that. The findings of the Board would subsequently be appended thereto.

5. The Board's findings

- 5.1 The Board considered whether Mrs. X's complaint could be upheld on any of the grounds outlined in Article 9 of the Administrative Decisions (Review) (Jersey) Law 1982, as having been –
- (a) contrary to law;
 - (b) unjust, oppressive or improperly discriminatory, or was in accordance with a provision of any enactment or practice which is or might be unjust, oppressive or improperly discriminatory;
 - (c) based wholly or partly on a mistake of law or fact;
 - (d) could not have been made by a reasonable body of persons after proper consideration or all the facts; or
 - (e) contrary to the generally accepted principles of natural justice.
- 5.2 The Board upholds Mrs. X's complaint on the grounds of (d) and (e) above.
- 5.3 Mrs. X made it clear to the Department myriad times that her financial situation meant that she was not in a position to meet any expenses incurred if she was sent to the United Kingdom in order to receive treatment. However, the Board believes that the Department either wilfully ignored what Mrs. X had told it, or its record-keeping was so poor that the information was not recorded and retained. During Mrs. X's dealings with the Department, employees continually cited the Department's travel policy to her, in which she was well-versed, and failed to deal with her in a flexible or empathetic way, which took into account her financial difficulties.
- 5.4 The Board is very disappointed to note the attitude of some of the staff in the Department. One employee in the Travel Office had been particularly dismissive when Mrs. X had raised concerns over the cost of rail travel, and had told her to borrow money. Moreover, Ms. Calthorpe, an independent United Kingdom investigator, who had upheld Mrs. X's complaint, had been extremely critical of the Department. She had written in her report that electronic mail exchanges between staff about Mrs. X had been inappropriate in language, style

and tone. The Board shares Ms. Calthorpe's view that '*the level of professionalism that should be expected from staff with a duty of care for vulnerable patients*' was not met. This is not the attitude that should be expected from staff working for the principal care provider in the Island.

- 5.5 On many occasions, Mrs. X was informed, or was led to believe, that she would be contacted by the Department, and was continuously let down. She left messages which either went unanswered, or were not responded to in a prompt, or satisfactory way. Some of the information which she was given was unclear and confusing. In the Board's view this is unacceptable. It is of vital importance that people under the care of the Department should be communicated with in a timely and professional manner. The very fact that an individual is requiring treatment from the Department is likely to mean that they will be vulnerable, to a greater, or lesser extent. As a consequence, they require reassurance, which can be provided by the knowledge that when they make contact with the Department, they will receive a prompt and clear response.
- 5.6 Mrs. X was not afforded this reassurance and was left struggling to find out information for herself. Her efforts to get answers from the Department, particularly in August 2017, were in vain. She found herself unable to speak to anybody, despite phoning on numerous occasions and leaving voicemail messages. The Board is very concerned that Mrs. X was dealt with in this way. The Department's behaviour at this time was at best extremely discourteous, and at worst cruel and potentially negligent. The Board hopes that the Department will put measures in place to ensure that no other patient is ever ignored in this way again.
- 5.7 The Board understands that since the hearing, the Department has provided Mrs. X with funding, equivalent to the cost of the treatment in Bath and associated travel and accommodation costs, to enable her to source her own treatment. This is what Mrs. X had requested, but the Board is disappointed that the Department acted in such a way that Mrs. X lost all trust in it and felt that she had no alternative but to arrange her own treatment. Whilst a cash payment may have provided some sort of resolution to Mrs. X's seemingly interminable problem, the Board is surprised and concerned that the Department should, to all intents and purposes, 'buy off' the problem which was of its own making. A Jersey resident is entitled to believe that the local health services will be able to identify and deliver in a reasonably timely manner an appropriate treatment programme, which may necessarily include the provision of treatment outside the Island. The Board is concerned that giving a patient a cash amount and effectively washing their hands of the patient's particular condition creates a disturbing precedent. Is a patient now entitled to demand from the Department a cash payment to enable them to source their own treatment?
- 5.8 Whilst the Board is pleased that, at the hearing, Professor McInerney offered Mrs. X a complete and unreserved apology for the way in which her complaint had been handled, and described her experiences with the Department as '*substandard and unacceptable*', this in no way compensates Mrs. X for the appalling way in which she was treated by the Department, which has had an adverse effect on her life.

- 5.9 The Department was unable to explain to the Board why the Hospital in Bath had been chosen as the U.K. care provider for Mrs. X. Professor McInerney had indicated to the Board that there appeared to be no service level agreement in place between the Department and the Bath Hospital, which may explain why the details of the practical arrangements for her treatment in Bath could not be (and more pertinently were not) explained to her, and why her perfectly reasonable questions went unanswered.
- 5.10 The Board recommends that the Department should carry out a review of those third party providers to whom patients may be referred for treatment outside the Island, in order to ensure that there is a clear understanding within the Department of who is responsible for what, in terms of practical arrangements and costs, in particular for travel and board and lodging costs. The Board further recommends most strongly that before a patient is referred for treatment outside the Island, the Department is in a position to set out in detail to the patient each step involved in the provision of the patient’s treatment out of the Island, in order that any particular difficulties that the patient may identify with such provision can be addressed at the earliest opportunity, or failing that, an alternative method of treatment considered. Practical problems with the provision of treatment out of the Island, be they financial or otherwise, need to be identified and addressed as soon as possible after the decision to recommend treatment out of the Island has been made. Had that happened in this case, months of inaction could have been avoided.
- 5.11 The Board further recommends that the Minister for Health and Social Services amends the travel policy to allow for cases such as Mrs. X, where patients are not in a financial position to meet expenses from their own pocket and then claim those expenses back from the Department.
- 5.12 The Board further recommends that staff working for the Department should be reminded of the importance of responding to patients in a timely and professional way, and of providing accurate information to them. It also wishes to emphasise, again, the importance of accurate record-keeping, to obviate the need for patients to continually have to provide the same information.
- 5.13 The Board requests a response from the Minister for Health and Social Services within 2 calendar months of the publication of its Report.

Signed and dated by –

G. Crill, Chairman Dated:

J. Eden Dated:

D. Greenwood Dated: