

STATES OF JERSEY



OVERDALE: THE CLOSURE OF LEOVILLE AND MCKINSTRY WARDS (S.R.1/2007) – RESPONSE OF THE MINISTER FOR HEALTH AND SOCIAL SERVICES

**Presented to the States on 17th July 2007
by the Minister for Health and Social Services**

STATES GREFFE

OVERDALE: THE CLOSURE OF LEOVILLE AND MCKINSTRY WARDS (S.R.1/2007) – RESPONSE OF THE MINISTER FOR HEALTH AND SOCIAL SERVICES

This document is tabled in response to the Education and Home Affairs Scrutiny Sub-Panel Report ‘Overdale: The Closure of Leoville and McKinstry Wards’.

When considering the Report and preparing this response, three simple questions have been asked –

1. Does the Report of the Sub-Panel *accurately* inform the public or does it *mislead* the public?
2. Does the Report of the Sub-Panel contain any novel policy suggestions, insights or constructive proposals that could lead to an improvement of the service, thus justifying the amount of time and tax-payers money that went into the exercise?
3. Was this particular study a useful undertaking or could the time and resources involved been more profitably directed towards a more strategic study and appraisal of continuing care?

The Sub-Panel’s Report was produced during the first year of Ministerial government in Jersey; the old ‘Committee system’ of government having been replaced with a Council of Ministers as an executive, and a number of Scrutiny Panels to monitor and evaluate the work of that executive.

Responses to Scrutiny Reports would not usually, perhaps, be expected to be of this length. However, as so many things went so badly wrong with this particular Scrutiny exercise, the time has been taken to produce a detailed and robust point-by-point response to each of the Sub-Panel’s Recommendations and Key Findings in the hope that a greater degree of professionalism and maturity can be brought to future studies than was exhibited in this particular exercise.

Some members involved in the Scrutiny function have, both publicly and privately, expressed views to the effect that their work is not taken seriously by the Executive; claimed that members of the Council of Ministers do not have much idea about how Scrutiny works; have accused Ministers of not being ready to accept valid criticism from of Scrutiny Panels, and have, quite remarkably, expressed the view that the Scrutiny function should, itself, be immune from scrutiny.

If the Report by this Sub-Panel is a representative example of the “standards” of Scrutiny, we can hardly be surprised if the Scrutiny function is regarded as a largely pointless irrelevance by many people. Some Panels – far from being above scrutiny themselves – clearly require a far closer examination of their own standards.

It is, perhaps, to be expected that mistakes will be made during a period when all involved are developing their experience as the new system of government settles into place. It is, though, very difficult to avoid the conclusion that certain members of this Sub-Panel embarked upon this particular exercise with a pre-determined political agenda.

However, by substantial margin, the single most serious failing of the Sub-Panel’s Report is that it actively misleads the public. It does so in this way –

A lay-person, with no particular prior knowledge of the subject, may pick up the Report and read its 20 Recommendations.

The great majority of the 20 Recommendations will appear to be, as they indeed are, no more than basic requirements, and fundamental standards of performance that H&SS should be expected to achieve as a minimum.

The lay-person, having read the 20 Recommendations, makes the entirely reasonable assumption that these Recommendations have been produced because H&SS was *not* meeting these standards nor using these policies at present – and therefore needed the direction of the 20 Recommendations in order to correct a seriously defective service.

Thus the lay reader is left with the impression that a highly important sector of health and social care is failing in many important areas of its responsibility.

This is the impression imparted to a lay person when reading the Report. Is this impression accurate? No, it is not. 18 of the 20 Recommendations are simply plagiarisms of unambiguous, pre-existing H&SS policies, performance standards, or well-documented developmental commitments.

Whilst this is the most serious defect in the document, it can be concluded that the Report of the Sub-Panel reflects and exhibits a large number of profound deficiencies. For example –

Grossly inadequate scoping study.

Failure to undertake initial discussions with H&SS prior to defining the enquiry, thus compounding the deficiency of the scoping study.

Lost opportunity to make a useful contribution to the subject of continuing care when considered as a strategic issue for the Island.

Poor evidence selection; the Sub-Panel simply asking for everything it thought of, thus burdening itself with a mass of evidence, much of which it clearly either didn't read or didn't understand.

Conversely, a failure to examine obvious pieces of evidence, given the Sub-Panel's clear areas of interest; for example the relevant States Business Plan.

A surprising failure to call key relevant witnesses, given the Sub-Panel's obvious areas of interest, for example the H&SS Director of Estates.

Failure to develop an understanding of much of the evidence put before it.

Failure to bring into its consideration relevant States of Jersey laws and policies; for example, the Public Finances Law and the Codes of Direction issued by the Treasury.

Throughout its study, proceeding in an apparent state of ignorance of a key States of Jersey policy, namely the Code of Practice on Public Access to Official Information.

Failure to record some sessions of oral evidence given by witnesses, thus retaining no permanent record of the evidence, but nevertheless referencing such unrecorded assertions in its final Report.

Failure to impart to witnesses the importance of understanding that the Scrutiny process is an *evidence*-based process – and *not* something akin to a radio phone-in, to which witnesses may expound their personal views and beliefs – quite regardless of factual basis or accuracy.

Producing a number of Recommendations and Key Findings which are wrong.

Producing Recommendations and Key Findings, a majority of which were, and are, existing H&SS policy, yet misleading the public into believing they were some startling new insights discovered by the Sub-Panel.

Producing a Report, the thrust of which could not, in fact, find real *evidence-based* grounds for disagreeing with H&SS policy and practice, yet formulating and presenting the Report in a manner that would give a lay audience the impression of broad criticism of the Department and its actions.

Flatly refusing a request from H&SS for sight of the Recommendations and Key Findings *prior* to publication, thus proceeding to publish a number of gross errors; an outcome that may have been avoided had the Sub-Panel received comments from the Department.

Compounding the misleading presentation of the Report when members of the Sub-Panel held a press-conference at which certain members made a number of utterly unfounded, scurrilous and baseless assertions.

To explain these observations in detail, this response reproduces all of the Sub-Panel's Recommendations and Key Findings below, with a response to each one of them.

RESPONSE TO THE SUB-PANEL'S RECOMMENDATIONS

1. The Department should ensure that two-way communication with families is constantly maintained until the end of the closure and transfer process. (7.3)

This is a statement of existing H&SS policy.

Two-way communication *has* been maintained with clients and next-of-kin throughout the process. It will, in fact, rather obviously be maintained *beyond* the transfer as all clients will be receiving on-going reviews by H&SS clinical staff as part of their care package in their new placements.

2. Thorough consultation with staff should occur at each stage of the transfer process in order to counter the potential effect of the rumour-mill. (7.4.2)

This is a statement of existing H&SS policy.

All reasonable consultation with staff has occurred at each stage of the transfer process. (See Appendix 1) Such communication will continue to occur as and when new relevant information becomes available. Obviously, it is not always possible to know months in advance every precise detail of the transfer process and staff re-deployments. H&SS always relays the facts to staff as and when those facts become known.

Such misunderstandings between staff and Department as may have occurred could be ascribed, in no small measure, to grossly inaccurate assertions made by some politicians to the media.

The prevalence of rumours and ill-founded assertions is a feature of political discourse which Scrutiny – with a supposed concentration on “evidence” – was intended to counter – rather than be merely an extension of the same culture.

3. To avoid the minor problems that occurred, in future, issues such as the placement process and available (re)training should be clarified with staff at an early stage. (7.4.5)

This is a statement of existing H&SS policy.

There can be few people employed in H&SS who are unaware of its award-winning education and training programme. Continuing professional development is a ‘given’ in modern health care organisations. It is little short of absurd to suggest that the Department would place staff in positions for which they were not trained. ‘Clarification’ with staff will occur when and as information becomes available. As stated above, it is not possible to know in advance every factor relevant to the timing of transfers. In a task as complex and substantial as this, some minor problems will inevitably occur. To see the impossibility of achieving perfection, we need only consider the many flaws in the work of the Sub-Panel.

4. Guidelines should be developed and agreed for when the Minister makes ‘in principle’ decisions in order that sufficient audit trails can be established after the event. (8.1)

The Sub-Panel fail to provide evidence that such a policy is necessary.

The Sub-Panel fail to explain the practical boundaries of such a policy.

Although the Sub-Panel focuses upon the in-principle decision, it fails to explain, what, precisely, are its concerns in this regard. No attempt is made to put any substantive argument for there being a problem with the in-principle decision. To develop a process of recording every in-principle decision would introduce unnecessary bureaucracy and expense of the kind Ministerial government was designed to reduce.

It should be noted that, Officers of the Department knew full well the significance and caveats attached to the in-principle decision. The in-principle decision allowed Officers to proceed with the scoping and development of the project, culminating in a subsequent Ministerial Decision to enter into a contractual arrangement with a private health care provider.

The recorded Ministerial Decision is the decision that matters. No substantial actions are taken or binding agreements made without such a recorded decision.

The Sub-Panel advocate a policy of establishing a record of in-principle decisions, yet the Sub-Panel itself acknowledges that it is unfeasible to record *every* such decision. Where, then, are the boundaries to be drawn? How is it to be decided in each and every case whether a record is needed? Under such a policy, won't Ministers simply record everything: perhaps many dozens of minor decisions each week – just to be on the safe side? What would such a policy cost in man-hours? Is such a policy actually necessary? What would it achieve?

The Sub-Panel fail to make a case.

5. The Department should establish and follow clear structural maintenance plans for its sites to ensure that situations akin to those found on Leoville and McKinstry Wards are avoided in future. (8.2.1)

This is a statement of existing H&SS policy.

There *are* regular pre-planned maintenance schedules produced by Estates Management which cater for the day-to-day maintenance of all plant and equipment in the buildings.

Additionally, there is responsive maintenance which is originated by the users of the building. This work addresses problems with the fabric of the building and any equipment failure. In an organisation as large and complex as H&SS there is a regular flow of notifications of maintenance issues to Estates Management. *Obviously*, responses have to be *prioritised* given the great variation in urgency of the requests.

There are improvements and other projects which are annually agreed following consultation with unit management and the approval of the Director of Estates.

All buildings are inspected at least annually, and in many cases, more frequently.

Leoville and McKinstry *were* maintained to an appropriate level. The Sub-Panel fails to adduce evidence to the contrary. Indeed, the Sub-Panel make assertions in the body of its Report that are actually irreconcilable with the evidence provided to them.

The inference of Recommendation 5, and other comments made by the Sub-Panel, is that the buildings in question *would* have been fit-for-purpose – that is housing people on a long-term

basis – if only proper maintenance had been carried out. It is difficult to regard this inference as anything other than a pre-formed political view that the Sub-Panel, or at least some of its members, was determined to assert notwithstanding the evidence to the contrary.

The detailed evidence provided by H&SS to the Sub-Panel included the costs of external works by contractors to the wards over the last 3 years (above £50,000) and a complete diary of every item of internal maintenance for 2006 by H&SS engineers, joiners, painters and decorators, etc. The Department also spent in the order of £291,000 on improvements to the buildings over the last 12 years.

The Sub-Panel either fails to understand – or wilfully ignores the fact – that the issues surrounding the closure of Leoville and McKinstry were ones of *design* and *obsolescence* – a lack of privacy, confidentiality and dignity for clients and their families. The decision to transfer clients from these buildings was made because of the clinical inappropriateness of people living in a hospital ward type environment – and *not* a decision made because of poor maintenance or neglect.

The buildings are simply obsolete *for the purpose of providing long-term nursing care*. That is the overriding reason for their closure – as is clear from any reasonable consideration of the evidence.

It should be noted that the Director for Estates for Health & Social Services was not asked to appear before the Sub-Panel to give any evidence at any stage. This can only be regarded as both surprising and deeply concerning, given the Sub-Panel was clearly determined to produce allegations of poor maintenance.

Given the Sub-Panel chose to make a major feature of such assertions in its Report, why should it not have spoken to *the key* senior officer who carries responsibility for building maintenance and development? Might the factual evidence of such a witness have stood in the way of the Sub-Panel's objectives?

6. The Minister should clarify the reason for the abandonment of development of the Belle Vue Residential Nursing Home and Day Care Centre and to where the capital funds from this project were allocated. (8.4)

This Recommendation is founded upon the Sub-Panel's failure to actually read the evidence available to it.

The reasons for the deletion of the Belle Vue nursing home project and the destination of the capital funds are perfectly clear on any reasonable or competent reading of the evidence.

The then Health and Social Services Committee considered its capital programme at a meeting on 4th March 2004. This is documented at 'Capital and Major Projects – Progress Report 1038/1/3/12'. The minute explains that the project had been suspended pending a fundamental review carried out in co-operation with the Treasury.

There was *further* re-ordering of the H&SS capital programme to enable the upgrading of the Central Sterile Supplies Department. Without a fully functioning CSSD, designed to meet modern standards, the hospital could not function. The re-structuring of the capital programme *also* made it possible to deliver the new Day Case Theatre. This revised capital programme was approved by the then Health and Social Services Committee at its meeting of 4th July 2004. (Minute: (Central Sterile Supplies Department Upgrade – Phase 1 1060/109(41))

In addition to the difficult prioritisation decisions being made by the H&SS Committee during this period, all Committee Presidents and the Corporate Management Board undertook a serious re-appraisal of the States capital programme in an effort to identify the funds needed to undertake the replacement of the Bellozanne incinerator.

Ultimately, the results of these exercises were manifested in the States Business Plan 2006-2010,

section 7.3 Capital Programme Summary, P.151/2005. *This document was debated and approved by the States.*

One might have expected any politician to pause for thought before making such serious imputations to the effect that money officially allocated for one purpose had – mysteriously – been diverted for some other use without due process or official sanction.

Instead we find that the Sub-Panel – notwithstanding the presence amongst its members of some familiar with H&SS – failing to recognise that the H&SS Committee of the day did, in fact, make the decision when discussing and re-structuring its capital programme.

Perhaps the most striking example of the Sub-Panel's ineptitude is to be found in the fact that the re-structured capital programme – *with the deletion of the Belle Vue project clearly adumbrated in it* – was actually published, debated by the States and approved by the assembly in the form of P.151/2005. Far from the secret and unauthorised shuffling of funds imputed by the Sub-Panel, the decision was ultimately made – in public debate – by no less an authority than the Island's legislature. The Sub-Panel, apparently not content with having inflicted such embarrassment upon itself, compounded the error when certain of its members proceeded to embellish such baseless assertions in media comment at the time of the Report's publication.

7. The Minister should clarify the use that will be made of Leoville and McKinstry Wards once all patients have been moved to the private sector. A clear, rolling plan should be developed for the wards' short, medium and long-term use. (9.2.1)

This is a statement of existing H&SS Policy.

The buildings will be utilised by the Pain Management Team, the Health and Social Services ICT project team (if movements elsewhere in Health and Social Services allows) and the Diabetes Service. In the medium term, they will also be used by the Physiotherapy Out-patients Services whilst the General Hospital Newgate Street extension is completed (proposed for 2012 – 2014). Eventually, the buildings will be demolished to make way for a future development that will meet the needs of H&SS at that time.

8. The land at Overdale should remain within States ownership for use by the Department. (9.2.2)

This is a statement of existing H&SS policy.

There has never been an intention to do otherwise. The Panel were *repeatedly* told this. Why does the Recommendation fail to make this clear? Why is the opportunity totally missed to say something actually useful? For example, whilst acknowledging the fact that *H&SS* want to keep the site in health use, making a clear recommendation to the central States Property Services Department – which H&SS has no control over – that such sites must remain in public ownership for strategic reasons.

9. The decision for the Department to build a new nursing home should be made within the context of the Department's longer-term policy for care of the elderly. When a new home is built, lessons should be learnt from mistakes made during recent constructions (such as the Westmount Assessment and Rehabilitation Centre). (9.2.3)

This is a statement of existing H&SS policy.

The decision to build, or purchase private sector capacity, or use any such combination, will be made based upon the capacity plan for long-term care which is already under development.

If a new home is built, it will be developed as an evolution of existing long-term care facilities such as Sandybrook and the Limes. The WARC is an assessment and rehabilitation centre – *not* a

nursing home. It fulfils its intended purpose very successfully.

10. The Department should give high priority to the development of a clear policy for care of the elderly (that takes into account short, medium and long-term aims). (9.2.4)

This is a statement of existing H&SS policy.

The Department has developed a clear policy for the short, medium and long-term care of the elderly. Indeed, this is a key component of the forthcoming health and social care strategy.

11. The Department should maintain and enhance its relationship with Jersey Association of Carers Incorporated. (9.2.6)

This is a statement of existing H&SS policy.

This process has been underway for sometime and will continue to be built upon in future. H&SS has always recognised the importance of co-operating with independent organisations.

12. The Department should undertake a skills audit during the first half of 2008 to assess the longer-term impact the closure of Leoville and McKinstry Wards may have had on the skills base amongst its staff to which it has access. (9.2.7)

This is a statement of existing H&SS policy.

This work is already underway in 2007 and was instigated as part of the development of a sustainable hospital strategy. The skills of nursing staff are of great importance and will play an ever increasing role in the Island's health service. As already observed, continuing professional development is a 'given' in modern health organisations.

These facts were made plain to the Sub-Panel.

13. A protocol should be developed and agreed to cover the provision of 'confidential' information by Ministers to Scrutiny Panels to ensure that clear reasons are given for documents to remain confidential and that the decision to define information as confidential does not rest solely with Ministers. In cases of dispute, the Chief Minister and President of the Chairmen's Committee should be invited to arbitrate. (9.3.1)

This is a statement of existing States of Jersey and H&SS policy.

States Departments and their Ministers are *already* subject to the Code of Practice on Public Access to Official Information. This was adopted by the States on 20th July 1999 and amended on 8th June 2004.

This Code lists a range of information which is exempted from public disclosure, mainly for very good reasons. One type of information exempted is that which is commercially sensitive. In this case, the publishing of commercial information would have seriously undermined both the public interest and the legitimate position of those we were tendering with. In addition to the potential financial harm, the random disclosure of commercial information would seriously undermine the credibility of the States as a commercial partner.

The Code also describes an existing appeals process available to an applicant whose request for information has been rejected.

It must be noted that the commercial information at issue *was* supplied to the Sub-Panel, but with a requirement that its details remain confidential – entirely in accordance with States policy under the Code and to protect the public interest.

Contrary to assertions made by the Sub-Panel, and some of its individual members to the media, absolutely nothing whatsoever prevented the Sub-Panel from stating in its Report whether – upon consideration of the confidential commercial information – H&SS had made a good, indifferent or bad agreement in respect of the financial arrangements or value for money.

The assertions made by the Sub-Panel and certain of its members in respect of confidential information could be considered as deliberate attempts to mislead. In any event, the assertions are utterly baseless and founded upon a clear and startling ignorance of existing States of Jersey policy.

14. The Sub-Panel feels very strongly that, prior to such major decisions being taken, timely, robust and transparent financial appraisals should be undertaken. (9.3.1)

This is a statement of existing H&SS policy.

The financial details *were* considered with great care.

H&SS Department’s handling of the financial details met the requirements of the Public Finances Law and the Treasury Codes and guidelines.

It has to be noted that the Panel’s own external financial experts could not identify improvements upon the process carried out by H&SS.

Therefore this Recommendation of the Sub-Panel’s is not even supported by its own independent expert advisor, Alex Picot Ltd., where they stated: “*it advised that, overall, it was difficult to see which other methods could have been used to undertake the appraisal.*”

Upon what *evidence*, then, does the Sub-Panel make its assertion? Is the sub-text to the Sub-Panel’s claim that they, in fact, consider the Public Finances Law and Treasury guidance deficient in some way? If so, why did the Sub-Panel not produce evidence to this effect in its Report?

15. When negotiating contracts with the private sector, the Department should take a formalised and nuanced approach to evaluate the costs of nursing care in a given nursing care home. (9.3.2)

This is a statement of existing H&SS policy.

The type of care packages required and their cost will vary from client to client. The ability to meet such requirements will also vary from institution to institution. Such factors as: what it is each home has to offer; and the complexity of the clients’ needs, will affect the price. H&SS has always been aware of these facts and does, indeed, take a formalised and nuanced approach. It is nothing short of an absurdity to claim otherwise. It is inevitable that some institutions will, from time-to-time, be dissatisfied with H&SS placement decisions. How could it be otherwise if H&SS is to choose the best care for its clients, and to seek value for money?

The Treasury issues to all States Departments clear guidance regarding the negotiation of contracts with the private sector. H&SS has always followed such Codes and will continue to do so. Given that H&SS is fully compliant with Treasury requirements, if the Sub-Panel considered the Treasury guidance in some way deficient, the Sub-Panel should have studied the Public Finances Law and the Codes of Direction and should have discussed its concerns with the Treasury.

16. The Department should undertake a study, incorporating all parts of the private nursing care sector, to consider how a range of providers can be sustained in order that a situation of market dominance can be avoided.

This is a statement of existing H&SS policy.

The Department has studied the continuing care market for some years. Much work has already been undertaken to develop a capacity plan that deals with continuing care places in both the public, private and charitable sectors. The continuation of this work will be an important component in the forthcoming health and social care strategy.

The Sub-Panel fail to recognise that H&SS has a duty of care to its clients. Whilst the Department wants a diverse and competitive long-term care market, this though must not be achieved through an acceptance of lower standards. All long-term care institutions – if they wish to receive public business – must offer a quality service at a realistic cost.

17. The Department should formally recognise the Jersey Care Federation in order to maintain and enhance its working relationship with the Federation. (9.4)

This is a statement of existing H&SS policy.

The Department formally recognised the Jersey Care Federation when certain members of this Sub-Panel were members of the old H&SS Committee. The process of further developing relationships with the independent sector has been underway for sometime and will be further expressed in the forthcoming health and social care strategy.

18. Regulation and inspection guidelines should be carefully monitored to ensure that there is not a disproportionate and excessive impact upon smaller care homes. (9.4)

This is a statement of existing H&SS policy.

H&SS does not engage in *unnecessary* regulation of care homes. Whilst regulation and inspection are routinely re-appraised and monitored, the safety and welfare of clients will be the overriding consideration regarding the regulation and inspection guidelines – irrespective of the size of care home. Proprietors and staff of long-term care institutions must accept the need to comply with modern standards if they wish to be in this business.

In light of this Recommendation, it is ironic – let us be frank, as this is a statement of the obvious – that certain members of this Panel would clearly be the very first to utterly condemn H&SS if some scandalous lapse in standards occurred in a Jersey institution as a result of weak inspection and regulation.

19. Proposals should be developed by the end of 2007 to allow the Department’s nursing care wards to be subject to regulation and inspection. (9.4.1)

This is a statement of existing H&SS policy.

The Department’s long-standing objective has been to move to inspection, not only for nursing care wards, but of all H&SS activities. Whilst proposals may be drawn up by the end of 2007, it should be emphasized that regulation and inspection of the H&SS Department’s long-term care facilities will require amendments to existing law and possibly increased resource use.

20. Proposals should be developed by the end of 2007 to allow for an independent Regulation and Inspection team to be created. (9.4.1)

This is a statement of existing H&SS policy.

Again, the decision to move towards independent regulation and inspection is a long-standing Departmental commitment – made when certain members of this Sub-Panel were H&SS Committee members. It is certainly true to say we are behind schedule in achieving this objective, but the set-back has largely been the result of the restructuring uncertainties – some might say chaos – thrust upon bodies like the Health Care Commission by U.K. government “initiatives”.

Whilst proposals may be drawn up by the end of 2007, again, we are dependant on external factors beyond the control of the Department. It should also be noted that the implementation of external inspection will be dependant on resource allocation.

RESPONSE TO THE SUB-PANEL'S KEY FINDINGS

Moving Patients to the Private Sector

1. On a fundamental level, patients were given little choice (prior to the decision to close Leoville and McKinstry Wards) about being moved to the private sector. The Sub-Panel felt the closure of the wards was an inevitability that would require patients to be moved, whether they wished to or not. However, once the decision had been made, some flexibility was possible in accommodating wishes about patients' destinations. (7.2.1)

The imputation within this Key Finding is that a binding or irrevocable decision to close the two wards was embodied in the in-principle decision *before* consultation with clients or staff began. This is not the case and the Sub-Panel fail to adduce any *evidence* to the contrary. Had profound objections been raised by the people most affected during the period when the possibilities were being explored, different solutions would have been sought. Once the client group agreed with the principle of moving, they were given as much choice as the situation allowed. Clients were informed directly and through their relatives of the desirability of closing Leoville and McKinstry wards and that H&SS would try and accommodate their wishes and needs wherever possible. Ultimately, any patient who firmly wished to stay in the public sector, could have done so, and been accommodated in other public sector facilities depending upon availability.

Other States Departments, such as Housing for example, also have to weigh up the needs of particular clients, against availability of facilities, against the competing needs of other clients. These are the imperatives of the real world, as opposed to some theoretical utopia. Under the circumstances H&SS did all that could be reasonably expected of the Department in accommodating the wishes of clients.

2. The Sub-Panel was pleased that the Department made patient safety its priority during the transfer process. The Sub-Panel believes that the assessment process implemented by the Department was well planned and incorporated standard procedures to ensure that a comprehensive evaluation of each patient was undertaken. (7.2.2)

It should be pointed out that patient-focused action is a normal approach and is at the core of all Health and Social Services activities and values.

This Key Finding is one of the few parts of the Sub-Panel's Report which *unambiguously* acknowledges that the policy of the Department is correct. Given that the Sub-Panel makes this acknowledgement here, why did it not make similar acknowledgments elsewhere in its Report when – quite clearly – the Sub-Panel is in agreement with most of the H&SS policies in question?

Were this not the case, why has the Sub-Panel largely taken existing H&SS policies and presented them as its own discoveries?

3. The closure of Leoville and McKinstry Wards would impact on all the Department's nursing care wards: patients from either The Limes or Sandybrook could find themselves being moved to the private sector. However, the Sub-Panel supports the Department's policy of keeping higher dependency patients within its own wards although it remains concerned that a situation might arise where a patient who has been identified as low dependency (and therefore moved) might eventually become a high-dependency patient. (7.2.3)

It is to state the obvious that such a substantive and complex exercise would have an effect upon all of the Department's related facilities. Of course consequential effects are taken into consideration and planned for.

The private sector providers with whom H&SS places public clients can deal with a broad spectrum of patient dependencies from relatively straightforward nursing care to more demanding

dependencies, without needing to move the patient. H&SS is also able to augment the services provided by the nursing home where this is deemed appropriate, again without moving the patient. Clients in private sector homes are able to draw on specialist care when needed from within the Department.

H&SS has always recognised that it is appropriate for the Department itself to care for those clients with particularly complex needs, as it possesses the staff and facilities best able to meet the needs of these patients.

The Sub-Panel expresses concern that “a (transferred) patient who has been identified as low-dependency might eventually become a high-dependency patient.” With all due respect to the Sub-Panel, this is, again, a statement of the obvious. This type of care is predominantly provided to older people. As people continue to age, it is a reasonable assumption that a significant majority of them will require increasingly complex levels of care. It is, therefore, inevitable that the tendency amongst this client group will be, in fact, to move towards higher levels of dependency.

We can, therefore, say, as a reliable rule-of-thumb, that as people become aged the complexity of their health-care needs will increase. Healthcare systems, therefore, take this into account in their plans and policies.

4. The Sub-Panel supports the Department’s decision to transfer patients gradually from its wards to the private sector. However, as the Department was evidently unable to keep to the timetable it originally established for the closure of the wards, the Sub-Panel believes it was unwise to have set such an early completion date as a target. (7.2.4)

The Sub-Panel is broadly correct in this finding.

It has not proven possible for H&SS to meet its original timetable. A number of factors have contributed to the delays in placing clients with other providers. The most significant of these was the inability of a private institution to achieve its original service development timetable.

The Department was, however, duty bound to provide indicative timescales for clients, relatives and staff, based upon the best information available at that time. This is consistent with the approach pursued by the Department in attempting to provide accurate information to all stakeholders.

It is also the case that H&SS is correct in subjecting itself to the discipline of set targets and deadlines. Whilst the Department may occasionally not succeed in achieving all such objectives it is important to have high aspirations for service delivery and policy effectiveness.

This Key Finding of the Sub-Panel also acknowledges that the Departmental policy, that of transferring patients gradually and with great care, was the correct approach.

Given the Sub-Panel is in agreement with such a centrally important aspect of this H&SS policy – something at the very heart of the issue – we have to ask why such fundamental agreement was not reflected in the propounding of the Sub-Panel’s Report instead of the misleading stream of effluvia that accompanied its publication?

5. The Sub-Panel believes the Department made sufficient arrangements for continuity of care during the transfer process. The arrangements were well planned although the Sub-Panel feels the ultimate success of the arrangements will depend on a good relationship between the Department and the managers of the private care homes. The Sub-Panel hopes that the Department will ensure that such good relationships are maintained. (7.2.3)

The Sub-Panel is, again, in agreement with the actions of H&SS. Care providers within the Department have good working relationships with care providers in the private and independent sectors. It should be pointed out that there are several supporting mechanisms initiated by the Department which will ensure that effective co-operation is maintained between H&SS and the

private nursing care homes. The provision of good patient care at all times requires all involved in delivering such care to communicate effectively.

6. The Sub Panel believes that the Department was well aware of the potential risks involved in moving patients. It found that the Department took appropriate measures to ensure these risks were assessed and addressed during the transfer process. It is confident that the Department will monitor the situation. (7.2.6)

The Sub-Panel is, again, in agreement with the actions of H&SS. Full assessment of each client is undertaken before any such move. The management of risk when dealing with the transfer and care of patients is always of paramount concern.

The care given to all H&SS clients is monitored, regardless of whether they are housed in public or private facilities.

Communication with Families

7. It was clear to the Sub-Panel that a policy for communication with families had been developed by the Department. However, due to the high levels of anxiety inherent in circumstances such as these, minor problems occurred and some people felt that communication from the Department had been unsatisfactory. In addition, the Sub-Panel believes the Department provided insufficient explanation to the general public of why the two wards were closed. (7.3)

The Department is satisfied that every effort was made to communicate with the relatives of those patients likely to be affected by the proposed move. This was one of the main focuses of the Department and one of its overriding obligations. Given the prevailing circumstances the Department is content that its approach was satisfactory.

H&SS does believe in the importance of consultation with the *general public*. However, there are clearly occasions when the overriding right to be consulted must lie with clients and their families.

In this case, the general opinion of the clients and their families was that they wanted to be re-housed in modern facilities that would afford them the privacy of their own rooms. Had H&SS undertaken broad public consultation on this question it is entirely feasible that many people *with no personal stake in the situation whatsoever* could have demanded that the use of the two wards for long-term care be continued. Such an outcome may, in fact, have been made *likely* given the political fomentation of unnecessary worries fuelled by the baseless assertions made by some States members, including certain members of this very Sub-Panel.

All concerned should pause and reflect upon the meaning and consequences of such an outcome. Had the political agitation to keep people living in these two old wards succeeded, what would be the situation?

We would have a situation in which the clients – a number of whom may have limited life-expectancy – were forced to remain accommodated in a crowded hospital ward environment with no privacy – because of scare-mongering by a few politicians.

The people *directly* affected – the *clients* and their *families*; people with an immediate and personal stake in the situation – would have had their wishes and needs trampled upon and subordinated to some vague and impersonal public concern that had been fomented by those in pursuit of political publicity.

Such a state of affairs could never be tolerated.

The Redeployment of Staff

8. The Sub Panel was concerned at the suggestion that staff could not have been consulted prior to the decision to close the two wards. It suggests that staff could make a valuable contribution early on in the decision-making process and believes that it was unacceptable for staff to become aware of the decision through the press. (7.4.1)

As explained in response to Recommendation 2, all reasonable consultation with staff has occurred at each stage of the transfer process (see Appendix 1). Staff do, indeed, have a valuable contribution to make to major decisions. Communication will continue to occur as and when new relevant information becomes available. Obviously, it is not possible to know months in advance every precise detail of the transfer process and staff re-deployments. H&SS will relay the facts to staff as and when those facts become known, but as pointed out above, good communication between staff and Department is not helped when politicians propound ill-informed nonsense in the media.

9. The Sub Panel believes that, once the decision had been made to close the wards, the Department followed a proper process of communication with staff although there were minor problems. (7.4.2)

The Sub-Panel is, again, in agreement with H&SS. However, the imputation behind this Key Finding is that a binding or irrevocable decision to close the two wards was embodied in the ‘in-principle’ decision *before* consultation with staff began. This is simply not the case. Had overriding reasons arisen for not transferring clients from the wards, the move would not have taken place and H&SS would have applied itself afresh to the situation.

10. Whilst it appears that the process of redeploying staff did not always run smoothly, the Sub-Panel believes that redeployment was generally appropriately managed and that the Department followed the relevant guidelines. (7.4.5)

It is difficult to know what, precisely, the Sub-Panel are saying in this Key Finding. The Sub-Panel states it “believes” the Department followed relevant guidelines, and that re-deployment of staff had been managed appropriately. But in the same paragraph the Sub-Panel says that it “appears” the re-deploying of staff did not always run smoothly.

What useful conclusion is expected to be drawn from such amorphous comments?

Has the Sub-Panel *found* that the Department handled the situation correctly, but also *found* that there were some minor problems? Are we dealing with robust conclusions drawn from hard evidence – or merely “feelings”, “beliefs” and “impressions”? Is the Sub-Panel impressionistically implying that it is a realistic expectation for all such exercises to work flawlessly? For if such is the view of the Sub-Panel, to be taken seriously it would need to be an *evidenced* conclusion rather than the nebulous postulations of this ‘Key Finding’.

Dealing with the Private Sector

11. The Sub-Panel received the impression that the tender document (that invited all registered nursing homes to tender for the Department’s beds) was a last-minute arrangement. (7.5.1)

This assertion is wrong.

H&SS notes that the Sub-Panel fails to provide supporting *evidence* for this ‘Key Finding’.

Firstly, it should be pointed out that the Scrutiny function was planned and intended to be an “evidence-based process”. This being the case, there should be no place in a Scrutiny Panel Report for such subjective, vague and non-evidenced phrases as “The Sub-Panel received the *impression*”. The Sub-Panel either had evidence that the “tender document was a last minute arrangement” – and that this arrangement differed from normal tendering practice following market exploration – or it did not have evidence. In the event of the Sub-Panel’s assertion being evidenced, its Key Finding should have stated “The Sub-Panel *found* the tender document was a last minute

arrangement”, and was in some way *not* consistent with normal tendering processes – for that is the imputation. But findings need to be just that; what has been *found* upon consideration of the evidence.

If a Scrutiny Panel wishes to express its “impressions”, such expression should be confined to generalities. If this is not to be the case – and Panels persist in making deeply contentious and specific allegations based on “impressions”, rather than evidence that can be weighed and tested – the Scrutiny process will rapidly become regarded as simply incompetent rather than a “critical friend”.

Any tendering process for the potential procurement of goods or services from external bodies by the public sector must always strive to achieve the best available deal for the public.

The tendering process that was followed met relevant States and Treasury guidance and regulatory requirements. The States of Jersey Treasury is content with the tender process followed.

Contrary to the assertion made by the Sub-Panel, the tender document was a key component in the Leoville/McKinstry project, as it openly and formally provided all interested parties the opportunity to meet the requirements of H&SS. Whilst the Department recognises the importance of a broad market in care facilities, it remains legally and ethically bound to strike the best deal available, both in terms of quality of care for patients and value for money. If wishing to contract, H&SS would have been obliged to do so with whichever provider produced the most advantageous agreement. The Department *cannot* depart from its legal and ethical obligations in order to support an institution that failed to be competitive.

The Sub-Panel displays its failure to grasp this concept when speaking of established institutions in the body of its Report:

“These Homes have provided an excellent service in the past but have now been overlooked when they should have been given constructive support to remain viable.”

Here the Sub-Panel makes special pleading for some institutions and not others. At risk of repetition, H&SS wishes to see a competitive and diverse market. To this end, the Department will do what it can *within the bounds of legal and ethical requirements*. Such requirements *do not permit* – and rightly so – the Department to place its clients in inferior and/or more costly environments merely to assist un-competitive institutions.

It is, frankly, nothing less than astonishing that the Sub-Panel should suggest otherwise.

12. The Sub Panel found that the evidence relating to the tender process was contradictory and confusing as the boundary between informal discussions and formal negotiations was not clear. It was understandable, therefore, that, to some eyes, the process became irrelevant as discussions with some homes had occurred prior to the beginning of the formal process. Notwithstanding that the Department is often in contact with private care providers, it was difficult for the Sub-Panel to counter fully the claim that the process had been inequitable. It was possible that pre-negotiation discussions had placed certain homes in a favourable position and was not clear whether all potential partners had been involved in early stage discussions. (7.5.1)

This assertion is wrong.

The Sub-Panel claims that it *found* the evidence to be contradictory and confusing. “Findings” must be based on hard evidence. Whilst it might be a fact that the Sub-Panel was ‘confused’, it fails to cite substantive evidence to justify the imputation that the tender process itself was contradictory and confusing.

A failure on the part of a Scrutiny Panel to understand that which is put before it represents a

deficiency in the Panel's work and does not, of itself, constitute "evidence" against a scrutinised Department.

The Sub-Panel was furnished with *all* the evidence relevant to the tendering process. This consisted of both documentation and oral evidence. Any sense of "confusion" felt by the Sub-Panel is a subjective matter for it to reflect upon. Such confusion cannot be taken seriously as a "Key Finding". The formal tendering process that was followed set out the requirements of H&SS clearly to all nursing care homes and how they should express and progress any interest they may have had.

The tendering process unequivocally represents the start of the formal procurement process, which was fair and open to all interested parties. This stage is the clear boundary between informal discussion and the beginning of the formal contracting stage. The fact that other potentially interested parties could not meet the requirements of H&SS does not invalidate the tendering process and the subsequent formal negotiation and approvals.

The H&SS Department always seeks to maintain informal relationships with external providers of nursing and residential care. This approach is adopted for both service specific and strategic purposes. H&SS needs to understand the private continuing care sector and be aware of what it offers, both to H&SS clients and private clients. At a strategic level H&SS must understand current market conditions and what developments in service individual institutions may be planning. If H&SS did *not* maintain this informal flow of communication it would be neglecting an important area of its responsibilities.

Given the above facts, H&SS is already familiar with what most continuing care institutions have to offer. It is though, entirely correct that the Department would seek to develop an understanding of the service investment proposals of two large and comparative newcomers to the market. It would, in fact, be perverse, given the complexity and size of the move from Leoville and McKinstry, if H&SS had not explored what capacity may be available *before* embarking on a formal tender process. What would have been the point if there was simply not the availability in the market? It is this type of research that is enabled by an initial in-principle decision. Only when satisfied that in-principle Departmental objectives can actually be met in the real world is there any point in making the relevant formal decisions.

Discussions were held with a number of institutions on a "pre-negotiation" basis. The institutions outlined their service development plans and asked H&SS whether it was seeking bed capacity in the private sector. In these discussions, the Department stated that it may be interested in seeking bed capacity subject to many caveats. Whilst not exhaustive, the caveats mentioned included the obligations upon H&SS to –

- undertake a through feasibility/business planning process;
- gain the necessary political approval which itself was subject to many considerations;
- undertake an open tendering process;
- The need to meet specified standards of care;
- The need to reach agreements that represent value for money for the States of Jersey.

Such discussions dealt only with generalities. *No confidential financial factors that may have had a bearing on the formal tender process were disclosed.* Thus there was no advantageous financial data in possession of certain institutions and not others. The fact is many institutions may have chosen not to seek the business, and others may not have been able to meet H&SS requirements in respect of the care package for clients with complex needs, suitability of environment, or value for money. H&SS has a duty of care to always seek the best possible agreements when contracting with the private sector. It is inevitable that, on occasion, some businesses will be unable to compete with others.

The Sub-Panel is simply wrong when it imputes the deal was, effectively, done before the tender process. In making such claims the Sub-Panel again departs from the standards of *evidence*, as opposed to mere suspicion, baseless rumour and innuendo.

The Sub-Panel asserts in the body of its Report that:

“Preferential treatment *appears* (emphasis added) to have been given to the newer and larger service providers with no reference to the already established ones.”

The question must be asked – for it is mystifying – upon what *evidence* – that is *evidence* – did the Sub-Panel imagine itself justified in accusing H&SS of breaking the Public Finances Law? For that is what this assertion amounts to. The Sub-Panel may wish to engage in sophistry by pointing to the word ‘*appears*’, used instead of an outright accusation of fact, but the imputation is plain. Given the experience of some members of the Sub-Panel, did none of them consider that such accusations should only be made on the basis of un-ambiguous *evidence*? For if the Sub-Panel has such evidence – where is it?

Every stage of the tendering process followed by H&SS was compliant with relevant Treasury Codes. This is what is shown by the evidence.

Instead, what we have seen displayed in this particular exercise is the appropriation and perversion of the Scrutiny function. The rigour and objectivity of dealing with hard *facts* and *evidence* abandoned and replaced with the altogether more lax standards of “impressions”, “feelings” and “appearances”, thus enabling partisan political agendas to be furthered without the tiresome inconvenience of adducing hard *facts* and *evidence*.

If the Scrutiny function in general, endorses and develops the approach adopted by this Sub-Panel, we may as well recognise now that our ambitions for an impartial and evidence-based contribution to government already lie smoking in their ruins.

Respite Care

13. The Sub-Panel supports the suggestion that one home should be used by the Department for the provision of its seven respite beds. However, it accepts the pragmatic approach taken by the Department in that two contracts may ultimately be signed, one for four beds and the other for three beds. The Sub-Panel would stress that continuity of care must be ensured for patients in the event that two homes are used. (7.6)

This is, again, largely a statement of agreement with H&SS policy. Problems with continuity of care should not arise as *nursing* respite care will be provided by one home and will be separate from *residential* respite care which will be dealt with by another home. Thus each institution will deal with its specific client group.

The Decision to close Leoville and McKinstry Wards

14. The Sub-Panel accepts that it would be unfeasible for Ministers to record every ‘in principle’ decision they make. However, in this case, the Sub-Panel felt that confusion was caused by the term ‘in principle’ and that the decision made on 30th March 2006 was more formal than this description would imply. (8.1)

The clear difference between in-principle decisions and Ministerial Decisions has been explained above in response to Recommendation 4. Again the Sub-Panel departs from the standards of *evidence*, and resorts to what it “felt” and makes the baseless assertion, with attendant innuendo, that the in-principle decision was “formal”. It was not, and the Sub-Panel displays a startling lack of understanding of the day-to-day realities of public administration in complex Departments.

15. The Sub-Panel believes that the condition of Leoville and McKinstry Wards merited their closure. It accepts that hospital-style wards are no longer appropriate for the provision of nursing care, given the

current expectations for better facilities (e.g. *en suite* rooms). The Sub-Panel agrees that it was not appropriate to mix the provision of nursing care and respite care. (8.2)

This is, again, a statement of agreement with H&SS policy. The Sub-Panel shares the fundamental view that it is not appropriate to have people effectively housed in a hospital ward type environment. Perhaps this point, more so than any other, represents the very heart of the matter. The central and overriding consideration of H&SS was to achieve a greatly increased quality of life for its clients. Given the agreement of the Sub-Panel with this most fundamental point, it is a pity that such agreement was not propounded to the media instead of the fundamentally wrong accusations that came to dominate coverage of the story.

16. From the evidence it considered, the Sub-Panel believes that limited maintenance was carried out on Leoville and McKinstry Wards. The Sub-Panel regrets that it could not receive evidence which could counter this conclusion by indicating that there had been a rolling maintenance plan. (8.2.1)

This assertion is simply untrue.

To repeat the points made in response to Recommendation 5, Leoville and McKinstry were maintained to an appropriate level. The Sub-Panel fails to adduce evidence to the contrary. Indeed, the Sub-Panel makes assertions in the body of its Report that are fundamentally irreconcilable with the evidence provided to them.

The inference of the Sub-Panel's comment is that the buildings in question *would* have been fit-for-purpose – that is housing people on a long-term basis – if only proper maintenance had been carried out. It is difficult to regard such claims as anything other than a pre-formed political view that the Sub-Panel, or at least some of its members, was determined to assert notwithstanding the evidence to the contrary.

The detailed evidence provided by H&SS to the Sub-Panel included the costs of external works by contractors to the wards over the last three years (above £50,000) and a complete diary of every item of internal maintenance for 2006 by H&SS engineers, joiners, painters and decorators, etc. The Department also spent in the order of £291,000 on improvements to the buildings over the last 12 years.

It is difficult to avoid the conclusion that the Sub-Panel simply did not read the evidence provided to it.

The Sub-Panel either fails to understand – or wilfully ignores the fact – that the overriding considerations in the closure of Leoville and McKinstry were ones of *design* and *obsolescence* – a lack of privacy, confidentiality and dignity for clients and their families. The decision to transfer clients from these buildings was made because of the clinical inappropriateness of people being housed in a hospital ward-type environment – and *not* a decision made because of poor maintenance or neglect.

The buildings are simply obsolete. That is the overriding reason for their closure – as is clear from any reasonable and competent consideration of the evidence.

Again, it should be noted that the Director for Estates for Health and Social Services was not asked to appear before the Sub-Panel to give any evidence at any stage. This fact can only be regarded as bizarre given that he is the key witness in respect of building maintenance.

17. The Sub-Panel found that evidence regarding the abandonment of the Belle Vue project was confusing. The Sub-Panel remains unsure as to the reason for the abandonment. It was also not clear to the Sub-Panel to where the funds from this project had been redirected. (8.4)

At risk of labouring the points made in response to Recommendation 6, this assertion is wrong and

founded upon the Sub-Panel's failure to actually read the evidence available to it.

The reasons for the deletion of the Belle Vue nursing home project and the destination of the capital funds are perfectly clear on any reasonable reading of the evidence.

Available to the Sub-Panel were at least 2 sets of H&SS Committee minutes that dealt with the structuring of the Department's capital programme. Further documentation concerning the structure of the overall States of Jersey capital programme was available from the Treasury.

In the event that the meaning of such documentation proved too elusive for the Sub-Panel to grasp, it may have had recourse to the major public document dealing with the subject, namely the States of Jersey Business Plan, P.151/2005.

It can only be regarded as quite startling that the Sub-Panel proceeds to make these assertions in a state of apparent ignorance of the fact that the re-structured capital programme – with the deletion of the Belle Vue project clearly adumbrated in it – was actually published, debated and approved by the States assembly in the form of P.151/2005. Far from the secret and unauthorised shuffling of funds imputed by the Sub-Panel, the decision was ultimately made – in public debate – by no less an authority than the Island's legislature.

18. The Sub-Panel feels it was unacceptable that no written record was made of the decision to abandon the Belle Vue project. It is also amazed that this 'political decision' was never considered by the former Health and Social Services Committee. The absence of a documented decision meant that the Sub-Panel was unable to confirm the reason for the abandonment and to consider the context in which the decision was made. (8.4)

As explained above, every aspect of this assertion is wrong. The 'written record' of the decision to not proceed with the Belle Vue project consists of the H&SS Committee minutes which dealt with the re-structuring of the Department's capital programme, within which context Belle Vue was considered, Treasury documentation, the States of Jersey Business Plan, and the resultant assembly minutes.

It is utterly untrue to suggest that the subject was not discussed by the then H&SS Committee. If it had not been considered, would we not have expected members of the Committee to express surprise at the deletion of this project during the Business Plan debate?

Given that some members of this Sub-Panel had been members of the H&SS Committee, and have become gripped by amnesia since those days, perhaps not.

19. Notwithstanding its concerns regarding the history of the decision to abandon the Belle Vue project, the Sub-Panel recognises that its construction (as a 28-bed nursing care home) would not have solved the problem which the Department faced with Leoville and McKinstry Wards. (8.4)

As discussed above, the Sub-Panel's "concerns" regarding the history of the Belle Vue project are baseless and not compatible with the evidence available to it.

It is, however, correct to state that even had the Belle Vue project gone ahead, it would not, of itself, have solved the problems posed by Leoville and McKinstry wards. This fact makes it all the more remarkable that the Sub-Panel should have chosen to focus so excessively – and entirely erroneously – on the deletion of the Belle Vue project.

The implications for Patient Care

20. The Sub-Panel recognises that the standard of care provided on Leoville and McKinstry Wards was very high. (9.1)

H&SS is pleased that the Sub-Panel recognises the efforts and professionalism of its staff in the provision of high quality patient care. The same professionalism and dedication is replicated throughout the Department.

21. The Sub-Panel has full confidence in the Registration and Inspection Team. Whilst it understands the concerns (both specific and general) that people have regarding the standard of care in the private sector the Sub-Panel believes an efficient inspection process can be relied upon to ensure that standards in the private sector remain high. (9.1.1)

H&SS is pleased that the Sub-Panel shares the Department's confidence in its Registration and Inspection team. H&SS is also pleased that the Sub-Panel recognises the importance of an appropriate inspection process in ensuring that standards of care in the private sector remain high. It is, though, difficult, to reconcile these views with the Sub-Panel's suggestions below to the effect that inspection and regulation are excessively burdensome to *some* private sector institutions.

22. The Sub-Panel feels that the fears regarding the victimisation of patients were unjustified. (9.1.1)

Whilst H&SS is pleased that the Sub-Panel "feels" that fears of victimisation are unjustified, again, it must be asked, why did the Sub-Panel not "find" there to be no "evidence" to support such unnecessary fears? Let us be clear, the "victimisation" of patients would be utterly unacceptable by the ethical and professional standards of the many carers involved. There is also a strong probability that the "victimisation" of patients could constitute a criminal offence. It is, therefore, disappointing that the Sub-Panel was not more robust in clearly reassuring the public that *no evidence* for such behaviour existed, and if such conduct were, hypothetically, to occur, it would be met with strong and swift action.

23. Patients who are moved to the private sector will not be expected to pay more, with the possible exception of GP services. The Sub-Panel believes that, despite the need to pay more, the arrangements for GP services may allow patients greater freedom of choice as well as afford them better continuity of care (in that, upon entering a care home, they may keep the GP with whom they were registered beforehand). (9.1.3)

H&SS is pleased that the Sub-Panel recognises the important role played by G.P.s in the life-long care of patients and the importance of being able to maintain an established relationship between patient and G.P.

24. The Sub-Panel does not believe that patients who are moved to the private sector will be treated differently to private patients. It is concerned, however, by the suggestion that they may be given smaller rooms than private patients; the Sub-Panel believes rooms should be allocated primarily on a needs basis. (9.1.4)

H&SS is pleased that the Sub-Panel recognises the fact that the same professional standards of care are expected, regardless of whether such care be provided by the public or private sector. However, again the Sub-Panel departs from the standards of "evidence" and is instead "concerned" at a "suggestion" of poorer standards of accommodation for public patients. H&SS is legally and ethically responsible for the welfare of its clients, therefore allocation of facilities will take place with the clients needs as the primary concern. It is, of course, entirely feasible that a private client with substantial resources might choose to pay for large facilities, but this fact will not drive public sector clients into accommodation which does not meet their needs.

25. The Sub-Panel believes the Department has implemented a system whereby it will be able to monitor effectively the nursing care received by its patients. However, the Sub-Panel is concerned that it may now prove more difficult for the Department to monitor the medical care provided to its patients. (9.1.4)

This assertion by the Sub-Panel is both ambiguous and indicative of a failure to understand clinical governance standards and care plans. H&SS is confident that medical care provided to its clients

will be of the high standard expected of the profession – regardless of whether the care is provided by the public or private sector.

Each client will have a dedicated care plan, and intrinsic to such plans is the monitoring of care.

How does the closure fit in to overall policy?

26. It was not clear to the Sub-Panel exactly how the wards will be used following the final transfer of patients. It is concerned that further deterioration of the wards may occur if sufficient action is not taken. (9.2.1)

In the face of a compelling need – which the Sub-Panel has had to recognise – the main focus of H&SS was to ultimately close the wards in respect of nursing care and respite care. As explained above, the principle driver of this decision was the need to provide clients with private living facilities.

As explained in response to Recommendation 5, there is a maintenance programme, the detail and rationale of which would have been explained to the Sub-Panel – had it bothered to call the H&SS Manager of Estates to give evidence.

As explained in response to Recommendation 7, the buildings will be utilised by either the Pain Management Team (and potentially the Diabetes Service) or the H&SS ICT project team in the short-term. In the medium term, they will be used by the Physiotherapy Out-patients Services whilst the General Hospital Newgate extension is completed (proposed for 2012 – 2014). Eventually, the buildings will be demolished to make way for a future development that will meet the needs of H&SS at that time.

27. The Sub-Panel believes there is a need for a new public nursing care home although it recognises that its construction is not feasible at present. The Sub-Panel would be concerned to see all provision of nursing care placed in the hands of the private sector. (9.2.3)

As explained elsewhere, there will always be a cohort of clients whose needs are of such a degree of complexity that public sector provision of care will be required. H&SS made this point repeatedly to the Sub-Panel. It is, again, difficult to see why such a comment should be included in the Report when there is no evidence to substantiate such concerns.

If additional central funding were to be supplied, H&SS would be more than happy to commission the construction of a new public nursing home.

28. The Department appears to be moving towards a policy of ‘community care’ in terms of care of the elderly. The Sub-Panel remains uncertain of how the closure of Leoville and McKinstry Wards fits into this development. (9.2.3)

This is, again, another entirely nebulous statement which is both difficult to interpret and indicative of poor focus on the part of the Sub-Panel.

Firstly, the Sub-Panel fails to define what it means by “ ‘community care’ ”. Community care exists already in many forms. H&SS cares for people in the community; FNHC care for people in the community; very substantial numbers of unpaid carers in the community care for the needs of family members and the private sector provides community care. As stated elsewhere by the Sub-Panel, the existence of a diverse range of provision in the market is important.

If, though, the Sub-Panel are expressing a ‘concern’ that H&SS may ‘privatise’ its facilities, such as The Limes and Sandy brook, then such concern is baseless. No such plans exist, nor would such a proposal be supported by this Minister.

The closure of Leoville and McKinstry Wards and transfer of patients to private sector homes is not driven by a privatisation agenda. As stated previously, the overarching consideration is the quality of life for clients, who H&SS wishes to see housed in appropriate facilities.

29. The Sub-Panel agrees that the current funding system (for care of the elderly) is untenable and looks forward to the options and proposals that the Minister will publish in due course. (9.2.4)

H&SS has long been of the view that the current funding system for continuing care is both untenable and chaotic. It has evolved over decades in a disjointed manner, and presently has the characteristic of being punitive to those who have been frugal and saved or brought their own home. The Department will be making suggestions as to how the present unsatisfactory arrangements are replaced when it publishes the draft New Directions strategy for consultation.

30. The Sub-Panel recognises the work that is currently being undertaken by the Department in conjunction with the Jersey Association of Carers. However, it is concerned that respite care may become the ‘poor relation’ of nursing care. (9.2.5)

As explained previously, H&SS has always been keen to work with independent organisations, such as the JAC. Whilst correct to say that respite care facilities have been poor in recent times, leading to a down-turn in their use, making better facilities available for respite has been one of the driving considerations behind the entire exercise. The Department does recognise the immensely important work undertaken by carers, and fully accepts that respite care is of fundamental importance. There is no question of respite becoming regarded as a ‘poor relation’ to nursing care.

31. It would appear from the evidence considered that the closure of Leoville and McKinstry Wards allowed the Department to address staffing issues it faced in other areas. However, the Sub-Panel believes that this was not the intention behind the closure but merely a fortunate consequence. (9.2.6)

The Sub-Panel is incorrect in this assertion. Contrary to the imputation that the logistics of staff placements was a contributory factor behind the closure of the two wards, the overriding consideration has always been quality of life for the clients.

Contrary to the impression given by the Sub-Panel in this comment, the staff placement issues which arose were not a “fortunate consequence”. The reverse is, in fact, the case. Purely in terms of staff logistics, the easiest path for H&SS would have been to leave the old arrangements untouched. Having a high regard for these staff and the quality of their skills, the Department wished to ensure their placement in other parts of the organisation. To this end, extensive use was made of bank and agency staff in other parts of the organisation, at some cost, precisely to ensure that the full-time vacancies were kept open and existed for the staff when the time came to transfer.

32. The Sub-Panel remains concerned that the redeployment of staff from Leoville and McKinstry Wards will ultimately lead to the break-up of a skilled and dedicated team. (9.2.6)

The staff do indeed constitute a skilled and dedicated team. However, the imputation of the Sub-Panel is quite misguided. The training undertaken by these nurses and care assistants in the specialism of elderly care will be put to full use. All of their specialist skills will be drawn upon by dint of the simple fact that the age profile of the great majority of patients in acute wards means that these skills will be utilised in their care.

The comment of the Sub-Panel also displays a lack of understanding in respect of the dynamic nature of staff deployment within a health service. It is frequently necessary to transfer staff and re-form teams according to the changing nature of client needs and the demands upon the service.

The Financial Implications

33. Whilst the Sub-Panel accepts the need for confidentiality of certain documents, it believes that the

Minister was over-cautious in his approach to the contractual information which the Sub-Panel received. The Sub-Panel would have liked to provide a proper assessment of the Department's work in this area in order to clarify matters but feels that it is unable to do so due to its obligations under confidentiality agreements. (9.3.1)

Although this assertion by the Sub-Panel has been dealt with in response to Recommendation 12 such is the startling degree of ignorance displayed by the Sub-Panel, many of the points merit repetition.

States Departments are subject to the Code of Practise on Public Access to Official Information. This was adopted by the States on the 20th July 1999 and amended on the 8th June 2004.

This Code lists a range of information which is exempted from public disclosure, mainly for very good reasons. One type of information exempted is that which is commercially sensitive. In this case, the publishing of commercial information would have seriously undermined both the public interest and the legitimate position of those we were tendering with. In addition to the potential financial harm, the random disclosure of commercial information would seriously undermine the credibility of the States as a commercial partner.

It must be noted that the commercial information at issue *was* supplied to the Sub-Panel, but with a requirement that its details remain confidential – in accordance with States policy under the Code and to protect the public interest.

The remainder of the Sub-Panel's assertion is utterly untrue and wholly incompatible with the furnished evidence. At risk of repetition, whilst the detail of the financial information was to remain confidential, in accordance with States policy, absolutely nothing in this requirement prevented – in any way whatsoever – the Sub-Panel from undertaking a detailed assessment of the financial data, and then including in its Report a section explaining the generality of the contracting process and whether H&SS had come to a good, indifferent or bad financial agreement. The Sub-Panel could also, for example, have given any financial agreements under consideration marks on a scale of one to ten in respect of value for money. There are any number of ways in which the Sub-Panel could have commented on the quality of the agreements. Instead, the Sub-Panel preferred to ignore such possibilities in preference to contriving some ground upon which to criticise the Department.

To repeat, it is utterly untrue for the Sub-Panel to claim that it was prevented – in any way – from giving a considered opinion as to the merits of the financial deal struck by H&SS.

34. The Sub-Panel agrees that the method of using present value techniques was appropriate. However, the Sub-Panel believes the financial appraisal undertaken by the Department was adequate but that it reflected an unsophisticated and opaque approach. It was difficult to understand the reasoning behind certain measures (such as why the notional value of the land was considered in the manner which it was). The Sub-Panel feels that cost-benefit analyses should have been done earlier in the decision-making process and that further sensitivity analyses should have been undertaken. (9.3.1)

The assertions in this Key Finding serve well as further evidence that this particular Sub-Panel was determined to drive forward the pre-formed political agenda of some of its members – come what may, and that it was never going to let the facts stand in the way of this objective. Consider how the Sub-Panel carefully chose the words “appropriate” and “adequate” to grudgingly acknowledge the irrefutable fact that the Department's handling of the financial appraisal was correct. The careful choice of such equivocal phrases thus leaves the way clear for the Sub-Panel to proceed to make the rest of the entirely un-evidenced and baseless imputations in the Key Finding.

To repeat, all aspects of H&SS handling of the financial issues of the transfer plan and process were compliant with the States of Jersey Public Finances Law and Codes of Direction and guidance of the States Treasury.

The handling of this issue was not “unsophisticated”, “opaque” or “difficult to understand”. It was perfectly understood by H&SS and the Treasury. The fact that a Scrutiny Sub-Panel should have the audacity to include such baseless political accusations without any supporting *evidence* indicates just how far the Scrutiny function could fall from the aspiration of evidence-based objectivity if those involved do not learn lessons from this shabby episode.

It is – quite literally – laughable that the Sub-Panel should include such assertions in its Report when – not only did it fail to produce evidence to justify such claims, but on the contrary, the professional advice given by the Sub-Panel’s own independent financial advisers, Alex Picot Ltd. demonstrated the opposite of the Sub-Panel’s statement, where it said:

“it advised that, overall, it was difficult to see which other methods could have been used to undertake the appraisal.”

Were this inadequacy not bleakly tragic enough of itself, the Sub-Panel proceeded to include the following statement in the body of its Report:

“To provide a new purpose made building to replace the old would be less expenditure than one year’s use of private nursing homes.”

The Sub-Panel saw fit to retain this ridiculous assertion notwithstanding the fact that the H&SS Department *provided evidence to refute it*. What are we to make of Scrutiny Sub-Panel that not only makes entirely un-evidenced assertions, but when provided with evidence to the opposite effect, simply presses on regardless?

It is difficult to know which is worse: the Sub-Panel ignoring evidence – or the fact that it makes an assertion which should be readily understood as nonsense to anyone with a rudimentary grasp of mathematics.

35. The Sub-Panel is unable to discuss publicly the fees agreed by the Department and Four Seasons Health Care although it would find it difficult to judge, on the evidence provided, whether a good deal was struck. (9.3.2)

This Key Finding is further evidence how badly wrong things can go when Scrutiny is undertaken without a clear statement of methodology appropriate to each review. As already described in detail, States of Jersey policy on public access to official information describes financially sensitive commercial information as exempt from public disclosure. The requirement of H&SS that the financial details not be discussed in public was simply the entirely reasonable invocation of States policy so as not to undermine the public interest.

It must be pointed out again that all information requested by the Sub-Panel was provided to it, including the commercially sensitive data. In addition to considering in detail such evidence, the Sub-Panel could have carried out its own market testing if it required further information. Therefore, as stated previously, absolutely nothing prevented the Sub-Panel from including a section in its Report that delivered an assessment of whether the deal struck was good, bad or indifferent. It is utterly untrue when the Sub-Panel claim otherwise; a claim, it should be noted, delivered entirely without supporting evidence; a vacuous political assertion of the kind that evidence-based Scrutiny was supposed to combat – rather than embrace as a political tool.

The Future of the Private Care Sector

36. Notwithstanding the need for the Minister not to be seen favouring one part of the private sector over another, the Sub-Panel is concerned as to how the market could develop. The costs of providing nursing care and meeting regulatory requirements (e.g. larger room sizes) are very high and beyond the reach of smaller operators unless they have a reasonable certainty of regular occupancy. It has been argued that, should the smaller operators be unable to compete, then one or two large operators would dominate the

market and in a classic case of market dominance, be able to dictate terms to the ‘buyers’, i.e. the public sector. Given the limited provision actually operated by the public sector, this could make it very vulnerable. (9.4)

As already explained in detail above, H&SS is aware of the advantages and importance of a vibrant and competitive market in the private provision of health care. The Department will seek to maintain such a market whenever it can. But, the Department is – rightly – required to consider a number of factors, such as patient safety, quality of life for clients and value for money for the taxpayer. Such requirements are unambiguous ethical and legal obligations. Whilst H&SS understands fully the importance of competitiveness in the market, the Department cannot – nor should it – depart from its important obligations merely to protect certain institutions from the competition provided by other institutions.

The evidence shows that H&SS has contracts with several private providers for its patients. However, the Department’s overriding concern is the need to ensure that standards in the private sector are appropriate. Institutions that fail to meet such minimum standards will not be supported.

37. The Sub-Panel welcomes the Minister’s approach to the Jersey Care Federation through the means of a Concordat. It believes that formal recognition of the Care Federation will only help the current situation. (9.4)

It is existing H&SS policy to work with independent associations on the basis of constructive partnerships. H&SS has always recognised the Jersey Care Federation and respects its views. What the Sub-Panel means by “the current situation” is unclear, but as explained elsewhere, H&SS is obliged to meet and maintain certain standards, for example, achieving cost-effectiveness. This will mean that from time-to-time the decisions of the Department may not be pleasing to external agencies and individual institutions.

Regulation and Inspection

38. The Sub-Panel is concerned about the difficulty facing smaller homes in the current market. It believes that regulation should ensure that the market remains diverse. It also believes that the authority of the Registration and Inspection Manager must be balanced by a swift and transparent appeals process. (9.4)

As explained above, H&SS has always been aware of the importance of a diverse market in continuing care. Whilst some homes may face difficulties occasionally, “regulation” is *not* the appropriate mechanism for maintaining diversity. The “belief” expressed by the Sub-Panel here is largely incompatible with the view expressed at paragraph 40, below. One of the key reasons for supporting greater independence in inspection is, precisely, to make that inspection process ‘pure’ and uncontaminated by political exigencies. An objective and impartial inspectorate will treat all providers equally – whether public or private, large or small.

Regardless of whatever form inspection may take in future, the overriding considerations – to which all others must be secondary – for any competent inspectorate will be patient safety and their quality of life. This is, and will continue to be, the ethical and legal obligation.

It is, therefore, quite perverse to suggest that an inspectorate function has any role to play in maintaining “market diversity”. Is it imagined that an inspectorate could apply more lax standards to certain institutions and more taut standards to others, in some strange attempt to level-the-playing-field? Such an approach would be both unethical and illegal. It can only be regarded as truly remarkable that a Scrutiny Panel should even hint at such a policy.

39. The Sub-Panel feels it is unacceptable that the Department’s wards are not subject to the same expectations and inspection process as privately-owned wards. This situation is inequitable and should be resolved. (9.4.1)

This is a statement of an existing H&SS policy objective.

The Department is in the process of taking steps to ensure that its own wards and continuing care homes are subject to the same rules and regulations as that which govern other providers of nursing care.

The imputation in the Sub-Panel's comment is that the Department operates to lower standards and expectations than those we impose on the private sector. This is simply not the case. The standards expected of, and achieved by, H&SS are extremely high. The Sub-Panel does not seem to understand that the variety of professionals working in the Department are regulated by both their professional bodies and the effective peer-review of colleagues from different disciplines. As many clients and their families would attest, the standard of care delivered by H&SS is excellent. One need only consider the demand for accommodation in the Department's continuing care facilities as evidence of that fact.

40. The Sub-Panel believes it would be fairer for the Registration and Inspection team to be independent of the Department, especially if provision is made for the inspection of the Department's wards. (9.4.1)

Although the Sub-Panel adduce absolutely no evidence whatsoever to substantiate the imputation that the present regulation and inspection procedures have been unfair, H&SS is examining ways of bringing greater independence into the inspection process. The decision to move towards independent regulation and inspection is a long-standing Departmental commitment – made when certain members of this Sub-panel were H&SS Committee members. Again, it is accepted that the Department has not been able to achieve this objective within its original timetable, nevertheless, the commitment remains – external factors and resources permitting.

A note of caution must be sounded. The Sub-Panel do not demonstrate any understanding of the potential for dramatically increased costs and bureaucracy that could arise if every regulatory function of each States Department were to be established as a stand-alone 'mini-Department'. The replication of staff time and infrastructure needed to go down that particular path would be considerable – to say the least. In a small environment such as Jersey with one layer of government, it may be neither possible nor desirable to develop the kind of separate regulatory apparatus we see in jurisdictions such as the U.K. A more realistic approach may be to give those units and staff involved in regulation and inspection greater protection in law and the statutory ability to submit Reports directly to the States. Such an arrangement may succeed in delivering robust and confident independence in regulation, without the need to establish another layer of public administration.

GENERAL OBSERVATIONS

THE RECOMMENDATIONS:

It will, no doubt, be recalled that when the Sub-Panel published its Report, the manner of its presentation, the emphasis placed on certain parts of it – and a number of extraneous comments to the media by certain of the Sub-Panel's members, generated the impression that the Sub-Panel's findings were in serious disagreement with H&SS and largely critical of the Department's actions, performance and policies.

Let us now consider, as a whole, the 20 Recommendations the Sub-Panel makes in its Report.

As we learnt at the beginning of this Response, 18 of the 20 Recommendations are statements of existing H&SS policy.

Of the remaining 2 Recommendations (4 and 6) the first is founded upon demonstrable ignorance of existing States of Jersey policy on public access to information. The second is a crass error born out of – to be charitable – a failure by the Sub-Panel to read the evidence available to it.

However, the fact remains that, in its Recommendations, the Sub-Panel was in agreement with existing H&SS policy on 18 out of 20 occasions.

The question must be asked, then – *given that the Sub-Panel's Recommendations were in 90% agreement with H&SS policy* – why did the Sub-Panel present and propound its Report in such a way as to give the impression of massive disagreement?

Consider the question framed differently: in its Recommendations, the Sub-Panel was 90% in agreement with H&SS policy. *Why, then, was the Sub-Panel content to allow the public to receive the completely misleading impression of wholesale disagreement?*

Perhaps the answer is to be found in a second publicly misleading aspect of the Sub-Panel's Report. For of the 18 Recommendations in which the Sub-Panel agreed with H&SS policy – the Sub-Panel studiously avoided properly informing the public that what it was presenting was a re-statement of pre-existing H&SS policies.

Instead, the Sub-Panel was entirely happy to cloak itself with the ideas and ethos of the Department – and then present such thinking as though it were some startling insight and original thought of the Sub-Panel's.

The fact that the Sub-Panel would seek to justify what was always going to be a largely pointless exercise by presenting a lengthy list of Recommendations, as though it were the result of useful work, is merely irritating. *Of far greater seriousness is the fact that the Sub-Panel's Report is actively misleading to the public.* Any casual reader of the Sub-Panel's Report could be entirely forgiven for thinking that the Recommendations had been made *expressly because* H&SS was not following such policies – and therefore performing in a seriously defective manner.

The Sub-Panel's Report cannot be regarded as anything less than needlessly alarming to – and seriously misleading of – the general public. By conniving to present existing H&SS policies as its Recommendations – *without* informing the public that such policies already existed – the Sub-Panel has put its own political interests above the need to provide full and accurate information to the public.

THE KEY FINDINGS:

Similar conclusions have to be drawn in respect of the Key Findings. The observations of the Sub-Panel fall into a number of categories. These include the appropriation of pre-existing H&SS policies, statements of the obvious, nebulous contradictions, gross errors of fact and outright falsehoods.

If we remove from the Key Findings the agreement with existing H&SS policies, statements of the obvious, the errors and the baseless assertions – what are we left with? What novel and constructive insights remain for H&SS to take back to the field of care? In other words, what useful and productive work was done with this use of taxpayers' resources?

Amongst the 40 Key Findings put forward by the Sub-Panel it is difficult to identify as much as a single one that represents an accurate, useful and novel contribution.

To be generous to the Sub-Panel, perhaps its point concerning the timetable being unrealistic is correct. But even this one point could hardly be categorised as a 'eureka' moment. The Department has to set itself targets and it had to give indicative timescales to clients and families. In an exercise as complex as this, we can hardly be surprised if a timetable has proven too ambitious.

The irony of the exercise is that time, expense and disagreement could have been avoided had only the Sub-Panel undertaken a proper 'scoping study' before embarking on this investigation. Such a study would have involved a meeting with the Department, the supply of some information and perhaps the exchange of letters for 2 or 3 weeks to develop an agreed understanding of the issues. Instead, the scoping study undertaken by the Sub-Panel (see Appendix 2) amounts to merely 2½ pages of text boxes of bureaucrats platitudes – with the box titled "methodology", rather tellingly, left entirely blank. Had a more detailed scoping study been undertaken with the co-operation of the Department, it might have been established that H&SS and the Sub-Panel agreed on 90% of the issues. It might also have succeeded in disabusing the Sub-Panel of a number of misapprehensions, and

enabling the Sub-Panel to avoid the many errors of fact which eventually plagued its Report.

Instead of the time put into this failed exercise, the Sub-Panel might have chosen, via co-operation, an altogether more useful and constructive approach to reviewing the subject of continuing care as a *strategic* consideration.

As H&SS has far higher priorities, it has not set aside valuable officer time to undertake a detailed assessment of how many man-hours were consumed by this exercise. It is, though, an entirely reasonable guess that the whole process has been an expensive undertaking indeed for the taxpayer. More so, when one factors in the costs of the Scrutiny side.

What is there to show for this investment? What worthwhile product are we left with? Nothing – save, perhaps, one thing.

The only thing of real value that could be taken from this exercise is that it serve as an object lesson in how *not* to undertake scrutiny.

CONCLUSION

In the controversy triggered by the Sub-Panel's Report, perhaps the most ridiculous excuses made to the Department for the Panel's clear failure have been those that attempted to argue that the Report's many undeniable errors, inadequacies and un-evidenced claims might somehow be the fault of H&SS – as though the Department could know, via some sixth-sense, what the Sub-Panel was seeking to understand. The argument appears to be that – perhaps by some teleological process – H&SS should have foreseen the Sub-Panel's focus – *before it knew what this was itself* – and laid the path to this destination. Quite aside from the fact that Scrutiny would lose independence under such practice, Departments are too busy to spoon-feed and lead by the hand Scrutiny Panels that cannot or will not bring sufficient focus of their own to their work.

Let us be clear about where responsibility for the effective and judicious use of Scrutiny time lies. It lies with the Scrutiny function. Who is accountable for the quality of Scrutiny work? The Panels and their members.

All scrutinised Departments *already have a principle area of responsibility*. Each sector of public administration comes with its own complexities – and often taxing demands. In the case of H&SS, its responsibility is delivering health and social care to the people of Jersey; a multi-faceted set of responsibilities, frequently involving difficult and profound trade-offs.

The Scrutiny Panels – by way of contrast – have but *one* clear function – to scrutinise the Executive. Whilst it may be argued that some issues under scrutiny are of great complexity, *developing an understanding of the key issues – however complex – must be the principle task and responsibility of Scrutiny*. How could it be otherwise?

For if Scrutiny Panels are allowed to develop a culture whereby every straight error of fact, failure to focus on key evidence, omission, misunderstanding, deficiency, misdirection, display of partisan politicking, media posing, misleading emphasis, loss of objectivity, departure from the evidence and baseless assertion in their Reports can be blamed on the scrutinised Departments – then we will have truly created a monster. An additional and expensive level of government *without responsibility* – which can do and say whatever it pleases regardless of the facts and be grossly deficient in its standards – yet comfortable in the knowledge that when wrong, it can simply blame the scrutinised Departments. It would be as though H&SS carried no responsibility for the people it treats and any failing in the quality of care was the fault of the patient.

H&SS staff went out of their way to assist this Sub-Panel *notwithstanding the already substantial demands of their principal jobs*. Absolutely every piece of evidence requested by the Sub-Panel was supplied by the Department. The Sub-Panel trawled overwhelming amounts of data – much of which, we are forced to conclude, it clearly failed to read or understand.

Rather than being a constructive process, what this review amounted to was simply a burdensome, time-consuming and expensive search for a non-existent smoking-gun; some 'killer' piece of evidence that could hang the Department to the political satisfaction of some of the Sub-Panel's members. Having failed utterly –

completely and resoundingly – to adduce the evidence needed to justify its pre-determined political agenda – indeed, having failed to even justify with evidence so much as *one* serious failing of the Department’s handling of the exercise – the Sub-Panel could do no more than cloak itself in the existing policies of H&SS, claiming them as its own – with the implicit sub-text that H&SS must be deficient for needing such policies suggested to it.

What else remains of the Sub-Panel’s Report is platitudinous statements of the obvious, largely embarrassing displays of ignorance of States of Jersey law and policy, baseless assertions and cockeyed half-truths.

The taxpayers of Jersey are funding the appalling level of performance evidenced in the Report of this Sub-Panel.

Let us speak frankly: in days gone by, if a States Committee performed so abysmally *at its central and key job* it would rapidly face a vote of no-confidence. As would a Minister in today’s system of government.

A member of this Sub-Panel recently wrote a letter to the Jersey Evening Post which was published with the title ‘Accept Valid Criticism’. Let the author of the letter be invited to accept his own advice. He alleges that “there are Ministers still finding it hard to accept that Scrutiny Reports may well end up seriously questioning their policies”, and he goes on to bemoan what he sees as a “dismissive culture which is far too prevalent on the Ministerial benches”.

Would that a credible Report seriously questioning H&SS policies had been produced! The Department would welcome legitimate ideas for the improvement of the service. When Scrutiny produces work of a high standard, great notice is taken of it. But can anyone really be surprised when a Report of such atrocious quality is dismissed and ridiculed? No system of government must be beyond scrutiny or the expectation of high standards of professionalism. ***This must, unavoidably, include the Scrutiny function itself.*** For all the criticism the author of the letter makes of the Ministers, a mirror could be held up to Scrutiny. He would fain portray the Ministers as embodying a poor “culture”, whilst at the same time being one of the chief architects of the “culture” that would have us believe everything done by the Executive is bad, and everything done by Scrutiny good; that Ministers are, by definition, the ‘bad guys’ in all matters and Scrutiny the ‘good guys’.

Let this Report by this Sub-Panel stand as evidence to the contrary. A thin cloak of respectability – woven from H&SS existing policies – barely concealing a writhing mass of contradictions, vacuity, ignorance, personal agendas, gross errors and pre-determined political purposes.

During the brief period of Shadow Scrutiny and the 18 months of Scrutiny proper in the era of Ministerial government, some Panels have produced constructive, measured and sensible Reports; work that has contributed in a positive way to policy development, debates and decisions.

By way of contrast, there is clearly a danger that some Scrutiny Panels and some individual members working within them might view the Scrutiny apparatus as little more than a tool, and a forum in which to pursue their subjective personal political agendas. It is absolutely healthy and natural that politicians should have differing political views. But the means of giving free rein to ideological or policy differences are to be found in debates, propositions and amendments. Indeed, a strong case could be made for saying that the political culture within the States of Jersey in fact suffers from a paucity of competition in ideas and proposals. More opposition, it could be argued, would be a good thing as it would lead to a more rigorous testing of policies.

But as much as opposition is of great importance to a healthy democracy, so is an *objective and impartial evidence-based* scrutiny process. If members working within Scrutiny do not possess sufficient discipline to set their political and personal views aside, the Scrutiny function will never be fit-for-purpose as a means of assessing ***facts.***

This is both disappointing and depressing to this member. Always a very strong supporter of Scrutiny during its development in recent years – *and the only Minister who voted in favour of the establishment of a fifth Scrutiny Panel* – I see my hopes for a rational and evidenced contribution to government profoundly weakened by the prospect of the Scrutiny function becoming merely a vector for personality wars.

Sadly, the possibility remains that the Scrutiny function may become merely a vehicle, terminally freighted with

political baggage of one kind or another. But too much has been invested in the new machinery of government to permit this to happen. Scrutiny has to fulfil the task of delivering *objective, impartial and evidence-based* assessments of public policy issues. If it fails in this – then the keystone of the new system of government will have been pulled away.

The Ministerial executive *requires* proper scrutiny. Great power is concentrated into few hands. The danger must, therefore, be recognised that every error of fact, display of partisan politicking and miss-direction that appears in a Scrutiny Panel Report will actually furnish Ministers with the ammunition needed to discredit, ridicule and dismiss the work of Scrutiny, should a Minister be so inclined. *This, notwithstanding the fact that there may be some important and legitimate points in the Reports.*

No-one who believes in the concept of *effective* checks and balances could accept such an outcome.

In an effort to avoid such a system failure, perhaps the time has come – even at this early stage – to think about the establishment of a Scrutiny Panel to scrutinise the Scrutiny Panels? After all, the quality of performance of the Scrutiny function is every bit as important as that of the executive. It, too, must be ready to “accept valid criticism”.

Sed Quis Custodiet Ipsos Custodes?

Senator S. Syvret
Minister, Health and Social Services.

Meetings with Staff:

There were **64** scheduled staff meetings listed below which were solely in relation to staff and their redeployment. In addition, of course, I often had impromptu conversations with staff when visiting wards in my normal day-to-day visits.

Training needs and preferences were identified for every member of staff. All staff completed a States redeployment form that allowed them also to indicate areas they wouldn't want to work.

In addition to these meetings I hold bi-weekly meetings with individual ward Sisters and bi-weekly group Sister meetings, at which I discussed any concerns or issues being raised by staff, and when necessary held a staff update meeting to respond to any concerns.

At every meeting staff were told they would hear any news from me first: I always met with them immediately after any media publicity so I could allay anxieties and correct misinformation.

At the update meetings domestic as well as nursing staff were present.

To the best of my knowledge the RCN have received no complaints from staff members.

The JNA asked to meet on the wards without staff in August following comments made at a union meeting. The union rep. F. Stein spoke with me, she had significant incorrect information which I corrected; she also sought assurances re redundancies... which were again given. She visited Leoville and McKinstry, no follow-up Report was given to me, nor any specific complaints from any staff member. This has been the only communication instigated by the unions.

Date	Meeting
12th April 2006	Update Meeting with all McKinstry Staff
18th April 2006	Update Meeting with all Limes Staff
20th April 2006	Update Meeting with all Sandybrook Staff
25th April 2006	Individual Meetings with Leoville Staff * 8
28th April 2006	Individual Meetings with Leoville Staff * 7
2nd May 2006	Individual Meetings with McKinstry Staff * 6
4th May 2006	Individual Meetings with Leoville and McKinstry Staff * 10
5th May 2006	Individual Meetings with Leoville and McKinstry Staff * 4
8th May 2006	Individual Meetings with McKinstry Staff * 10
11th May 2006	Update Meeting with all Leoville Staff
12th May 2006	Update Meeting with all McKinstry Staff
15th May 2006	Individual Meeting with McKinstry Staff * 1
7th June 2006	Update Meeting with all Leoville Staff
27th June 2006	Update Meeting with all Limes Staff
30th June 2006	Update Meeting with all Sandybrook Staff
5th July 2006	Update Meeting with all Limes Staff
6th July 2006	Update Meeting with all Leoville Staff
7th July 2006	Update Meeting with all McKinstry Staff
14th July 2006	Update Meeting with all Sandybrook Staff
18th August 2006	Update Meeting with all McKinstry Staff
29th August 2006	Update Meeting with all Leoville and McKinstry Staff
5th September 2006	Update Meeting with all Leoville and McKinstry Staff
6th September 2006	Update Meeting with all Limes Staff
2nd October 2006	Update Meeting with all Sandybrook Staff
3rd October 2006	Update Meeting with all Leoville and McKinstry Staff

Meetings with Unions:

Date	Meeting
24th April 2006	Meeting with Mark Littler and Mair Hutt and Unions – Nick Corbel, Peter Hannaford, Jim Ward and Amanda Bisson K. McNeil was invited but unable to attend. This was a two-hour meeting, the first hour with TGWU reps and Nick Corbel, and the second hour with JNA, RCN and Nick Corbel. A very thorough briefing of our proposals was given, with a clear explanation of the redeployment process and firm assurances that there would be no redundancies and that staff would receive any necessary re-training/updates. Also that staff preferences would be sought and met wherever possible.
30th June 2006	9.30 a.m. Kenny McNeil and Jim Ward with Mair Hutt for a further update.
29th August 2006	3.30 p.m. K. McNeil, J. Ward, P. Hannaford, B. Orey, P. Kirwan, S. Bishop with Mair Hutt. A comprehensive update.

K. McNeil claims the first he heard of this plan was in the JEP. Our first meeting with the unions was in April right at the start of the project. There was significant publicity in the media in May/June, below is an excerpt from the JCC meeting at which K. McNeil was present.

Excerpt from JCC Meeting June 8th 2006-10-12

MH wanted to squash several rumours which have been Reported in the media recently, most of which are untrue. She confirmed Leoville & McKinstry are closing due to the state of the buildings which will affect 47 patients. MH has hand delivered letters to private nursing homes inviting them to tenders for these beds and she is

currently working on a Service Level Agreement specifying obligations. This will form part of the negotiations and interview process.

Responsibility for patients will still lie with H&SS supported by two full time community sisters and a half time social worker who will be recruited to these positions.

States of Jersey Redeployment Policy guidelines are being used for the redeployment of staff from Leoville and McKinstry. Vacancies within H&SS which do not have specialised requirements will not be advertised externally. MH and a member of HR have met with all staff and MH has also met with staff side representatives. All wards are working with MH regarding vacancies and release dates can be negotiated. MH is able to fund short term cover if required.

All staff have been told that they will not lose their jobs and have been asked where their preferences lie to help with job matching. Initially they will work in their new post on a trial period and to aid the transition they have been given a perceptorship pack which encourages the use of mentors and also identifies learning needs.

Patients are being assessed and meetings will be set up with patients' relatives. The cost of care will remain the same for the patients but they will be required to pay for any medical treatment in the private sector.

The scoping document prepared and used by the Sub-Panel

SCRUTINY TOPIC – SCOPING DOCUMENT

For detailed planning of a review

Review Topic	Overdale
Scrutiny Panel	Social Affairs
Target Committee	Health and Social Services
Officer Support	Officer to be confirmed
Rationale <i>Key issues – reasons for doing this review</i>	Profound changes are being proposed for long term care in the Island, and Overdale in particular. It is very important that the implications for the Island as a whole and particularly the residents of Overdale are properly considered and their continuing welfare ensured.
Objectives <i>Specify what the review should achieve</i>	To examine and Report upon the following issues: <ol style="list-style-type: none"> 1. Plans for the future of Respite and Residential/Nursing Care for the Elderly, currently provided at Overdale, and to assess how those plans fit within overall policy. 2. The staffing, physical location and psychological issues that arise from any relocation and/or revamping of these services. 3. Whether those residents currently with Health and Social Services will retain the current standards of medical and nursing support and whether they will be required to make additional payment for such support. 4. The financial implications, for the States, Health and Social Services and families, of transferring elderly residents, currently at Overdale, to the private sector. 5. The implications of possible discounted rates for Health and Social Services residents upon other residents and upon the economics of operating private care facilities. 6. The future impact on the Overdale site of the changes proposed by Health and Social Services.
Success Indicators <i>Specify the desired outcomes of the review</i>	An understanding of the proposals and their implications for Overdale and its residents. A proper debate on the future of long term care and Overdale in particular. A greater public awareness of the issues surrounding the proposed changes to long term care and specifically the implications for Overdale and its residents.
Risks <i>Identify potential obstacles and pitfalls</i>	The review overrunning due to the importance and wide ranging nature of the issues involved. Possible distress to residents of Overdale and other long term care homes resulting from the surrounding publicity.
Methodology <i>Specify types of enquiry/methods</i>	

<i>of gathering evidence</i>		
Specialist Adviser <i>Specify source of advice if required</i>	N/A	
Witnesses <i>Specify who to contact</i>	<ul style="list-style-type: none"> ● Minister for H&SS ● H&SS Officers (to include Mr. R. Jouault and Mrs. M. Hutt) ● Social Security Department ● Management and staff from Overdale ● Management from other long term care homes affected by the proposed changes. ● Age Concern ● Residents of Overdale ● Members of the Public ● Property Holdings ● Jersey Association of Carers ● Care Federation ● Family Nursing and Homecare ● Mrs. I. Le Feuvre (Chair of ISAS Public Steering Group) ISAS = Island wide Strategy for and Ageing Society ● Ms. Christine Blackwood, Health Protection ● GPs from the Laurels Medical Practice ● Mr. M. Richardson, Geriatrics Specialist 	
Site visits	Overdale Other long term care homes	
Views of stakeholders <i>Specify evidence sources e.g. public meeting, focus group, workshop, public consultation</i>	Call for evidence: written submissions; personal statements	
Documents <i>Specify written evidence sources</i>	'New Directions'	
Resources <i>Specify budget for</i> <ul style="list-style-type: none"> ● Expenditure ● Officer days 	Panel meetings: 5 half days (15 Officer days) Site visits: 2 days (3 Officer days) Public Hearings: 3 days (5 Officer days, 4 Administrator days) Research, collation and analysis of written submissions: 10 Officer days Final Report (anticipated transcription of Report dictated by Panel Member): 6 days Total: 33 Officer days; 4 Administrator days	
Start Date	Completion of Evidence Gathering	Completion of Evidence Gathering

Comments of the Treasury

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Dear Mike,

With regard to the processes followed to by your Department in securing the alternative provision of care for residents of Leoville and McKinstry wards, I would make the following comments.

There is no financial direction providing specific instruction on what financial appraisals should be undertaken, I would expect that financial appraisals included within the business case for Leoville and McKinstry would reflect best practice and provide a fair appraisal of the different options being considered. Based on assurances from Health staff and the conclusion of the independent review by Alex Picot Ltd, I believe that the business case applied well established financial appraisal techniques that are widely used in both public and private sectors and have been in use in the NHS for some considerable time. This was, I believe, presented in a transparent and timely manner.

I understand, again based on assurances from Health staff, that an appropriate procurement process was followed and that value for money was a key consideration in the decision making process.

Kind Regards

Ian

Ian Black | Treasurer of the States

Treasury and Resources Department

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