STATES OF JERSEY

STATES OF JERSEY COMPLAINTS BOARD: FINDINGS – COMPLAINT BY MRS. X AGAINST THE HEALTH AND COMMUNITY SERVICES DEPARTMENT REGARDING THE WAY IN WHICH HER COMPLAINT WAS PROCESSED (R.4/2019) – RESPONSE OF THE MINISTER FOR HEALTH AND SOCIAL SERVICES

Presented to the States on 22nd March 2019
by the Minister for Health and Social Services

STATES GREFFE

RESPONSE OF THE MINISTER FOR HEALTH AND SOCIAL SERVICES

States of Jersey Complaints Board

On 4th October 2018, a Complaints Board Hearing constituted under Article 9(9) of the Administrative Decisions (Review) (Jersey) Law 1982 was held to review a complaint by Mrs. X against the Health and Community Services Department regarding the way in which her complaint was processed.

On 15th January 2019, the Privileges and Procedures Committee presented to the States the findings of the Complaints Board Hearing (*see* R.4/2019).

The Minister for Health and Social Services has considered the Board's Report dated 15th January 2019 and responds as follows.

The Complaint

It is accepted that the transcript of the Complaints Board Hearing accurately reflects proceedings on 4th October 2018. However, it is noted that various statements made at the Hearing and within the report were not substantiated, including many that we would dispute.

It should be noted by the Board that the Department were constrained by Mrs. X's decision to decline to give consent to access her medical records at the Hearing and in responding to the Board's findings. On 2 separate occasions during the Hearing, Professor J. McInerney asked Mrs. X whether she would consent to him sharing with the Board sensitive clinical information from her case history in order to clarify the events under discussion. On both occasions Mrs. X declined to provide her consent to do so. As a consequence, Professor McInerney was not able to fully support the position of the Health and Community Services Department ("HCSD") to the Board without the comprehensive clinical picture, as he was precluded from doing so without Mrs. X's consent, as he is constrained by GMC Good Practice guidelines. This has resulted in the Department being unable to respond to specific concerns raised or to respond in full to some of the Board's findings.

The Board's Findings

The Minister's response in relation to the Board's findings is as follows –

5.2 The Minister accepts the decision of the Board to uphold Mrs. X's complaint under the Administrative Decisions (Review) (Jersey) Law 1982, and acknowledges that there were failings in the way that Mrs. X's complaint was handled. The Department had previously acknowledged these failings following the Independent Review of Mrs. X's complaint carried out by Ms. Calthorpe and had put a plan in place to address these. The Department would like to apologise for its shortcomings –

1. in providing timely responses to communications;
2. in that the attitude of some staff was not in keeping with the States' Core Values;
3. in that the complaints procedure was drawn out and did not meet the timelines stated.

5.3 The Minister is confident that the Department did not wilfully ignore Mrs. X, or that it failed to regularly communicate with her, although the Department accept that there were delays in some of the responses.

The travel policy in place at the time, *Health and Social Services, Patient Travel Charges Policy (2014)* ('the Policy') was a means-tested policy, consequently Mrs. X would have been means-tested to ascertain her ability and eligibility to pay. The policy included thresholds for married and single parents with and without 1, 2 or more residential children. The Travel Office staff are bound to work within the limits of the policy, which was signed off at a Ministerial level. The policy was very clear on what would be reimbursed and what would not be, and includes a section on how to appeal in exceptional circumstances, which Mrs. X did not do. Mrs. X states that "*she was well-versed*" with the policy, and that it had been made clear to her on a number of occasions. The Department therefore considers that Mrs. X would have been aware of the boundaries contained within it, as well as the appeals process.

When Mrs. X continued to express her financial concerns, the Department made every effort to assist her under the '*exceptional circumstances*' section of the policy. One example of this is that when train tickets were bought for Mrs. X in advance; and when she did not collect these, the Travel Office staff delivered them to her home to support her if she was struggling to get into the Hospital.

In December 2016, a complete review and revision of the policy was launched, which in September 2017 was updated as the result of feedback and became '*Patient Travel and Related Costs Policy (2017)*'. This policy is no longer means-tested, although there remain aspects of the policy that Mrs. X identifies as issues, such as –

- the frequency of paid weekend visits (currently one every 4 weeks);
- the fact that the referring Consultant is required to clinically assess whether the patient's condition requires the patient to have an escort of a nurse, or accompanying friend/relative in patients under the age of 75. This is agreed by the Director or Care Group Lead.

The Department are now able to purchase train tickets and so on, in advance for patients being treated off-Island. The only exception to this is when the patient has an appointment at short notice, the patient picks up the ticket from the Travel Office instead of the station.

There has been a departmental and staff change in the Travel Office; they are now managed as part of the Overseas Treatment team. This ensures that when a patient is referred to a UK contractor by Health and Community Services, the referral is appropriate within contractual arrangements in place.

The 2017 policy is currently under further review to improve guidance and clarity. The Minister is grateful to Mrs. X and the Board for making the Department aware of the impact that policy limitations can have on patients. The Minister will ensure a policy review, with service user feedback, and will balance the need for a fair, equitable policy with the current financial constraints on public spending.

5.4 The Minister accepts the view of the Board and Ms. Calthorpe's report that the level of professionalism from staff with a duty of care for vulnerable patients was not met on every occasion. On behalf of the HCSD, the Minister would like to extend its apology to Mrs. X if the attitude of the staff was not always in keeping with the States' Core Values, and if behaviours were below the expectations expected of staff as outlined in the Behavioural Framework.

The Health and Community Services Department is committed to giving our customers the best possible experience, and aims to put the customer at the centre of everything that we do. In October 2017, the HCSD launched the 'Our Values Our Actions' campaign. 'Our Values Our Actions' are the principles at the heart of the cultural and behavioural relationships within all areas of the HCSD. It includes a behavioural framework and expectations of staff within this. Champions within the organisation have been trained throughout 2018 in order to fully roll this out to all staff across the HCSD.

5.5 The Minister cannot fully comment on this section as it is not clear which communications within the Department this section refers to. However, the Minister accepts the view of the Board that the standard of communication was unacceptable and would like to apologise to Mrs. X for this failure.

5.6 The Minister does not agree with the Board that the Department left Mrs. X struggling to find information for herself. The Department is confident that Mrs. X was given all the information required to make an informed decision relating to the medical management of her condition on a regular basis, and as Mrs. X acknowledges and demonstrates, she was well aware of both the Travel Policy and Complaints Procedure. The Department does not have Mrs. X's permission to use her medical notes as part of this process, so cannot go into specific details related to that, but can reassure the Board that during Mrs. X's medical consultations she was given full, detailed and relevant information, and this was followed up in writing.

5.7 The Minister does not agree that the HCSD has 'bought off' Mrs. X and is very disappointed that the Board, which in paragraph 3.17 of its report offered to act as a liaison between the Department and Mrs. X, and helped the Department to negotiate this cash payment, would consider this to be the case. Mrs. X has never been denied treatment in the Department, and has declined all offered on-Island treatment on a number of occasions. Mrs. X was then offered off-Island treatment in Bath and felt unable to take up this treatment option, leaving no other treatment options open to the HCSD.

On 30th July 2018, Mrs. X was invited to a meeting with the Pain Clinic in a further attempt to re-engage with her and reconcile the differences between her and the HCSD. Mrs. X was offered a treatment plan, which she did not feel that she could accept. Mrs. X requested that instead she had the equivalent amount of money that the HCSD would spend on sending her off-Island, so that she could spend it on-Island for private treatment. Mrs. X said that she would like to be in control of her own medical care on-Island and access private treatment locally that she had found to be beneficial. This was considered carefully by members of the Management Executive Team of the HCSD, as this would not be standard practice. However, all other options had been explored with Mrs. X

and exhausted. As Mrs. X continued to require treatment, the HCSD agreed to the request of Mrs. X on this occasion only and due to the exceptional circumstances. During the Complaints Board Hearing, Mrs. X asked the HCSD to include travel costs associated with travel to Bath in case she chose a private off-Island option. This was agreed by the HCSD and added to the costing, which Mrs. X accepted.

The Minister acknowledges the Board's concerns regarding creating a precedent, and acknowledges that in paragraph 3.11 of the findings report, Professor McInerney raised this point himself. This was something that was always considered and discussed by the Management Executive Team ("MEX"). The MEX proceeded with the offer after careful consideration. Decisions such as these are taken on a case-by-case individual basis, and as most patients are happy with the treatment options available within the HCSD, it is not felt that this will set an unworkable precedent.

5.8 The Minister accepts that the Department departed from its Complaints Procedure, and that there were significant delays in responding at each stage of the complaints process. The Department gave an unreserved apology for delays in the process in writing on 10th April 2017, 3rd May 2017, 5th September 2018 and 26th January 2018, as well as in person at the Hearing on 4th October 2018. The Department agrees that this is unacceptable and that complaint responses need to be sent in a timelier manner, and that communication within the process needed improvement.

HCS plans in the near future to introduce a Patient Advisory and Liaison Service. This will ensure that there will be a point of contact for people with complaints within the Department, and a champion for them throughout the complaints process. The Department has also made changes to the way in which complaints are handled, and now has a dedicated Feedback and Complaints Officer.

The States of Jersey are currently in the process of introducing a new States-wide OneGov Complaints Policy. This aims to improve the complaints process throughout all States Departments and ensure a more timely response. There will be a clear line of reporting of complaint data up to the Chief Minister Level. The policy includes expectations from the Management Executive Team to commit to promoting a culture that values feedback, continuous improvement and the effective resolution of complaints.

5.9 The Minister would like to confirm that in paragraph 3.8 of the report, Professor McInerney stated that "*he had not yet had the opportunity to discuss referrals from the Pain Team. Accordingly, he was unaware of whether or not a referral to the Royal National Hospital for Rheumatic Diseases in Bath was outside the normal referral pathway*". The HCSD sent approximately 4,584 patients to up to 86 different hospitals in 2018. Bath is one of only a few UK hospitals that hold a residential programme – and therefore has become the hospital that receives the referrals from the Department of Pain Medicine where appropriate. However, it is not commonly used, as most patients receive effective on-Island treatment, and only 4 referrals were made to Bath in 2018.

The Overseas Treatment Office meet weekly with the Divisional Lead to review all referrals off-Island. When a request for referral is made by a Jersey-based Consultant, and the referral proposal is outside contractual arrangements with the provider, that referral may be required to be reviewed by a Medical Decisions Panel and, where recommendation is made, endorsed by the HCSD Executive and Care Group Head, in considering the very best treatment pathway with the most optimal outcomes for the patient at the centre of care.

5.10 The HCSD has Service Level Agreements ("SLAs") in place with third party providers that outline responsibilities with 11 NHS hospitals. However, depending on clinical need, speciality, and the need for residential placement or bed availability for example, it is not possible to have SLAs with all UK hospitals that the HCSD send patients to; and the HCSD does not currently have a contract with Bath.

Following the implementation of the off-Island Treatment and Travel Administration System (an overseas treatment monitoring tool), the Minister is assured that there is appropriate monitoring, governance and challenge around referrals to third party providers.

5.11 As in paragraph 5.3, the Minister accepts that the Travel Policy in place in 2015 was in need of revision, and confirms that the 'Patient Travel and Related Costs Policy (2017)' will be revised.

5.12 The Minister accepts the recommendations in paragraph 5.12, and the HCSD continue to improve procedures and training to ensure better communication between patients and staff. The importance of accurate record-keeping is entirely accepted.

5.13 The Minister thanks the Board for the opportunity to respond to the Report and the Board's recommendations and findings.