STATES OF JERSEY

STATES OF JERSEY COMPLAINTS BOARD: FINDINGS – COMPLAINT BY MR. B. HUDA AGAINST THE MINISTER FOR HEALTH AND SOCIAL SERVICES REGARDING AN UNRESOLVED COMPLAINT AND ALLEGATIONS OF RACISM

Presented to the States on 5th December 2018
by the Privileges and Procedures Committee

STATES GREFFE

REPORT

Foreword

In accordance with Article 9(9) of the Administrative Decisions (Review) (Jersey) Law 1982, the Privileges and Procedures Committee presents the findings of the Complaints Board constituted under the above Law to consider a complaint against a decision of the Minister for Health and Social Services regarding an unresolved complaint and allegations of racism.

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

STATES OF JERSEY COMPLAINTS BOARD

26th October 2018

Findings of the Complaints Board constituted under the Administrative Decisions (Review) (Jersey) Law 1982 to consider a complaint by Mr. B. Huda against the Minister for Health and Social Services regarding an unresolved complaint and allegations of racism

Hearing constituted under the Administrative Decisions (Review) (Jersey) Law 1982

Present

Board members –

G. Crill, Chairman
S. Cuming
R. Bonney

Complainant –

B. Huda
C. Huda
Advocate I. Jones, Preston Legal

Health and Community Services –

C. Dunne, Director, Community Care and Health (*previously Director of Adult Services*)
J. Poynter, Director of Operations, Community and Social Services
R. Downes, Clinical Director, Community and Social Services
H. Sandy, Mourant Ozannes

Strategic Performance, Policy and Planning Directorate-General –

Dr. S. Turnbull, Medical Officer of Health

States Greffe –

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

The Hearing was held in public at 10.00 a.m. on 26th October 2018, in the Blampied Room, States Building.

1. Opening

1.1 The Chairman welcomed those persons present, and introduced members and officers of the States Greffe. He explained the process which would be followed and advised that an audio recording of proceedings was being made to assist the Clerk. He advised that whilst the initial complaint against Mr. B. Huda had arisen as a result of the treatment of a patient, there would be no reference to that individual or details of the treatment received. With this in mind, the Chairman referred to Mr. Huda's expectations in terms of the outcome of the Hearing, as detailed within his submission, and advised that it was unlikely that the Board would be able to meet them. He reminded the meeting that the Board

was limited to either upholding or rejecting a complaint and making recommendations to Ministers based upon its findings. The Board could not demand an apology, seek a redaction, instigate disciplinary action, or require any financial compensation.

1.2 Turning its attention to Mr. Huda's complaint against the Minister, the Board noted that this centred around the Department's failure to inform/engage with him or allow him a right of reply in respect of a decision which had been taken to refer concerns about his professional competence/conduct to the professional body with which he was affiliated and registered in Jersey (the General Osteopathic Council) (GOC). The Board was advised that the decision had been taken to refer the matter to the professional body as a result of concerns which had arisen out of an adult safeguarding alert. Ultimately, the professional body concerned had found that there was no case to answer.

2. Hearing

2.1 Mr. C. Dunne, Director, Community Care and Health, explained that the adult safeguarding team within the Health and Social Services Department had 3 permanent staff members who dealt with safeguarding alerts/referrals. The team was responsible for co-ordinating and running the multi-agency functions of the Safeguarding Partnership Board and reported to Mr. Dunne and, ultimately, to the Safeguarding Partnership Board. The Safeguarding Partnership Board was independent of the Minister for Health and Social Services, but was accountable to the Chief Minister's Department.

2.2 Clear protocols existed for managing safeguarding alerts and, in this particular case, after the initial assessment of the safeguarding alert and the convening of a strategy meeting, it had been concluded that the individual concerned was no longer at risk (which was of paramount importance and took absolute priority), and was not receiving any further treatment from Mr. Huda. This meant that no further investigation or the formulation of a safety plan for the individual had been necessary. However, following this, there had been procedural errors, delays and confusion around who was responsible for informing Mr. Huda of concerns which had been expressed at the initial strategy meeting regarding treatment he had provided, and the intention to refer the matter to the professional body with which he was affiliated. Mr. Dunne stated that he would have expected Mr. Huda to have been contacted after the decision had been taken to refer the matter to the professional body. It was clear from the agreed procedures that Mr. Huda should have been given the opportunity to respond to the issues which had been raised about his treatment of the individual concerned.

2.3 Mr. Dunne acknowledged that there were 2 separate, but related, strands to the process – the first rightly dealt with safeguarding aspects, and the second focussed on professional practice. Consequently, whilst the safeguarding element had been successfully concluded in this case, the second strand, which related to Mr. Huda's treatment of the individual concerned, was progressed without his knowledge. Whilst Mr. Huda had been contacted by a local General Practitioner who had requested that he cease treating the individual concerned, this was not considered to be a viable alternative or substitute for following the proper procedures.

2.4 Mr. Dunne stated that a clear separation of the different parts of the process was desirable, and officers should carefully consider the guidelines and use them appropriately. A record of proceedings had been produced during the strategy meeting, but this had not been done in a timely manner and the content had been found to be inaccurate. The Board was advised that the record of such meetings was often produced by an administrator from within the wider service but, when this was not possible, a member of the Adult Safeguarding Team was required to produce the record. In this particular case, no administrative support had been available and a member of the Adult Safeguarding Team had been tasked with producing the record. The Board requested that copies of the formal record and the contemporaneous notes be provided (it was recognised that these would be redacted to protect patient confidentiality). The Board was later advised that these were not available.

2.5 Mr. Dunne advised that, around this particular time, 4 cases which had not been managed as expected or in accordance with the agreed policies had come to his attention. He described the quality of the process which had followed in relation to the referral of Mr. Huda to the GOC as 'poor'. He had taken appropriate action to address the failures which had occurred, and steps were also being taken to secure dedicated administrative support. In addition, a review of adult safeguarding procedures was being carried out by the Safeguarding Board. The Chairman suggested that, given the potentially serious consequences which flowed from the initial referral, and the momentum which could be generated within a small team, it might have been beneficial for someone outside of the immediate team to 'sign off' each stage of the process. Mr. Dunne agreed that this suggestion was certainly worthy of further consideration, but he also felt that a dedicated team of experts working within a defined set of rules should lead to consistency of approach, and it was for this reason that action had been taken to address the issues which had arisen.

2.6 Mr. Dunne confirmed that the concerns which had been expressed had arisen as a result of Mr. Huda's treatment of one individual only and that individual's unique circumstances. However, he was referred to an electronic mail message dated 21st September 2018, addressed to Ms. C. Blackwood, Head of Professional Care Regulation, from the Medical Officer of Health, Dr. S. Turnbull (who was a signatory to the agreed policies and procedures for safeguarding), which Mr. R. Bonney, a member of the Board, read aloud as follows –

> *"…. I share your concern that the GOC may not have been provided with sufficient information to trigger the serious concerns they ought to have about their continuing registration of this apparently unscrupulous practitioner who is bringing the GOC and its Register of Osteopaths into disrepute.*
>
> *Please keep me informed how this is progressing. I will wade in if I need to. In the meantime, given the gravity of what has happened to x, Huda seems to me quite likely to be placing other vulnerable clients at risk, continuing with the badge of respectability of being a registered osteopath. Much time has already passed since HSS first became aware".*

2.7 Dr. Turnbull addressed the Board, advising that she had first been alerted to the issue by the former Minister for Health and Social Services, who had received a direct communication from a vulnerable adult who had received treatment from Mr. Huda. Given the particular circumstances, Dr. Turnbull's reaction was that serious concern existed, and she had undertaken to find out what action had been taken so far. She had subsequently been advised of the referral to the GOC, and had later learned that the body had decided to take no further action. Dr. Turnbull had reviewed the referral document, and had concluded that the GOC had not been furnished with all of the relevant information, and she was concerned that there might be wider professional integrity and public health issues. Dr. Turnbull advised that in Jersey, the regulatory team did not have investigatory powers, so matters had to be referred to the relevant professional body. The Chairman commented that he felt that it was all the more surprising then, that there had not been a full investigation within the safeguarding process.

2.8 Dr. Turnbull was asked about the tone of the e-mail, and she responded by stating that she had been extremely perturbed about the allegations made in a detailed report prepared by the patient, which report had not been forwarded to the GOC. The comments made about Mr. Huda being 'unscrupulous' were based on Dr. Turnbull's professional assessment of the contents of the report. Ultimately, she and others had been served with a writ for defamation of character by the English High Court. Advocate Jones, acting for Mr. Huda, pointed out that the report contained untested allegations, the serious nature of which had had a catastrophic effect on Mr. Huda's professional life.

2.9 Mr. Huda addressed the Board, advising that he found the manner in which he had been dealt with most upsetting and disrespectful. He stated that he had lived in Jersey for 42 years and was a well-respected member of the community. He had been in practice for 32 years and, during that time, had carried out over 64,000 procedures. Mr. Huda informed the Board that the patient concerned had attended with a parent for assessment, and he stated that the number of treatments had been grossly exaggerated. However, the Chairman reminded Mr. Huda that the treatment he had carried out was not the focus of the complaint.

2.10 Mr. Huda went on to state that he believed that the actions taken showed malicious intent, and he had concluded that there was also an element of racial prejudice. The language used to describe him had left him feeling 'small' and degraded, and he made particular reference to internal documentation in which he had been addressed as 'Huda' and not Mr. Huda. He had not been consulted with regard to the treatment protocol or the issues raised by the individual concerned, and he had been left feeling as though the Department had 'ganged up' on him.

2.11 Mr. Dunne repeated that he accepted that there had been procedural errors, and he had met Mr. Huda and apologised for these errors. He too felt that references to Mr. Huda as 'Huda' were disrespectful, and he apologised most sincerely to Mr. Huda and stated that this conduct fell below the standards he expected from staff. However, he stated that there had been absolutely no malicious intent or racial prejudice.

3. Closing remarks

3.1 The Board thanked those persons present for attending, and advised that a report and findings would be prepared and distributed as soon as possible to both parties for their input on the factual content. The findings of the Board would subsequently be appended thereto. The delegation and all observers withdrew.

4. The Board's findings

4.1 The Board has considered whether the complaint could be upheld on any of the grounds outlined in Article 9 of the Administrative Decisions (Review) (Jersey) Law 1982, as having been –

(a) contrary to law;

(b) unjust, oppressive or improperly discriminatory, or was in accordance with a provision of any enactment or practice which is or might be unjust, oppressive or improperly discriminatory;

(c) based wholly or partly on a mistake of law or fact;

(d) could not have been made by a reasonable body of persons after proper consideration of all the facts; or

(e) contrary to the generally accepted principles of natural justice.

4.2 The Board has decided to uphold the complaint on the grounds of (b) above, *that the manner in which the matter was handled was 'unjust, oppressive or improperly discriminatory, or was in accordance with a provision of any enactment or practice which is or might be unjust, oppressive or improperly discriminatory;'* and (e) above, *'contrary to the generally accepted principles of natural justice.'*.

4.3 The Board is very disappointed that the Department failed to deal effectively with the complaint made against Mr. Huda and conducted a one-sided review of the case without giving him the right of reply. The untested allegations were accepted at face value, and it is most worrying that the Department is unable to provide the contemporaneous notes taken at the Safeguarding Strategy meeting at which this unfortunate series of events was initiated.

4.4 The Board does not accept that there was any malicious or racist intent towards Mr. Huda, but concurs that the references made in e-mails, where he was not accorded the dignity of a title, but identified simply by his surname alone, were both disrespectful and discourteous.

4.5 The Board concludes that the Department departed from agreed policy when dealing with this particular case. The Board finds this to be of great concern and is of the view that there is no real point in having set procedures if they are not going to be followed. Any referral to the GOC should have been accompanied by robust evidence to substantiate the request for a review to be conducted. It was completely unfair for those conducting the 'investigation', such as it was, to have had the final determination as to whether a referral was made to the GOC. The Board is also critical of the fact that it appears the Safeguarding Strategy team abrogated responsibility to the complainant's G.P. to intervene and request that Mr. Huda cease treatment of the complainant.

4.6 The Board offers no comment as to whether the outcome of the investigation by the GOC would have been different if the correct processes had been followed. Its focus is on the application of procedural fairness, that is to say the procedures used by a decision-maker, rather than the actual outcome reached. However, procedural fairness requires a fair and proper procedure to be used when making a decision, and the Board believes that a decision-maker who follows a fair procedure is more likely to reach a fair and correct decision.

4.7 The Board's role in this case is to adjudicate as to whether Mr. Huda was treated fairly and in line with the basic principles of natural justice, which, the Board is mindful, states that no one should be condemned unheard. It is clear from the evidence presented that this was not the case.

4.8 The Board is pleased to note that Mr. Huda was sent a letter, dated 10th October 2018, apologising for the failures in the administration of the complaint brought against him. That apology notwithstanding, in upholding the complaint, the Board makes the following recommendations to the Minister for Health and Social Services –

- The existing guidelines/policy, and the implementation of the same, should be reviewed to establish a clear differential between the focus on the patient at risk and the disciplinary aspects of any investigation.
- Each step of the process should be clearly documented. The Board wishes to stress the importance of accurate record-keeping, and highlights, with some concern, that this appears to be a recurring problem within the Health and Community Services Department, evidenced by other recent complaints cases.
- The reasons for any departure from policy need to be clearly documented and robustly defended (no explanation or reasoning for the departure from policy in this case was provided).
- Each progression of the complaint-handling procedure should be signed off by an independent scrutineer who is not part of the original decision-making process.

4.9 The Board asks for a response from the Minister for Health and Social Services within 2 calendar months of the publication of its Report.

Signed and dated by –

G.C. Crill, Chairman ..... Dated: .....

R. Bonney ..... Dated: .....

S. Cuming ..... Dated: .....