

## **REVIEW BOARD**

*(Constituted under The Administrative Decisions (Review) (Guernsey) Law, 1986)*  
*(“the Law”)*

### **Review Board Members:**

Deputy Matt Fallaize (Chairman)

Deputy Scott Ogier

Mr. Richard Heaume, MBE (Dean of the Forest Douzaine)

(together as “**The Review Board**”)

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**Decision - Issued on Tuesday, 25<sup>th</sup> June, 2013**

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### **Parties (“the Parties”):**

**(1) The Complainant: Mr. C Rolfe (“the Complainant”)**  
**and**

**(2) The Department: Health and Social Services (“the Department”)**

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**Following the Hearing at The Cambridge Room, Beau Sejour Leisure Centre  
on Thursday 23<sup>rd</sup> May, 2013 (“the Hearing”)**

The Review Board is grateful to both parties for the clear, concise and helpful way in which they presented their respective cases. The Review Board also wishes to thank the members of the public, the media and States Members who attended the Hearing, including for their patience and understanding during the two short closed sessions of the Hearing.

## **1. Issue**

- 1.1 The submission from the Complainant relates to a decision of the Department regarding its application of States' policy on the funding of referrals for second opinions obtained off-island and consequent treatment.

## **2. Background**

- 2.1 The Complainant made an application to the Chief Executive of the States of Guernsey on 9<sup>th</sup> December, 2012 under Section 1 of the Law for a review of decisions taken by the Department in 2012 and confirmed on 24<sup>th</sup> October, 2012 ("the Department's Decision"), which resulted in the Department's refusal to reimburse Mr Rolfe approximately £13,000 for fees and expenses paid in respect of obtaining:
  - i) a second opinion with a consultant in Cambridge ("the Cambridge Consultant"); and
  - ii) further, resultant off-island consultations and treatment received at Addenbrooke's Hospital and Spire Cambridge Lea Hospital in Cambridge ("the Cambridge hospitals").

## **3. Process for Complaints under the Law**

- 3.1 The Chief Executive enquired into the matter in accordance with the provisions of Section 2 of the Law and satisfied himself that the matter complained of was within the jurisdiction of a Review Board. Accordingly, he requested the Chairman of the Panel of Members, Deputy R A Perrot, to appoint a Review Board to enquire into the complaint. A Review Board was established with the following members: Deputy M J Fallaize (Chairman), Deputy S J Ogier and Mr R Heaume, MBE.

## **4. Introduction**

- 4.1 The Review Board convened at 10 a.m. on Thursday 23<sup>rd</sup> May, 2013 to consider the Complainant's application for a review of the Department's Decision. The Hearing ended at approximately 3.45 p.m. that day.
- 4.2 The Complainant chose not to be legally represented at the Hearing. He was accompanied by his spouse.
- 4.3 The Department was represented by Mr. Richard Evans (Director of Corporate Services), assisted by Mr. Ed. Freestone (Assistant Director, Policy) and Advocate Laura de Lisle of St James Chambers.

**5. Procedural matters**

- 5.1 The Hearing commenced with the Chairman setting out the arrangements, the scope of the Review Board under the legislation and what would happen at the conclusion of the Hearing.
- 5.2 The Review Board considered the Complainant's concerns regarding a letter that was addressed to the Chairman of the Review Board from the Department dated 20<sup>th</sup> May, 2013 ("the Letter"), a copy of which the Department sent to the Complainant on the same date. The Complainant explained to the Review Board that he had interpreted the letter as an attempt by the Department to prevent him from truthfully presenting all the circumstances of his complaint and explaining the reasons for taking the action that he did. He stated that he viewed the Letter to be unhelpful and another example of how poorly the Department had treated him. His view was that the Department had sufficient time to submit the Letter earlier than two days before the Hearing. The Complainant remarked that the effect of the Letter would be to discourage him from explaining and justifying the reasons for his complaint.
- 5.3 The Review Board noted the Complainant's views.
- 5.4 The Review Board informed the Parties that it shared similar views to that of the Complainant in respect of both the timing and effect of the Letter. The Board would refer the Letter to the Chairman of the Panel and its legal advisers for further consideration.
- 5.5 The Department later apologised for the lateness of the Letter. The Department stated that the purpose of the Letter was to explain the Department's opinion of the scope of the Hearing and was not an attempt to inhibit the Complainant or the Review Board. The Department further confirmed that the Letter was not a request for the meeting to be held in private, but was intended to establish clarity that the scope of the Hearing would be limited to the review of administrative decisions, in accordance with the Law, and would not extend to reviewing medical discussions and decisions, in accordance with the Law.
- 5.6 The Review Board confirmed that the Hearing would be held in public in the interest of adhering to the general principle of openness and transparency and in acknowledgement of the public interest in Review Board Hearings. However, the Review Board noted that there may be certain aspects of the matter, such as personal medical information, which should not be discussed in public.
- 5.7 The Review Board considered that measures could be taken to meet particular concerns and therefore:
- (a) It was agreed that, as far as was possible, any medical staff should remain anonymous during the Hearing. No medical practitioner or members of staff, other than those who appeared at the Hearing, have been named in this Decision;
  - (b) The Review Board also agreed that in order to balance the conflicting public and private interest in the matter, it would limit the exclusion of the public to

a particular part of the Hearing only. The Complainant and the Department were requested to advise the Review Board if at any time during the course of the Hearing they became concerned that the confidential nature of the matter being discussed (e.g. medical information) justified the exclusion of the public from the Hearing. Review Board members would then, if necessary, adjourn to resolve upon any such requests.

5.8 During the Hearing, the Complainant and the Department were each given the opportunity to present their cases to the Review Board and each given the opportunity to ask both initial questions and then supplementary questions of the other party. The Review Board also asked initial questions and then supplementary questions of the Parties.

5.9 The Complainant addressed the Review Board first; followed by the Department.

## **6. Adjournments**

6.1 There were three adjournments during the Hearing, two of which arose out of requests by the Complainant for the Hearing to be held in private. Having carefully considered the merits of each request, the Review Board was not satisfied that a public hearing, albeit with reporting restrictions, would sufficiently protect the confidential nature of the medical issues to which the Complainant needed to refer and therefore, under section 7(1) of the Law, the Review Board approved both requests.

## **7. The Department's Complaints Procedure**

7.1 It emerged during the Department's submission that the Complainant had not exhausted the Department's Complaints Procedure – because the Department had failed to draw the complaints procedure to his attention. Therefore, the Review Board gave the Complainant the opportunity to withdraw his complaint in order to allow him to take advantage of the Department's complaints procedure. The Complainant declined, which the Review Board respected, and the Hearing continued.

## **8. The Complainant's Submission to the Review Board**

What follows is based exclusively on the chronology and details of the case which were presented to the Hearing by the Complainant:

8.1 In June 2012, the Complainant awoke one morning to find that he was unable to see out of his right eye.

8.2 On 10<sup>th</sup> July, 2012, the Complainant was seen by a consultant ophthalmologist ("the Guernsey Consultant") at the Medical Specialist Group ("MSG") and was advised that the sight in his right eye was permanently impaired and that no medical procedure was available which would repair the damage.

8.3 The Complainant was told by the Guernsey Consultant that he could have a second opinion from another, off-island consultant and proposed the Cambridge

Consultant who worked at the Cambridge Hospitals. Other eye centres within the south of England were also discussed, but not Southampton. The Guernsey Consultant was aware of (a) the Complainant's previous poor experience with one of the consultants at Southampton Hospital and (b) the location of a house owned by the Complainant in the UK which was close to the Cambridge Hospitals.

- 8.4 On 23rd July, 2012, whilst at his house in the UK, the Complainant notified the MSG by email that he had arranged of his own accord an appointment with the Cambridge Consultant to take place on 1st August, 2012. He requested that the results of his tests in Guernsey be sent to the Cambridge Consultant. He acknowledged that he may have to pay for the consultancy as a private patient but he was very worried about his eye and did not wish to delay obtaining a second opinion, and in any event he fully expected to be reimbursed for the consultation in due course.
- 8.5 Late in July, 2012, the Complainant telephoned the MSG and was informed by a member of staff that his request for funding of the second opinion with the Cambridge Consultant had been rejected. The Complainant assumed that the Guernsey Consultant would challenge the Department's decision, as would he upon his return to the island. The Guernsey Consultant had not led him to expect a rejection of the request for funding. The Complainant fully expected that ultimately he would be reimbursed.
- 8.6 On 27th July, 2012, a referral letter from the Guernsey Consultant to the Cambridge Consultant was copied to the Complainant. It confirmed the refusal to fund the second opinion with the Cambridge Consultant on the basis that the Department was unprepared to fund a second opinion with the Cambridge Consultant when a consultant was available at Southampton. The information was also sent by email. The Complainant did not read the letter or email until his return to Guernsey on 4th September, 2012.
- 8.7 On 1st August, 2012, the Complainant had his appointment with the Cambridge Consultant. He claims that the Cambridge Consultant did not make him aware of the letter dated 27th July in which the Department advised that it would not fund the cost of the second opinion.
- 8.8 On 9th August, 2012, following his initial consultation in Cambridge eight days earlier, the Complainant had a procedure on his eye carried out, also in Cambridge.
- 8.9 On 5th September, 2012, the Complainant emailed the Department requesting clarification about why funding for the second opinion had been rejected and additional information about the decision in order that he could consider whether to appeal against the decision.
- 8.10 On 17th September, 2012, the Complainant rejected an appointment offered to him to see his Guernsey Consultant as a private out-patient. At that stage the only information the Complainant was awaiting was in respect of whether the

Guernsey Consultant had challenged the Department's decision not to provide funding and in respect of any appeals process related thereto.

- 8.11 On 27th September, 2012, having received no further information from the Department nor MSG, the Complainant emailed the Department to lodge a complaint.
- 8.12 In October and November, 2012, the Complainant had further appointments and procedures carried out in Cambridge. Happily, the Complainant's sight has been restored to its condition before the sudden loss of vision in June, 2012.
- 8.13 On 24th October, 2012, the Chief Officer of the Department responded to the Complainant's complaint to confirm that the Department was unprepared to reimburse any expenditure incurred by the Complainant.
- 8.14 On 9th December, 2012, the Complainant made an application to the Chief Executive of the States of Guernsey to have the decisions of the Department considered by a Review Board. This Review Board was subsequently convened.
- 8.15 The Complainant submitted that, in view of the exceptional circumstances of his case, the Department should reimburse the costs incurred by him in obtaining a second opinion and undergoing subsequent treatment. The Complainant advised that by accommodating himself at his house in the UK and paying for his own flights he had saved the States of Guernsey some money. He had pursued his complaint with the Department unsuccessfully, though not as far as he could have on account of the Department's failure to avail him of its complaints procedure, and he felt that he had no option but to make an application to a Review Board.
- 8.16 The Complainant had understood that the Guernsey Consultant referred him to the Cambridge Consultant because it was the most appropriate course of action.
- 8.17 The Complainant trusted the Guernsey Consultant and felt that, in the event of problems with the referral to the Cambridge Consultant, the Guernsey Consultant would have contacted him and discussed alternative options. The Guernsey Consultant did not do so.
- 8.18 The Complainant explained that he had not been advised of the distinction made for funding purposes between second opinion referrals and off island treatment referrals. Therefore he assumed that one application covered both.
- 8.19 The Guernsey Consultant had recommended the Cambridge Consultant and therefore the Complainant was satisfied that the medical criteria of the application process would be met.
- 8.20 The Complainant recognised that the Department would not be able to make the necessary funding arrangements in advance of his initial appointment in Cambridge, but he fully expected that he would be reimbursed.

- 8.21 The Complainant advised that it was not possible in hindsight to say whether he would have gone to Southampton had he known that the Department regarded it as the only legitimate option for which funding would be made available. Potentially he may have agreed to obtain a second opinion at Southampton but, given his previous experiences there, he would not have consented to receive their treatment.
- 8.22 The Complainant submitted that the procedures for obtaining off -island second opinions and treatment, and the appeal processes relating thereto, were not clearly communicated to him by the Guernsey Consultant or Department staff. The Complainant further submitted that such procedures were unclear in any event.
- 8.23 The Complainant believed that the Department had applied policies relating to second opinions and resultant treatment off-island too rigidly and, given the circumstances of his case, possibly unjustly too. Had he complied with the Department's application of policy he would have received treatment at the same hospital – and quite possibly from some of the same staff – where he is of the opinion that he received extremely poor treatment previously, which he considers to have been an unreasonable imposition.
- 8.24 The Complainant was aggrieved at what he considered to be a lack of support by the MSG and the Department. Although by November he was aware that the Department had refused to fund his treatment, he had expected them to review their decision and in any event he had to focus on his recovery from a significant eye operation and had therefore decided to leave the matter of pursuing reimbursement of costs until he had made a full recovery.

## **9. The Department's Submission**

- 9.1 The Department's submission was read out verbatim at the Hearing. The Review Board has reproduced it overleaf.

**“REVIEW HEARING UNDER THE ADMINISTRATIVE DECISIONS  
(REVIEW) (GUERNSEY) LAW, 1986**

**HEALTH AND SOCIAL SERVICES DEPARTMENT'S SUBMISSIONS**

**IN RELATION TO MR ROLFE'S COMPLAINT**

**23 MAY 2013**

**PRELIMINARY MATTERS**

1. *Before the Department makes its principal submissions, it would like to highlight that the Review Board's powers under section 1 of the Administrative Decisions (Review) (Guernsey) Law, 1986 ("**Administrative Decisions Law**") [Tab A] relate to the review of "any decision made, or any act done or omitted, relating to any act of administration by any Committee of the States, or by any person acting on behalf of any such Committee". The scope of the Review Board's powers are therefore limited to the review of administrative decisions and do not extend to reviewing medical decisions. Mr Rolfe's complaint before the Review Panel is in relation to the application of the States Policy regarding the funding of off-island second opinions and treatment. The Department has refrained from using specific consultants' names and invites the Review Panel to do the same.*
2. *I think it is also important to notify the Review Panel that Mr Rolfe was a colleague of mine when he worked for the Department in Human Resources. In fact, due to Mr Rolfe's role, he was known to a large number of individuals who currently work for the Department. It is with regret therefore that we are in these circumstances today. I hope the Review Panel and Mr Rolfe have no objections to me speaking on behalf of the Department.*

**INTRODUCTION**

3. *This Review Hearing is in relation to the decisions made by the Health and Social Services Department ("**the Department**") -*
  - (a) *on 26<sup>th</sup> July 2012, and confirmed on the 24<sup>th</sup> October 2012, not to fund an off island second opinion with a Cambridge Consultant ("**Second Opinion Funding Decision**"), and*
  - (b) *on 24<sup>th</sup> October 2012 not to reimburse the fees and charges amounting to approximately £13,000 incurred by Mr Rolfe as a result of off island consultations and treatment received at Addenbrooke's Hospital and Spire Cambridge Lea Hospital in Cambridge ("**Off Island Treatment Funding Decision**") ("**both decisions are together referred to as the "Funding Decisions"**).*

*Mr Rolfe's complaint before the Review Panel today is therefore in relation to the application of the States Policy regarding the funding of off-island second opinions and*



*treatment.*

4. *The Review Board has the power in certain circumstances detailed under section 7(3) of the Administrative Decisions Law [Tab A] to request that the Department reconsiders its decisions. The Department submits that none of the circumstances detailed in section 7(3) of the Administrative Decisions Law apply in relation the Funding Decisions, and therefore the Review Board is respectfully invited to find the same, and therefore decline to make a declaration requesting that the Department reconsiders the Funding Decisions.*

### **STATES POLICY AND LEGAL FRAMEWORK**

5. *It is important, before looking at the detail of the particular facts in this case, that the Review Panel Members have an understanding of the States Policy and legal framework in relation to the funding of off-island second opinions and treatment, so that the Review Panel can properly consider whether there was a correct and reasonable application of the law and policy in relation to the Department's Funding Decisions.*
6. *The two reports within the Billet D'État of 1992 [Tab B] set out the background to the States health care and health proposals schemes. After consideration of the reports, the States resolved on the 7<sup>th</sup> May 1992 [Tab 27] to agree in principle that there shall be established a Health Insurance Scheme and to direct the States Insurance Authority to report back with recommendations for a health insurance scheme.*
7. *On the 27<sup>th</sup> January 1994, after considering the Report submitted by the Guernsey Social Security Authority [Tab C] the States resolved that States health insurance cover should extend to specialist medical care which would cover treatment in Guernsey only and that objectives of cost containment and value for money were integral to the scheme [see paragraph 95 report]. The Authority were instructed to submit a further report to the States containing full details of a scheme of health insurance. It is worth noting that in making this decision, the States were referred to a Medical Specialist Group letter dated 9 December 1993 [Tab C, page 52, par. 7] which states that the "cost of treating Guernsey residents in the United Kingdom has risen significantly. It is clearly in the interests of the States and the Medical Specialists to seek to reduce the number of referrals off the Island".*
8. *On the 29<sup>th</sup> June 1995, the States approved the final details of the Scheme [Tab 27]. It was decided that the categories of benefit provided under section 4 of the Health Service (Benefit) Law, 1990, should extend to include special medical benefit under the specialist health insurance scheme as follows [Tab 28]:*
  - *including: "specialist, acute care, consultations, treatment and procedures undertaken in Guernsey or Alderney by a specialist approved by the Board of Health". [paragraph 24, p. 548],*

- and specifically excluding : "treatment outside Guernsey or Alderney, with the exception of a specialist escorting a patient to the UK or Jersey", [paragraph 26, p.549]

- but that "availability of specialist treatment in the UK [under the Reciprocal Health Convention] or under contracts which the Board of Health has with UK health authorities for specialist treatment ...will continue." But that this was not part of the specialist medical benefit available under the specialist health insurance scheme [paragraph 23, p. 548].

9. In 1995, the States further authorised the States Board of Health and the Guernsey Social Security Authority to, on behalf of the States, enter into a contract with the Guernsey Medical Specialist Group ("MSG") in accordance with the heads of agreement set out in the Report, which include specific provisions on off island second opinions and referrals for off island treatment. This contract was entered into in 1995 for seven years [Tabs 27 and 28].
10. This States policy is reflected in the Health Service (Benefit) (Guernsey) Law 1990, as amended by the Health Service (Specialist Medical Benefit) Ordinance, 1995, and the Health Service (Specialist Medical Benefit) Regulations, 2002 [Tabs D, E and 24]. Section 5A of the 1990 Law confers the right for certain persons to be entitled to specialist medical benefit. Regulation 2 of the 2002 Regulations clarifies that "specialist medical benefit" comprises "the provision of all such specialist consultations, treatment, procedures and ancillary entitlements within the skill and competencies of the Medical Specialist Group and undertaken at (i) the Princess Elizabeth Hospital; (ii) the Mignot Memorial Hospital; (iii) Les Bourgs Hospice; or (iv) the Group's Premises". Specialist medical benefit is therefore constrained to consultations and treatment in Guernsey and Alderney.
11. It is important to note that one of the key objectives behind the introduction of reforms to the health care delivery system in Guernsey was to ensure a degree of cost containment in the future. This was identified in the King's Institute Commentary to the Guernsey Health Reform Proposals [Tab 28, p. 608] and discussed in paragraph 21 of the 1995 Report [Tab 28, p.547]. This provides a strong rationale as to why specialist medical benefit was restricted to treatment and consultations in Guernsey and Alderney, and the formulation of controls in relation to off island second opinions and referrals for treatment under the contract.
12. In 2002, the contract with MSG was up for renewal and therefore the Guernsey Social Security Authority presented Heads of Agreement which are set out in the States Report dated 18<sup>th</sup> January 2002 [Tab 23]. The States on the 28<sup>th</sup> February 2002 resolved to authorise the Guernsey Social Security Authority and the States Board of Health to enter a contract with MSG for 15 years in accordance with the Report [Tab 27]. The contract was entered into on 19 December 2002 [Tab 26] ("the Contract").

13. *The key provisions of the Contract for the purposes of this Review Hearing are as follows:*

*- **Extent of Specialist Medical Benefit** [clause 5 Contract/ paragraph 42 Report] – confirms that consultations and treatment must be in Guernsey or Alderney and that any off island treatment is not included within the terms of the Contract.*

*- **Second Opinions Off Island** [clause 36 Contract/ paragraph 148 of the Report] - Under the Contract, patients are entitled to a second opinion. This shall be obtained from another local MSG specialist. If there is no other specialist in Guernsey to give a second opinion, the patient may be referred off island for a second opinion under the provisions of other contractual arrangements entered into by the States of Guernsey with UK providers. Where an opinion is sought off island from a consultant in private practice, the costs of obtaining that opinion shall be met by the Patient.*

*- **Referrals for Treatment Off Island** [Clause 8 and Paragraph 10 of Appendix 2 of the Contract and paragraph 147 of the Report] - Under the Contract, referrals for treatment off island are limited to those UK hospitals with which the Department has a contract with and any referrals outside of that list must receive the prior agreement of the Department's Manager.*

14. *The States Policy and legal framework surrounding the specialist health insurance scheme and what is and what is not covered within the scheme is clearly communicated and reflected in leaflets issued by the Department and the Social Security Department.*

15. *For example, the Specialist Health Insurance Scheme Leaflet 2 [Tab F] communicates the policies in relation to off island second opinions [5<sup>th</sup> bullet point on page 2] and off island referrals [last bullet point on page 4].*

### **CHRONOLOGY OF THE PRINCIPAL FACTS**

16. *The Department submits that the key facts and dates which relate to, and surround the Funding Decisions, are as follows –*

17. *On 10<sup>th</sup> July 2012, Mr Rolfe was seen by a consultant ophthalmologist at MSG ("MSG Consultant") [Tab 5]. Mr Rolfe requested a second opinion for the review of the fundi of his right eye. He indicated that he did not wish to be seen at Southampton General Hospital ("Southampton") and that instead he would like to be referred by MSG to Adenbrooke's Hospital in Cambridge ("Addenbrooke's") for a second opinion due to (a) previous poor experience with one of the consultants at Southampton; and (b) the location of his UK home was close to Addenbrooke's and this would therefore be convenient [Tab 6, 17].*

18. On 19<sup>th</sup> July 2012, the MSG Consultant contacted the Department's Off-Island and Visiting Service for approval for an off island second opinion in accordance with the States policy [Tab 17].
19. On 23<sup>rd</sup> July 2012, Mr Rolfe arranged an appointment with a consultant at Addenbrooke's ("**Cambridge Consultant**") on 1<sup>st</sup> August 2012 on the understanding that funding might not be forthcoming and that he may have to pay for the consultancy as a private patient [Tab 4].
20. On 26<sup>th</sup> July 2012 the Department's Off-Island and Visiting Service communicated the Second Opinion Funding Decision to MSG (i.e. that funding would not be available for an off island second opinion with the Cambridge Consultant) [Tab 17]. On or around this same date, Mr Rolfe called the MSG and he was told over the telephone that his request for funding in relation to the second opinion with the Cambridge Consultant had been rejected [Tab 6].
21. On 27<sup>th</sup> July 2012 the referral letter from the MSG Consultant to the Cambridge Consultant was copied to Mr Rolfe which confirmed the Second Opinion Funding Decision – and that the Department would not be prepared to fund the off island second opinion with the Cambridge Consultant when "Southampton is on our doorstep" [Tab 5, 9].
22. On 1<sup>st</sup> August 2012, Mr Rolfe had an appointment and sought a second opinion with the Cambridge Consultant on a private basis [Tab 4].
23. On 9<sup>th</sup> August 2012, Mr Rolfe had a procedure carried out on his eye in Cambridge [Tab 10].
24. On 5<sup>th</sup> September 2012, the Department's Off-Islands and Visiting Service Department received its first communication from Mr Rolfe after his appointments and procedures in Cambridge in August, and requested clarification as to why funding was rejected. [Tab 6]
25. On 27<sup>th</sup> September 2012, Mr Rolfe made a formal complaint under the Department's Complaints Policy. An investigation was conducted by the Department in accordance with the Complaints Policy. [Tab 10]
26. On 24<sup>th</sup> October 2012, the Chief Officer of the Department responded to Mr Rolfe's complaint and confirmed the Second Opinion Funding Decision and also made the Off Island Treatment Funding Decision. [Tab 12]
27. In October and November 2012, Mr Rolfe had further appointments and procedures carried out at the Private Hospital, Spire Cambridge Lea Hospital ("**Spire Cambridge**"). MSG were advised of the Cambridge Consultant's findings. [Tabs 13, 14]
28. In December 2012, following communication from the press of Mr Rolfe's grievances, the Department and MSG further reviewed the complaint [Tab 17], and further to the review the Department was satisfied with the Funding

*Decisions for the same reasons as set out in the letter dated 24<sup>th</sup> October 2012.*

29. *On 9<sup>th</sup> December 2012, Mr Rolfe made an application to the Chief Executive of the States of Guernsey to have the Funding Decisions reviewed by a Review Board under the Law. [Tab 1]*
30. *On the 14<sup>th</sup> February 2013, the Department wrote to the Chief Executive of the States of Guernsey confirming the Funding Decisions [Tab 15].*
31. *On the 26<sup>th</sup> February 2013, the Department received confirmation that the Review Board would be formed to review the Funding Decisions.*

**Reasonable Communication of the Department's Second Opinion Funding Decision**

32. *Before the Department makes its submissions in relation to the Funding Decisions themselves, the Department would like to submit that the communication of the Department's Second Opinion Funding Decision was clearly made to Mr Rolfe by the MSG before Mr Rolfe's appointment with the Cambridge Consultant.*
33. *It is worth noting there was a relatively short period of time between the request for an off island second opinion and the appointment date with the Cambridge Consultant and all reasonable efforts were made by the Department to communicate the decision in the timeframe available.*
34. *In the papers submitted by Mr Rolfe, it is accepted by Mr Rolfe that he called MSG on or around the 26<sup>th</sup> July 2012 – where he was given oral confirmation of the Second Opinion Funding Decision (i.e. that the funding request had been refused) [Tab 6]:*

*"A week or so after I last saw [MSG Consultant] in mid/late July I phoned his office for information and was told orally that an email had just been received from your good self which said that the referral was refused and would have to be made to Southampton."*

35. *In addition, the MSG referral letter that Mr Rolfe had requested was sent to the Cambridge Consultant on the 27<sup>th</sup> July 2012 – this included a written communication that the consultation would not be funded by the Department [Tab 5] –*

*"Finally, and this is probably more for Mr Rolfe than yourself, I have been in contact with our Off-Island Referral Department and they are not prepared to cover this consultation when we have Southampton on our doorstep".*

36. *The letter was copied to Mr Rolfe and sent to his address in the UK and by email so it should have been received by Mr Rolfe prior to his appointment in August. It is noted by the Department that Mr Rolfe contends that he did not*

*receive the letter until he returned back to Guernsey in September. The Department has been unable to confirm this, but even if, due to an unfortunate administrative error, that was the case, Mr Rolfe received oral confirmation from MSG of the Department's Second Opinion Funding Decision prior to his consultation, and therefore received effective communication that the Department would not fund the consultation. The fact that it was not a formal written decision is irrelevant as communication of the decision had been made, and therefore, what is critical is that Mr Rolfe was aware of the Second Opinion Funding Decision before his appointment with the Cambridge Consultant.*

37. *For these reasons, the Department submits that the communication of the Department's Second Opinion Funding Decision was clearly, and in the circumstances reasonably, made to Mr Rolfe by the MSG before Mr Rolfe's private appointment with the Cambridge Consultant.*
38. *The Department notes that Mr Rolfe is disappointed that that the Second Opinion Funding Decision did not come directly from the Department. By way of explanation, the Department's existing procedures do not involve it communicating individual decisions to patients for reasons of confidentiality. When the requests for funding are made to the Department, they are anonymously made by MSG to the Department. The Department then communicates its funding decision to MSG, who then in turn communicate the funding decision to the patient.*

## **THE COMPLAINT TO THE REVIEW BOARD : THE FUNDING DECISIONS**

### **Correct and Reasonable Application of the States Policy and the Contract**

39. *Having explained the formulation of the relevant States Policy behind the existing legal framework in relation to the funding of off-island second opinions and referrals for off island treatment and a brief chronology of the principal facts in this case, the Department submits that, in making its Funding Decisions in relation to off island second opinions and referrals for off island treatment, it acted in accordance with the legal framework, and applied the States Policy and Contract reasonably.*
40. *The Department shall look at the application of the States Policy and the Contract in relation to Off Island Second Opinions and Referrals in turn -*

### **Off Island Second Opinions**

41. *As referred to above the States Policy in relation to second opinions is set out in section 148 of the Policy Report (Tab 23) and confirmed in clause 36 of the Contract (Tab 26) :*

#### ***Policy Report***

*148. Each patient shall be entitled to request a second opinion. Under normal circumstances, this shall be obtained from another local specialist*

*under the contract. Where another specialist opinion is not available locally, the patient may be referred off-Island under the reciprocal health agreement or other Board of Health off-island contract, at no charge to the patient.*

### **Contract**

*"36. Each patient shall be entitled to request a second opinion. This shall be obtained from another Consultant in the specialty concerned and the cost of obtaining that opinion shall form part of this Agreement. Where there is no other Consultant in the specialty concerned available in Guernsey to give a second opinion, the Patient may be referred off-island for that opinion. That opinion shall be sought from a specialist working in the UK NHS and the cost of that opinion shall be met by the States either under the provisions of the United Kingdom Reciprocal Health Convention or any other contractual arrangements entered into by the States with United Kingdom providers. Where an opinion is sought off-island from a consultant in private practice, the costs of obtaining that opinion shall be met by the Patient;"*

- 42. Under the Contract, Mr Rolfe was entitled to a second opinion. This shall be obtained from another local MSG specialist. If there is no other specialist in Guernsey to give a second opinion, the patient may be referred off island for a second opinion under the provisions of other contractual arrangements entered into by the States of Guernsey with UK providers. Where an opinion is sought off island from a consultant in private practice, the costs of obtaining that opinion shall be met by the Patient.*
- 43. In Guernsey, the MSG has three specialist eye consultants. In this case, there were therefore two other specialists which Mr Rolfe could have seen locally for a second opinion.*
- 44. In the case of off island eye specialists, the contract for ophthalmology that the States of Guernsey has is with Southampton. Southampton's Eye Unit is claimed by the NHS's website to be the leading provider of eye care services on the south coast and consists of over 15 eye specialists, 3 of which who specialise in Vitreoretinal surgery (the same speciality as the Cambridge Consultant). Please note that the Department is not aware of it having received any complaints in the last five years of a clinical nature from Guernsey patients who have had consultations or received treatment at Southampton. It is important to note that the States of Guernsey does not have a contract with Addenbrooke's or Spire Cambridge.*
- 45. It follows that in accordance with the Contract, Mr Rolfe, or any other individual requiring a second opinion in respect of eye treatment, was entitled to a second opinion by an eye specialist either in Guernsey or, if such a specialist was not available, with Southampton as this is the hospital with which Guernsey has a contract. Therefore, a second opinion was available to Mr Rolfe which was "independent and objective" to both the MSG Consultant and the Southampton Consultant.*

46. *The Department rejects Mr Rolfe's contention that "any independent second opinion must by definition exclude referral to Southampton" [Tab 18]. Although it is acknowledged that Mr Rolfe had lost confidence in Southampton due to his experience with one of the eye consultant's in Southampton [Tab 10] there were two other leading eye specialists at Southampton that he could have obtained a second opinion from under the Contract.*
47. *Mr Rolfe's request to have a second opinion from a specialist eye consultant in Cambridge was therefore outside the Contract, and therefore the States Policy's funding arrangement for second opinions. In rejecting Mr Rolfe's request to fund this off island second opinion, and therefore in making the Second Opinion Funding Decision, the Department therefore acted in accordance with the States Policy and the provisions of the Contract.*
48. *The Department makes every effort to apply the funding policies fairly, consistently and reasonably with all of its patients. Due to the fact that both a local and off island second opinion were available to Mr Rolfe from independent eye specialists, the Department's decision to reject Mr Rolfe's request for funding for an off island second opinion with a hospital with which the Department had no contractual arrangements with, was fair and reasonable in the circumstances.*
49. *It follows that, in accordance with the Contract, the costs of obtaining a second opinion sought off island from a Consultant in private practice, shall be met by the patient. In this case, Mr Rolfe was aware that this was the policy when he made the appointment for a second opinion – as demonstrated by Mr Rolfe's email to MSG dated 23<sup>rd</sup> July 2012 where he states that he appreciates "that this may mean having to pay for the consultancy as a private patient, even if the approval from Guernsey is forthcoming by then." [Tab 4]. Mr Rolfe's understanding of the personal financial implications of his making an appointment with the Cambridge Consultant is further demonstrated in Mr Rolfe's letter dated 8 January 2013 to the Policy Council [Tab 2] where he states –*
- "When I informed the Eye Clininc of the date and requested a medical letter of referral I was orally told that an email refusing funding approval had just been received from the HSSD....In the meantime I went ahead with the consultant's appointment to avoid delay, accepting that it would initially, at least, have to be a private consultation".*
50. *It is therefore fair and reasonable in the circumstances that Mr Rolfe funds the second opinion that he received from the Cambridge Consultant in private practice.*



### Referrals for Treatment Off Island

51. As referred to above the States Policy in relation to referrals for treatment off island is set out in section 147 of the Policy Report [Tab 23] and confirmed in section 8 and paragraph 10 of Appendix 2 of the Contract [Tab 26] :

#### **Policy Report**

"147. It is proposed that the referral route for treatment under the reciprocal health agreement and contracts which the Board of Health has with UK hospitals will only be through the Medical Specialist Group or other Specialists employed or contracted by the Boards of Health or that Group".

#### **Contract**

"8./Appendix 2(10). In normal circumstances it will be expected that any off-island referral will be made to a consultant working for one of the institutions with which the Board has a service level agreement. A list of such institutions will be provided to the Group by the Board on an annual basis. Referral to an institution outside this list will only be made with the prior agreement of the Board's Manager.

52. Under the Contract any referrals for treatment off island are limited to those UK hospitals with which the Department has a contract. As explained above, in the case of off island eye specialists, the contract for ophthalmology that the States of Guernsey has is with Southampton. The States of Guernsey does not have a contract with the Eye Unit in Addenbrooke's or Spire Cambridge. In instances in which a patient would like to have an off-island referral to a hospital outside of the Department's contractual arrangements, prior agreement of the Department's Manager has to be obtained (this is the Department's Director of Finance and Performance). These are exceptionally authorised when the expertise and/or facilities cannot be provided by one of the Department's contracted providers. In practice, referrals outside of contracted UK hospitals are the exception, in accordance with the States objective of ensuring a degree of cost containment in relation to specialist medical care and off island treatment.
53. In Mr Rolfe's case, the Department can see no evidence that Mr Rolfe made a separate request to the Department or MSG for a referral for off-island treatment at Addenbrooke's or Spire Cambridge Hospitals. The original request was for an off island second opinion only and therefore the Second Opinion Funding Decision was solely in relation to the second opinion with the Cambridge Consultant. This is demonstrated by the letter which was sent by the MSG Consultant to the Cambridge Consultant which was limited in scope to a second opinion and made no mention of treatment [Tab 5].
54. Secondly, as Addenbrooke's and Spire Cambridge are not one of the States contracted hospitals, prior agreement would be required from the Department's Manager before any referral for treatment can be made. However, no such prior agreement was obtained in Mr Rolfe's case. It is

worth noting that in cases where off island referral for treatment is authorised, a letter is sent to the UK Consultant [Tab 25]. However, in this case no such authorisation was given and therefore no authorisation letter was sent to the UK Consultant. It follows that there was no authorisation obtained in relation to any of the off island treatments which Mr Rolfe received in Cambridge.

55. *In the event that the Department had received a request for a referral for off island treatment, it is unlikely that any such request would have been approved as the contracted hospital, Southampton, has the necessary expertise and facilities in relation to specialist eye care treatment (approximately 700 appointments or treatments per annum are held in Southampton by Guernsey patients, and to the best of the Department's knowledge, it has no record of any clinical complaints regarding treatment received in Southampton over the past five years).*
56. *Mr Rolfe's subsequent request that the Department should fund the off island treatment in Addenbrooke's and Spire Cambridge is therefore outside the scope of the Contract, and the States funding policy in relation to off island referrals for treatment. In rejecting Mr Rolfe's request to fund the off island treatment, and therefore in making the Off Island Treatment Funding Decision, the Department therefore acted in accordance with the States Policy and the provisions of the Contract.*
57. *The Department makes every effort to apply the funding policies fairly, consistently and reasonably with all of its patients. The Department's mandate includes being "accountable to the States for the management and safeguarding of public funds and other resources entrusted to the Department" [Tab 22]. It would not be acceptable or good governance for patients to elect to have off island opinions or be treated at hospitals where the Department does not have a contract and still expect to be funded by the States. The Department would quickly find itself open to requests for payments for unproven treatments or procedures, and/or scales of charges that are simply not acceptable or affordable, particularly in the current economic climate.*
58. *In addition, if the Department agreed to reimburse Mr Rolfe outside of the provisions of the Contract, and States Policy, this would initiate a precedent where other patients could be referred off island outside of the ambit of the Contract yet expect reimbursement. This would quickly lead to there being little control over off island expenditure.*
59. *Taking all of these considerations into account, due to the fact that off island treatment would have been available to Mr Rolfe from independent eye specialists at Southampton, that no request was made by Mr Rolfe for referrals for off island treatment either before or soon after the treatment, and that therefore no off island treatment was authorised by the Department, the Department's decision to reject Mr Rolfe's request for funding for off island second treatment with two hospitals with which the Department had no contractual arrangements with, was fair and reasonable in the circumstances.*

*In Summary*

60. *In summary, the Department therefore submits that in making the Funding Decisions not to reimburse the fees and charges incurred by Mr Rolfe as a result of consultations and treatment received at Addenbrooke's and the Spire Cambridge, the Department –*

*- acted in accordance with the current States Policy and Contract in relation to the funding of off island Second Opinions and Referrals, and*

*- secondly, applied the States Policy and Contract in relation to the funding of off island Second Opinions and Referrals reasonably in the circumstances.*

61. *It follows that the Department submits that none of the circumstances detailed in section 7(3) of the Administrative Decisions Law apply in relation to the Funding Decisions. Taking each of the criteria in turn -*

62. *Section 7(3)(a)* - *the Funding Decisions were not contrary to law, as the Department's decisions were in accordance with the legislative framework set out under the Health Service (Benefit) (Guernsey) Law, 1990, the Contract and the various Resolutions made by the States of Guernsey in relation to the funding of off island second opinions and treatment,*

63. *Section 7(3)(b)* – *the Funding Decisions were not unjust, oppressive or improperly discriminatory – the Funding Decisions applied the existing States policy on off island second opinions and treatment fairly and proportionately in the circumstances,*

64. *Section 7(3)(c)* – *the Funding Decisions were not based on a mistake of law or fact,*

65. *Section 7(3)(d)* – *the Funding Decisions were reasonable decisions and within the range of reasonable responses available to the Department at the time in which it made its decisions. In the event that the Review Board focuses on section 7(3)(d), the Department would like to remind the Review Board that the concept of reasonableness must be viewed in light of the range of reasonable decisions available to a decision maker. The Department would like highlight a section of the Review Boards Guidance Note for Departments [page 2] which clearly explains that –*

*"It is important to recognise that it is possible for different groups to reach different decisions on the same facts. This does not mean that one decision is reasonable and the other is not. This is because there is usually a range of reasonableness, where even a detractor of a decision can objectively agree that a decision is not unreasonable based on the facts, even though he disagrees with the decision. Therefore the fact that the Review Board might have decided the same matter differently had it make the original decision does not mean that the original decision was unreasonable" and*

*"It is therefore a serious step for a Review Board to effectively cancel a decision and so is one which should not be taken lightly. This underlines the principle that the review is to determine if something significantly has really "gone wrong rather than a lower threshold of something like "this would be a better decision".*

66. *The standard of healthcare available to Guernsey residents compares favourably with many other developed countries and territories, particularly for a small Island with approximately 63,000 inhabitants. However, in order to deliver and sustain a high quality and sophisticated health care service to all residents, this does necessitate the implementation of certain boundaries in relation to the service provided. The Review Board is reminded that one of the main objectives behind the introduction of reforms to the health care delivery system in Guernsey was to ensure a degree of cost containment in the future. This provides a strong rationale as to why specialist medical benefit is restricted to treatment and consultations in Guernsey and Alderney, and why there are restrictive terms in relation to off island second opinions and referrals for treatment under the Contract. Together with the Department's mandate to safeguard public funds, the Department has a responsibility to ensure that the Contract provisions relating to off island opinions and treatment are applied consistently.*
67. *The Department submits that the Funding Decisions were within the range of reasonable decisions available to the Department.*
68. *Section 7(3)(e) – the Funding Decisions applied the States policy fairly and consistently and therefore were not contrary to the generally accepted principles of natural justice.*
69. *Therefore the Review Board is respectfully invited to find that none of the circumstances in section 7(3) of the Administrative Decisions Law apply in relation to the Funding Decisions, and therefore requests that the Review Board declines to make a declaration requesting that the Department reconsiders the Funding Decisions.*

#### **OTHER ISSUES RAISED BY MR ROLFE**

##### **INTERNAL PROCEDURES**

70. *The Department submits that its current internal procedures in relation to the application of the States Policy and Contract on the funding of off island second opinions and referrals for off island treatment are fair and reasonable.*
71. *However, the Department is keen to listen to the comments that Mr Rolfe has in relation to considerations that the Department should have in relation to "off-island referral policies, patient choice, various MSG/HSSD administrative arrangements and procedures and the equipment resources available to the MSG eye consultants" [Tab 2].*

72. *The Department is always looking to improve existing procedures and therefore thanks Mr Rolfe for his valuable input in relation to his experiences.*
73. *For example, Mr Rolfe submits that there should be more involvement of patients in the decision making process in relation to funding decisions and that patients should have sight of the request made by MSG for off island funding, and a detailed explanation for any refusal. Currently, the MSG Consultant is responsible for representing the patient's case to the Department, and the Department then communicates its decision to the MSG Consultant, who in turn communicates this to the patient [Tab 1, 2].*
74. *Further, Mr Rolfe contends that, despite the presence of a complaints procedure, he would like to see a separate appeal mechanism in place for funding decisions [Tab 1, 2].*
75. *The Department is currently reviewing its existing procedures in relation to off island referrals and opinions, and will therefore ensure that Mr Rolfe's comments together with feedback from any other patients or individuals are taken into account during its review.*
76. *However, it is important to note that any amendment to States policies or a provision of the Contract in relation to the funding of off island opinions or referrals for treatment would have to be put before the States, as it does not have the mandate to amend any such policies unilaterally either contractually (due to the existing contract with MSG) or constitutionally (due to the fact that it has an obligation to adhere to the existing States resolutions).*

### **THE DEPARTMENT'S COMPLAINTS POLICY**

77. *The Department submits that it has an extensive and independent complaints policy in place. This is set out in the document entitled "Dealing with Complaints". The Department's complaints procedure incorporates a first and second stage process which has been developed in conjunction with the Jersey Health and Social Services whereby unresolved complaints originating in Guernsey can be independently reviewed in Jersey (and vice versa). The policy therefore allows complaints to be independently reviewed by individuals who have no involvement in the original decision, and allows complainants to present their grievance in detail to an independent panel.*
78. *The Department therefore contests any claim from Mr Rolfe that the Department's complaints process is not independent or does not meet accepted international standards [Tab 1, 2].*
79. *Mr Rolfe's complaint was investigated by the Department and it was established in the first part of the First Stage of the complaints procedure, that, in accordance with the States Policy, and the Contract, that the Department could not authorise reimbursement of the expenses incurred. This*

*decision was communicated by way of letter from the Chief Officer to Mr Rolfe on the 24<sup>th</sup> October 2012 [Tab 12].*

- 80. However, having reviewed Mr Rolfe's recent submissions, the Department can see why Mr Rolfe has been disappointed by the way in which his complaint has been handled in that it would appear from the papers that he was not made aware of the full extent of the appeals process within the Department's complaints policy, or of the fact that the complaints process had not yet been fully exhausted. This is unfortunate as the complaints process would have given Mr Rolfe access to a review by an independent body and the ability to set out his grievance in full.*
- 81. The Department would like to take this opportunity to apologise to Mr Rolfe for the fact that he was not made aware of the full extent of the complaints procedure and that not all of the steps within the complaints procedure were completed, and would like to suggest that Mr Rolfe's complaint is, at Mr Rolfe's request, either reinvestigated or referred to the Appeal Panel under the Complaint's Policy in order that the appropriate complaints channels available to Mr Rolfe are fully exhausted.*
- 82. The Department would also like to acknowledge that it is currently reviewing its internal procedures in relation to the handling of complaints, particularly the communication of the Department's complaints process to patients, so that they are fully aware of the process.*

### **CONCLUSION**

- 83. In conclusion, the Review Board is respectfully invited to find that none of the circumstances detailed in section 7(3) of the Administrative Decisions Law apply in relation to the Funding Decisions, and therefore requests that the Review Board declines to make a declaration requesting that the Department reconsiders the Funding Decisions.*

*Health and Social Services Department*

*23 May 2013”*

## 10. Decision of the Review Board

- 10.1 The Review Board has considered all the evidence submitted to it by the Parties, both written and verbal, and unanimously finds as follows:

- (a) **The Review Board agrees that sections 7 (3) (a), (c) and (e) of the Law do not apply to the Department's Decision.**
- (b) **The Review Board is of the view that section 7 (3) (d) is applicable in that the decision is one which could not have been made by a reasonable body of people after proper consideration of all the facts.**
- (c) **In addition, giving the words in section 7 (3) (b) their ordinary meaning, the Review Board considers that the Decision was unjust.**

**The Review Board unanimously requests that the Department should reconsider its decision.**

- 10.2 The Review Board agrees that the Department must act in accordance with States' policy and its contractual arrangements.
- 10.3 The Review Board appreciates that the Department is concerned that the correct formalities should be observed in respect of patients obtaining off-island treatment.
- 10.4 The Review Board agrees that it would not be acceptable for patients routinely to elect to be treated at hospitals with which the Department does not have a contract and still expect to be funded or reimbursed by the States. The Review Board notes that the Department has a duty to safeguard public funds. The Review Board, as a result of its decision, would not wish the Department to be open to requests for payments for unproven treatments or procedures or to charges which would be wholly unreasonable.
- 10.5 However, the Review Board must make its decision on the merits of the case before it and in accordance with the provisions of the Law.
- 10.6 The Department's mandate makes it responsible for, inter alia:

*“preventing or diagnosing and treating illness, disease and disability”; and “caring for the sick, old, infirm and those with disabilities” .*

In respect of secondary healthcare, the MSG provides services on behalf of the Department.

- 10.7 The Review Board regards the specialist health scheme to be a compact between the States of Guernsey and the people of Guernsey as set out in the relevant

Billets d'État of the 1990s. The States has chosen to provide secondary healthcare through contracting with a service provider, the MSG, but nonetheless it remains a service under what the Review Board regards as that compact, for which the Department and ultimately the States must accept full responsibility.

- 10.8 Therefore, in the opinion of the Review Board, it is the obligation of the Department and any agent which it has contracted – rather than the obligation of the patient – to ensure that correct procedures are followed or at least to ensure that everything reasonable is done to bring those correct procedures to the attention of the patient and make clear the consequences, including in respect of funding, of any deviation from those correct procedures. It cannot be appropriate to require a patient, who may be unwell or vulnerable, to become an expert in referrals policy and to expect a patient to question advice provided, or a course of action suggested, by the Department or any service provider acting on its behalf lest that such advice or suggestions should contravene the Department's and the States' policies. And yet it seems that was what the Department expected of the Complainant in this case.
- 10.9 The Department stated that its *“existing procedures do not involve it communicating individual decisions to patients for reasons of confidentiality. When the requests for funding are made to the Department, they are anonymously made by the MSG to the Department. The Department then communicates its funding decision to MSG, who then in turn communicate the funding decision to the patient.”*
- 10.10 While the Review Board appreciates that patient confidentiality is of the utmost importance, where it cannot be confirmed to the patient that all of the personal and medical circumstances of his case have been taken into account by the decision-maker(s) at the Department, it is difficult to see how the Department can maintain that its decision is objective and has been made by a reasonable body of persons after proper consideration of all the facts. The Review Board understands that in such cases the decision-maker(s) at the Department are administrative rather than medical staff, which adds further weight to the concerns of the preceding sentence.
- 10.11 The Review Board is convinced that in establishing the secondary healthcare scheme the States would have expected the Department to apply its discretion objectively in the case of certain claims for funding which on a strict interpretation might fall outside of the list of procedures clearly covered by the scheme but where there are exceptional circumstances. However, the Review Board is not remotely persuaded that all of the relevant facts of the Complainant's claim for funding – and especially his previous experience at Southampton – were taken into account by the Department. At the Hearing the Department was firm in stating that the Complainant could have been seen by an alternative consultant at Southampton, but it appears that was not made clear when perhaps it should have been, at the time when the off-island referral was being made in the summer of 2012. All things considered, the Review Board is inclined to believe that it was in the unjust application of its policy that the Department made a decision which in the circumstances was wholly unreasonable.



- 10.12 In view of this and a previous Review Board decision, and in the interests of its patients, the Review Board hardly needs to emphasise to the Department the importance of ensuring that service providers with which it has contracted comply with policies regarding off-island referrals.
- 10.13 In its submission, the Department drew the attention of the Review Board to that part of its contract with the MSG which states that: *“In normal circumstances it will be expected that any off-island referral will be made to a consultant working for one of the institutions with which the [Department] has a service level agreement. A list of such institutions will be provided to the Group by the [Department] on an annual basis. Referral to an institution outside this list will only be made with the prior agreement of the [Department] Manager.”*
- 10.14 The words “in normal circumstances” rather imply a recognition that occasionally there may be abnormal or unusual circumstances which will demand some discretion in the application of the policy. The Review Board is of the opinion that in view of his previous poor experiences at Southampton – which he described in detail during a closed part of the Hearing – the Complainant’s circumstances could be described as “abnormal”.
- 10.15 The Review Board wishes to emphasise that the Department, in its submission, conceded the following:
- “...the Department can see why Mr Rolfe has been disappointed by the way in which his complaint has been handled in that it would appear from the papers that he was not made aware of the full extent of the appeals process within the Department's complaints policy, or of the fact that the complaints process had not yet been fully exhausted. This is unfortunate as the complaints process would have given the Complainant access to a review by an independent body and the ability to set out his grievance in full.*
- “The Department would like to take this opportunity to apologise to Mr Rolfe for the fact that he was not made aware of the full extent of the complaints procedure and that not all of the steps within the complaints procedure were completed...”*
- 10.16 The Complainant first raised his grievances with the Department in September, 2012 and at that time specifically requested information about how he could appeal against or complain about the funding decisions. The Department was notified about the Review Board Hearing in February, 2013. Yet neither the Complainant nor the Review Board was afforded access to the Department’s complaints procedure until two days before the Hearing at the end of May, 2013. This failure was no doubt an oversight or omission, but it was extremely unfair and unjust on the Complainant. Preparing for a Review Board and presenting evidence in public must be taxing for any Complainant, perhaps especially for those whose complaints concern their health, and Review Boards should be used only when all Departmental appeals procedures have been exhausted. The Review Board notes that the Department is currently reviewing the way in which it handles complaints and appeals, and the Review Board wishes to encourage the Department in the strongest possible terms to ensure the full and proper

application of appeals processes in order to avoid a repeat of the very poor experience of the Complainant in this case.

- 10.17 The Department was unable to demonstrate that the Complainant was provided with relevant information relating to the correct procedures, including funding procedures, for second opinions and treatment off-island. The Complainant had no recollection of having received any such information. A patient would probably look no further, and might not be expected to look any further, than a leaflet which is in the public domain about secondary healthcare and the funding thereof. The leaflet states that funding does not extend to private specialist care provided by someone not under contract to the States. In this case there is no reason to believe that the Complainant knew that by visiting the Cambridge Consultant he was entering private specialist care provided by someone not under contract to the States; indeed, if anything, the reverse is likely.
- 10.18 Therefore the Review Board is of the opinion that the only reasonable conclusion it can draw from the evidence put before it is that the Complainant believed that he would be reimbursed for medical costs incurred in visiting the Cambridge Consultant and that neither the Department nor its service provider acted with the clarity that was required to disabuse the Complainant of that not unreasonable belief at an early stage.
- 10.19 The Review Board is of the opinion that in refusing to reimburse the Complainant, the Department placed too much emphasis on what it seems to have regarded as the Complainant's wish to go to Cambridge for reasons of convenience (vis-à-vis his home there) and placed too little emphasis on what the Review Board believes to have been the Complainant's more material consideration: his wish to avoid going to Southampton, where he felt he had such a poor experience previously. The Review Board considers that in the circumstances it was not unreasonable for the Complainant to wish to avoid having to attend at Southampton again. At times during the Department's submission the Review Board felt that the Complainant was being portrayed as virtually having forced the Guernsey Consultant to refer him to Cambridge – and it is stretching the bounds of probability to believe that a consultant/patient relationship would work in such a way.
- 10.20 This case turns upon its own facts. In the Review Board's opinion, it is of particular relevance that the MSG consultant had told the Complainant that in his opinion no further treatment would restore his vision. Yet, the second opinion and subsequent treatment by the Cambridge Consultant resulted in the restoration of the Complainant's sight to the condition that it was in prior to June 2012. Therefore, the Review Board is of the opinion that a reasonable body of persons, having considered objectively all the facts of this case, would at the very least have reimbursed the Complainant up to a value equal to that which the States would have expended had the second opinion and subsequent treatments been obtained from Southampton rather than Cambridge.

10.21 Therefore, the Review Board respectfully requests the Department to reconsider its decision and to reimburse the Complainant at the very least along the lines set out in the preceding paragraph.

10.22 The Review Board should be grateful for a response from the Department by 31<sup>st</sup> July, 2013.

**Deputy Matt Fallaize (Chairman)**

**Deputy Scott Ogier**

**Richard Heaume, Esq MBE**

**Date: 25<sup>th</sup> June 2013**