

STATES OF JERSEY



STATES OF JERSEY COMPLAINTS BOARD: FINDINGS – 3 COMPLAINTS AGAINST DECISIONS OF THE MINISTER FOR EDUCATION, SPORT AND CULTURE

**Presented to the States on 20th August 2008
by the Privileges and Procedures Committee**

STATES GREFFE

REPORT

Foreword

In accordance with Article 9(9) of the Administrative Decisions (Review) (Jersey) Law 1982 as amended, the Privileges and Procedures Committee presents the findings of 3 Complaints Boards constituted recently under the above Law to consider separate complaints against the Minister for Education, Sport and Culture. As the 3 complaints all relate to matters concerning children, relevant names have been deleted from the reports.

Connétable D.F. Gray,
Chairman, Privileges and Procedures Committee.

Findings of the Complaints Board constituted under the Administrative Decisions (Review) (Jersey) Law 1982 to consider a complaint against the Minister for Education, Sport and Culture regarding refusal of place for child at preferred secondary school.

1. The Complaints Board was composed as follows –

Advocate R. Renouf (Chairman)
Mrs. M. Le Gresley
Mr. T. Perchard

The parties were heard in public at the States Building on 15th July 2008.

The complainant, Ms. B., was represented by Deputy P.V.F. Le Claire.

The Minister for Education, Sport and Culture was accompanied by Deputy J.B. Fox, Assistant Minister, M. Lundy, Director of Education, J. Westwater, Head of Planning and Projects, Department of Education, Sport and Culture.

2. Hearing

Summary of the complainant's case

- 2.1 Deputy Le Claire introduced the appeal, and asked the Board to consider whether an error had been made in not permitting Ms. B's child to attend Haute Vallée School. Deputy Le Claire confirmed that he considered the criteria used were good, but voiced the concern that if the child attended Grainville School, Ms. B would be unable to continue with her current employment. Ms. B added that her primary concern were that regarding keeping her job, and, as a single parent, that the child would be left at home alone at times. Deputy Le Claire expressed the view that the complainant's personal and financial situation had not been taken sufficiently into account when deciding which school the child should attend.
- 2.2 Ms. B explained that she did not feel her circumstances had been fully considered by the appeals panel which she had attended on 7th May 2008. She did not feel that the proximity of Haute Vallée School to her place of work or the letter from her boss had been considered, and she was asked to put her son on the bus so as to go to Grainville School. This would add to her weekly budget which would be difficult.
- 2.3 The Board noted from the papers that the complainant felt that she met the criteria, she had taken all the necessary steps to appeal, but that her appeal had not been taken properly into account and the decision had already been made.

3. Summary of the Minister's case

- 3.1 The Minister explained that he delegated all matters relating to schools allocations to the Assistant Minister. The Education Law provides that the Minister should allow parents to choose their child's school, but this choice is constrained by the need to ensure that there is an efficient use of both education and resources. This means that there can't be a completely free choice, although he would like to agree to all parents' requests, and he tries to accede to their requests.
- 3.2 The Assistant Minister explained that there is an appeals panel to consider all appeals which assists him. The ultimate decision however rests with him. This year, there had been 42 appeals all together, but there were severe limitations on school places. Where it is unlikely to be possible to approve an appeal, the Assistant Minister tries to tease out whether there are any alternative arrangements the family could make to ensure the child can attend a particular school – this can sometimes mean the child going on a bus, and this was the reason why he discusses transport issues with the parent.

- 3.3 Mr. Westwater informed the Board that of the 42 appeals, there had been 16 appeals from people not living within the catchment area. 9 of these were refused and 5 were accepted. Of the 5, 3 involved children who were receiving support from external agencies, one was in the case of a disabled parent, and one was a case of extreme social need. That it to say that only where there were significant problems to overcome.
- 3.4 Mr. Lundy explained that resources for each school were based on the formula of £4,000 per child. If all 16 cases had been approved, and additional £64,000 would have to be found to fund the school where those 16 would be going, but other schools with 16 too few children would not be able to give up any of their funding (because if they did, then their education would suffer), so the education of the 16 children would have to be paid for twice. It is important to maintain optimum class sizes and the year group size. If these numbers are exceeded then the school will have to employ extra subject teachers.
- 3.5 The criteria are there to ensure the needy get the places. The admissions are based on where you live, but not the primary school attended. The criteria are in a priority order, so even if the parents work in the catchment area, this is further down the priority list. The criteria, in order of priority, are as follows –
1. Students living in catchment area have priority;
 2. An equal priority is for students identified through statement who should be accessing the resourced provisions;
 3. Student with siblings in Y7 – Y10;
 4. Students who currently attend catchment school (Friendship groups being the key here) i.e. not a strong case if group of friends going to another school;
 5. Parents live and work in catchment;
 6. Students with siblings in Y11;
 7. Other requests – supported with a **good educational reason** for attending non-catchment school;
 8. School X is a good school;
School Y is a poor school;
Good facilities;
Good SEN support;
Are **insufficient reasons** for transfer.
- 3.6 The Minister confirmed that the criteria are reviewed, and through experience these seem to be the right ones. He is always prepared to look at them again in response to the Board's comments. The Department offered to show Ms. B. and her child around Grainville School at a time to suit her so that she could see the school and the facilities, and to give the child an opportunity to make friends before transfer and Mr. Westwater undertook to make contact with her to make the necessary arrangements.
- 3.7 The parties left the meeting to allow the Board to consider the appeal in private.

4. The Board's findings

- 4.1 The Board noted that the reasons for the appeal to allow the child to attend a different school were personal reasons. The Board understood that the complainant would have greater difficulty in making arrangements for her child at secondary school, but these were the kind of difficulties faced by many families at this time of change in routine, and were not a special need. The Board considered that the criteria used to assess transfer were reasonable, all cases had been carefully assessed and it did not consider that an unreasonable decision had been made in this case. The Board therefore upheld the Minister's decision.
- 4.2 The Board did feel that steps should be taken to communicate much more clearly and sympathetically with parents who are under the impression that they have a clear choice about the school their children can attend. The following are areas that the Minister should review –

- A. The criteria used need to be explained more carefully, to make it absolutely clear that it is not a question of how many criteria a family can meet, but, until the school is full, the number of children that meet criteria 1, then criteria 2, etc. It should be made clear that in a year where there are a lot of children in the age group, **the school could be full once criteria 1 and 2 have been looked at, and all of the rest of the criteria therefore fall away.**
- B. Criteria 2 should be made clearer. It contains jargon which will be familiar to professionals in the world of education but is not easily understood by the general public. Perhaps this should read – “An equal priority is for students, identified through particular circumstances or need, who should have access to specific resources provided at the school”.
- C. The website needs to be amended to make sure the importance of the criteria priority order is clear. For example, the website currently shows –

“School catchment areas

All States primary schools have a catchment area. *Those pupils living within the catchment area have priority for a place within the school.* Each primary school has a copy of its own map, all of the Parish Halls and the central library have copies of all catchment area maps.

All four States Secondary schools have a catchment area and pupils living within these catchment areas have priority for a place within the school. The catchment areas are based on the primary schools catchment areas and are linked as follows:

Secondary School	Grainville	Haute Vallée	Le Rocquier	Les Quennevais
Linked primary school	Grands Vaux	d’Auvergne	Grouville	Bel Royal
	Springfield	First Tower	Plat Douet	La Moye
	St. John	Janvrin	Samares	Les Landes
	St. Martin	Rouge Bouillon	St. Clement	Mont Nicolle
	St. Saviour	St. Lawrence	St. Luke	St. Mary
	Trinity			St. Peter

Clearly is it not the case that feeder schools have priority, and this is misleading parents.

To those persons with a full understanding of the procedures for school transfers, the content of the website is not incorrect. However the reference to “linked primary school” and the general thrust of the website suggest that if a student attends a primary school in a secondary school catchment area, he or she will be able to attend that secondary school. This is misleading parents and the emphasis should be shifted to the place of residence of the student.

- D. The letter from the appeals panel to the parent who has been unsuccessful in appealing for their child to go to a different school is a little stark, and should ideally contain, in a sympathetic and accessible way, the reasons why it is not possible for the child to transfer. This could include some of the information imparted at the hearing about there being a lot of children transferring to secondary school, there being very few places available, every single child transferring has been assessed, and the places have been allocated very carefully. The letter could include the total number of places available, the number of appeals considered and the information that the school is now full. It could also offer days/times which are different from the scheduled open day for those working parents who have difficulty attending inside working hours.
- E. A written record of the appeal process should be kept. The Board did not see such a document in the paperwork provided to it and therefore we presume it is not standard procedure at this time.

As the option of an appeal is offered to parents, it is important that a record is kept of the proceedings, not only for the Department's own purposes, but also in case decisions are reviewed by the Complaints Board or a court. Such a record should contain the names of the persons present, a summary of what was said, a list of any documents referred to and the reasons for the decision made.

F. The appeals process may need to be explained more clearly. The Assistant Minister, while assisted by a panel, made it clear that it was 'his decision'. This may be confusing and should be explained. In referring unsatisfied appellants to the States of Jersey Complaints Panel, the Minister should make it clear to parents that the Complaints Board is able to conduct an enquiry and, if appropriate, request the Minister to reconsider his decision but it is not empowered to overturn the Minister's decision. This may not have been understood. A referral to a Complaints Board is not a further appeal and a Board may only request the Minister to reconsider his decision in the circumstances set out in Article 9(2) of the Administrative Decisions (Review) (Jersey) Law 1982.

5. The Board asked the Minister to consider the above comments, and to advise it within 28 days of any action he proposed to take.

Signed and dated by:
Advocate R. Renouf, Chairman

.....
Mrs. M. Le Gresley

.....
Mr. T. Perchard

Findings of the Complaints Board constituted under the Administrative Decisions (Review) (Jersey) Law 1982 to consider a complaint against the Minister for Education, Sport and Culture regarding refusal of place for child at preferred secondary school.

1. The Complaints Board was composed as follows –

Advocate R. Renouf (Chairman)
Mrs. M. Le Gresley
Mr. T. Perchard

The parties were heard in public at the States Building on 15th July 2008.

The complainant, Mrs. D. was represented by Deputy A. Breckon and accompanied by Mrs. B.

The Minister for Education, Sport and Culture was accompanied by Deputy J.B. Fox, Assistant Minister, M. Lundy, Director of Education, J. Westwater, Head of Planning and Projects, Department of Education, Sport and Culture.

2. Hearing

Summary of the complainant's case

- 2.1 Deputy Breckon presented the complainant's appeal, and pointed out the criteria being used. The complainant fulfilled certain of the criteria, and her case should therefore be reassessed alongside the cases of those children who had already been allocated places. He believed the case has merits and is worthy of reconsideration.
- 2.2 Mrs. D. explained that she hoped to be able to work longer hours, and that with the help of family who live close to Haute Vallée School, would be able to do so. If the child was at Grainville School, this would be more difficult to achieve. The child would also benefit from being close to relatives (but not siblings) at the same school and living close by.
- 2.3 The Board was also informed about the child's participation in swimming, his level of commitment and potential to succeed. The swimming club trains at Haute Vallée and would be more accessible. Mrs. B explained the benefits which the child had already experienced, and the value of continuing with this hobby.

3. Summary of the Minister's case

- 3.1 The Minister explained that he delegated all matters relating to schools allocations to the Assistant Minister. The Education Law provides that the Minister should allow parents to choose their child's school, but this choice is constrained by the need to ensure that there is an efficient use of both education and resources. This means that there can't be a completely free choice, although he would like to agree to all parents' requests, and he tries to accede to their requests.
- 3.2 The Assistant Minister explained that there is an appeals panel to consider all appeals which assists him. The ultimate decision however rests with him. This year, there had been 42 appeals altogether, but there were severe limitations on school places. Where it is unlikely to be possible to approve an appeal, the Assistant Minister tries to tease out whether there are any alternative arrangements the family could make to ensure the child can attend a particular school – this can sometimes mean the child going on a bus, for example.
- 3.3 Mr. Westwater informed the Board that the panel looks through all the applications for all children

transferring, until the school is full. All forms are compared with each other. All the children allocated to Haute Vallée live in the area and/or have siblings there. For the 2008 intake, the school filled up at this point, so the panel could not take into account children who fulfilled other criteria lower down the priority list of criteria. Mr. Westwater explained that in some years, when there are fewer children in the year group, the school will not fill up at this point, and it may be possible to review children against the criteria lower down the list. It is possible that, looking at children who are older, children from outside the catchment area have been admitted, but that would have been because the school had not filled up so quickly, and there was scope to admit more pupils. The situation varies from year to year depending on numbers living in a particular area, and while one school might be oversubscribed in a particular year, another could be undersubscribed. It is not possible to set hard and fast rules because it depends on changing numbers. Mr. Westwater explained that in 2008 there had been 16 appeals from people not living within the catchment area. 9 of these were refused and 5 were accepted largely because they were found to fulfil the second criteria. Of the 5, 3 involved children who were receiving support from external agencies, one was in the case of a disabled parent, and one was a case of extreme social need. That is to say that only where there were significant problems to overcome. The swimming club could not be included in the definition of an external agency, as it is a sporting club.

3.4 Mr. Lundy explained that resources for each school were based on the formula of £4,000 per child. If all 16 cases had been approved, an additional £64,000 would have to be found to fund the school where those 16 would be going, but other schools with 16 too few children would not be able to give up any of their funding, (because if they did, then their education would suffer) so the education of the 16 children would have to be paid for twice. It is important to maintain optimum class sizes and the year group size. If these numbers are exceeded then the school will have to employ extra subject teachers.

3.5 The criteria are there to ensure those most in need get the places. The admissions are based on where students live, but not the primary school attended. The criteria are in a priority order, so even if the parents work in the catchment area, this is further down the priority list. The criteria, in order of priority, are as follows –

1. Students living in catchment area have priority;
2. An equal priority is for students identified through statement who should be accessing the resourced provisions;
3. Student with siblings in Y7 – Y10;
4. Students who currently attend catchment school (Friendship groups being the key here) i.e. not a strong case if group of friends going to another school;
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8. School X is a good school;
School Y is a poor school;
Good facilities;
Good SEN support;
Are **insufficient reasons** for transfer.

3.6 The Minister confirmed that the criteria are reviewed, and through experience these seem to be the right ones. He is always prepared to look at them again in response to the Board's comments. It was also confirmed that if children did not take up their places at a school, or moved house/school, then those people who had appealed would be invited to apply for the vacancies as they arose and the process of appeal would begin again.

3.7 The parties left the meeting to allow the Board to consider the appeal in private.

4. The Board's findings

4.1 The Board noted that the reasons for the appeal to allow the child to attend a different school were

personal reasons. The Board understood that the complainant would have greater difficulty in making arrangements for her child at secondary school, but these were the kind of difficulties faced by many families at this time of change in routine, and were not a special need. The Board considered that the criteria used to assess transfer were reasonable, all cases had been carefully assessed and it did not consider that an unreasonable decision had been made in this case. The Board therefore upheld the Minister’s decision.

4.2 The Board did feel that steps should be taken to communicate much more clearly and sympathetically with parents who are under the impression that they have an unrestricted choice about the school their children can attend. The following are areas that the Minister should review –

- A. The criteria used need to be explained more carefully, to make it absolutely clear that they are listed in order of priority and it is not a question of how many criteria a family can meet. It should be made clear that in a year where there are a lot of children in the age group, **the school could be full once criteria 1 and 2 have been looked at, and all of the rest of the criteria therefore fall away.**
- B. Criteria 2 should be made clearer. It contains jargon which will be familiar to professionals in the world of education but is not easily understood by the general public. Perhaps this should read – “An equal priority is for students, identified through particular circumstances or need, who should have access to specific resources provided at the school”.
- C. The content of the website needs to be reconsidered to make sure the importance of the criteria priority order is clear. For example, the website currently shows –

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To those persons with a full understanding of the procedures for school transfers, the content of the website is not incorrect. However the reference to “linked primary school” and the general thrust of the website suggest that if a student attends a primary school in a secondary school catchment area, he or she will be able to attend that secondary school. This is misleading parents and the emphasis should be shifted to the place of residence of the student.

- D. The letter from the appeals panel to a parent who has been unsuccessful in appealing for their child to go to a different school is a little stark, and should ideally contain, in a sympathetic and accessible way, the reasons why it is not possible for the child to transfer. This could include

some of the information imparted at the hearing about there being a lot of children transferring to secondary school, there being very few places available, every single child transferring has been assessed, and the places have been allocated very carefully. The letter could include the total number of places available, the number of appeals considered and the information that the school is now full. It could also offer days/times which are different from the scheduled open day for those working parents who have difficulty attending the catchment area school inside working hours.

- E. A written record of the appeal process should be kept. The Board did not see such a document in the paperwork provided to it and therefore we presume it is not standard procedure at this time. As the option of an appeal is offered to parents, it is important that a record is kept of the proceedings, not only for the Department's own purposes, but also in case decisions are reviewed by the Complaints Board or a court. Such a record should contain the names of the persons present, a summary of what was said, a list of any documents referred to and the reasons for the decision made.
- F. The appeals process may need to be explained more clearly. The Assistant Minister, while assisted by a panel, made it clear that it was 'his decision'. This may be confusing and should be explained. In referring unsatisfied appellants to the States of Jersey Complaints Panel, the Minister should make it clear to parents that the Complaints Board is able to conduct an enquiry and, if appropriate, request the Minister to reconsider his decision but it is not empowered to overturn the Minister's decision. This may not have been understood. A referral to a Complaints Board is not a further appeal and a Board may only request the Minister to reconsider his decision in the circumstances set out in Article 9(2) of the Administrative Decisions (Review) (Jersey) Law 1982.

5. The Board asked the Minister to consider the above comments, and to advise it within 28 days of any action he proposed to take.

Signed and dated by:
Advocate R. Renouf, Chairman

.....
Mrs. M. Le Gresley

.....
Mr. T. Perchard

Findings of the Complaints Board constituted under the Administrative Decisions (Review) (Jersey) Law 1982 to consider a complaint against a decision of the Department of Education, Sport and Culture not to conduct an independent investigation into Mr. X's son's treatment whilst at [primary school].

1. The Review Board was composed as follows –

Mrs. C. Canavan (Chairman)
Mrs. M. Le Gresley
Mr. P. Freeley

The parties were heard in private at Le Capelain Room, States Building on 23rd July 2008.

The complainant together with his wife and son attended the hearing and were represented by Deputy I.J. Gorst of St. Clement and Mr. D.

Senator M.E. Vibert, Minister for Education, Sport and Culture was accompanied by Mr. M. Lundy, Director of Education.

2. Hearing

Summary of the complainant's case

2.1 The Board had received a dossier of correspondence and other documents in respect of the complainant's case, together with a further bundle of documents, before the hearing and had taken note of the documentation supplied on the complainant's behalf.

2.2 Deputy Gorst outlined the circumstances of the complainant's appeal against the decision of the Department for Education, Sport and Culture not to conduct an independent investigation into Mr. X's son's treatment whilst at [primary school]. The Board was informed that this had been a protracted and difficult case with the involvement of a number of individuals in a variety of ways. This matter had been ongoing for over 3 years and as yet there had not been an outcome which was satisfactory to the complainant. Deputy Gorst stated that the complainant had on several occasions requested that the Education Department conduct an independent investigation so that all the circumstances surrounding this case might be laid open and so that the family might be able to move on and put the events behind them.

Deputy Gorst proposed that the complaint be upheld in accordance with Article 9(2)(e) of the Administrative Decisions Review (Jersey) Law 1982 as he considered the decision was contrary to the generally accepted principles of natural justice.

Deputy Gorst explained some of the details in the submissions to show that in the complainant's view the Department had not acted in line with best practice when it became obvious that the reports were not as thorough as they should have been. He contended that the letters from the legal representative also showed that certain questions remained outstanding. He pointed out the following instances –

- a report was written by the school entitled "Incidents involving Mr. X/child Z/[Mr. and Mrs. X's son] and child 2 on Wednesday 15th June 2005". This report was an account of evidence gathered from over 12 witnesses, however Mr. X was not interviewed although he was present and was a prime witness.
- Further in the same report there are conflicting remarks – "she (teacher R) saw child Z kicking child 2" and "Mr. X and child Z walked away as teacher R appeared".
- In the letter dated 23rd September 2005 from the headteacher to Mr. and Mrs. X it states "teacher R saw child Z kicking out at someone". The Report dated 16th September 2005 of

Dr. B., the then Principal Educational Psychologist and the Child Protection Coordinator ESC, states “there is clear evidence from staff and pupil reports that child Z kicked and punched child 2 leaving him distressed and bruised.” However there appears to be some doubt whether teacher R was there or not.

- It was contended that child Z had been a victim of bullying over several years and that this had not been dealt with in accordance with the Education, Sport and Culture’s own policy. The Child Protection Co-ordinator, ESC had stated in his report dated 16th September 2005 that “appropriate strategies were not put in place”.

Deputy Gorst proceeded to point out the punishment meted out to child Z of a suspension. According to the Education, Sport and Culture website the procedure relating to suspension is as follows –

“Prior to suspension

Prior to suspension it is expected that schools will have:

- recorded the pupil’s view of the situation;
- ensured the learning and emotional needs of the pupil are being met;
- put pupil support strategy in place;
- monitored and reviewed those strategies.”

This was not the approach taken by the school authorities but it should have been. Child Z was suspended after one hour of attendance but the school report of the incident took 15 hours of teacher time to complete. Deputy Gorst advised that, as stated in the submission of the Education Department dated 7th March 2007 paragraph 4, “between 15th November 2005 and 8th August 2006 there was extensive and detailed correspondence between Advocate R. and the Director”. There were indeed letters from Advocate R. but Deputy Gorst explained that there were only short letters written by the Director.

It was also pointed out that if child Z had been at a secondary school, there would have been a Board of Governors that the parents could have appealed to.

In conclusion Deputy Gorst explained that other departments have used independent investigations. He cited the examples of the Minister for Planning and Environment commissioning an independent investigation of the outdoor adventure park at Les Ormes, St. Brelade where a number of objectors and neighbours were unhappy with the Minister’s decision. He advised that in the Williamson Report one of the conclusions was that “an independent board or review process should be available to users of the Children’s Service”.

Mrs. X advised the Board that the Education Law imposed duties in relation to education of children, but there was no provision for sanctions against the Minister if it was considered that he had failed in his duties towards a child, or any right of appeal against decisions, acts or omissions. The family had been complaining about bullying and adequate care for children for several years before this particular case commenced in 2005. They felt that they are entitled to a fair and impartial hearing which they have repeatedly requested but the Education Department had said that it had investigated the complaints but was not prepared to undertake an appeal. Mrs. X referred to an e-mail dated 23rd October 2007 from the Minister to Mr. X in which he stated that he did not believe that an injustice had been done otherwise his decision on reviewing the complaint would be different. Mrs. X stated that there is an appeals process in relation to school transfers but she is not aware of any appeals process in relation to bullying. A previous Complaints Board had however been established in relation to the complaint of an individual against the Minister for Education, Sport and Culture in 2007 regarding a nursery school place. Mrs. X referred to a page on the Education, Sport and Culture website entitled “Complaints – I am unhappy with my child’s

school: what can I do about it?" This page on the website did not make any reference to the States of Jersey Complaints Board.

Mrs. X also pointed out that in the original request for a Complaints Board Review on 28th February 2007 a number of issues were raised and a series of 5 decisions which the family wish to have investigated were included. However, the response of the Greffier of the States dated 26th March 2007 explained that the Administrative Decisions processes did not appear to be an appropriate vehicle to resolve the problem. However the Chairman had advised that if they could identify individual decisions then the Chairman would review her decision.

The family wished to have explained whether the Minister or his Department had authority to carry out an independent review of the family's complaints; whether a procedure existed for the establishment of an independent hearing against decisions, acts or omissions arising in the Department, and whether any such independent reviews had taken place.

Mrs. X pointed out that the Human Rights Convention on the Rights of the Child had not been ratified in Jersey.

The Chairman interjected that the presentation was straying from the remit of the Complaints Board and emphasised that the points Mrs. X was making in relation to appeals procedures and Human Rights issues were noted.

Mrs. X reiterated that the family had been a victim of the failures. In relation to the Minister for Education, Sport and Culture, the only appeals procedure available is the States of Jersey Complaints Board. By contrast in Scotland there is a proper system for the review of educational matters to ensure fair and proper hearings. The family was unclear whether their grievances could be adequately covered within the confines of the Review to be carried out by the Board.

Mr. and Mrs. X had written to the Child Protection Co-ordinator, ESC (Dr. B.) on 24th October 2005 in which they stated "We have asked from day one for a thorough, objective and unbiased investigation of the incident on Wednesday 15th June which led to his suspension for three days and the repetitive incidents of bullying suffered by child Z for the last four years which were never treated or recognised as bullying by the school". The Department however, declined to carry out a further review.

The only other route available was a legal route, and the Bâtonnier allocated Advocate R. to the case Advocate R. did not advise the family that their requests had no merit and she wrote a number of letters to the Department on their behalf. Although Deputy Baudains, who was then representing them had mentioned the Complaints Board, the Department did not advise the family of the Complaints Board procedure. The e-mail dated 22nd February 2007 from the Director of Education to Mr. X documented that he had informed Mr. X orally of the existence of the Board of Administrative Review prior to advising him in writing that he might consider approaching a States member to ensure that his interests were properly represented. The procedure under the States of Jersey Complaints Board was made clear in the letter forwarded by the Deputy Greffier of the States. The family considered that the failures to proceed with an independent investigation of the family's complaints breached all paragraphs of Article 9 (2).

3. **Summary of the Department's case**

Senator M.E. Vibert, Minister for Education, Sport and Culture began by asking for confirmation from the complainant as to where in the bundle of papers it stated that the Department turned down an independent investigation.

The Minister advised that Dr. B. is an expert and independent of the Education Department in reviewing the situation. The Minister or the Department would not normally conduct independent reviews of single issues affecting only one student. There are 14,000 pupils in total and this could be onerous. However, the Department does instigate independent reviews on areas of wider concern affecting more students. In a

letter dated 14th June 2006, an independent review had been sought into the conduct of the Director of Education, not an independent investigation of the child's treatment at [primary school].

In the letter dated 6th February 2006 from Advocate R. addressed to the Director of Education it is stated "at our meeting you indicated that your view was that with hindsight matters may well have been dealt with in a better manner. However, we are now some seven months after the incident and it is, therefore, not appropriate or worthwhile to reopen the investigation and re-interview witnesses, particularly the children. Whilst this is reluctantly accepted by Mr. and Mrs. X, explanations could still be sought from teacher C."

The Minister stated that on a number of occasions Mr. X had been advised to take independent advice and to speak to a States member, and to use the appeal procedure of a States of Jersey Complaints Board. Initially Mr. X stated that he did not want to pursue a Complaints Board, as he stated that he had no trust in the Board of Appeal so would not be taking that avenue. Mr. X had asked for an in-house solution. In an e-mail to Senator Vibert from Deputy G.C.L. Baudains of St. Clement he had requested a review, and he stated "clearly there are options as to how this can be resolved, but I would hope it can be done 'in house' rather than seeking outside remedies." At the Deputy's request, the Minister had reviewed all the papers and was satisfied that everything had been dealt with appropriately. The Minister ultimately withdrew from the exchange as it was not getting anywhere and inflammatory statements were being made. A meeting was set up to reconcile matters but the meeting failed to achieve this.

The Minister stated that the Department officers had spent a lot of time but had found it impossible to reach an agreement. Every time they thought that they had got there, things changed. Because of this it was difficult for the sides to get closer together. The Minister advised that he wished it had been possible to reach agreement, but that had not been possible. It is in no one's interest for there not to be an agreement.

The Minister did not agree that the Department did not follow good practice. The Department went out of its way to do everything possible. He did not agree that the Department had not answered Mr. X's questions, and he did not agree that witnesses weren't interviewed. There is no dispute that child Z kicked another pupil as this had not been rebutted. Mr. X had also agreed that he had inappropriately encouraged child Z to do so.

The Minister continued that an independent investigation is not commonly used except in issues of wider impact. However, independent inspectors attend in every school to review procedures.

In discussing how appeals are made, the Minister advised that the States of Jersey Complaints Board procedure is available to hear appeals and is Human Rights compliant. Appeals may also be made to the Minister.

The bullying policy of [primary school] had been updated and was in force at the time of the incident.

The European Convention on the Rights of the Child was the responsibility of the Minister for Health and Social Services. The Minister for ESC confirmed that he had been pushing for this to be adopted.

If a Minister behaves inappropriately, he can be the subject of a Vote of Censure or of No Confidence. Two members of the States of Jersey have been involved to date with the complaint, and neither had lodged such a proposition.

The Minister believed that he had acted in a proper way. He did not believe that any investigation would satisfy certain parties unless it agreed with their view. The Minister and the Department had tried to be as conciliatory as possible in dealing with the complaint.

In response to a question from the Chairman of the Board, the Minister confirmed that the complaints procedure on the Education, Sport and Culture's website is the one that would be used in the case of bullying. If the concerns were not addressed by the school, then contacting the Director of Education

would open up the procedure for any type of complaint. It was not clear whether information on the procedure was available at schools, but the necessary information would be given out on request.

The Director of Education advised that following the complaint of Mr. X a report had been prepared and this report had been modified in response a comment from Mr. X in the anticipation that this could lead to closure of the matter, but Mr. X remained unsatisfied.

The Director of Education had felt Mr. X had wanted to change the terms of reference of the review on more than one occasion, and if Mr. X had asked for an independent review he would have looked at this. However, the Advocate acting on behalf of Mr. X had confirmed that it would not be worth opening up the investigation after seven months had lapsed. At one stage the Advocate had also stated that they were "making progress".

Deputy Baudains, when he was representing Mr. X, had also confirmed that the matter should be handled "in house" if possible. So the Department had always felt that they were going through a conciliation process.

In relation to the suggestion of the complainant that natural justice had not been satisfied, Mr. X had been interviewed by the Principal Educational Psychologist. There had been an inaccuracy which had been corrected.

There had never been any doubt that there was an incident. The school's view was that child Z had an anger management issue, and Mr. X's view that child Z was being bullied. As far back as 2000, the individual learning plan of child Z showed anger management issues.

Mr. X had direct access to the Minister for Education, Sport and Culture through Deputy Baudains, and indeed the Minister reviewed the matter in response to Deputy Baudains' request.

In Dr. B's report dated 16th September 2005, while he pointed out that the school's anti-bullying policy was out of date, he also stated that there are some examples of good practice being developed by the school, such as anger management and raising self-esteem, which needed to be included in the policy.

In essence, there was a difference in opinion between the parents and the school as to what the issue was and how it should be handled. The problem was how to bring together the 2 sides in handling this issue and it had proved impossible to achieve an outcome which was satisfactory to both sides.

4. Response of the Complainant's representatives to the points made by the Education, Sport and Culture Department

The Minister had confirmed that he has an ability to order an independent investigation, but that it was a question of gravity and broad concern as to whether he did so.

When his clients started with their complaint they were unaware of the process by which they could appeal. The Advocate's letters in their entirety show that there remain questions unanswered. He conceded that Mr. X may not have used the precise phrase "independent investigation" but this was merely a question of terminology. He at all times wanted a fair, thorough and unbiased review. In Mr. X's list of questions the first question was "are you happy you conducted a thorough, objective and unbiased report as promised?"

The Minister had reported Mr. X as saying he had no faith in the Complaints Board. Deputy Gorst stated that whether parishioners feel a board is independent is not relevant as States members know it is independent.

The Bâtonnier engaged Advocate R. on behalf of the family. The firm has spent a lot of time in relation to this case and obviously therefore felt there were merits to it. A legal aid certificate would have been withdrawn if there had been no merit.

The meeting with teacher C failed. The Department's understanding was that this was a meeting of reconciliation. Mr. X had considered that the meeting had been called to answer his questions. The meeting could not have been successful as each side had different aims.

Recollections of a conversation between teacher C and Mr. X differed. It took 14 months for there to be recognition that the conversation took place.

If none of the appeal routes satisfied the complainant, then a States member could bring a proposition in relation to a vote of no confidence or a vote of censure. In reality it would not be fair for a member to take a parishioner through the publicity of such a proposition. The member bringing the proposition would have to persuade 53 members of the merits of a confidence case, without support, whereas the Minister would be supported by department officers.

Mr. X disputed that anger management issues had been raised several years ago.

The appeals process on the website is around allocation of school places. It does not say anything about using it to deal with a complaint. The recurring problem is – what is the complaints process – where does one go to – who does one contact? There does not appear to be an open process to be used in a complaint about a department.

Mr. D. stated that information on complaints procedures is virtually non-existent. The family had not had an independent inquiry and he questioned whether there should have been done. He had found out as much as he could on the website. He had not been able to find a Ministerial Decision to back up the decision not to proceed with an independent investigation. He had asked to see the file at the States Greffe but had not been allowed to see it, but he had been advised by the Deputy Greffier that there were no Ministerial Decisions on file in relation to this case.

Mr. D. advised that he could not find the document regarding “dealing with concerns” which had been mentioned by the Director of Education. He had looked at all of the leaflets, but there were none on appeals. He does not believe that there has been a fair and independent hearing because there is not a process to consider appeals.

It is not clear to a layman whether the review carried out by the school and the review carried out by Dr. B were one and the same process. He confirmed that he believed that only an independent investigation would give closure, however he appreciated that it may not give the answers his parishioners wanted. Such an investigation would show that the matter had been reviewed, and that it had been reviewed by a person removed from the situation.

Mr. X repeated that his meeting with Mrs. C had not been fruitful as she was not prepared to answer child Z's questions. Dr. B, as the Principal Educational Psychologist, had investigated the incident between the 2 children and the bullying but he did not speak to the children. Mr. X disputed that the Director of Education had changed the report to assist in conciliation. He did not believe that this had happened.

The Minister responded to the point that Mr. X had requested an independent review on several occasions. The Minister confirmed that he had never been asked to set up an independent review and this was why there was no Ministerial Decision recorded on that matter. He was not always sure what was being requested, because things were moving all the time. He had tried to be as fair, honest and open as he could be.

Mr. X had made complaints and had had access to the Head of the school, the Head of Special Needs, the Consultant Psychologist, the current Director of Education in his former post, the Director of Education of the day, and now the Complaints Board. This was an unusual level of engagement for an independent complaint. If the Consultant Psychologist had stated that there were serious problems he would have asked for a review. However, Advocate R. had stated it would not be worthwhile to reopen and review the

case and re-interview witnesses, especially children, and Deputy Baudains had also stated any review should be in-house. The Department had felt it had been in a conciliation process.

The Minister queried whether Mr. X had asked the Department for Education, Sport and Culture for the complaints procedure, he was not aware that he had asked for this information. States debates could, of course, be held *in camera*; it had not been necessary to establish an appeals panel in this case as the panel is advisory to the Minister. In Mr. X's complaint, the Minister had dealt with the case personally. The letter dated 6th February 2006 from Advocate R which had stated that it was not appropriate or worthwhile to re-open the investigation was taken to mean that the matter was closed. It was not taken to mean that a request for an independent investigation was in place.

The parties then withdrew from the meeting to enable the Board to consider its findings.

5. The Board's findings

The Board was at pains to make clear that it is completely independent and impartial, and is comprised of persons who are not States members, and who are not connected with education in the Island. It had considered in detail the considerable bundle of papers made available and had listened very carefully to the oral submissions of both parties.

The Chairman of the Complaints Board had considered more than one application for a review, and had not at any time refused a review. The Chairman had, however, asked for details of the decisions being complained about, so that it was possible to review an actual decision under the terms of the Administrative Decisions (Review) (Jersey) Law 1982. The Board was conscious of the fact that it could not consider patterns of behaviour, or matters in general terms: it needs to consider very specific finite decisions.

Deputy Gorst had set out two possible decisions/omissions for the Board to review –

1. the Minister for Education, Sport and Culture's decision not to conduct an independent investigation into child Z's treatment whilst at [primary school].
2. the Department for Education, Sport and Culture's decision not to conduct an independent investigation into child Z's treatment whilst at [primary school].

The Chairman had agreed that she would allow a review of the second of the decisions.

There are clear areas of disagreement between the Education Department and Mr. X. The principal of these are –

- Mr. X states that he asked for an independent investigation (although he may not have used those precise words) – the Education Department says he did not.
- Advocate R stated that it was not appropriate or worthwhile to reopen the investigation and re-interview witnesses, particularly the children, and Mr. and Mrs. X reluctantly agreed this at the time. However, Mr. and Mrs X have clearly have continued to pursue this course against their advocate's advice.
- Deputy G.C.L. Baudains said that any review should be conducted 'in house' – Mr. X is seeking an external review.
- Mr. X states that his son was bullied at school– in Dr. B's report it states that teacher C said that she did not feel bullying was an appropriate definition of the problem: it was more a relationship problem.

- The Education Department states that child Z had had a pre-existing anger management problem – Mr. X says he was not aware of this.
- There were clearly personal differences between Mr. X and teacher C attributable to a clash of personalities.

What Mr. X had asked at the outset was –

“are you happy you conducted a thorough, objective and unbiased report as promised?”

It is clear from the documents received that the Education Department did not think that there was a request for an *independent investigation* into child Z's treatment whilst at [primary school].

Three separate reports had been prepared in response to Mr. X's request – firstly the report prepared by the school, secondly the report prepared by Dr. B, and thirdly the report prepared by the Director of Education in a letter. The Minister made it clear at the hearing that he had also reviewed the case personally.

The Board found that the matter had been sufficiently investigated, and that it would be disproportionate to the scale of the incident to request a report to be prepared by an external individual/body. The Board therefore upheld the position of the Education Department.

The complainants stated that there is no procedure to deal with complaints other than those associated with school transfers. The Board found this not to be the case. The complaints procedure to which the department referred is found at [gov.je homepage>Education Sport & Culture>Who we are>Policy and Planning Division](#). Following investigation after the hearing it was noted that the information was believed to have been uploaded to the site on 20th September 2005. The Board agrees that this is not easy to find, and there are no links to it from the 'Schools' pages on the website. The Board was also not presented with any evidence to suggest that paper copies or leaflets are available in schools, although it was informed that the schools or the department would provide details to any parent on request. The Board agreed that leaflets on such matters should be available at schools for those parents without access to the internet.

The Board decided to recommend that the Minister and the Department should review the presentation of information on the website to ensure that its procedures can be easily found by a layman using the site. The Director of Education was requested to notify it of the steps taken to rectify this matter. Given that the school holidays have now commenced, the deadline for this notification is 1st October 2008.

Signed and dated by:
Mrs. Carol Elizabeth Canavan, Chairman

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Mrs. M. Le Gresley

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Mr. P.E. Freeley