
STATES OF JERSEY



STATES OF JERSEY COMPLAINTS PANEL: REPORT FOR 2009

**Presented to the States on 20th April 2010
by the Privileges and Procedures Committee**

STATES GREFFE

REPORT

Chairman's Foreword

The Privileges and Procedures Committee is pleased to present the Report of the States of Jersey Complaints Panel for 2009. The Committee would like to place on record its thanks to the Chairman, Deputy Chairmen and all of the members of the Panel for their honorary work dealing with complaints during this period. The Committee recognise that all of the Panel members are extremely busy people in their own right and generously give their time freely to serve the community. Particular gratitude is expressed to Messrs P. Freeley and P. Farley, who retired as Panel members during 2009 after several years of service. The Committee also welcome Messrs. R. Bonney, F. Dearie, C. Beirne and S. Platt who were appointed as new members in 2009.

Connétable J. Gallichan of St. Mary
Chairman, Privileges and Procedures Committee

**ADMINISTRATIVE DECISIONS (REVIEW) (JERSEY) LAW 1982:
REPORT OF THE STATES OF JERSEY COMPLAINTS BOARD FOR 2009**

Dear Madam Chairman,

I have pleasure in forwarding to you the report for 2009, which includes the resolution of matters outstanding as at the end of 2008. The following statistics show the work undertaken by the Administrative Appeals Panel during this period –

		<i>Request for hearing refused</i>	<i>Number of hearings held</i>	<i>Ministers' decisions upheld</i>	<i>Complaint upheld</i>	<i>Informal resolution</i>	<i>Report to the States</i>	<i>Complaints carried forward into 2010</i>
<i>Complaints carried forward from 2008</i>	2	1	1			1	1	
<i>Total Complaints 2009</i>	15	6	5	3	3	1	5	3

In accordance with Article 5 of the Administrative Decisions (Review) (Jersey) Law 1982, the following persons were reappointed as the Chairman, Deputy Chairmen and 5 members of the States of Jersey Complaints Panel, from whom members of Complaints Boards can be drawn, for a period of 3 years, by the States on 17th June 2009 (P.92/2009 refers).

Chairman

Mrs. Carol Elizabeth Canavan

Deputy Chairmen

Mr. Nigel Peter Edgar Le Gresley
Advocate Richard John Renouf

Members

Mr. John Geoffrey Davies
Mrs. Mary Le Gresley
Mr. Thomas Siouville Perchard
Miss Christine Vibert
Mr. David James Watkins.

On 21st July 2009, in accordance with Article 5(2) of the Administrative Decisions (Review) (Jersey) Law 1982, the States agreed to appoint the following additional members of the Panel for a period of 3 years (P.116/2009 refers) –

Mr. Christopher Beirne
Mr. Robert Frederick Bonney
Mr. Frank Dearie
Mr. Stephen William Platt.

During the course of 2009 a total of 6 hearings were convened. Three hearings were chaired by the Chairman and 3 by a Deputy Chairman.

The Panel noted an increase in the number of matters which had gone to the appeal stage of the process following the initial refusal by the Chairman. In 3 such instances the matter had been referred to the Deputy Chairmen and in all 3 cases the decision to refuse a hearing had been upheld. The Panel is aware that this has created a greater administrative burden for the Greffier of the States and his team. On behalf of the Panel I would like to thank Michael de la Haye, the Greffier of the States and his team for their continuing support at all times.

The Panel noted that in 2009 it received the first complaint in relation to Freedom of Information and the Code of Practice on Public Access to official information, which was upheld; and also the first request to film a Complaints Board by persons not affiliated to the accredited media.

Mrs. C.E. Canavan,
Chairman, Complaints Panel

The following is a summary of the outcome of the complaints which were outstanding in the 2008 Annual Report and of new complaints received in 2009 –

Outcome of complaints that were outstanding at the end of 2008 and which were referred to in the Annual Report for 2008 (R.18/2009) –

- (a) A statement of complaint dated 22nd September 2008 was received relating to a decision of the Planning and Building Services Department regarding the level of fees due for Planning Application P/2008/1461.

The Chairman reviewed the report presented by the Department and concluded that this was not an appropriate case for a hearing by a Board as the department had acted *intra vires*, and the complainant was informed of this in a letter dated 17th December 2008.

On 18th December 2008, the complainant appealed against the decision of the Chairman not to proceed with a review. The matter was considered by the Deputy Chairmen in February 2009. The Planning Department refunded part of the fees incurred by the complainant on 5th March 2009. However, the complainant sought an extension of the appeal for a total refund. The Chairman considered that there was no provision for a full refund on a withdrawn planning application, and the matter was then referred to the Deputy Chairman who upheld the view of the Chairman that there was no justification for a Complaints Board hearing. The complainant was informed that the case was closed on 17th July 2009.

- (b) A statement of complaint dated 15th December 2008 was received relating to a decision of the Minister for Planning and Environment to order the removal of parts of a fence erected at the property known as Saval, La Route des Côtes du Nord, Trinity.

The Chairman considered the complaint in January 2009 and agreed that this was an appropriate case for a hearing, which was held at Trinity Parish Hall on 6th April 2009. This hearing was the first occasion when the Board had been asked to consider whether to allow the filming of its proceedings by persons not affiliated to the recognised media. In the Board's view such permission should have been sought well in advance of the hearing rather than requiring it to make an 'instant' decision on the matter which also affected the accredited press. It had been agreed that this was a matter on which all members of the Complaints Board should be able to express their views and the matter was to be raised at its next general meeting.

The Board (the Chairman and 2 members) did not believe that the decision of the Planning Applications Panel was contrary to Article 9(2)(b), (d) and (e) of the Administrative Decisions (Review) (Jersey) Law 1982, and but believed that there could be a spirit of compromise extended by both parties to resolve the situation amicably. The Board's findings were presented to the States on 28th April 2009 (R.43/2009).

New complaints received in 2009 –

Chief Minister's Department

- (a) A statement of complaint dated 19th January 2009 was received relating to a decision of the Chief Minister to refuse access to certain documents to the complainant whilst he was preparing his defence in respect of his suspension from his post of Chief Officer of the States of Jersey Police.

The initial application for a hearing was refused by the Deputy Chairman (the Chairman having been conflicted) due to the interaction with the ongoing Judicial Review initiated by the complainant. The complainant appealed against this decision on 8th April 2009 and the Deputy Chairman was requested to reconsider his decision following an amendment to the scope of the Judicial Review which removed the aforementioned conflict.

The Chief Minister was advised of this appeal on 29th April 2009 and was given further time to consider the matter in order that an informal resolution could be found. On 29th June 2009 the Chief Minister advised that he had sought legal advice and was not willing to provide the information requested because he maintained that the Code of Practice on Public access to Official information applied to existing documents only and was not intended to require a department to construct a document not already in existence.

The matter was referred to the Deputy Chairman for a decision on 1st July 2009 and it was agreed that a hearing should be convened. The hearing took place on 16th September 2009. The Board (the Deputy Chairman and 2 members) concluded that, in accordance with Article 9(2)(d) of the Administrative Decisions (Review) (Jersey) Law 1982, the decision of the Chief Minister 'could not have been made by a reasonable body of persons after proper consideration of all the facts'. In accordance with the Law the Board therefore requested the Chief Minister to reconsider his decision and report back to the Board within one month. In reconsidering his decision the Board urged the Chief Minister to consider carefully how disclosing 3 times and dates, and nothing else, could possibly disclose whether any legal advice was sought or given and thereby breach legal professional privilege. The findings were presented to the States on 14th October 2009 (R.115/2009).

A response was received from the Minister dated 14th October 2009. The Minister accepted the Board's findings.

- (b) A statement of complaint was received on 12th October 2009 relating to a decision of the States Employment Board, that a PECRS member who continues to work after normal retirement age should not receive an enhanced pension.

A résumé was sent to the Chairman on 20th October 2009. The Chairman sought additional information from the complainant regarding his submission and will consider the papers to determine whether a review is justified in early 2010.

Housing

- (c) A complaint was received on 16th July 2009 from a complainant regarding a decision of the Minister for Housing to refuse her application for residential qualifications to be granted under Regulation 1(1)(g) of the Housing (General Provisions) (Jersey) Regulations 1970. Following the receipt of legal advice from H.M. Attorney General on the issue of Human Rights, the Chairman agreed that a hearing should be convened.

The Board (the Chairman and 2 members) met on 27th October 2009. The Board acknowledged that the Minister for Housing and his Department had acted in accordance with the current policies in relation to granting consent under Regulation 1(1)(g) of the Housing (General Provisions) (Jersey) Regulations 1970 on the grounds of hardship.

The Board, whilst having every sympathy for Mrs. X's situation and a high regard for her efforts to provide a stable home for her young sons, accepted that in making the decision to refuse her application, due process had been followed. The Board, having carefully reviewed the decision made by the Minister and his Department, found it to be entirely in accordance with the policies which applied to the application.

The Board's findings were presented to the States on 17th November 2009 (R.123/2009)

Planning and Environment

- (d) A statement of complaint was received on 14th February 2009 against a decision of the Minister for Planning and Environment to reject an application for the demolition of a garage and the construction of a single-storey extension to the east elevation of the property known as No. 3 Teighmore Park, Grouville to create one unit of residential accommodation.

The Chairman agreed that a hearing was justified and a meeting was held at Grouville Parish Hall on 25th June 2009. The Board (a Deputy Chairman and 2 members) concluded that none of the constraints imposed by Policy H8 applied to the application under question and the proposals did not represent an unreasonable development of the site. The application also did not, in the opinion of the Board, appear to contravene Policy G2. The Board upheld the complaint and requested that the application should be reconsidered. The findings were presented to the States on 20th July 2009 (R.78/2009). A response was received from the Minister dated 21st October 2009. The Minister maintained his decision.

- (e) A statement of complaint was received on 3rd March 2009 against a decision of the Minister for Planning and Environment in respect of a planning application at Field 268, Les Croix, La Rue du Tas de Geon, Trinity. The Chairman agreed to a hearing and the Board (a Deputy Chairman and 2 members) convened at Trinity Parish Hall on 1st July 2009.

The Board acknowledged that the Planning Applications Panel had acted in accordance with the current Policy which presumed against development in the Green Zone. It was recognised that exceptions to this policy were extremely rare. The Board, whilst having every sympathy for the complainants and high regard for their efforts to provide for themselves, accepted that the planning applications process had to be governed by the relevant laws and policies adopted by the States of Jersey. The Board, having carefully reviewed the decision made by the Planning Applications Panel, found it to be entirely in accordance with the policies which applied to the application. Accordingly the Board rejected the Complainant's contention that the decision made by the Panel could not have been made by a reasonable body of persons after proper consideration of all the facts.

The Board's findings were presented to the States on 28th August 2009 (R.93/2009).

- (f) A statement of complaint was received on 7th April 2009 relating to a decision of the Minister for Planning and Environment in respect of a planning application for permission to change a dormer window into a bi-folding door and balcony at the property known as Willowmere, Willow Grove, St. Clement.

The Board (the Chairman and two members) met on 12th August 2009 at St. Clement's Parish Hall to consider the matter. During the meeting it was acknowledged that a number of documents had been omitted from the Department's submission which were actually pivotal to the Minister's decision-making process in relation to the application. Without the benefit of the 10 photographs, the letters of objection and also the Planning Department's policy in relation to gardens (alluded to by the Senior Planner (Appeals) during his verbal submission), it was extremely difficult for the Board to determine whether the Minister would have been able to make a sound judgement in relation to the overlooking issues, particularly as the Minister had not viewed the site from the vantage point of the balcony.

The Board was mindful that the balcony had been constructed in breach of the planning permit and that this was a retrospective application. The Board nevertheless concluded, in accordance with Article 9(2)(d) of the Administrative Decisions (Review) (Jersey) Law 1982, that the Minister's decision 'could not have been made by a reasonable body of persons after proper consideration of all the facts'. The Board reached this conclusion because of the inclusion of the neighbouring property within the grounds for refusal in relation to the balcony on the west of Willowmere when it was manifestly clear to the Board, having visited the site at the beginning of the hearing, that no such overlooking was possible from the balcony. This inclusion, in the Board's view, cast doubt on the validity of the whole decision to refuse.

The Board requested the Minister to reconsider his decision within 2 months and believed it was essential that the Minister conducted a full site visit. The Board's findings were presented to the States on 3rd September 2009

(R.96/100). A response from the Minister was received dated 21st October 2009. The Minister had reviewed the application and maintained his refusal on the grounds of unacceptable loss of privacy for the neighbouring properties.

- (g) A statement of complaint dated 25th April 2009 was received relating to a decision of the Minister for Planning and Environment in respect of an application for the removal of a Leylandi hedge under the High Hedges (Jersey) Law 2008 at the property known as Sablon Cottage, La Grande Route des Sablons, Grouville.

A résumé of the complaint was sent to the Chairman on 14th May 2009 and on 17th May 2009 she advised that there were insufficient grounds for a hearing. It was noted that the High Hedges (Jersey) Law 2008 could only be invoked in relation to loss of light and this had not been mentioned in the submission by the complainant. The complainant was advised to amend or resubmit her appeal.

The Connétable of Grouville undertook to resolve the matter informally on the complainant's behalf and the case was closed on 3rd June 2009.

- (h) A statement of complaint dated 1st May 2009 was received on 5th May 2009 relating to a decision of the Minister for Planning and Environment in respect of an application for change of use to domestic curtilage at the property known as Mandorey Villa, La Grande Route de St. Jean, St. John.

A résumé of the complaint was sent to the Chairman on 15th May 2009. The Chairman refused the request for a hearing as she considered that it was not an appropriate case for a hearing by a Board and the application had been correctly dealt with in accordance with Article 3(5) of the Administrative Decisions (Review) (Jersey) Law 1982. The complainant, having been advised of the Chairman's decision on 20th May 2009, decided to appeal and the matter was referred to the Deputy Chairmen on 24th July 2009, who considered the appeal in significant detail. Looking to the provisions of the Administrative Decisions (Review) (Jersey) Law 1982, they concluded that the Chairman had reached a correct conclusion in relation to the application for a hearing. The complainant was advised of this decision on 24th July and the case was closed.

- (i) A statement of complaint dated 26th May 2009 was received on 28th May 2009 relating to a complaint against 2 named officers of the Planning and Environment Department.

The complainant was advised to refer his complaint to the Chief Executive Officer of the Planning and Environment Department in the first instance as the Board did not become involved in processes which could lead to disciplinary action.

- (j) A statement of complaint dated 10th August 2009 was received on 18th August 2009 in relation to a decision of the Minister for Planning and Environment regarding the refusal of planning application P/2008/1212 for proposed alterations to create self contained units of lodging house accommodation at the property known as Transvaal, La Rue de Fauvic, Grouville.

A résumé was sent to the Chairman on 8th September 2009 and the complainants were advised on 21st September 2009 that their request for a hearing had been refused on the grounds that the Chairman considered the department had followed its policies correctly in respect of the definition of a “lodging house” which was a series of rooms with shared facilities and that the Housing Control requirements with regard to size had also been followed. The Chairman considered that the application related to self contained units which were not “lodging houses” and therefore decided, in accordance with Article 3(5) of the Administrative Decisions (Review) (Jersey) Law 1982 that a review of this case was not justified.

The complainant appealed this decision and the matter was referred to the Deputy Chairman and one of the longest-serving Board members to adjudicate (as the other Deputy Chairman had declared a conflict of interest). Having considered the appeal, the Deputy Chairman and Board member concurred with the decision of the Chairman that the circumstances did not justify review by a Complaints Board and the complainant was advised of this outcome on 20th November 2009.

- (k) A statement of complaint was received on 17th November 2009 in relation to decision of the Minister for Planning and Environment regarding the refusal for permission to change a single three-bedroom dwelling into 2 one-bedroom units at the property known as Amani, La Route de St. Aubin, St. Helier.

A résumé was sent to the Chairman on 7th December 2009. The Chairman will consider the papers to determine whether a review is justified in early 2010.

- (l) A statement of complaint dated 22nd December 2009 was received relating to a decision of the Planning and Building Services Department regarding the zoning of land at against the decision of the Minister for Planning and Environment to refuse permission for the re-zoning of Field 287, St. Peter.

A request for a résumé was sent to the Minister and Planning and Environment Department on 23rd December 2009. The Chairman will consider the papers to determine whether a review is justified in early 2010.

Scrutiny

- (m) A statement of complaint dated 22nd April 2009 was received on 27th April 2009 relating to a decision of the Scrutiny Chairmen’s Committee not to allow filming of Scrutiny meetings.

A résumé was sent to the Chairman on 28th April 2009. The complaint was disallowed as the proceedings of the Chairmen's Committee fell outside the scope of the terms of the Administrative Decisions (Review) (Jersey) Law 1982. The complainant was advised of the refusal of his request for a hearing on 24th June 2009.

Complaints against non-States Departments

- (n) A statement of a complaint against a charitable organisation was received on 20th February 2009. The complainant was advised that this fell outside of the jurisdiction of the Board in accordance with the terms of the Administrative Decisions (Review) (Jersey) Law 1982, as it was not a publicly administered body. The complaint was then withdrawn.

- (o) A statement of complaint was received via electronic-mail on 28th July 2009 against the Dean of Jersey. The complainant was advised that this fell outside of the jurisdiction of the Board in accordance with the terms of the Administrative Decisions (Review) (Jersey) Law 1982. The complaint was then withdrawn.