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# STATES OF JERSEY



## STATES OF JERSEY COMPLAINTS PANEL: REPORT FOR 2010

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Presented to the States on 17th May 2011  
by the Privileges and Procedures Committee

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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 2010. 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 greatly appreciates the fact that they continue to give their time freely to serve the community in this way.

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

**ADMINISTRATIVE DECISIONS (REVIEW) (JERSEY) LAW 1982, AS  
AMENDED: REPORT OF THE STATES OF JERSEY COMPLAINTS BOARD  
FOR 2010**

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Dear Madam Chairman,

I have pleasure in forwarding to you the report for 2010, which includes the resolution of matters outstanding as at the end of 2009. The following statistics show the work undertaken by the Administrative Appeals Panel during this period –

		<i>Request for hearing refused/withdrawn</i>	<i>Hearings held</i>	<i>Ministers' decisions upheld</i>	<i>Complaint upheld</i>	<i>Report to the States</i>	<i>Complaints carried forward</i>
<i>Complaints carried forward from 2009</i>	3	1	2	1	1	2	0
<i>Total Complaints 2010</i>	12	4	1	1	0	1	7

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

There were 12 new complaints received during 2010 and a total of 3 hearings were convened, 2 of which pertained to complaints received in 2009. One hearing was chaired by the Chairman and 2 by a Deputy Chairman. The decisions made by the respective Ministers were upheld by the Panel at 2 of the 3 hearings. Three reports were presented to the States outlining the findings of the hearings.

The Board notes that in 2010 most of the complaints received related to decisions made by the Minister for Planning and Environment. The Board considers that the reduction of appeals in respect of other Ministers could be a result of improved internal Departmental appeals processes. It further notes that only one of the complaints in respect of Planning resulted in a hearing and in that instance the Minister's decision was upheld. It is considered that the increase in Planning related complaints could be a result of the perceived prohibitive costs of a Royal Court or Third Party Appeal process, but the Board wishes to emphasise that a vast majority of the complaints received related to the outcome of specific applications, rather than the process followed by the Planning Department and therefore had not justified a review by a Panel.

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

**The following is a summary of the outcome of the complaints which were outstanding in the 2009 Annual Report and of new complaints received in 2010 –**

**Outcome of complaints that were outstanding at the end of 2009 and which were referred to in the Annual Report for 2009 (R.45/2010) –**

**(1) 1386/2/1/2(295)**

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 two one-bedroom units at the property known as Amani, La Route de St. Aubin, St. Helier.

A resume was sent to the Chairman on 7th December 2009 and a Board was convened on 4th March 2010. The Board upheld the complaint. The Board recognised that the complainant had made efforts to mitigate the parking issue by renting a space for the second unit; the private amenity space had been accepted as adequate by the Case Officer and he had altered the design. The Board did not consider that it was sustainable to argue that the subdivision of the property into two units of accommodation would exacerbate the parking situation in the area any more than an extension to the existing three bedroom family home, which could potentially house four car owners.

The Board was not convinced that the Department had followed the process in accordance with note 9 of the Parking Guidelines (Planning Policy Notes No. 3) and made every effort to seek a balance between the need for accommodation and the environmental costs. The Board considered that each of the grounds given for refusal could be assuaged if assessed individually. The Board therefore concluded, in accordance with Article 9(2)(b) and (d) of the Administrative Decisions (Review) (Jersey) Law 1982 that the decision of the Minister for Planning ‘was unjust’ and ‘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 Minister to reconsider his decision and report back to the Board within one month. The Board’s findings were presented to the States on 23rd March 2010 (R.34/2010).

The Minister reconsidered the application and, having accepted the Board’s findings and reviewed the decision, granted permission to the complainant on 25th March 2010.

**(2) 1386/2/1/2(296)**

A statement of complaint dated 22nd December 2009 was received relating to a decision of the Minister for Planning and Environment to refuse permission for the re-zoning of Field 287, St. Peter.

A request for a resume was sent to the Minister and Planning and Environment Department on 23rd December 2009. The Chairman was conflicted and the matter was therefore referred to one of the Deputy

Chairmen, who 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 5th February 2010.

On 16th February 2010 the complainant appealed against the decision of the Deputy Chairman not to proceed with a review. The matter was then considered by the other Deputy Chairman who upheld the view that a hearing was not justified. The complainant was advised of this decision on 25th March 2010 and the case was closed.

**(3) 1386/2/1/8(12)**

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

A resume was sent to the Chairman on 20th October 2009 and, following clarification by the complainant regarding what would be achieved by a hearing, it was agreed that the Board would be convened on 15th March 2010. The Board (the Chairman and 2 members) presented its findings to the States on 15th April 2010 (R.41/2010).

The Board, having reviewed the possible bases for upholding a complaint, decided that it was not able to uphold the complainant's personal complaint that the pension he would finally achieve would not be enhanced because he was retiring late. The complainant had entered into a contract with the States' Employment Board and would have understood the implications and limits of the Pension Scheme at that time. Therefore Article 9 of the Administrative Decisions (Review) (Jersey) Law 1982 as amended did not apply.

The Board decided to make observations on the position of employees continuing to work beyond normal retirement age, which was being encouraged in Jersey. The Board felt it seemed unfair that the States should promote legislation which reduced a pension, to the Pension Fund's benefit, when a person retired early, but completely ignored the reverse scenario.

**Complaints received in 2010**

**(a) 1386/2/1/2(298)**

A statement of complaint was received on 2nd March 2010 relating to a decision of the Minister for Planning and Environment relating to a refusal of planning permission for the development of the property known Slate House, La Grande Route de St. Clement.

The complainant advised that they were progressing a Royal Court case in relation to this matter and consequently the complaint was withdrawn.

**(b) 1386/2/1/2(299)**

A statement of complaint was received on 1st June 2010 relating to a decision of the Minister for Planning and Environment relating to a refusal of planning permission for the development of the property known as Cleveland House, Cleveland Road, St. Helier.

The Chairman, having considered the case fully, decided that the circumstances did not justify review by a Complaints Board and the complainant was advised of this outcome on 5th August 2010.

**(c) 1386/2/1/2(301)**

A statement of complaint was received on 7th July 2010 relating to a decision of the Minister for Planning and Environment relating to the development of Field 604, Rue du Panigot, St. Peter (P.2007/2014 and subsequent application).

The matter was firstly referred to the Chairman as it related to a matter which was more than 12 months old. Following investigation it was determined that the complainants had effectively already achieved everything they were seeking and there was little that a Complaints Board could review at this stage. The complainants were therefore advised of the refusal of their request for a hearing on 1st September 2010.

**(d) 1386/2/1/2(302)**

A statement of complaint was received on 17th July 2010 relating to a decision of the Minister for Planning and Environment to reject a planning application for the property known as No. 49, St. Mark's Road, St. Helier.

A resume was sent to the Chairman on 2nd August 2010 and it was agreed that the Board would be convened on 16th November 2010. The Board (a Deputy Chairman and 2 members) presented its findings to the States on 8th December 2010 (R.144/2010).

The applicant had considered that, as a result of his application being rejected, and in the absence of being able to appeal against the decision other than through the Royal Court or a Complaints Hearing, that there were three matters to be addressed by the Panel. Firstly, he considered that the Minister for Planning and Environment and the States of Jersey had not acted in conformity with the provisions of the Human Rights (Jersey) Law 2000. Secondly, he considered that the Minister's decision to reject his application had been unreasonable, having regard to all the circumstances. Thirdly, he considered that the Minister's refusal to reconsider his application following its rejection by the Planning Applications Panel had been contrary to the provisions of the Planning and Building (Jersey) Law 2002 and planning practice.

The Board emphasised that its consideration of such appeals was constrained by the provisions of Article 9(2) of the Administrative Decisions (Review) (Jersey) Law 1982, and therefore it could not supplant its view for the decision arrived at by the Minister, or his delegate, under established

procedures. It was noted with regret that the applicant had chosen to ignore much of the pre-application advice offered – albeit after some delay – by the Planning Department, and, had he not done so it was possible that a satisfactory application could have been produced, although probably on a somewhat smaller scale than originally envisaged by the applicant.

The Board was of the view that Article 9 of the Administrative Decisions (Review) (Jersey) Law 1982, as amended, did not apply in relation to the refusal of the application and consequently, in respect of this particular application, the Board was in support of the decision of the Minister for Planning and Environment.

The Board noted the repeated willingness of officers of the Planning Department to work with the applicant on a revised application with a view to overcoming the perceived shortcomings of the original application.

**(e) 1386/2/1/2(303)**

A statement of complaint was received on 27th July 2010 relating to a decision of the Minister for Planning and Environment relating to actions associated with the granting of planning permission for the development of Field 621, Noirmont, St. Brelade.

The Chairman, having considered the details of the complaint, 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 Chairmen. Having considered the appeal, the Deputy Chairmen 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 21st September 2010.

**Ongoing complaints from 2010**

**(i) 1386/2/1/17(3)**

A statement of complaint was received on 5th October 2010 relating to a decision of the Minister for Home Affairs regarding maladministration by the Immigration Department in respect of an application for an Indefinite Leave to Remain.

A résumé was sent to the Chairman on 20th October 2010 and the complainant was advised on 27th October 2010 that his request for a hearing had been refused on the grounds that the directions set out by the Department clearly showed the process to be followed when an application for a visitor's visa or an ILR was to be made. The complainant was advised that if he wished to challenge the Immigration Department's directions then he was entitled to do so through the Court system, but the Chairman had decided, in accordance with Article 3(5) of the Administrative Decisions (Review) (Jersey) Law 1982, that a review of this case by the Administrative Review Board would not be appropriate.

The complainant appealed this decision and the matter was referred to the Deputy Chairmen. Having considered the appeal, the Deputy Chairmen 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 5th January 2011.

**(ii) 1386/2/1/2(297)**

A statement of complaint was received on 4th February 2010 relating to a decision of the Minister for Planning and Environment relating to the granting of planning permission in respect of the development of the former De La Mare Nurseries site, La Rue a Don, Grouville.

A request for a résumé was sent to the Minister and Planning and Environment Department on 9th February 2010 and the Department requested an extension to the usual two week deadline in order that a full submission could be made. The résumé was finally received on 17th May 2010 and forwarded to one of the Deputy Chairmen as the Chairman had a conflict of interest. In the interim the complainant's Advocate made contact requesting a deferral as efforts were underway to resolve the matter informally. The complaint was revived in October 2010 and the Deputy Chairman determined that the matter could not be taken forward until the matter had been considered by the Planning Applications Panel. The complainant was advised of this decision by letter on 7th December 2010 and it is anticipated that the matter will be addressed in 2011.

**(iii) 1386/2/1/2(300)**

A statement of complaint was received on 23rd June 2010 relating to a decision of the Minister for Planning and Environment relating to the refusal of a planning application at the property known as Cliffside House, 65 New St. John's Road, St. Helier.

A résumé of the case was sent to the Chairman on 21st July 2010 and it was agreed that the Board would be convened on 27th October 2010. At the complainant's request the hearing was cancelled and the matter was considered at a hearing in February 2011.

**(iv) 1386/2/1/2(304)**

A statement of complaint was received on 7th October 2010 relating to a decision of the Minister for Planning and Environment to approve the demolition of 3 external supporting walls of the building known as St. Juste, Merton Hotel, Belvedere Hill, St. Saviour.

A résumé of the case was sent to one of the Deputy Chairmen on 8th November 2010 in the Chairman's absence and, as no Planning Permit had been issued as yet, it was determined that the matter would remain with the Deputy Chairman, who would decide whether the complaint justified a review board hearing as soon as notification was received from the Planning and Environment Department that a permit had been issued. The complainant was informed of this decision on 7th December 2010.

**(v) 1386/2/1/2(305)**

A statement of complaint was received on 25th October 2010 relating to a decision of the Ministers for Planning and Environment and Home Affairs regarding the Rocket Launch attempt in 2007 by the complainant.

Despite having spent a considerable amount of time reviewing the documentation, the Deputy Chairman, adjudicating the case in the Chairman's absence, advised that he had found no special circumstances which made it proper for him to waive the rule which required that a complaint must be brought within 12 months. The Deputy Chairman therefore decided, in accordance with Article 4(b) of the Administrative Decisions (Review) (Jersey) Law 1982 that a review of this case could not be justified.

The complainant appealed this decision and the matter was referred to the other Deputy Chairman on 15th December 2010 and he will consider the papers to determine whether a review is justified in 2011.

**(vi) 1386/2/1/2(306)**

A statement of complaint was received on 9th November 2010 relating to a decision of the Minister for Planning and Environment relating to the granting of planning permission in respect of the development of the property known as Vale View, Trinity.

A request for a résumé was sent to the Minister and Planning and Environment Department on 9th November 2010 and the Department requested an extension to the usual two week deadline in order that a full submission could be made. The Chairman will consider the papers to determine whether a review is justified in 2011.

**(vii) 1386/2/1/2(307)**

A statement of complaint was received on 22nd December 2010 relating to a decision of the Minister for Planning and Environment relating to the granting of planning permission in respect of the property known as 12 La Cambrette, La Grande Route de la Côte, St. Clement.

A request for a résumé was sent to the Minister and Planning and Environment Department on 22nd December 2010. The Chairman will consider the papers to determine whether a review is justified in 2011.