
STATES OF JERSEY



STATES OF JERSEY COMPLAINTS BOARD: FINDINGS – COMPLAINT AGAINST A DECISION OF THE MINISTER FOR EDUCATION, SPORT AND CULTURE

Presented to the States on 13th August 2012
by the Privileges and Procedures Committee

STATES GREFFE

REPORT

Foreword

In accordance with Article 9(9) of the Administrative Decisions (Review) (Jersey) Law 1982, the Privileges and Procedures Committee presents the findings of the Complaints Board constituted under the above Law to consider a complaint against the Minister for Education, Sport and Culture regarding the transfer of a child to Haute Vallée School rather than the preferred parental option of Les Quennevais School.

Connétable A.S. Crowcroft of St. Helier,
Chairman, Privileges and Procedures Committee.

STATES OF JERSEY COMPLAINTS BOARD

26th July 2012

**Findings of the Complaints Board constituted under
the Administrative Decisions (Review) (Jersey) Law 1982
to consider a complaint by Mr. and Mrs. B.
against a decision of the Minister for Education, Sport and Culture to transfer
their son to Haute Vallée School rather than the preferred parental option of
Les Quennevais School**

1. Present –

Board Members

Advocate R. Renouf, Chairman
Mr. F. Dearie
Mr. R. Bonney

Complainant

Mr. and Mrs. B.

On behalf of the Minister

Mr J. Harris, Assistant Director, Policy and Planning
Mr. J. Westwater, Head of Planning and Projects
Mr. P. Horsfall, Education, Sport and Culture

States Greffe

Mrs. L. Hart, Assistant Greffier of the States

In attendance as observers

Mr. P.D. McGrath – new Panel member
Mr. G. Marett – new Panel member

The hearing was held in private at 3.30 p.m. on 26th July 2012 in Le Capelain Room, States Building.

2. Summary of the dispute

- 2.1 The Board was convened to hear a complaint by Mr. and Mrs. B (the complainants) against a decision of the Minister for Education, Sport and Culture to transfer their son to Haute Vallée School rather than the preferred parental option of Les Quennevais School.

3. Summary of the Complainants' case

- 3.1 The Chairman formally welcomed both parties to the meeting and outlined the terms of Article 9 of the Administrative Decisions (Review) (Jersey) Law 1982, against which the complaint would be considered. He advised that, having reviewed the summary of the complaint, the Board needed to be apprised of the details of the case, in order that it could consider the matter fully.
- 3.2 Mr. B advised the Board that he and his family had moved to the Island in October 2008. This had proven quite stressful for his then 8 year-old son J, who had been very unsettled at his new school, La Moye. It had taken a considerable time for the child to establish secure friendships, which it was acknowledged were essential for any child's learning and development. Mr. B wished to emphasize from the outset that the family were concerned about the potential negative impact of the secondary transfer on J. His established circle of friends were all moving to Les Quennevais and he did not know anyone at Haute Vallée and would be faced with the same situation he had struggled through when he first arrived in Jersey.
- 3.3 The complainants did not have an issue with the quality of educational provision at Haute Vallée, which they were certain was of equivalent standard to Les Quennevais, but they wished to avoid a repetition of the difficulties that J had faced in 2008 – 2009. They wanted him to attend the same secondary school as all his established group of friends to ease the transition to secondary school. Mr. B advised that he and his wife had been uncomfortable with the way in which the Appeals Panel meeting had been conducted. They considered it strange that the meeting was chaired by Deputy R.G. Bryans of St. Helier, former Chair of the Board of Governors of Haute Vallée School; and they alleged that reference was made to their 'j' category status. Mrs. B interjected that the Panel had asked why the family had moved out of the catchment area for Les Quennevais School, and when she had explained that they had been renting as 'j' category residents, she claimed that one of the Panel had said that it therefore 'wouldn't matter' which school J went to, as it would not be for the long term. Mr. B advised that they had not seen the relevance of their residential status to their appeal and considered the reference made to it to have been inappropriate.
- 3.4 Mr. B highlighted the 2 letters sent by J's class teacher and the Headteacher of La Moye School in support of the appeal. Both teaching professionals had acknowledged the importance of J remaining with his secure circle of friends and recommended that it would not be in his best interests to move to a new school without this cohort.
- 3.5 Mr. B explained that when the family had moved out of the catchment area they had not intended to circumvent the system – they had been unaware that the change of address would impact upon J's place at Les Quennevais as they believed that, as he attended a feeder primary, his place at that school was secure. Mr. B added that the family had been honest with the Department, and it had been an oversight that La Moye had not been informed of the family's change of address. Mr. B emphasized that the main thrust of their complaint was that they wished to minimise the impact of the transition to secondary

school upon J and to avoid a resurgence of the behavioural issues which they had encountered when he last moved school. The family had not anticipated J's vulnerability when they moved to Jersey, and La Moye had provided a great deal of support during this period. J had not been assessed as having special educational needs, but there had been behavioural problems and his attainments levels had dropped significantly. La Moye, over a period of months, had addressed the difficulties and turned the situation around, and J had made long-term friends and his confidence had grown. The family feared that moving to a school where he was isolated and knew no-one would impact upon his confidence, and his frustration would be manifested in a downturn in behaviour which would impact negatively on his ability to learn.

- 3.6 It was noted that the Department had adopted a Policy whereby appeals were based upon 6 key criteria in order of importance. The complainants considered that J fitted criteria 3 (attending a feeder school) and 6 (supported by a good educational reason for attending a non-catchment school). J's middle sister had attended Les Quennevais (criteria 2 – siblings in years 7 – 10) but was now at Hautlieu, and his eldest sister lived at La Moye. The family were currently leasing a property on Victoria Avenue for a year, having been unable to find a suitable property in St. Brelade, but they had every intention of returning to St. Brelade as all J's after-school activities were based there and so were all his friends.
- 3.7 Mr. B stated that he and his wife had been disappointed that the focus of the Appeals Panel meeting had been on the strengths of Haute Vallée, rather than J's situation. The complainants had found this emphasis, made mainly by the Chairman of that meeting, Deputy R.G. Bryans of St. Helier, to be somewhat perplexing, as they had already advised the Panel that the school was not the issue. The complainants explained that, as they were relatively new to the Island they had no knowledge of the school or its reputation, in fact they hadn't even known where it was situated. Mrs. B had regarded Deputy Bryan's repeated references to the fact that that his children had attended the school as irrelevant. It was only after she had made her complaint to the Administrative Appeals Board that someone had told her of his former position as a Governor of the school.
- 3.8 The Board questioned the travel arrangements for J's attendance at secondary school, and was advised that he would probably catch the bus and be collected by his eldest sister if there were after-school activities. The Board challenged the notion of J's perceived vulnerability given that he was deemed sufficiently confident to catch a bus alone. Mr. B countered that the family had considered J to be a robust child and had not anticipated any problems when they moved to Jersey. He was a spirited and popular boy and they had assumed that the transition would be fine. However, J had proven to be more sensitive than they had expected and the move had been quite traumatic.
- 3.9 Mrs. B advised that since he had been told about the change to his secondary school, J had not been 'himself' and clearly the issue was on his mind all the time. Mrs. B advised that he had become so overwrought before the transition days that he had suffered an asthma attack in the morning of the first day. He had attended the Thursday afternoon and all day Friday, but had returned home very upset and anxious, maintaining that everyone had been strangers

and he had recognised no-one. The complainants expressed reservations about the claims made by the transition teacher from Haute Vallée that J's attitude towards the forthcoming move was 'very positive' as they suspected that he had merely told her what she had 'wanted to hear'.

- 3.10 The complainants re-iterated that when they had first arrived in Jersey and J had started at La Moye knowing no-one, his behaviour had been disruptive, both at school and at home, and it had taken many months for him to make friends and feel secure. The family were petrified that these difficulties would resurface at Haute Vallée and would have a detrimental effect on his educational experience.

4. **Summary of the Minister's case**

- 4.1 The Board heard from Mr. J. Westwater, Head of Policy and Planning, who had attended the Appeals Panel meeting in an advisory capacity, but had not been part of the decision-making process. He advised the Board that the Department had never suspected that the complainants had tried to intentionally circumvent the system, and he confirmed that their failure to inform the primary school of their change of address was not a pertinent issue. Mr. Westwater explained the secondary school allocation process, and advised that the Educational Support Team looked at any sensitive cases and made recommendations to the Department, which were usually accepted and acted upon. In all other cases the decision was based upon residency in the catchment area. Parents were able to indicate a preferred alternative and such requests were gauged against the aforementioned 6 criteria, in order of importance, until the school reached its maximum capacity. Everyone denied their first choice was offered the chance to appeal. In many instances the schools were filled just by students who met criteria 1 and 2 (living in catchment area/having a statement of special educational needs and having siblings in years 7 – 10). There had been 62 requests for out-of-catchment places for the 4 Island secondary schools, and 40 had been allocated places at their chosen school, having met criteria 1 and 2. The remaining 22 were offered meetings with the Appeals Panel and 15 had accepted this offer. Of these 15, 6 had claimed that the children concerned were sensitive, had emotional difficulties and were fragile, and 6 appeals had been supported by letters from their respective primary schools, although Mr. Westwater advised that only one such letter had been submitted by the Headteacher on an unsolicited basis.
- 4.2 In the case of Les Quennevais there had been 8 appeals, but only one had been successful following the presentation of compelling medical evidence. Mr. J. Harris, Assistant Director, Policy and Planning, added that the child concerned in that case had a physical disability for which Les Quennevais was deemed better able to cater. The Board questioned why this had not been highlighted by the Educational Support Team and was advised that the team had not been involved with the child.

- 4.3 Mr. Westwater confirmed that the Appeals Panel had asked the complainants about their employment situation, but he maintained that at no point during the proceedings had any comments been made about their ‘j’ category status. Mr. Harris also refuted the allegation that such comments had been made by any member of the Panel. The Board asked whether minutes had been taken at the Appeals Panel meeting and was advised that Mr. Westwater had compiled notes on a summary sheet, but there was no other record of the decision-making process. The Board requested that a copy of this summary sheet be submitted by the Department for its consideration. It was confirmed that all of the appeals for Les Quennevais School had been considered at the same session. Mr. Westwater advised that the Panel had the authority to increase the maximum capacity at a school if they agreed that an appeal should be upheld. Mr. Harris advised that the Panel was always mindful of the wishes of parents coupled with the availability of resources. In exceptional circumstances schools made extra provisions to accommodate additional students. It was noted that out of the 40 children initially allocated places out of their catchment areas, only 4 had been for Les Quennevais, as the school had reached its capacity. All of the 8 appeals for Les Quennevais met criteria 3 or below, and the Panel had considered J’s appeal to be borderline, with no evidence of any serious educational need.
- 4.4 The Board questioned how the Department’s policy worked in accordance with Article 15 of the Education (Jersey) Law 1999, which stated –

15 Parental right to choose school

- (1) *The parent of a child aged below or of compulsory school age shall have the right to express a preference as to the provided school at which the parent wishes education to be provided for his or her child in the exercise of the Minister’s functions.*
- (2) *Subject to paragraph (3), the Minister shall comply with any preference expressed pursuant to paragraph (1).*
- (3) *The Minister shall not be required to comply with a preference if to do so would prejudice the provision of efficient education or the efficient use of resources.*

- 4.5 The Board was unsure how the parental right to choose tallied with paragraph (3), and to what extent the Minister could show flexibility if there was an overriding resource implication. Mr. Westwater advised that each secondary school operated on a staffing ratio of 14:1, and therefore additional students created an imbalance in terms of funding and staffing, at both the school which was over capacity and the one which would be under-utilised. In terms of cost, each student carried £4,500-worth of funding which would have to be re-routed from Haute Vallée to Les Quennevais; and that would be inefficient when the latter school was already fully funded. Mr. Harris stated that the physical capacity for Les Quennevais was 750 and it was difficult for the school to cater for more than that number. He also opined that allowing in just one child over that figure would set a precedent. Mrs. B countered that she was aware of 2 children who had decided not to accept their places at Les Quennevais and she believed this demonstrated that there were still places available. The Board questioned whether a place could have been offered to J,

regardless of the capacity issue, had the Appeals Panel considered it justified. Mr. Westwater confirmed that this was correct. It was further noted that if a family moved house the day after the start of Year 7, the child's place at that school would be unaffected. Students who had unsuccessfully applied to an out-of-catchment school could join a waiting list, providing they lived in the catchment area, and priority for any place which subsequently became available would be given to students recommended by the Special Needs team, failing which it would be in order of date of application to the list.

- 4.6 The Board sought some background to the current policy and how it was applied in relation to Article 15 of the Education (Jersey) Law 1999. Mr. Westwater affirmed that the policy had been in place since before he had joined the Department in 2000 and, whilst it had been updated over the years, there had been no major amendment to the Law. The Department's primary aim was to ensure that the best interests of the child were met. The priority order of the criteria had been set to place residency in the catchment or special needs referrals as paramount.
- 4.7 Siblings at the school took greater priority over primary colleagues as it was considered this benefited parents, avoiding having to travel to different locations to drop off children, whilst also acknowledging that siblings provided support to the Year 7 student as part of the family group. The Board questioned whether any consideration had been given to revising the allocations policy and moving away from a geographical system, and was advised that the concept of feeder schools becoming the determining factor had been discussed, but no decision had been made as yet. The Department therefore had to adhere to the existing policy in order to guide decisions and ensure efficiency. Guidance was available on the Department's website, which included a digital map showing the catchment boundaries, and advice was given to parents over the phone.
- 4.8 The Board questioned how much importance had been attached to the 2 supporting letters which the complainants had submitted in connection with their appeal. Mr. Westwater responded that the case presented had not been considered strong. The Board asked whether educational professionals were invited to Appeal Panel meetings to support parents' applications, and it was noted that there was currently no precedent for this. Mr. Harris stipulated that the Panel had not considered J's case to be exceptional and he opined that many children experienced a degree of apprehension before moving to secondary school.
- 4.9 The Board was apprised of the 'good educational reasons' which the Appeals Panel would normally consider sufficiently compelling to qualify under criteria 6. These included family breakdown and referrals from educational psychologists. J had not been referred to the educational psychology team during his unsettled period at La Moye. Mr. Harris reiterated that all of the secondary schools had equivalent resources, including support mechanisms for induction and the first year of transition from primary. It was the Appeals Panel's view that all children were somewhat daunted by the prospective move to a new school, but J would make new friends at Haute Vallée and would eventually settle in, as he had done at La Moye. Mr. B reminded the

meeting that it had taken almost 18 months for J to settle last time, and the family did not wish to risk repeating this stressful period.

- 4.10 The Board sought clarification as to why the views of the Headteacher and class teacher had been disregarded, when they knew the child best, and greater emphasis had been placed on geographical concerns. Mrs. B affirmed that J's Headteacher had written the letter of her own volition as she believed J was vulnerable and that it would be better that he remained with his cohort from La Moye.
- 4.11 Mr. Harris confirmed that the views of teaching professionals were taken into consideration, but in many instances they did not provide sufficient justification to persuade the Panel. The Department had to ensure that school resources were efficiently administered and Mr. Westwater reiterated that there was provision at Haute Vallée to 'manage' any potential problems which J might experience. Mr. B replied that he did not wish for his son to be 'managed' – he wanted to avoid the situation completely.
- 4.12 Mr. Harris wished to stress that the comments attributed to Deputy Bryans in respect of Haute Vallée had been made in order to provide assurance to the complainants that the school could meet J's needs. Deputy Bryans had resigned as Chair of the Board of Governors of Haute Vallée when he took up his post as Assistant Minister for Education, Sport and Culture, and it was not considered that his former connection with the school affected his judgement when presiding at Appeals Panel meetings. It was accepted that Deputy Bryans had mentioned the fact that his own children had attended the school during the Appeals Panel meeting, but Mr. Westwater contended that he was simply assuring the complainants that the provision was of a high standard at that school. Mr. Harris claimed that Deputy Bryans had advised applicants of his former status as Chair of the Board of Governors of Haute Vallée School when applicable, as he was aware of the need to assure parents that their appeal was being heard by an impartial Panel. Mrs. B advised that this had not been the case at their meeting, and she reiterated that the Deputy's former position had only been made known to her some time after the Appeals Panel meeting. Mr. B stated that the Department had acknowledged that the efficient use of resources was a pivotal part of the decision-making process, and he had felt during the Appeals meeting that the Panel had been promoting Haute Vallée, rather than considering the concerns expressed by J's family and teachers. The Board questioned why, if it was recognised that there could be a perceived conflict, Deputy Bryans could not have been replaced by the other Assistant Minister for Education, Sport and Culture or, indeed, the Minister himself, in order to assuage any doubts of the Panel's impartiality. Mr. Harris refuted the implication that Deputy Bryans had been conflicted and stated that he would have been equally enthusiastic about Le Rocquier or Grainville had they been the school to which J had been allocated. He opined that the Department tried to run the system in the best way possible; to act fairly and appropriately, but it was an emotive issue and difficult to please everyone.
- 4.13 Mr. B requested that the guidance in relation to the criteria for appeal be more clearly defined to highlight the priority order. He also asked that in future there be impartial minutes taken at Appeals Panel meetings to provide an independent record of the decision process.

- 4.14 The Chairman thanked both parties for attending the meeting and advised that it was a complex case which would require detailed thought. The parties then withdrew from the meeting to enable the Board to consider its findings.

5. **The Board's findings**

- 5.1. The Board considered the complaint in relation to the complainants' contention that the decision made by the Minister could be criticised on any of the following grounds outlined in Article 9 of the Administrative Decisions (Review) (Jersey) Law 1982, as having been –

- (a) contrary to law;
- (b) unjust, oppressive or improperly discriminatory, or was in accordance with a provision of any enactment or practice which is or might be unjust, oppressive or improperly discriminatory;
- (c) based wholly or partly on a mistake of law or fact;
- (d) could not have been made by a reasonable body of persons after proper consideration of all the facts; or,
- (e) contrary to the generally accepted principles of natural justice.

- 5.2 The Board found that there had been a potential conflict of interest, in that, as a former Chair of the Board of Governors of Haute Vallée School, Deputy Bryans could have allowed his personal opinion of that school to influence the outcome of the meeting. Despite the Department's assertion that appellants had generally been advised of his former position at the beginning of each appeal, the complainants did not seem to have been aware until after the event. The Board was of the opinion that, even if Deputy Bryans' connection with Haute Vallée was mentioned at the start of the meeting, it would have been ill-timed at that stage of the proceedings. The Board considered that the Appeals Panel should have recognised the significance of the Chairman's potential conflict and advised the complainants in advance of the meeting in order that the implications of his involvement could be fully absorbed and an alternative Chairperson found if requested. The Board expressed the view that it would have been difficult for parents, faced with a Panel of persons experienced in Departmental procedures and anxious to achieve certainty for their child, to challenge the constitution of that Panel. As the complainants' Appeals meeting progressed, the Chairman demonstrated a lack of impartiality through his promotion of Haute Vallée, to the extent that the complainants had considered that the focus of the meeting had been 'hijacked' as a showcase for that school rather than the needs of their son. Having the former Chair of the Board of Governors on the Panel, irrespective of the efforts to maintain impartiality, created a perception of bias and it could therefore be argued that paragraph (b) or indeed (e) of Article 9 of the Administrative Decisions (Review) (Jersey) Law 1982, could be applied.

- 5.3 It appeared that greater importance was attached to the views of the Special Needs Team rather than the submissions made by the teaching professionals who knew the child best. The fact that J had not been stated or referred to an educational psychologist had appeared to detract from the actual difficulties he had experienced integrating at La Moye. The Board was astonished that the views of those who dealt with J on a daily basis had been disregarded ostensibly. The Board did not consider that the Department had given due and proper consideration to the supporting letters from the Headteacher and class teacher at La Moye, both of which stated that the best interests of J would be served by allowing him to attend Les Quennevais. The Board considered that these statements should have been pursued more vigorously by the Department before a final decision was made, particularly when the Department had affirmed that its primary aim was to ensure that the best interests of the child were met. The Board acknowledged that there was an onus on parents bringing appeals to ensure that sufficient material to support their claim was placed before the Panel. However, the Board was mindful that parents were not necessarily used to the formalities involved and in such cases, where there was a genuine discussion to be had in relation to the best interests of a child, the Department should endeavour to involve everyone concerned, including the child's Headteacher and class teacher. It could therefore be argued that paragraph (d) of Article 9 of the Administrative Decisions (Review) (Jersey) Law 1982, could be applied.
- 5.4 The Board was mindful that Article 15 of the Education (Jersey) Law 1999 enabled the capacity of a school to be exceeded if a compelling case had been made, provided that this did not '*prejudice the provision of efficient education or the efficient use of resources*'. The Board recognised that the efficient provision of education and use of resources could be called into question if, ultimately, J faced prolonged difficulties settling into the new school, a drop in his attainment levels and his behaviour impacted negatively upon other children and disrupted the learning environment.
- 5.5 The Board expressed concern that the current policy, which deferred to resources and funding as an overriding decisive factor, might not allow for proper consideration of the best interests of individual children, as the Department could be predisposed to reject any applications which resulted in an imbalance of resources in one school over another.
- 5.6 The Board considered that the Appeals Panel meeting had not been properly constituted due to the Chairman's potential conflict of interest. It also considered that insufficient importance had been placed upon the letters sent by teaching professionals in support of the case. The complainants were entitled to an impartially constituted Appeals Panel meeting and this had not been provided. Furthermore, the current policy placed a greater significance on resource efficiencies rather than parental choice, which implied that any appeal would be thwarted once a school had reached capacity. In view of the fact that the Appeals Panel meeting was a quasi-judicial process, the Board was of opinion that the summary notes which were produced did not provide a sufficiently robust record of the decision-making process, and recommended that in future, full and impartial minutes of the meetings should be prepared.

- 5.7 The Board, having carefully reviewed the decision made by the Minister for Education, Sport and Culture, concluded, in accordance with Article 9(2)(b) and (e) of the Administrative Decisions (Review) (Jersey) Law 1982, that the failure of the Minister to provide an impartial hearing to the complainants was unjust and contrary to the generally accepted principles of natural justice. The Board also concluded that the failure to give due and proper consideration to J's best interests, including the supporting views of his headteacher and class teacher, gave rise to a risk that the decision could not have been made by a reasonable body of persons after proper consideration of the facts, contrary to Article 9(2)(d) of the Law.

- 5.8 The Board acknowledges and appreciates the difficulties faced by the Minister and the Department in ensuring an efficient education provision and use of resources whilst balancing the wishes of parents. However, the Board considers that the policy applied to the allocation of out-of-catchment secondary places should primarily uphold the principle of parental choice enshrined in the Education (Jersey) Law 1999, particularly where that choice had been made in the best interests of the child.

- 5.9 The Board, mindful that the new school year is imminent, invites the Minister to reconsider the complainants' application and to liaise with the Department to review more fully what is in J's best interests, giving due and proper consideration to the views expressed within the documents submitted by his current school and noting the complainants' expressed intention to move back within the catchment area within the year at termination of their present lease. **The Board requests that the Minister responds within a period of 3 weeks from the date of this report, outlining the steps taken to reconsider the matter and the result of that reconsideration.**

Signed and dated by:
Advocate R. Renouf, Chairman

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Mr. F. Dearie

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Mr. R. Bonney