
STATES OF JERSEY



STATES OF JERSEY COMPLAINTS PANEL: REPORT FOR 2012

**Presented to the States on 31st May 2013
by the Privileges and Procedures Committee**

STATES GREFFE

Chairman's Foreword

The Privileges and Procedures Committee is pleased to present the report of the States of Jersey Complaints Panel for 2012, and would like to place on record its thanks to the Chairman, Deputy Chairmen and all of the members of the Panel (listed below) for their honorary work dealing with complaints during this period. 2012 saw several new faces joining the Panel following the retirement of the Chairman, Mrs. Carol Canavan, and Mr. David Watkins, Mrs. Mary Le Gresley and Mr. Tom Perchard, who had all completed many years as members of the Board. The Committee wishes to pay tribute to their dedication and willingness to serve the community and thanks the new members for giving their time freely to undertake this important work.

On 17th July 2012, the States, in accordance with Article 5(2) of the Administrative Decisions (Review) (Jersey) Law 1982, appointed the following persons as members of the States of Jersey Complaints Panel, from whom members of Complaints Boards can be drawn, for the following periods (P.64/2012 refers) –

Chairman

Advocate Richard John Renouf (3 years)

Deputy Chairmen

Mr. Nigel Peter Edgar Le Gresley (3 years)
Miss Christine Vibert (18 months)

Members

Mr. John Geoffrey Davies (12 months)
Mr. Christopher Beirne (3 years)
Mr. Robert Frederick Bonney (3 years)
Mr. Frank Dearie (3 years)
Mr. Stephen William Platt (3 years)
Mr. John Frederick Mills C.B.E. (3 years)
Mr. Graeme George Marett (3 years)
Mr. Patrick David McGrath (3 years)

**ADMINISTRATIVE DECISIONS (REVIEW) (JERSEY) LAW 1982:
REPORT OF THE STATES OF JERSEY COMPLAINTS BOARD FOR 2012**

Dear Chairman,

I have pleasure in forwarding to you the report for 2012, which also includes the resolution of matters outstanding as at the end of 2011. 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Request for hearing refused/ withdrawn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>Informal Resolution</i>	<i>Reports to States</i>	<i>Complaints carried forward</i>
<i>Complaints received 2012</i>	7	4	1	0	1	2	1	1
<i>Complaints carried forward from 2011</i>	1					1		

There were 7 new complaints received during 2012, but only one hearing was convened. This was chaired by the Chairman, and the complaint was upheld by the Panel and a report subsequently presented to the States Assembly (R.102/2012). One complaint was carried forward into 2013. The Board regrets that the Education, Sport and Culture Department did not feel able to follow the recommendations of the Board and improve its appeals system to meet well-established standards of best practice in this area.

The Board noted that, unlike previous years where the complaints appeared to centre on the decisions of the Minister for Planning and Environment, the complaints received in 2012 related to decisions made by a variety of Ministers. However, the majority were considered not to relate to matters of maladministration and therefore did not justify hearings being convened by a Panel.

The Board wishes to express its thanks to the Greffier of the States and his staff, who provide efficient and professional administrative and advisory support to the Panels.

Advocate Richard Renouf
Chairman, Complaints Panel

**THE FOLLOWING IS A SUMMARY OF THE OUTCOME OF THE
COMPLAINTS WHICH WERE OUTSTANDING IN THE 2011 ANNUAL
REPORT AND OF NEW COMPLAINTS RECEIVED IN 2012 –**

Outcome of complaints that were outstanding at the end of 2011 and which were referred to in the Annual Report for 2011 (R.67/2012) –

(i) 1386.2.1.20(1)

A statement of complaint was received on 22nd December 2011 relating to the failure of the Minister for Treasury and Resources to respond to a request to publish information under the Code of Practice on Access to Information.

A request for a résumé was sent to the Minister for Treasury and Resources and the Treasury Department on 23rd December 2011, and the matter was referred to the Chairman, who was conflicted. The matter was then referred to one of the Deputy Chairmen on 6th February 2012. Following the intervention of the Panel, the Minister, having requested sight of the report himself, concluded that a redacted version could be prepared and issued to the complainant. The issue was therefore resolved.

Outcome of complaints received during 2012

(a) 1386.2.1.2(313)

A statement of complaint was received on 25th April 2012 relating to a decision of the Minister for Planning and Environment in respect of the refusal of a Planning application to remove conditions (1(ii)) – maintenance of play equipment; and (7) – provision of play equipment of Permit P/2005/174 and vary requirement of a planning obligation to the provision of the children's playground to serve the development at Clos Lemprière, Rue du Maupertuis, St. Clement.

A résumé was received from the Minister for Planning and Environment and the Planning and Environment Department on 11th May 2012, and the matter was referred to the Chairman, who attempted to resolve the matter informally. A meeting was subsequently arranged between the complainant and the Minister for Planning and Environment, and the appeal was resubmitted for his review. The Department has been discussing possible alternatives for the site at Clos Lemprière with the applicants, and this has now culminated in the submission of a new planning application for a different proposal.

(b) 1386.1.1.3(18)

A statement of complaint was received on 28th May 2012 relating to a decision of the Minister for Education, Sport and Culture in respect of the Primary to Secondary transfer of a child to Haute Vallée School against the preferred parental option of Les Quennevais School.

A request for a résumé was sent to the Minister for Education, Sport and Culture and the Education, Sport and Culture Department, and was received on 13th June 2012. Following consideration of the matter by the Chairman, a Board was convened on 26th July 2012.

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 the child's best interests, including the supporting views of his head-teacher 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.

The Board acknowledged and appreciated 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 considered 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.

The Board, mindful that the new school year was imminent, invited the Minister to reconsider the complainants' application and to liaise with the Department to review more fully what was in the child'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 findings were presented to the States Assembly on 13th August 2012 (R.102/2012). The Minister for Education, Sport and Culture responded on 7th September 2012 and, although he did not accept the conclusion reached by the Board, he decided to grant the application for the child to transfer to Les Quennevais School (R.108/2012 refers).

(c) 1386.2.1.2(314)

A statement of complaint was made on 13th July 2012 against the Minister for Planning and Environment regarding the delay in resolving a claim for compensation in relation to a planning application in respect of the former Mont de la Rocque Hotel, St. Brelade.

A résumé from the Minister for Planning and Environment and the Planning and Environment Department was received on 30th July 2012 and forwarded to the Chairman, who was conflicted, and therefore the matter was redirected to one of the Deputy Chairmen. After consideration of the matter, she concluded that the circumstances of the complaint justified review, but not on the grounds submitted. She contended that it was not in the remit of the Complaints Panel to be able to rule on the actual value of any compensation, but if he wished to limit the application to the question of the reasonableness of the proposed interest payment calculation, bearing in mind the time delays that had occurred, then a Board was recommended. This was not accepted by the complainant. The Deputy Chairman attempted an informal resolution and met with officers at the Planning and Environment Department to discuss the situation. A compensation sum was then offered to the complainant. The Deputy Chairman then met with 2 of the longest-serving Members of the Board to discuss the case, as she was leaving the Island until Christmas and therefore needed to hand over the case to one of them to Chair. The 3 Board members were in full agreement that there would be no merit in prolonging the process by holding a hearing, as the eventual outcome would be the same. Furthermore, any hearing could only address the

issue of the reasonableness of the proposed interest payment calculation. A letter was sent on 21st November 2012 advising that the matter must end there. A States of Jersey Complaints Board could not be used as an appeal court. It is constituted to consider grievances relating to matters of administration. The developer's complaint in relation to this was heard by a previous Complaints Board who upheld the decision of the then Planning and Environment Committee to refuse the application.

The complainant has maintained a request for a hearing. The Deputy Chairman has now approached the Planning and Environment Department requesting information regarding how the compensation offer was calculated. The matter is ongoing.

(d) 1386.2.1(21)

A statement of complaint was received on 2nd August 2012 relating to a decision of the Minister for Transport and Technical Services to remove the motorcycle parking bay on Commercial Buildings, St. Helier.

A résumé was received from the Minister for Transport and Technical Services on 21st August 2012 and the matter was referred to the Chairman.

Having considered the submission, the Chairmen decided that the circumstances did not justify review by a Complaints Board, and the complainant was advised of this outcome on 24th October 2012. The complainant requested that this decision be reviewed and the matter was referred to the Deputy Chairman, who concurred with the decision not to hold a hearing, but contacted the Department with the hope that the matter could be resolved informally.

(e) 1386.2.1.7(7)

A statement of complaint was received on 2nd August 2012 relating to a decision of the Minister for Social Security to phase out Pension Books requiring monies to be paid directly into bank accounts.

A résumé was received from the Minister for Social Security on 17th August 2012 and sent to the Chairman. The Chairman determined that the matter did not justify a hearing as he considered that the Minister's decision to phase out pension books was not an administrative decision of a kind that was susceptible to review by a Complaints Board. It was also clear that the Social Security Department had offered the complainant various options to assist with his particular circumstance.

(f) 1386.2.2.1(315)

A statement of complaint was received on 13th August 2012 relating to a decision of the Minister for Planning and Environment in respect of revised plans to install 2 PVC windows on the property known as Rosemount, Wellington Road, St. Saviour.

A résumé was received from the Minister for Planning and Environment on 22nd August 2012, and the matter was referred to the Chairman.

Having considered the submission, the Chairmen decided that the circumstances did not justify review by a Complaints Board and the complainant was advised on 12th September 2012. It was considered that the Planning application had been dealt with

in accordance with normal policies and procedures, and there was no reasonable prospect of finding any maladministration on the part of the Minister.

(g) 1386.2.7(8)

A statement of complaint was received on 5th September 2012 relating to a decision of the Minister for Social Security in respect of a claim for Long-Term Incapacity Allowance.

A résumé was received from the Minister for Social Security on 25th September 2012 and sent to the Chairman. Having considered the submission, the Chairmen decided that the circumstances did not justify review by a Complaints Board and the complainant was advised on 24th October 2012. Following further correspondence, the complainant was referred to the Judicial Greffe to explore pursuing the matter via the Courts.