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# STATES OF JERSEY



## **STATES OF JERSEY COMPLAINTS BOARD: FINDINGS – COMPLAINT AGAINST A DECISION OF THE DEPUTY CHIEF OFFICER OF THE STATES OF JERSEY POLICE (R.157/2013) – RESPONSE OF THE MINISTER FOR HOME AFFAIRS**

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**Presented to the States on 4th February 2014  
by the Privileges and Procedures Committee**

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**STATES GREFFE**

**FOREWORD**

Article 9(9) of the Administrative Decisions (Review) (Jersey) Law 1982 requires the Privileges and Procedures Committee [PPC] to present to the States the findings of every Complaints Board hearing and the response of the Minister when a Board has asked a Minister to reconsider a decision. On 19th December 2013, PPC presented to the States the findings of a Complaints Board held on 29th October 2013 to review a decision of the Deputy Chief Officer of the States of Jersey Police (R.157/2013). The Minister for Home Affairs has now reconsidered the decision as required by the Board, and the Committee is therefore presenting his response to the States as required by Article 9(9).

## REPORT

### Introduction

When I first learned of the referral of this matter to the Complaints Board, my initial reaction was that the Board did not have jurisdiction in relation to an internal employment-type matter within the States of Jersey administration.

Upon reviewing the matter, I discovered that there was no clear definition of what was or was not any decision made, or any act done or omitted, relating to any matter of administration by any Minister or Department of the States or by any person acting on behalf of any such Minister or Department.

I had always understood that the intention behind the setting-up of the Administrative Decisions Review System was that members of the public should have the ability to have a decision reviewed in a less formal manner, without incurring the costs involved in an appeal to the Royal Court.

I would be particularly concerned if the jurisdiction of the Complaints Board were being operated alongside the jurisdiction of the Employment Tribunal. A situation could then arise in which a States employee, having exhausted all the remedies of initial disciplinary hearing and internal appeal, then sought to go to the Complaints Board rather than to the Employment Tribunal. I would not view that as being a satisfactory situation, because the Employment Tribunal itself has been set up to create an easier and cheaper access to justice than that afforded by the Royal Court.

My concern would be even greater if an attempt were to be made to refer a matter to the Complaints Board after a hearing before the Employment Tribunal.

However, in this particular case, that kind of problem does not arise because States of Jersey Police Officers in employment-type matters have been expressly excluded from the jurisdiction of the Employment Tribunal. There is an issue, which will need to be considered in the future, as to whether that situation needs to be maintained, in order to support in some way the special status of police officers, or whether it would be more sensible for appeals in such matters to lie to the specialist body on employment-type law which has been set up by the States of Jersey, namely, the Employment Tribunal.

I am, therefore, grateful to the Chairman and Members of the Complaints Board for the obvious care and serious thought which has gone into their consideration of this matter.

Their decision, in addition to providing me with clear analysis of the situation, has caused me to consider this area in some depth and the States of Jersey Police to obtain further legal advice, and all of this has been very helpful both for the present and for the future.

Having said that, the fact that I am now considering the matter some 18 months after the initial decisions and after the officer concerned ceased to function as a police officer creates enormous legal and practical complications, to which I do not have complete answers. Indeed, the Complaints Board, in their decision, did not seek to go into that area.

## **The background**

The background to this particular case is the attempt by successive Police Chiefs to find a way in which to deal with competency-type issues and attendance policy-type issues in relation to their officers.

The area of competency issues has been an 'Achilles Heel' of the Public Employment system for many years. Indeed, it is only in fairly recent years that an effective system has been brought into operation in relation to Civil Servants and other pay-groups.

In relation to police officers, a very clear provision was made some time back in relation to disciplinary matters, and this is enshrined in the Police (Complaints and Discipline) (Jersey) Law 1999.

There is also statutory provision for the early retirement of officers upon health grounds. However, there is no express statutory provision in relation to competency issues, and the only statutory provisions in relation to attendance issues lie partly with the system for the granting of sick-leave which is contained in the Police Force (General Provisions) (Jersey) Order 1974, and partly with non-attendance without a proper reason being a part of the Disciplinary Code.

However, alongside the statutory framework, new officers sign an agreement which provides for a variety of contractual matters and which then forms part of the terms upon which they hold office. The Minister for Home Affairs, having delegated matters of the appointment of officers and their promotion to the Chief Officer of Police under the delegation power contained in Article 28 of the States of Jersey Law 2005, the agreement is normally signed by the Chief Officer or on behalf of the Chief Officer. I would comment in passing that, in my view, the document should be signed by the Chief Officer personally or, in his absence by the Deputy Chief Officer, and not delegated to a Human Resources staff member.

However, the standard agreement, and that which related to Mr. Berry in this case, contains a clause which enables the termination of service by one month's notice on either side.

I am bound to say that the existence of this provision without a clear explanation as to the way in which the power of the Minister or Chief Officer to exercise the right to give one month's notice was bound to cause considerable confusion. In addition to this, new police officers are presented with another document which is entitled 'Police Terms and Conditions of Service'. This document makes reference to a number of different matters, some of which are included in statutory provisions and some of which go beyond statutory provisions. There is currently no reference in the standard agreement to these additional terms, and the most recent legal advice has pointed out that there should be in order to comply with Article 2(g) of the Police Force (General Provisions) (Jersey) Order 1974.

Further in addition to this, there exists another document entitled 'Managing Attendance Policy'. This is not referred to in either the Police Terms and Conditions of Service document or in the standard agreement.

There is one further background matter which I need to mention at this point. That is that the way in which the States of Jersey Police are managed and run and, in particular, the relationship between the Chief Officer and the Minister, has moved on considerably but the statutory provisions, and particularly those contained in the Police Force (General Provisions) (Jersey) Order 1974, have not been updated.

I have been aware for some years that these needed to be updated, but that work has been caught up in the greater pieces of work which relate to the States of Jersey Police Force Law 2012.

Even under the terms of the 1974 Law, the Chief Officer of Police is responsible to the Minister for the general administration and the discipline, training and organisation of the Police Force.

However, under the 2012 Law, the responsibilities of the Chief Officer, the Minister and, sitting between them, the Police Authority are more clearly defined. At the relevant time of the hearings held by the Deputy Chief Officer and by an appellate body which included the Chief Officer, the new Law had not come into force but, since then the Articles which relate to the respective functions of the Chief Officer, the Minister and Police Authority have come into force.

What has happened here is that the Chief Officer and Deputy Chief Officer, inheriting a Managing Attendance Policy and believing that this formed part of the terms and conditions which applied to every officer, believing that this area lay within the general area of the responsibility of the Chief Officer, and knowing that there needed to be advances in the areas of competency assessment and work attendance, set up a system in relation to this which, following on from the Managing Attendance Policy, purported to give initially to the Deputy Chief Officer and subsequently to an appellate body which included the Chief Officer, the power to activate the one month's notice provision contained within the standard form of agreement.

The Complaints Board accepted that, in so doing, they had acted in good faith but found that they had both exceeded their powers in this respect.

#### **The response of the Minister to the findings of the Complaints Board**

I have the advantage of being able to view this matter with the benefit of the findings of the Complaints Board, with the benefit of the additional legal advice which has been obtained recently by the Police Chief, with the benefit of my own not inconsiderable legal and judicial knowledge and experience, and with the benefit of having had the opportunity to discuss this matter with the Chairman of the Police Authority, who is also a lawyer of considerable ability and experience.

In relation to the issue as to whether or not the Deputy Chief Officer had the power to dismiss Mr. Berry in this way, all four of these, the findings of the Complaints Board, the additional legal advice, my own opinion and that of Advocate White, are agreed that they did not. I will come on later to the effect of that and of subsequent events which have rendered the resulting situation very far from clear.

However, a number of matters flow immediately from this, as follows –

- (a) Firstly, the current work in relation to the replacement of the existing Police Force (General Provisions) (Jersey) Order 1974 by a new Order under the 2012 Law will need to proceed as fast as possible. I already have on my desk some draft law drafting instructions in relation to this, and I would have been working on these today if I were not working on this response. That Order will need to be consulted on in a proper way and will need to set up, in relation to the important areas of competency and attendance policy, a fair and balanced system with an appropriate appellate provision.
- (b) Secondly, until such time as that occurs, the system to which the complaint of Mr. Berry relates cannot be operated in relation to potential dismissal. I have viewed the terms of the Managing Attendance Policy and I do not have any problems with that policy. However, if the policy is, in the short term, to be given teeth, then that should be in the area of the withholding of sick-leave and not in the area of dismissal. That power is already provided for within the existing (General Provisions) Order. This has no effect upon the disciplinary system which has been set up by statute.
- (c) Thirdly, there is a need for me to urgently review those powers which are currently ascribed to the Minister, and which should now be expressly delegated to the Chief Officer of Police. It has clearly, in the past, been assumed that the Chief Officer had the power to deal with certain matters under his general statutory role, and I now need to strengthen that by express delegation where that is necessary. Such express delegation will be fully consistent with the new balance of roles within the tri-partite system which has been set up by the 2012 Law. However, I do not think that I should delegate powers in relation to the areas of competency or attendance policy until the new statutory framework for this is created.
- (d) Fourthly, there needs to be a review of the way in which targets are set to officers under the Managing Attendance Policy. There was criticism within the findings of the Complaints Board in relation to the final target which was set to Mr. Berry. Unfortunately, there was some confusion here caused by an error in the relevant letter to Mr. Berry. That letter indicated a target of 6 days of sick-leave per year, which was described as the average across the Force. The 6 days per year was actually an aspirational target to which the Chief Officer was seeking to work. The intention of the Deputy Chief Officer was to set the 6 days per year target, but this was wrongly described in the letter as the average of Force sickness, which it was not, because that was 10 days per year.

In looking at the possible targets, the Deputy Chief Officer was clearly influenced by the poor previous sickness record of Mr. Berry. However, there had been a more recent development with Mr. Berry obtaining a clear diagnosis of the nature of his medical problem with appropriate treatment. The Complaints Board found that the 6 days target was unreasonable. In my view, it was too tight. A 10 days target would have been more appropriate, and even that should have had a degree of flexibility to accommodate the possibility of an injury at work or some other completely new medical problem.

**The current position**

I indicated before that the effect of all this is unclear. That is so because of the gap of about 18 months since Mr. Berry last worked as a policeman.

Unfortunately, when faced with the dismissal decision, he did not immediately challenge this before the Royal Court by judicial review or before the Complaints Board. The judicial review procedure has a relatively short time period for the bringing of an application, and the reference to the Complaints Board was well outside of this.

That now creates a problem and I do not have a clear solution. I have received advice to the effect that Mr. Berry will be entitled to some financial compensation. What I propose to do is to refer the matter of the negotiation of this to the Chief Officer of Police to deal with, with the benefit of the current legal advice. If negotiations on this were to break down, then I would need to consider whether there should be some form of binding arbitration, but this is not without difficulties because of the complex legal position which has now arisen.

**Finally**

I repeat my thanks to the Complaints Board and extend them to all those who have assisted me in coming to the conclusions contained in this response.

**Minister for Home Affairs**