
STATES OF JERSEY



STATES OF JERSEY COMPLAINTS BOARD: FINDINGS – COMPLAINT AGAINST THE MINISTER FOR TREASURY AND RESOURCES REGARDING OVERCHARGING ON A LOAN MADE TO THE COMPLAINANT BY THE STATES OF JERSEY IN 1999

**Presented to the States on 19th May 2014
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 Treasury and Resources regarding overcharging on a loan made to Mr. D.R. Manning by the States of Jersey in 1999.

Deputy J.M. Maçon of St. Saviour
Chairman, Privileges and Procedures Committee

STATES OF JERSEY COMPLAINTS BOARD**15th April 2014****Findings of the Complaints Board constituted under
the Administrative Decisions (Review) (Jersey) Law 1982 to consider a complaint
by Mr. D.R. Manning
against the Minister for Treasury and Resources regarding overcharging on a
loan made to him by the States of Jersey in 1999****1. The Complaints Board was composed as follows –**

Advocate R. Renouf
Mr. D. McGrath
Ms. C. Boscq-Scott

The parties were heard in public in the Le Capelain Room, States Building, Royal Square, St. Helier on 15th April 2014 (and also subsequently on 2nd May 2014).

The complainant was present and was also represented by Deputy T.A. Vallois of St. Saviour.

The Minister for Treasury and Resources was represented by: Ms. L. Rowley, Treasurer of the States; Mr. K. Hemmings, Head of Decision Support, States Treasury; and Ms. D. Shipley, Head of Shareholder Relations, States Treasury.

2. HearingSummary of the complainant's case

- 2.1 In his submission, Mr. Manning contended that the overcharging complained of had come about because a contract had been prepared on 9th August 1999 which was based on the loan being repaid in 176 monthly repayments, whereas his legal representative had written to H.M. Solicitor General on 12th August 1999 notifying her that the loan should be for 15 years (180 months). This resulted in new loan documentation being provided to the legal representative based on repayment within 15 years, although the monthly repayments (£1,499.02) had remained unchanged. Mr. Manning considered that this could not be correct as if the period of the loan was extended the monthly repayments should have been adjusted accordingly (i.e. reduced).
- 2.2 Mr. Manning considered that a further mistake had occurred when the Loan and Mortgage Administration Centre (LAMAC) took over the management of States Loans (in 2001) because although the interest due on the balance of the loan continued to be charged on the payments made each year, Mr. Manning considered this to have created excessive interest which would have had the effect of extending the monthly repayments.
- 2.3 Mr. Manning had calculated that a £200,000 loan, which had an interest rate of 4% per annum on the balance outstanding and had been repaid by monthly

repayments of £1,499.02 for 180 months, would have equated to 4.2% interest per annum.

- 2.4 Mr. Manning was aggrieved that although he had drawn this matter to the attention of the Head of Shareholder Relations, States Treasury, there had been a refusal to admit that a mistake had been made, with a suggestion being made that any fault lay either with the Complainant's legal representative, or Mr. Manning himself, for not having checked the method of calculation of interest. Mr. Manning suggested that as the draft revised contract documentation had only been received by his legal representative on the morning of 13th August 1999 (the day the contract was registered before the Court), there had been insufficient time to verify the figures and an assumption had been made that they were accurate.
- 2.5 Deputy Vallois, on Mr. Manning's behalf, expressed concern at the way in which interest had been applied to Mr. Manning's loan and, potentially, to other loans hitherto. It was apparent that the method of applying interest to the loan had not been explained or set out in writing to Mr. Manning prior to the completion of the contract documentation for Court. Deputy Vallois drew attention to various alternative methods of calculating interest and confirmed that Mr. Manning's calculations had arrived at an interest rate of 4.2% per annum.
- 2.6 Also of concern were the changes to paragraph 2.1(c) in the draft contract creating a hypothèque conventionnelle simple. Mr. Manning's legal representative had requested an alteration to the date from which the loan agreement was to run from 13th August 1999 – the date of the passing of the contract before the Royal Court – to, as it subsequently turned out, 23rd December 1999 – the date of certification by the Architect of practical completion of Mr. Manning's house. Deputy Vallois suggested this had not adequately been taken into account.
- 2.7 Mr. Manning and Deputy Vallois argued that it remained unclear precisely what the policy of the States Treasury was in regard to the method of calculating interest, as there appeared to be nothing in writing to elucidate it. Deputy Vallois contended that, in any event, there remained no justification to overcharge Mr. Manning – or anyone else – by imposing one interpretation of the method of charging interest which favoured the taxpayer. It was suggested that it was inappropriate that a public body such as the States Treasury should seek on the one hand to argue that the loan agreement was not a “mortgage”, but yet to describe themselves in the loan agreement as a “mortgagee.”
- 2.8 Deputy Vallois commented on the apparent divergence of ‘operational’ approach as between the States Treasury and LAMAC whereby the Treasury considered the date of the commencement of the loan to be 23rd December 1999, whilst the LAMAC documentation was based on a 13th August 1999 starting date. However, it was accepted that members of the States, in adopting *Projet 72 of 1999* [“*Mr. D.R. Manning: grant of a loan (Field 1007, St. John)*”] were unlikely to have given consideration to the precise details as to how the interest on the loan would be calculated.

- 2.9 In any event, Deputy Vallois contended that the interest calculation should have been based on a monthly reducing capital balance basis, so that Mr. Manning was not charged interest on capital sums he had already repaid. This would have had the effect of shortening the term of the loan whilst ensuring that it was repaid within the 15-year period set out in the proposition and, subsequently, the loan agreement. It was emphasised that the interest calculation during the initial ‘draw-down’ phase of the loan which facilitated construction of Mr. Manning’s house had indeed been based on a daily balance basis, so there appeared to be no reason why the interest calculation for the £200,000 over the 15-year period could not have been based on a basis other than annual ‘rest periods.’
- 2.10 Mr. Manning confirmed his understanding had been that his loan was to have come to an end in August 2014, and it had only been when he applied for a settlement figure in the latter part of 2013 that the States Treasury had informed him that the loan was to run until December 2014. Mr. Manning contended that his legal advisers at the time would not have queried the repayment figures produced by the States Treasury when the contract had been placed before the Court, as their role was principally to examine the legal issues associated with the matter.

Summary of the Minister’s case

- 2.11 In the Minister’s submission, the Treasurer of the States outlined the background to the grant of a loan to Mr. Manning, including the adoption by the States on 25th May 1999 of Projet 72 of 1999 which set out that the life of the loan would be 15 years charged at a rate of 4% per annum, repayable in equal monthly instalments. The submission also referred to: the timing and significant events leading up to Mr. Manning going to Court, including the appointment of his legal representative; evidence that Mr. Manning had been informed when he entered into the Loan Agreement passed on 13th August 1999; the facts and clarity of the loan agreement; the question as to why the present complaint had been delayed for 13 years; and comparisons to other loans and differentiation to that of a mortgage.
- 2.12 The Treasurer of the States confirmed that the loan had been managed by Treasury and Resources since its inception, being treated as a Miscellaneous Loan in the States Accounts. The Loan and Mortgage Administration Centre (LAMAC) – appointed in 2001 – had managed the loan collections and accounting for the monthly collections received for Mr. Manning, which it was noted was the only currently active miscellaneous loan where the borrower made payments monthly. It was confirmed that since the inception of the loan, Mr. Manning had been provided with annual statements and that since LAMAC’s involvement he had also been sent, upon request, statements showing the loan balance from inception to the forecast end final repayment date of the loan. A recent statement sent to Mr. Manning showed: that interest was applied annually based on the opening balance at the start of each year at 4%; that the total repayments made up of capital was fixed per annum and when divided into 12 (monthly) payments equated to £1,499.02; that in order for the loan to be fully repaid before the expiry of 15 years from the date of certification, repayments of 12 x 15 x £1,499.02 were required. It was noted that LAMAC had confirmed that all the schemes for Jersey loans “*utilise a*

yearly rest period, specifically at the end of December each year. As such the balance as at this date will be used to calculate the monthly interest debit for the year.”

- 2.13 With regard to the timing and significant events leading up to Mr. Manning going to Court, it was noted that H.M. Attorney General had sent to Mr. Manning a letter – dated 9th August 1999 – to which was attached a copy of the draft loan agreement. This showed a principal loan of £200,000 at an interest rate of 4% with repayments of monthly instalments of £1,499.02 for the life of the loan. The agreement therefore set out the interest rate charge, monthly repayment and the life of the loan and made no reference to interest being calculated on a daily basis or reducing balance which it was suggested might be a feature of a mortgage agreement. The Attorney General’s letter had also recommended that Mr. Manning should appoint legal representation in order to ensure that he took appropriate professional advice before passing the deed.
- 2.14 A letter, dated 12th August 1999, addressed to the Solicitor General was received from Mr. Manning’s legal representative, who had been asked for advice by Mr. Manning on the draft loan agreement which had been sent to him. This was the first intimation received by the States Treasury that Mr. Manning was being legally represented in this matter. Although it was clear from the letter that the legal representative had reviewed the draft loan agreement, with a change to the wording in paragraph 2.1(c) having been requested, no amendment to the financial terms or the duration of the loan had been proposed.
- 2.15 The Conveyancing Section of the Law Officers’ Department wrote to Mr. Manning’s legal representative (by letter, dated 13th August 1999, which was marked “urgent” and sent by facsimile). It addressed each of the proposed amendments sought by Mr. Manning’s legal representative for each clause. There was no reference made to any concerns about the amount of the repayment or the terms of the loan. A subsequent file note recorded that the legal representative had agreed a change in the contract about insurance and had confirmed acceptance of the draft contract on behalf of Mr. Manning. This was considered to have confirmed that Mr. Manning was happy with the draft loan agreement and wanted to proceed with its registration in the Royal Court that same afternoon. It had also been indicated that Mr. Manning proposed to attend Court personally.
- 2.16 The Treasurer of the States considered that the rationale for Mr. Manning having delayed the present complaint until 13 years after the commencement of the loan was unknown, given that, at meetings and during correspondence with him, he had endeavoured to compare his loan calculations to that of a traditional mortgage, and that explanations had been provided to him – both through correspondence and a face-to-face meeting – as to how his loan was calculated in order to ensure full and final repayment.
- 2.17 The States Treasury was aware, through correspondence from Mr. Manning, that he wished to repay the loan early, in which respect it had offered interest waivers for early repayment. However, there had been protracted correspondence over many months with Mr. Manning and it had become clear

to the States Treasury that it was unable to continue to waive interest on Mr. Manning's loan.

- 2.18 In conclusion, the States Treasury considered that to the best of its knowledge Mr. Manning had entered into the agreement with understanding of its terms and conditions and had secured legal representation. Mr. Manning's legal counsel had reviewed the loan documentation and had sought amendments thereto prior to giving approval, on Mr. Manning's behalf, before the matter was presented before the Royal Court. The timing of the decision to go to Court was at the request of Mr. Manning's legal counsel. The loan agreement did not operate as a mortgage and the annual payment and the interest charge were clear and calculated to ensure full and final repayment at the end of the term. The loan operated in a consistent manner to other historic loans – the calculation of interest at the start of the year was not different to some of the States' other miscellaneous loans – the only difference being that Mr. Manning made monthly rather than annual repayments. The loans issued by the States Treasury had been to support individuals and organisations at overall lower rates of interest over the life of the loan. Consequently, the States Treasury considered that Mr. Manning had benefitted as a result of: (a) lower fixed interest rates over the life of the loan compared to commercial rates; (b) certainty over actual annual repayment values; and (c) lower stamp duty costs when the loan was first established.
- 2.19 The Treasurer of the States indicated that 2 types of interest were envisaged by the loan agreement: namely, daily interest (expressed as "*simple interest at four per cent on the capital advances up to the date of completion of the building works*" in paragraph (c) of the proposition); and annual interest on the capital "*the loan to be payable in equal monthly instalments on or before the expiry of fifteen years from the date of completion of the works.*" It was also noted that provision was made in the loan agreement for "Early Repayment" (paragraph 9.1) whereby; "*The Borrower may repay the Mortgage at any time upon repayment of the Principal of the Loan or the balance thereof then outstanding together with interest thereon calculated to the date of repayment.*"
- 2.20 The Treasurer of the States confirmed that the method of calculating interest adopted was the only construct which was possible from the terms of the loan as set out in the contract passed before the Royal Court [namely, £200,000 at 4% per annum by monthly instalments of £1,499.02] to ensure repayment "*on or before the expiry of fifteen years.*" Although in common with most borrowers, Mr. Manning had not been informed specifically as to the method of calculating the interest on his loan, it was recognised that neither was this specified in the contract passed before the Royal Court. The Treasurer of the States contended that the States Treasury had implemented the terms as set out in the loan agreement and had calculated the interest payable in accordance with the policy in place at the time.
- 2.21 It was emphasised that nowhere in the contract was it specified that interest would be calculated on a 'monthly reducing balance' basis. The Head of Decision Support confirmed that the method of calculating the interest due on the loan had been consistent with the method adopted in respect of other loans current at the time. It was recognised that Mr. Manning might not have

completed an application form for the loan, given that his case had been supported by a member of the States who had taken a relevant report and proposition to the States. The Treasury team undertook to seek out supporting documentation – including a written version of the interest-charging policy which would have been in place at the time (c.1999) and the rationale for applying ‘annual rests’ to Miscellaneous Loans.

- 2.22 The Treasurer concluded her representation by confirming that Mr. Manning had been dealt with fairly and on an equitable basis with others who had benefitted from similar type loans. She confirmed that had the Treasury made an error as alleged by Mr. Manning, the department would have admitted its error and taken steps to rectify the error in Mr. Manning’s favour.

Hearing deferred for the provision of further information

- 2.23 The Board agreed to defer further consideration of the complaint until such time as the further information requested had been provided by the States Treasury.
- 2.24 Having received a copy of the Building Loans (Jersey) Law 1950 from the States Treasury, the Board noted that paragraph (1) of Article 4 – “Loan to be secured by hypothec, to bear interest and to be repaid by instalments” – had been highlighted and referred to: “...*every loan shall be secured by a simple conventional hypothec charged on the property in relation to which the loan is made and shall bear interest at the prescribed rate calculated annually on the amount of the principal of the loan for the time being remaining unpaid on the first day of January.*”
- 2.25 The Board also received from Mr. Manning a copy of the Building Loans (Miscellaneous Provisions) (Amendment No. 24) (Jersey) Regulations 1994 (R&O 8759), Schedule 2 of which was drawn to the Board’s attention. Schedule 2 had been added to the Regulations with effect from 1st January 1995 and represented a “Form of Security Agreement to Secure Loan” under Regulation 7(2) of the principal Regulations. Although Mr. Manning had pointed out that the Schedule had been in force at the time he had taken out his loan (1999), the Board did not consider that Schedule to be relevant as Mr. Manning’s loan had not been made to him: “...*to assist him or her in the purchase of shares in a company which upon purchase will entitle him or her to occupy a company-owned dwelling*” as set out in the Schedule.

3. Hearing reconvened

- 3.1 The Board decided that it would be helpful for the hearing to be reconvened in order that the further information which had been provided might be discussed with the Complainant and the Minister’s representatives. This took place on 2nd May 2014.
- 3.2 The Head of Decision Support, States Treasury emphasised that Article 4 of the [Building Loans \(Jersey\) Law 1950](#), set out clearly the basis upon which interest calculations were to be made in the case of dwelling house loans. It was reported that 70 “Miscellaneous Loans” had been in place at the time that Mr. Manning’s loan had been created; and that approximately 20 such loans had been entered into subsequently. It was noted that only loans made in

accordance with other legislation (for example, agricultural loans) might be made on a slightly different basis to those under the Building Loans Law, and these tended to be for a specific purpose and did not represent a 'class' of loan, but rather were subject to negotiation at the time. Although Mr. Manning's loan (being classed a miscellaneous loan) was not subject to the Building Loans Law, it was suggested that the loan would have been made on an equivalent basis as being the most straightforward method to pursue. The Treasurer of the States confirmed that H.M. Solicitor General at the time had indicated that she considered the "usual" paperwork to be appropriate.

- 3.3 Mr. Manning confirmed that he had not been able to be granted a "Building Loan" because the limit of such loans at the time was £150,000 and, because of delay in matters associated with the length it had taken to achieve planning permission, he was then of an age which prevented him from obtaining a loan from a bank. Mr. Manning also confirmed that the mortgage protection policy, which had been a requirement of the Finance and Economics Committee of the day and which was included in P.72/1999, was still in place.
- 3.4 Mr. Manning contended that as his loan was not made under the Building Loans (Jersey) Law 1950 (with all loans under that legislation being administered by the Housing Committee), his loan should not have been administered as if it had been made under that Law. Deputy Vallois reiterated that there was no specific mention anywhere in the documentation of the method of calculating repayments that were to be applied to Mr. Manning's loan. She also drew the Board's attention once again to the change of wording in paragraph 2.1(c) of the initial draft contract as set out in paragraph 2.6 of these findings).
- 3.5 The Board noted that Mr. Manning had not commenced his monthly loan repayments until January 2000, and therefore not from August 1999, such that the 15-year period would be due to terminate in December 2014. Deputy Vallois contended that whereas the States Treasury had calculated an annual repayment of interest at 4% and then divided that figure by 12 to arrive at a monthly repayment figure, had interest been calculated on the basis of a shorter period (e.g. monthly) Mr. Manning would not have been paying interest on amounts of capital he had already repaid and the loan would be due to be fully repaid by August 2014 rather than December 2014 (which in any event was the indication consistently given by LAMAC). The Deputy indicated that the method of calculating interest on Mr. Manning's loan had been unclear from the outset and had never been properly explained to him.
- 3.6 Mr. Manning reiterated his contention that whilst the term of the loan had been extended (with repayment being due by December 2014 instead of the original proposal that it would have been repaid by August 2014), the amount of the monthly repayments had not been reduced. However the Chairman commented that it was apparent that the calculation of the amount of the loan repayment (as set out in P.72/1999) would have been made by the States Treasury prior to July 1999 on the basis that it was to be repaid over a period of 15 years (as set out in the contract passed before the Royal Court). It was recognised that, in the event, the 15-year period had ultimately commenced from January 2000 rather than August 1999, but that nevertheless it remained at 15 years.

- 3.7 Deputy Vallois emphasised that the lack of clarity in the method adopted by the States Treasury for the calculation of the interest charged on Mr. Manning's loan had adversely affected Mr. Manning who, in effect, by December 2014 would have paid an interest rate of 4.2% per annum and not the 4% which had been agreed by the States.
- 3.8 The Treasurer of the States reiterated that the position of the Minister for Treasury and Resources remained that Mr. Manning had been granted a miscellaneous loan on terms set out in P.72/1999. Given that Mr. Manning had been legally represented in the matter, and also that he had been granted a miscellaneous loan on the same terms and conditions as applicants under the Building Loans Law, the Minister considered that Mr. Manning had been treated entirely fairly.

4. The Board's findings

- 4.1 The Board concluded that whilst there had been some lack of clarity in the contract to which Mr. Manning, through his legal representative, had become party, it was clear that it had always been intended that the loan to him was to be made over a period of 15 years: in the event it had simply been the commencement date for the repayments which had been changed, a change prompted by Mr. Manning's legal representative who, amongst other matters, observed the drafting error within paragraph 2.1(c) as aforesaid.
- 4.2 The Board considered that Mr. Manning could not now rely upon an initial drafting error in the contract (which had, in any event, been corrected prior to being passed before the Royal Court) to show that he had been treated unfairly. The Board considered that, had Mr. Manning, either by himself or through his legal representative, considered that there was any degree of unfairness in the proposed arrangements, the matter should have been brought to notice at the time. The Board was cognitive of the fact that Mr. Manning's legal representative had highlighted/sought in excess of 12 amendments to the initial draft, which were either adopted or rejected by the Law Officers' Department in the final draft. Where amendments sought by Mr. Manning's legal representative were rejected, an explanatory note was included with accompanying correspondence. The notion that Mr. Manning's legal representative gave proper consideration to the task is evidenced. The Board is of the view that had Mr. Manning's legal representative considered that there was any deviation from what one might expect, particularly if the proposed action was prejudicial/unfair, he would have advised Mr. Manning accordingly and would not have allowed the matter to proceed without first resolving perceived difficulties.
- 4.3 The Board further considered that the issue surrounding the 'change of details' in the draft contract was somewhat of a 'red herring', as it was always abundantly clear that it had been the intention that the loan should be repaid over a period of 15 years.
- 4.4 The Board considered the contention that Mr. Manning had been treated unfairly was unfounded. The Board considered he was treated on a like basis to others who had sought assistance by way of a dwelling house loan in order to finance the purchase or building of a dwelling at, or around, the same time.

The calculations were made on the same basis as that set out in the [Building Loans \(Jersey\) Law 1950](#). Although Mr. Manning’s loan was classed as a miscellaneous loan because the amount involved exceeded the limit for a dwelling house loan, the Board considered it was not unreasonable for his interest repayments to be calculated in the same way as a dwelling house loan. The Board believed it would have been unfair (to those others with dwelling house loans) had Mr. Manning been treated any more favourably in this regard. The Board noted that it was the size of the dwelling which Mr. Manning was proposing to construct, and the costs associated with so doing, which prevented Mr. Manning from making an application under the terms of the Building Loans legislation, but to all intents and purposes, the loan granted to him was for the sole purpose of building a dwelling for occupation by himself and members of his family.

4.5 The Board considered whether the complaint could be upheld on any of the 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.

4.6 The Board concluded that none of the above-mentioned grounds could be upheld in relation to Mr. Manning’s complaint.

4.7 The Board agreed nonetheless that it would be desirable for consideration to be given in any future similar circumstance to address any perception that the terms of a loan agreement might be unclear or ambiguous. The Board considered it would have been helpful, in Mr. Manning’s case, for the States Treasury to have explained to him in clear and unambiguous terms that his loan was being made to him on the same terms as stipulated under the [Building Loans \(Jersey\) Law 1950](#), in the same way as they applied to persons who had been granted loans under that legislation.

Signed and dated by:
Advocate R. Renouf, Chairman

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Mr. D. McGrath

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Ms. C. Boscq-Scott