
STATES OF JERSEY



STATES OF JERSEY COMPLAINTS PANEL: REPORT FOR 2014

**Presented to the States on 9th July 2015
by the Privileges and Procedures Committee**

STATES GREFFE

REPORT

The Privileges and Procedures Committee is pleased to present the report of the States of Jersey Complaints Panel for 2014, 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. 2014 saw new faces joining the Panel, following the retirement of one of the longest-serving members, Miss Christine Vibert as Deputy Chairman; and also the Chairman, Advocate Richard Renouf resigned from the Panel following his election to the States Assembly as the Deputy of St. Ouen.

The Committee wishes to pay tribute to the dedication and willingness of both Miss Vibert and Advocate Renouf to serve the community, and wholeheartedly thanks all of the remaining members for giving their time freely to undertake this important work.

The Committee recognises that the Panel's aim is to ensure that public services are administered in accordance with accepted policies and procedures. Complaints are only taken forward by the Panel once a complainant has exhausted the internal complaints procedures available. It is therefore vital that every Department has a complaints procedure, which is accessible and readily publicised, and maintains a register of complaints.

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)

Ms Christine Vibert (18 months)

Members

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).

On 8th October 2013, the States, in accordance with Article 5(2) of the Administrative Decisions (Review) (Jersey) Law 1982, appointed the following persons as additional members of the States of Jersey Complaints Panel, from whom members of Complaints Boards can be drawn, for a period of 3 years (P.106/2013 refers) –

Members

Mrs. Claire Boscq-Scott

Mr. Stuart Catchpole, Q.C.

Mr. Geoffrey George Crill

Mrs. Janice Eden

Mr. John Moulin

Professor Edward Sallis, O.B.E.

**STATES OF JERSEY COMPLAINTS PANEL:
DRAFT REPORT FOR 2014**

**ADMINISTRATIVE DECISIONS (REVIEW) (JERSEY) LAW 1982:
REPORT OF THE STATES OF JERSEY COMPLAINTS PANEL FOR 2014**

Dear Chairman,

I have pleasure in forwarding to you the report for 2014, which also includes the resolution of matters outstanding as at the end of 2013. The following statistics show the work undertaken by the Administrative Appeals Panel during this period –

		<i>Hearing held</i>	<i>Request for hearing refused/ withdrawn/ matter not pursued</i>	<i>Complaint upheld</i>	<i>Informal Resolution</i>	<i>Complaints Carried forward (some of which may be resolved informally)</i>
<i>Complaints received 2014 (including 7 carried forward from 2013)</i>	20	1	11	0	4	5
<i>Complaints received 2013</i>	17	4	5	4	1	7

Seven complaints were carried forward into 2014 and there were 13 new complaints received during the year.

The Panel noted that the complaints received in 2014 related to decisions made by a wide variety of Ministers, when in previous years they had been mostly concentrated on planning matters. It was acknowledged that the majority of complaints received were considered not to relate to matters of maladministration and therefore had not justified a hearing being convened.

Only one hearing was convened during 2014. This was chaired by the Chairman and the complaint was not upheld. A report was subsequently presented to the States Assembly (R.67/2014 refers). Five complaints were carried forward into 2015.

There were a number of matters resolved informally, through the minor intervention of either the Chairman or Executive Officer.

Complaint against Minister for Treasury and Resources

The Board's findings were published as R.67/2014 and related to a decision of the Minister for Treasury and Resources in relation to a loan made to the complainant by the States of Jersey in 1999. The complainant contended that he had been overcharged 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. The complainant had argued that this could not be correct as, if the period of the loan was extended, the monthly repayments should have been reduced accordingly. The Board concluded that whilst there had been some lack of clarity in the contract to which the complainant, 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. The Board considered that the contention that the complainant had been treated unfairly was unfounded and that the complaint could not be upheld on any of the grounds outlined in Article 9 of the Administrative Decisions (Review) (Jersey) Law 1982. However, the Board did agree that the States Treasury should have explained the terms of the loan to him in a clear and unambiguous manner.

The Panel does not intend for its recommendations to be taken as a criticism of the sterling work undertaken by those employed within the public sector or appointed to serve the community, but acknowledges that mistakes are occasionally made. Many of the complaints received in 2014 related to delays in responding to enquiries, and could have been avoided had Departments made efforts to discuss matters with complainants in a more timely manner.

The Panel 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 Boards.

Nigel Le Gresley
Chairman, Complaints Panel

THE FOLLOWING IS A SUMMARY OF THE OUTCOME OF THE COMPLAINTS WHICH WERE OUTSTANDING IN THE 2013 ANNUAL REPORT AND OF NEW COMPLAINTS RECEIVED IN 2014 –

Outcome of complaints that were outstanding at the end of 2013 and which were referred to in the Annual Report for 2013 (R. 51/2014) –

(i) 1386/2/2/1/4(96)

A statement of complaint was received on 25th September 2013, relating to a decision of the Minister for Housing and the Housing Department in respect of an eviction notice and resulting claim for court costs.

A resumé from the Minister for Housing and Housing Department was received on 30th September 2013, but the matter was deferred until the complainant had met with Departmental officers to attempt to resolve the matter informally. The submission was sent to the Chairman for consideration on 7th November 2013, but the Chairman was conflicted, and therefore the matter was referred to one of the Deputy Chairmen for review.

In early 2014, following intervention from the Deputy Chairman, the complainant met with Departmental officers and was reinstated on the Housing list. As the matter was therefore resolved, the complaint was withdrawn.

(ii) 1386/2/1/21(4)

A statement of complaint was received on 8th October 2013, relating to a decision of the Minister for Transport and Technical Services regarding the level of consultation with residents in respect of road closures associated with the Paperclix Rally 2013.

Initially an informal resolution was sought, given that the Rally was due to take place during the weekend of 11th and 12th October 2013. However, the complainant wished to continue to a hearing, and so the formal procedure was then followed.

A resumé from the Minister for Transport and Technical Services and the Department was received on 11th November 2013 and forwarded to the Chairman. The Chairman reviewed the submissions made and, whilst he did not consider that there had been sufficient administrative error to justify a hearing, he wished to try to resolve the matter informally. He requested that a meeting be convened between the complainant and the Department, which he would chair.

The Chairman held an informal meeting with an officer from Transport and Technical Services and the complainant in February 2014. Following an informal discussion on the procedures adopted for closing roads during the road race, it was hoped that the complainant's concerns regarding future closures of the road were allayed, and the complaint was considered resolved.

(iii) 1386/2/1/4(97)

A statement of complaint was received on 30th October 2013 relating to a decision of the Minister for Housing and the Housing Department regarding access to the complainant's housing records.

A resumé from the Housing Department was received on 21st November 2013 and forwarded to the Chairman. He wrote to the Data Protection Registrar for advice in order to attempt an informal resolution of the matter. Following discussions, the Housing Department acknowledged that, given the complainant's limited literacy, they should have offered to approach other States Departments on his behalf. They subsequently released the information and the complaint was resolved informally.

(iv) 1386/2/1/7(10)

A statement of complaint was received on 30th October 2013, relating to the way in which the Social Security Department had processed an Income Support claim.

A resumé was requested from the Social Security Department on 6th November 2013, but the matter was then deferred as the Department attempted to resolve the matter informally. The complainant met with Departmental officers on 27th November 2013 but subsequently maintained the request for a hearing to be convened. The Departmental resumé was forwarded to the Chairman on 11th December 2013. Whilst acknowledging that this was not a case which would justify the convening of a Board, the Chairman wrote to the Social Security Department to highlight the fact that there was no guidance available on its website in relation to the processing of complaints. The Chairman considered that this should be addressed and wished to highlight the need for guidance in this area. As a consequence, the Department revised its online feedback process.

<http://www.gov.je/Government/Departments/SocialSecurity/Pages/FeedbackOnSocialSecurity.aspx>

(v) 1386.2.1.2/21(2)

A statement of complaint was received on 30th January 2013 relating to a decision of the Minister for Transport and Technical Services in respect of the failure to honour an undertaking given by the Public Services Committee to the Transport and General Workers' Union (now Unite) in 2001.

A resumé was received from the Minister for Transport and Technical Services and the Department on 11th February 2013 and the matter was referred to the Chairman, who requested further information from the complainant. This was finally received on 19th November 2013 and the case was then referred to the Chairman to decide whether it merited a Board being convened. Following much discussion, a Board was set to be convened in June 2014, subject to agreement that any review would be restricted to an examination of the Minister's actions in relation to Clause 18.3 of the Connex contract. It would not be possible to pursue the complaint on the basis of the political undertaking given to Unite in 2001. This was rejected at the eleventh hour by Unite, and the case was subsequently referred to the newly appointed Chairman. He

was appreciative of the viewpoint expressed by his predecessor and it was out of respect for him that the current Chairman decided to support the basis upon which the complaint *could* proceed. He was of the very firm opinion that asking the Complaints Panel to look into legal matters fell beyond its remit, and that the correct course of action should really be a judicial review.

Given the discussions to date, the Chairman felt it was only fair that this decision should be referred to the Deputy Chairman, in order that a definitive conclusion regarding whether the matter should proceed or not could be reached.

(ongoing as of 31st December 2014)

(vi) 1386/2/1/1(317)

A statement of complaint was received on 24th May 2013 relating to a decision of the Minister for Planning and Environment in connection with Planning Application P/2011/1673 for the construction of 28 dwellings at the former Plémont Holiday Village site.

This case was somewhat different to other complaints, in that the complainant was not someone with a ‘personal’ interest in the application, such as the site-owner or developer, but was a group of interested persons, namely the Council for the Protection of Jersey’s Heritage (CPJH). A brief resumé was received from the Minister for Planning and Environment and the Department on 12th June 2013, and the matter was referred to the Chairman, who was conflicted. The matter was then referred to an Acting Deputy Chairman. Legal advice was sought regarding the interpretation of Article 4(e) of the Administrative Decisions (Review) (Jersey) Law 1982, which states that: “*The Chairman (or a Deputy Chairman) of the Panel shall not decide that any circumstances justify a review of any matter by a Board if in his or her opinion the complainant has not a sufficient personal interest in the subject matter of the complaint.*”. Historically the Panel has always interpreted ‘*sufficient personal interest*’ to mean an interest in a property, *et cetera*, and not in the sense of ‘being interested’ in the subject of a complaint.

The test in Article 4(e) was designed to mirror the concept of *locus standi* in judicial review matters. The Greffe has always sought to ensure that any person bringing a complaint to the attention of the Board has some personal connection with the issue and therefore a standing to bring proceedings. The legal advice received was not conclusive.

In the interim, the Minister issued the planning permit and the Parish of St. Ouen commenced a Third Party Appeal. As a result, the Complaints Board process was deferred, as the matter was *sub-judice*. Following the States Assembly’s intervention in the future of the Plémont site, which effectively overturned the decision taken by the Minister prior to the acquisition of the land by the National Trust, the Deputy Chairmen considered that the subject matter of the appeal was no longer valid (irrespective of the locus of the CPJH to bring the appeal – which remained unresolved).

(vii) 1386/2/1/5(24)

A statement of complaint was received on 2nd December 2013 against the Minister for Treasury and Resources and his Department concerning overcharging on a loan made to the complainant by the States of Jersey in 1999.

A resumé from the Minister for Treasury and Resources and the Department was received on 19th December 2013 and forwarded to the Chairman. This matter was the subject of the only hearing in 2014, held on 15th April 2014 (P.67/2014 refers).

The complainant contended that he had been overcharged 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. The complainant had argued that this could not be correct as, if the period of the loan was extended, the monthly repayments should have been reduced accordingly.

The Board concluded that whilst there had been some lack of clarity in the contract to which the complainant, 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.

The Board considered that the complainant 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 the complainant, 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 the complainant'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 the complainant's legal representative were rejected, an explanatory note was included with accompanying correspondence. The notion that the complainant's legal representative gave proper consideration to the task is evidenced. The Board was of the view that had the complainant'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 the complainant accordingly and would not have allowed the matter to proceed without first resolving perceived difficulties.

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.

The Board considered the contention that the complainant had been treated unfairly was unfounded. The Board considered he had been treated similarly 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 the

complainant'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 the complainant been treated any more favourably in this regard. The Board noted that it was the size of the dwelling which the complainant was proposing to construct, and the costs associated with so doing, which prevented the complainant 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.

The Board considered that the complaint could not be upheld on any of the grounds outlined in Article 9 of the Administrative Decisions (Review) (Jersey) Law 1982.

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 the complainant's case, for the States Treasury to have explained to him in a clear and unambiguous manner 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.

Outcome of complaints received during 2014

(i) 1386/2/1(321)

A statement of complaint was received on 28th December 2013 regarding a decision of the Minister for Planning and Environment regarding a Planning Application.

A resumé was received from the Planning and Environment Department and submitted with the complaint to the Chairman, who declared a conflict of interest. The case was then referred to one of the Deputy Chairmen for consideration.

The Deputy Chairman did not believe that the circumstances of the complaint justified a review and found no grounds for a Board to be convened.

(ii) 1386/2/1/4 (98)

A statement of complaint was received on 13th February 2014 regarding the allocation by the Housing Department of a States rental property.

The matter was resolved informally following a meeting between the complainant and the Department, and the complainant was reinstated on the Housing list.

(iii) 1386/2/1(23)

A statement of complaint was received on 15th February 2014 regarding a decision of the Chief Minister in respect of the purchase and development of a property which had been formerly owned by the States of Jersey.

A resumé was received from the Chief Minister and the matter was referred to the Chairman. The Chairman considered that the complaint centred on a decision made on policy grounds rather than any administrative act, and was therefore not a matter for the Board. The complainant was advised to pursue his complaint at a political level.

(iv) 1386/2/1/2(322)

An initial statement of complaint was received on 4th March 2014 regarding the processing of a planning application. A resumé was received from the Planning and Environment Department but, owing to the poor health of the complainant, a full submission of the complaint was not received until early 2015. In the interim, it was made clear to the complainant that the Panel could not consider any complaint in respect of the planning applications which had been already determined and upheld by the Royal Court (the Court having found that the process of consideration of the applications was entirely in order), nor the process of the Court appeal or its outcome.

(ongoing as of 31st December 2013)

(v) 1386/2/1/22(1)

A statement of complaint was received on 10th March 2014 against the States Employment Board regarding the withdrawal of an offer of employment to Dr. XX at the Jersey General Hospital.

A resumé was received from the States Employment Board and submitted with the complaint to the Chairman, but the case was subsequently deferred whilst the complainant pursued the case through the Employment Tribunal Process. On 6th December 2014, the complainant wrote to advise that he had withdrawn from the Jersey Employment Tribunal process and the submissions were then sent to the Chairman for consideration.

(ongoing as of 31st December 2014)

(vi) 1386/2/1/18(4)

A statement of complaint was received on 8th May 2014 concerning the perceived lack of action taken by the Chief Minister and Minister for Home Affairs regarding an investigation into an assault in the complainant's home.

A resumé was received from the Minister for Home Affairs and referred to the Chairman. Having considered the matter at length, the Chairman decided that the complaint did not justify further review by a Board, as it fell outside of its jurisdiction. The complainant was advised that the Panel was not empowered to review operational police decisions and matters which were within the remit of the Police Complaints Authority.

(vii) 1386/2/1/18(4)

A statement of complaint was received on 29th August 2014 against the Minister for Home Affairs/States of Jersey Police Force regarding treatment of Mr. XX during an investigation.

A resumé was received from the Home Affairs Department and submitted with the complaint to the Chairman. The Chairman determined that the complaint did not justify further review by a Board as it fell outside of its jurisdiction. The complainant was advised the Panel was not able to intervene in operational police matters and that any issues relating to the complainant's treatment during the course of his arrest and remand should be brought to the attention of the Jersey Police Authority.

(viii) 1386/2/1/7(12)

A statement of complaint was received on 16th September 2014 against the Minister for Social Security regarding breaches of the Income Support (Jersey) Regulations 2007, Data Protection and maladministration of the Income Support process in relation to Mr. XX.

A resumé was received from the Social Security Department and submitted with the complaint to the two Deputy Chairmen, as this was during the transition period before the Chairman became a States Member. They concluded that this was not an appropriate case for a hearing by a Board. Having considered the papers, they believed that the complaint had already been subject to review by both the Social Security Department in accordance with its established procedure and by the Deputy Data Protection Commissioner and that, therefore, there was no justification for the complaint now to be considered by the Administrative Review Board.

(ix) 1386/2/1/13(3)

A statement of complaint was received on 28th October 2014 against the Minister for Economic Development regarding the enforcement of a contract to use the facilities at Bouley Bay.

A resumé was received from the Economic Development Department and submitted to the Chairman, who considered that the matter justified further review.

(ongoing as of 31st December 2014)

(x) 1386/2/1/18(6)

A statement of complaint was received on 23rd December 2014 against the States of Jersey Police for unfair dismissal.

(ongoing as of 31st December 2014)

Complaints which were not progressed**(a)**

A statement of complaint was received on 29th May 2014, against the Social Security Department regarding the continued level of incapacity benefits for Mrs. XX.

The complainant was advised that she should exhaust the existing appeals process within the Social Security Department before the matter could be considered by the Board.

(b)

A statement of complaint was received on 30th September 2014 regarding an allegation of an historical failing by the Population Office/Social Security Department to give adequate information to the complainant when she moved to the Island almost 10 years earlier, regarding the requirement to pay social security contributions when resident in Jersey. After making initial enquiries, the complainant was advised that the complaint was 'out of time' having been submitted after the 12 month deadline.

(c)

A statement of complaint was received on 1st October 2014 against the JFSC, regarding the use of a close derivative of an existing company name by another limited company. Whilst this was not a matter which fell within the Board's jurisdiction, the Executive Officer contacted the JFSC on behalf of the complainant to see if the matter could be resolved informally. Following a very thorough explanation from the Commission it was apparent that, although the similarity in company names was unfortunate, the correct procedures had been followed.