
STATES OF JERSEY



STATES OF JERSEY COMPLAINTS PANEL: REPORT FOR 2016

Presented to the States on 19th October 2017
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 2016, 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. The end of 2016 saw some changes to the Panel following the retirement of 2 of its members.

The Committee would like to thank the retiring members, namely Professor Edward Sallis, O.B.E. and Mrs. Claire Boscq-Scott, who were members of the Panel since 2013. The Committee recognises that they are extremely busy people and generously gave their time freely to serve the community, for which the Committee is very appreciative.

The Committee is aware 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.

Whilst the Committee considers that it is important to appoint new members, it is also essential to maintain some continuity, which is necessary on a Panel of this nature, where experience in dealing with complaints is built up over time. Following appointments in 2017, we now have in place a very strong team who have proven themselves to be extremely measured, reasonable and fair-minded. The Panel now consists of 12 members, but in 2016 its 10-strong membership was as follows –

The following have been members since 2009:

R. Bonney
C. Beirne (Deputy Chairman)

These members were first appointed in 2012:

D. McGrath
G. Marett

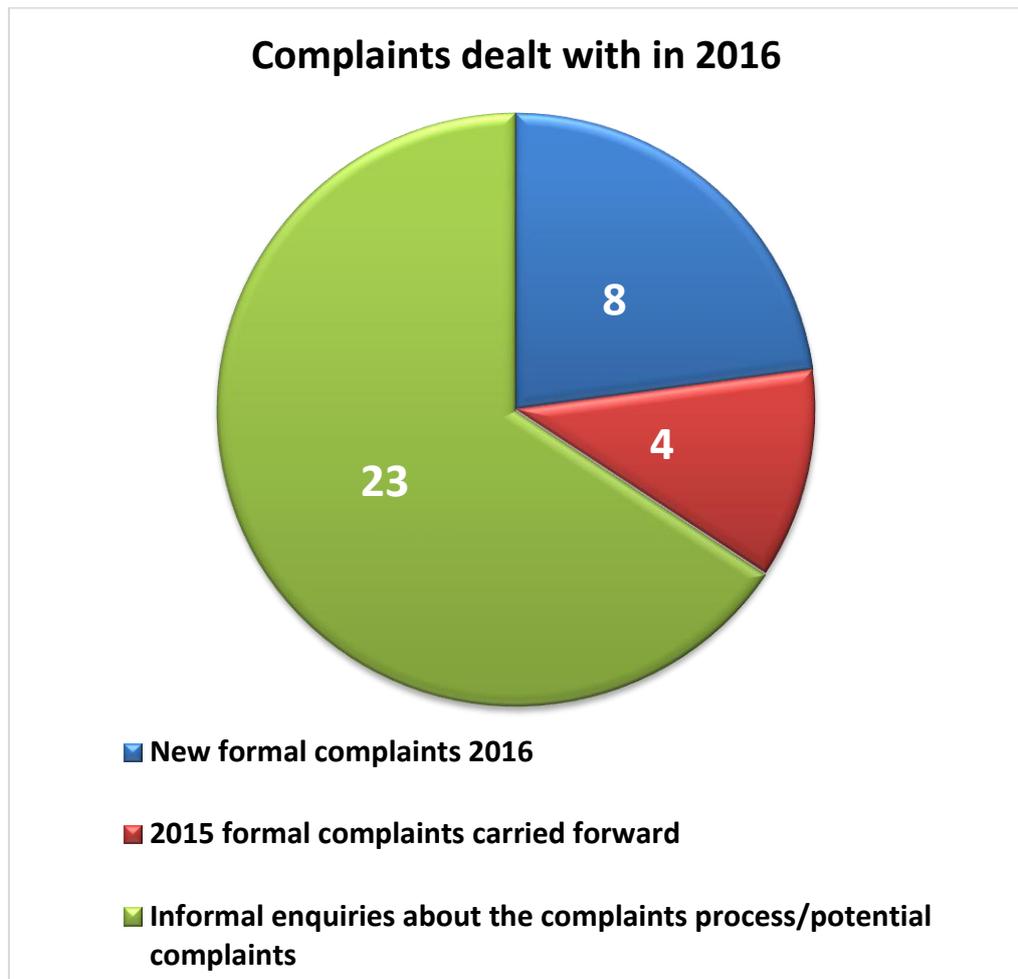
The following 6 members joined the Panel in 2013 (*see* [P.106/2013](#) adopted by the States on 8th October 2013):

Mr. Stuart Catchpole, Q.C. (*Deputy Chairman*)
Mr. Geoffrey George Crill (*Chairman*)
Mrs. Janice Eden
Mr. John Moulin
Prof. Edward Sallis, O.B.E.
Ms. Claire Boscq-Scott

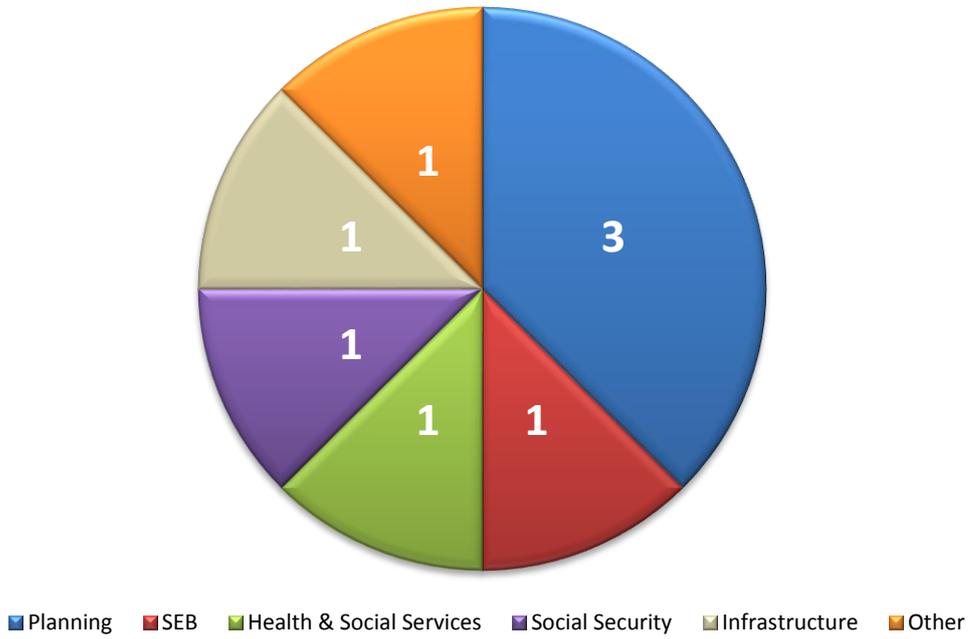
**ADMINISTRATIVE DECISIONS (REVIEW) (JERSEY) LAW 1982:
REPORT OF THE STATES OF JERSEY COMPLAINTS PANEL FOR 2016**

Dear Chairman,

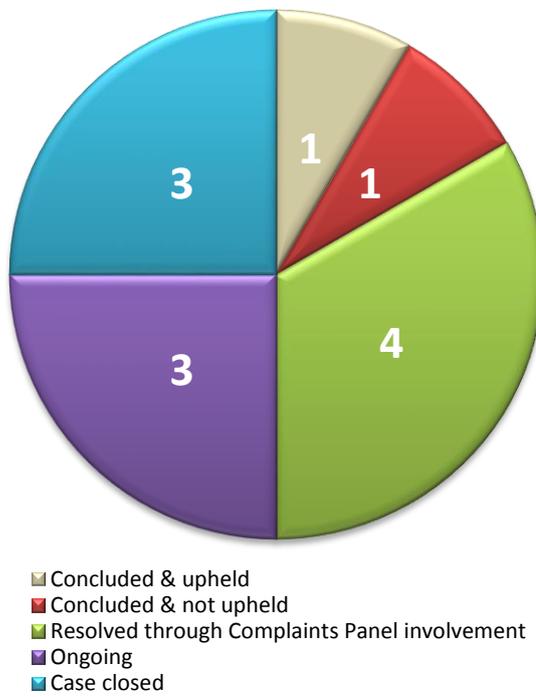
I have pleasure in forwarding to you the report for 2016, which also includes the resolution of matters outstanding as at the end of 2015. The following statistics show the work undertaken by the Administrative Appeals Panel during this period –

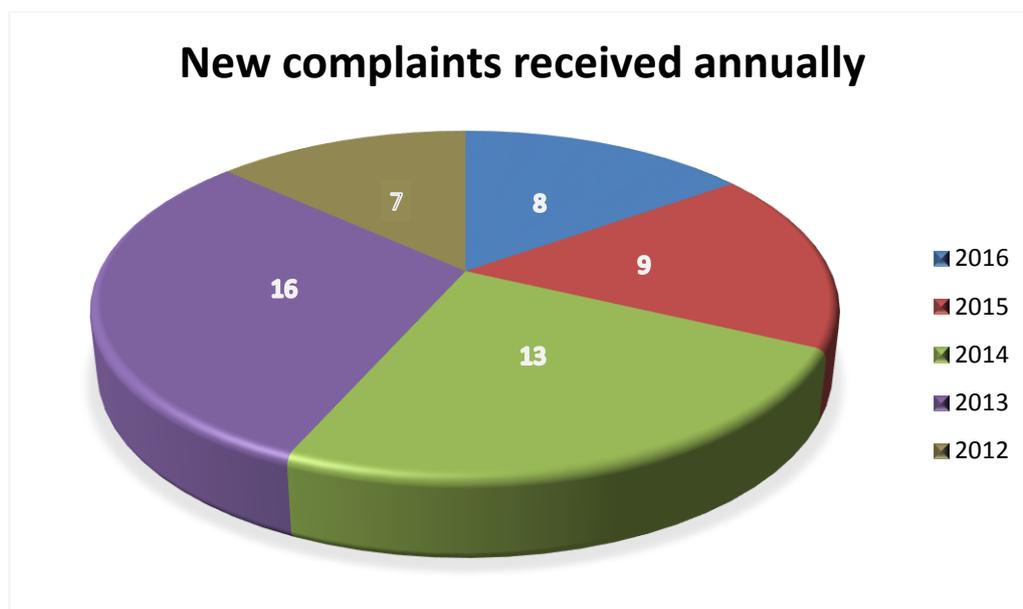
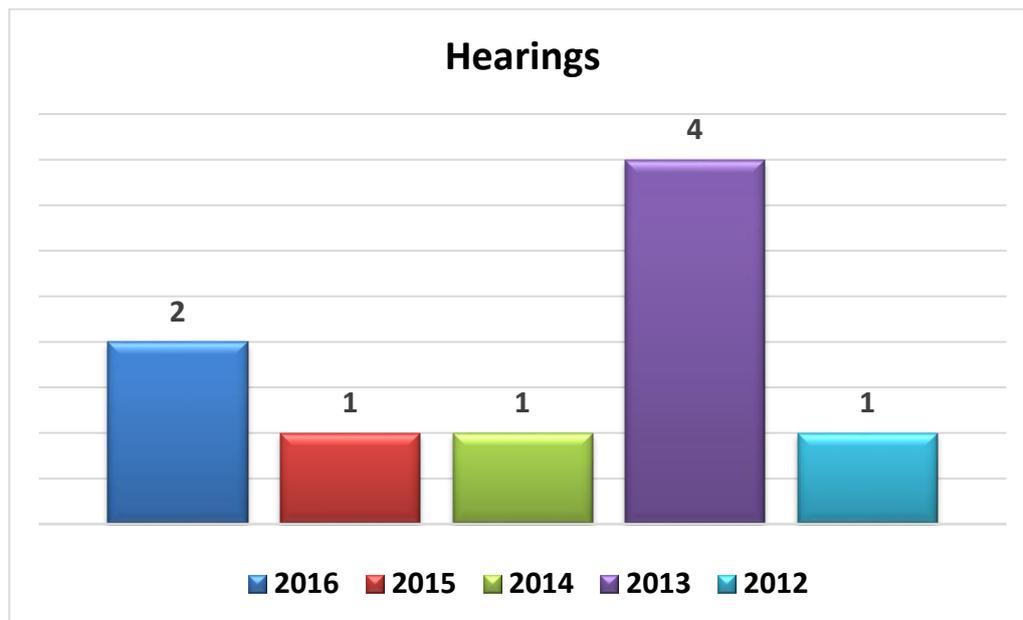


Complaints received in 2016 by Department



Complaint outcomes 2016





Four complaints were carried forward into 2016, and there were 8 new complaints received during the year.

The Panel notes that the complaints received in 2016 related to decisions made by a wide variety of Ministers, when in previous years they had been mostly concentrated on planning matters. The majority of complaints received were considered not to relate to matters of maladministration, and therefore had not justified a Hearing being convened. It should also be noted that complainants can only make a formal complaint to the Panel when they have exhausted the appeals or complaints process within the Department concerned. As well as the 12 formal complaints, the Deputy Greffier received a number of telephone enquiries regarding complaints which were not taken forward. For the first

time these calls were logged during 2016 to provide an indication as to the level of complaint-handling work undertaken behind the scenes.

Two Hearings were convened during 2016, and both related to matters which had been subject to much delay by both parties. These were quite different Hearings. The first involved Unite the Union and related to the contract change when LibertyBus took over the bus service ([R.31/2016](#) refers). Given the difficulties and delays experienced, this could have been a quite heated meeting, but thanks to the professionalism of the Deputy Chairman, Chris Beirne, and his Panel, Graeme Marett and Janice Eden, the tense atmosphere was diffused and both parties felt they had been given a fair Hearing, even though the complaint was not upheld.

The second Hearing was to consider a complaint against the States Employment Board (“SEB”) in relation to its decision to terminate a contract of employment. This was chaired by myself, accompanied by Deputy Chairman, Stuart Catchpole, Q.C. and Janice Eden, and the complaint was upheld. A report was subsequently presented to the States Assembly ([R.75/2016](#) refers). Unfortunately the report’s findings were not accepted by the Chief Minister and States Employment Board, and the Complaints Board was required to submit a further response to the report. There was also a breach of an embargo relating to the draft report.

What saddened the Board most in this case was the speed with which the SEB responded to its findings. Rather than presenting a considered response, prepared after having sufficiently absorbed its findings, the SEB instead issued a very defensive press release the same week as the report was published, in which it attempted to undermine the strength of the findings by questioning the Board’s remit and processes.

There has been an increase in the number of legal representatives attending Hearings, and this is unfortunate as we are not a court process and the informality of the Hearings is one of the strengths of the system. Not only does the presence of lawyers make the tone of a Hearing more litigious, but it potentially adds a cost implication to what should be a free process for those wishing to complain, and can be quite intimidating for complainants.

Those cases which were resolved without a Hearing involved Departments which were willing to admit to mistakes and apologise for them, and the search for that acknowledgement and an apology remains a fundamental element of most of the complaints we receive.

The Panel does not intend for the recommendations contained within its findings 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 a recognition that mistakes are occasionally made.

The Panel wishes to express its thanks to the Deputy Greffier of the States and the States Greffe staff, who provide efficient and professional administrative and advisory support to the Panel and Boards.

Geoffrey Crill
Chairman, Complaints Panel

THE FOLLOWING IS A SUMMARY OF THE OUTCOME OF THE COMPLAINTS WHICH WERE OUTSTANDING IN THE 2015 ANNUAL REPORT AND OF NEW FORMAL COMPLAINTS RECEIVED IN 2016 –

OUTCOME OF COMPLAINTS THAT WERE OUTSTANDING AT THE END OF 2015 AND WHICH WERE REFERRED TO IN THE ANNUAL REPORT FOR 2015 (R.41/2016) –

(a) 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 (now Department for Infrastructure) 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 in relation to the bus service contract.

A résumé was received from the Minister and the Transport and Technical Services 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 was emphasized that 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 Chair 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 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. The Deputy Chairman did feel that the case warranted a Hearing and, following some delays, the Hearing was arranged.

The Hearing was held in public at 9.30 a.m. on 24th February 2016, in the Blampied Room, States Building. It was chaired by Deputy Chairman, Chris Beirne, alongside Graeme Marett and Janice Eden. At the Hearing, the Chairman emphasized that the Board's role was not to fall back into historical reflection on the background to the complaint, but specifically to examine the Minister's actions in respect of clause 18.3 and, in so doing, to discern and decide whether the Minister had fulfilled his obligations thereunder as reasonably as he possibly could.

In its findings (published as [R.31/2016](#)) the Board expressed the wish that every care should be taken to ensure that a repeat of the situation was avoided. The Board recommended that when the bus contract next went out to tender, the equivalent of clause 18.3 should be amended to ensure that the Minister's ability to obtain information

could not be hampered in the way that it had been in 2012 by Unite and the outgoing contractor.

In the view of the Board, the role of Unite should have been to liaise with the Minister on behalf of its members. However, there had been a paucity of communication from Unite, which had been evidenced by the lack of response from them to letters from TTS in which they had been specifically asked to identify the particular changes to the terms and conditions with which they took issue.

The Board concluded that the Minister had correctly interpreted his duties under clause 18.3 to ensure equivalency and supported the drivers to the limit of his ability to do so, and the Board, therefore, did not uphold the complaint.

E-mail received on 25th February 2016 from the Director of Transport, Department for Infrastructure (the day after the Hearing and before the findings were published).

“Just a quick note of thanks to you and your team, to say whatever the Board’s findings and outcome, I think that you all did an excellent and professional job in creating the right atmosphere in difficult circumstance, whereby in my view all parties must have felt they had a fair hearing and an opportunity to put over their respective positions.

I felt that the Chair managed the proceedings particularly well, giving impartial and clear guidance on the issues and the matters of concern to be addressed which took much of the heat out of the proceedings.

While no-one ever wishes to attend the Board’s reviews, I recognise they are an important part of the Island’s scrutiny process and I felt that this one was extremely well conducted.”

<i>Case status – closed</i>

(b) 1386.2.1.22(1)

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

Dr. Alwitary had entered into a permanent contract of employment with the SEB as a Consultant in Ophthalmology, effective from 1st December 2012. This contract had been terminated by letter dated 22nd November 2012. It was alleged that from 1st August to 13th November 2012, there had been a series of discussions between the complainant and staff at the General Hospital which were considered to be unusual and challenging. On 13th November 2012, management at the General Hospital had concluded that the relationship with Dr. Alwitary had broken down and was viewed as being dysfunctional. Consequently, the employment contract had been terminated by letter on 22nd November 2012.

A résumé was received from the SEB and submitted with the complaint to the Chairman, but the case was subsequently deferred whilst the complainant pursued the matter 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.

A Hearing was scheduled to take place in April 2015, but was deferred at the complainant's request and instead took place on 16th March 2016, in the Blampied Room, States Building, reconvening on the morning of 17th March 2016.

In its findings (published as [R.75/2016](#)) the Board noted that the SEB had relied upon 3 independent reviews in support of the decision to terminate Dr. Alwitary's employment. The Board considered that the action of the SEB in breaching the contract (or to use their parlance – "withdraw the offer of employment") on 22nd November 2012 was unlawful, in that it represented a clear and fundamental breach of contract by the SEB.

The Board found that Dr. Alwitary had been given no opportunity to answer the charges against him before the final termination decision was taken, had been allowed no right of appeal, notwithstanding that a right of appeal was clearly set out in the employment contract, and the persons raising the charges against Dr. Alwitary had been, to all intents and purposes, the same as those who took the decision to terminate the contract. There had been absolutely no independent review of the charges brought. The Board made no finding as to whether, had there been a properly independent review of the claims made in respect of Dr. Alwitary's behaviour, such review would have been likely to find in favour of the employer or the employee. That was not within the terms of reference set out by the Board. It was however appropriate for the Board to make it clear that there was nothing produced during the Hearing which could, in its view, reasonably justify the summary termination of Dr. Alwitary's contract of employment. The Board made a number of recommendations including that there should be an independent and wide-ranging review of the management of the Hospital and, in particular, the role of senior clinicians in such management and the findings publicised.

The Board was concerned with the speed with which the Minister for Health and Social Services, and the SEB rejected the findings of the report, issuing press releases within days of being provided with a copy of it. As the Board set out in its press statement dated 11th July 2016, the immediate rejection of the Board's report by the Minister for Health and Social Services and by the SEB did not suggest that the States departments involved would be reviewing the findings and recommendations with the same degree of open-mindedness with which they were made. In the Board's strong view, the press releases should not have been issued by the departments at the time they were, and we would hope that in the future any department that is the subject of a complaint will respond in detail to the Complaints Board's report before trying to argue and spin its case in public.

What can be said with certainty is that, on the evidence before the Board, Dr. Alwitary had very strong arguments that his dismissal was not justified, and that these ought to have been considered by the original decision-makers and an independent appellate body. Whether he would have prevailed is, however, not a matter for the Board to comment upon.

<i>Case status – closed</i>

(c) 1386.2.1.2(324)

A statement of complaint was received on 10th April 2015 relating to a decision of the Minister for Planning and Environment regarding the refusal to accept an application for the variance of a planning condition in relation to the use of a shed at Field 1007, St. John.

A résumé was received from the Minister and the Planning Department on 27th April 2015 and the matter was referred to the Chairman. The Chairman maintained the view that there was no justification for a Hearing, but he was sympathetic to the complainant's situation and, mindful of the case history, was willing to try and resolve the matter informally. Meetings were held with Planning Officers, and the complainant was encouraged to submit a revised application which it was anticipated would be considered sympathetically.

<i>Case status – closed</i>

(d) 1386.2.1.7(16)

A statement of complaint was received on 3rd November 2015 relating to the Social Security Department regarding the lack of payment of Benefits to a claimant during his treatment for cancer (JY103391B).

A résumé was received from the Minister and the Department on 25th November 2015, and the matter was referred to the Chairman. The Chairman was extremely sympathetic of the complainant's situation, but did not see any evidence that the Department had acted outside its established procedures and policies. The complainant was advised of this decision on 12th December 2015 and requested that the matter be reviewed by the Deputy Chairmen.

The Deputy Chairmen did consider that there were sufficient grounds for a Hearing and a date was set. However, the Deputy Chairmen were mindful that that it was not within the power of the Minister for Social Security to make discretionary decisions over the payment of contributory benefits. It was therefore difficult to see what outcome a Hearing could achieve, given that there were no grounds for complaint regarding the service that the complainant received from officers in the Department, and that Social Security legislation had been applied correctly when processing the Benefit claims in question. The Hearing was postponed.

One of the Deputy Chairmen decided to convene a meeting between the parties in order to explore the possibilities of an informal resolution, and this was held on 6th December 2016. It was noted that the Department planned a review of the Social Security scheme, and that the issues surrounding the classification of 'employment' for those paying Class 2 contributions, when they were the corporate sole, would be addressed.

<i>Case status – ongoing</i>

OUTCOME OF COMPLAINTS RECEIVED DURING 2016

(i) 1386.2.1.22(2)

A statement of complaint was received on 17th January 2016 relating to the refusal of the States Employment Board to grant Ill-Health Retirement when Mrs. X left the employment of the States of Jersey.

A résumé was received from the SEB on 17th February 2016, and the matter was referred to the Chairman. He agreed that the case should be heard by a Board and a date was set for 7th June 2016. Following a request by the Law Officers representing SEB, the date of the Hearing was postponed, and then attempts were made by the Chairman to resolve the matter informally by seeking a review by AXA of the records. This process took place and Mrs. X was informed of the outcome. She remained dissatisfied, and the Chairman agreed that the Complaints Board Hearing should therefore take place as planned.

<i>Case status – ongoing: a Hearing was scheduled to take place in April 2017</i>

(ii) 1386.2.1.24(1)

A statement of complaint was received on 22nd February 2017 against the Privileges and Procedures Committee relating to the Committee's handling of a complaint made in relation to comments posted on social media by a States Member.

A résumé was received from the Privileges and Procedures Committee and referred to the Chairman, in order that he could consider whether the matter justified a Complaints Board Hearing.

The Chairman of the Complaints Panel, having considered the matter carefully, concluded that this was not an appropriate case for a Hearing by a Board. He considered that the Privileges and Procedures Committee had followed the procedures set out under Standing Orders of the States relating to the investigation of a complaint against a States Member.

The complainant sought a review of this decision, and the case was subsequently reviewed by the Deputy Chairmen, who concluded that there was no case for the Panel to investigate further. They were of the opinion that the Privileges and Procedures Committee correctly followed the procedure that was prescribed and they upheld the Chairman's decision.

<i>Case status – closed</i>

(iii) 1386.2.1.9(15)

A statement of complaint was received on 21st March 2016 against the Health and Social Services Department regarding the way in which the residents and non-residents' charging policy was applied and processed.

A résumé was received from the Department on 3rd May 2016 and was referred to the Chairman, in order that he could consider whether the matter justified a Complaints Board Hearing.

The Chairman met with one of the Panel members to consider this matter, and directed the Deputy Greffier to write to the Department for further clarification. The Chairman considered that the explanations given by the Department were clear and satisfactory. The process appeared to have been followed correctly and appropriately and the Chairman decided, in accordance with Article 3(5) of the Administrative Decisions (Review) (Jersey) Law 1982, that a review of this case was not justified.

However, the Chairman did recognise that the manner in which the complainant's case was dealt with by the Hospital staff at the time clearly was not in keeping with best practice, but acknowledged that the Department had clearly amended its procedures since the incident.

The complainant sought a review of the Chairman's decision and the matter was referred to the Deputy Chairmen, who agreed that the manner in which the case had been dealt with by the Hospital staff at the time was not in keeping with best practice and mistakes had been made, but noted that the Department had clearly amended its procedures since the incident and issued an apology to the complainants for the way in which they had been treated. The Deputy Chairmen concluded that there would be nothing further which a Hearing could achieve, and the complainant was advised accordingly in November 2016.

<i>Case status – closed</i>

(iv) 1386/2/1/2(327)

A statement of complaint was received in May 2016 against the Planning Department in relation to the delays in determining a planning application.

As this case related directly to case **1386.2.1.2(324)** outlined above, the Chairman sought to resolve this matter informally and wrote to the Department on 8th June 2016 to advise that it was not acceptable that the complainant's application had not been addressed since it was submitted on 16th December 2015, and requesting that the matter be remedied as soon as practicable.

We were subsequently advised by the Department that, following the initial complaint *re* RC/2015/0450, the complainant had made an application for a change of use of the building concerned, which the Department had argued was the appropriate method for seeking a different use for the structure.

The other application subject of complaint (RC/2015/1911) was therefore put on hold, as it would become superfluous if the change of use application was approved. The complainant advised us that his permit had been processed.

<i>Case status – closed</i>

(v) 1386/2/1/21(7)

A statement of complaint was received on 22nd August 2016 against the Department for Infrastructure regarding a perceived lack of notification regarding the impact of the Battle of Flowers on residents adjacent to the Arena.

Whilst this was not a case which justified a Hearing, the Deputy Greffier forwarded the complaint to the Department to comment on the issues raised.

The Department subsequently responded to say that they had written to the complainant to apologise for the inconvenience caused.

<i>Case status – closed</i>

(vi) 1386/2/1/2(328)

A statement of complaint was received on 9th November 2016 against a decision of the Planning Committee to refuse permission to amend the parking layout at a property.

A résumé was received from the Department on 7th December 2016, and was referred to the Chairman, in order that he could consider whether the matter justified a Complaints Board Hearing.

He considered that the explanation given by the Department was clear and satisfactory. The planning process appeared to have been followed correctly and appropriately, and the Chairman therefore decided, in accordance with Article 3(5) of the Administrative Decisions (Review) (Jersey) Law 1982, that a review of this case was not justified. The complainant was informed of this decision on 12th January 2017 and did not seek a review by the Deputy Chairmen.

<i>Case status – closed</i>

(vii) 1386/2/1/17

A statement of complaint was received on 16th November 2016 regarding the way that a couple's pension claim had been administered by the Social Security Department.

Although it appeared that the couple's pensions had been calculated based on their contributions and credit records throughout their working lives, as was the standard way that benefits were calculated, there was a small issue with some of the information provided, and the Deputy Greffier wrote to the Department to clarify the figures quoted. A response received from the Department confirmed that one of the figures given had been inaccurate, but that the overall calculations had been correct, and this was accepted by the complainants.

<i>Case status – closed</i>

(viii) 1386/2/1/2(329)

A statement of complaint was received on 6th December 2016 against the Planning Department, regarding the inconsistent application of the Building Bye-Laws (Jersey) 2007. A résumé was requested from the Department by 10th January 2017 for referral to the Chairman, in order that he could consider whether the matter justified a Complaints Board Hearing.

<i>Case status – ongoing</i>
