
STATES OF JERSEY



**STATES OF JERSEY COMPLAINTS
BOARD: FINDINGS – COMPLAINT BY
MR. A. LUCE AND MR. J. MALLINSON
AGAINST THE MINISTER FOR
INFRASTRUCTURE AND JERSEY
PROPERTY HOLDINGS REGARDING
THE HANDLING OF FORESHORE
ENCROACHMENT CLAIMS (R.71/2018) –
RESPONSE OF THE
MINISTER FOR INFRASTRUCTURE**

**Presented to the States on 7th August 2018
by the Minister for Infrastructure**

STATES GREFFE

RESPONSE OF THE MINISTER FOR INFRASTRUCTURE

States of Jersey Complaints Board

On 11th April 2018, a Complaints Board Hearing constituted under Article 9(9) of the [Administrative Decisions \(Review\) \(Jersey\) Law 1982](#) was held to review complaints by Mr. A. Luce and Mr. J. Mallinson against the Minister for Infrastructure and Jersey Property Holdings regarding the handling of foreshore encroachment claims.

On 1st June 2018, the Privileges and Procedures Committee presented to the States the findings of the Complaints Board Hearing (*see* [R.71/2018](#)).

The Minister for Infrastructure’s response to the final report as per paragraph 8.17 of the same

Introduction

This response paper to the final report of the States of Jersey Complaints Board’s Hearing on 11th April 2018 has been presented to the Minister for Infrastructure by Jersey Property Holdings (“JPH”) as part of a report dated 18th July 2018.

The new Minister, having taken office on 7th June 2018, does not have the benefit of his predecessor’s direct involvement in decisions MD-PH-2015-0098 and MD-PH-2016-0073, and the purpose of the 18th July report is, therefore, to set out the events of the 2 complaint cases, and to recommend a response for the Minister to make in respect of the Board’s final report.

Responses to findings

- 8.1 No comment.
- 8.2 The transfer of the foreshore from the Crown to the Public in 2015 was in respect of the balance of the foreshore the Crown held in right of the Bailiwick that had not already been ceded to the Public. Whilst it is correct that there was not a set policy for the foreshore prior to December 2017, JPH, on behalf of the Public, acted in accordance with the 9th November 2006 Ministerial Decision reference MD-PH-2006-0094 “Statement on Land Valuation” to extract the optimum benefit from the Public’s property assets.
- 8.3 The Minister is pleased to note that the Panel take the view that “it was, therefore, entirely appropriate that the Public should formulate a policy relating to its ownership of the foreshore and, by extension, how it approached the matter of encroachments towards it”.
- 8.4 The expression “the Public” in contracts is one that has grown up over the centuries as a conventional description for property which is owned by the States of Jersey (“the States”) on behalf of the Island community.

It is the Minister for Infrastructure who is the flood defence authority for Jersey and has power to “provide, maintain, improve and extend facilities and measures to protect Jersey from flooding” (Article 2(3)(c) of the [Drainage \(Jersey\) Law 2005](#)).

The Minister for Infrastructure also has responsibility for the States' property. This is a separate function from his position as the flood defence authority.

The Statement on Land Valuation (made by MD on 9th November 2006) requires that the Public should not dispose of its land, or create rights over its land, for a consideration less than the best that can reasonably be obtained. The Minister agrees that negotiations should be conducted in a fair manner and considers that this was the case for both transactions. The Minister also notes that the Board comments that negotiations should be conducted in a "transparent manner apposite to the nature of the transaction". The Minister will not behave improperly, but is required to take a range of relevant factors into account in negotiating a property transaction.

- 8.5 The Board has made a finding that *"when it is approached by a neighbouring owner seeking such clarification or ratification, the Public has a clear duty to act fairly, promptly and transparently in its dealings with that owner. The Board does not consider that it did so in either of these cases."*

The Minister does not accept this finding. Whilst the Minister does not seek to question the assertion that each complainant may have been financially distressed, the Minister does not accept that either transacting party was vulnerable.

The starting point for entering into agreements relating to land owned by the Public is that the States Assembly is the elected body through which the Public makes its decisions. That includes decisions relating to the Public's land. This has been modified by Standing Orders, and Standing Order 168 of the [Standing Orders of the States of Jersey](#) provides that the prior agreement of the States is not needed for certain transactions in land if the action is recommended by a body established by the States to manage land and buildings owned by the Public [JPH] and the recommendation is accepted by the Minister for Infrastructure.

Both transactions involved the Public acting as a landowner and were carried out in accordance with the 2006 Valuation Statement and Standing Order 168.

- 8.6 The Minister does not accept the finding at paragraph 8.6. The Minister does not accept that it is appropriate for the Public to share the valuation advice that it has received with the other transacting party. Such an approach would severely compromise the Public's ability to engage in a meaningful transaction.

It is open to the parties to a transaction to seek and obtain their own valuation advice.

- 8.7 No comment.
- 8.8 To reach an agreement requires both parties to agree terms. Having reviewed the chronology in relation to each matter, the Minister is satisfied that officers provided information and responded in an appropriate timescale to the various parties involved. The time taken to conclude a transaction will vary depending on the nature of the matter, and in this case the nature of the transaction and the

number of parties involved contributed to the length of time taken to conclude the matter.

- 8.9 Landward boundaries will be dealt with as part of the Minister's intended work concerning the foreshore.
- 8.10 The Minister acknowledges that it will not always be possible to open up access to the foreshore.
- 8.11 The Minister disagrees. The landside face of the sea-wall requires access for maintenance, repair, replacement and possible improvement. The Minister accepts that a degree of pragmatism is required, but that also has to be balanced with the [Drainage \(Jersey\) Law 2005](#), which provides for 5 metres as the space required behind a sea-defence. Furthermore, the Board's finding does not take into account areas of foreshore where there is no sea-wall.
- 8.12 The Minister notes the Board's finding and will review the policy in light of the comments, including the Board's recommendation that the sliding scale be removed. If the sliding scale is removed, then it would mean that property owners would have to pay the full value of the encroachment.
- 8.13 The Minister will give consideration to whether there is an alternative clause which meets the requirement to enable the sea-wall to be maintained which can be included in future contracts.
- 8.14 As above. The Minister will review the wording for future contracts.
- 8.15 The Minister does not accept the recommendation of the Board.
- 8.16 The Minister has carefully considered the Board's findings. Although the Minister does not accept all of the conclusions of the Board, some of the points raised in respect of the policy on the foreshore will certainly be considered as part of a review.