

STATES OF JERSEY



STATES OF JERSEY COMPLAINTS PANEL: REPORT FOR 2008

**Presented to the States on 4th March 2009
by the Privileges and Procedures Committee**

STATES GREFFE

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Chairman's Foreword

The Privileges and Procedures Committee is pleased to present the report of the States of Jersey Complaints Panel for 2008, 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.

Chairman

Mrs. C.E. Canavan

Deputy Chairmen

Mr. N.P.E. Le Gresley

Advocate R.J. Renouf

Members

Mr. P.E. Freeley

Miss C. Vibert

Mr. D.J. Watkins

Mr. J.G. Davies

Mr. P.G. Farley

Mr. T.S. Perchard

Mrs. M. Le Gresley

Following the introduction of amendments to the administrative appeals system in December 2006, there has been a significant increase in the number of matters referred to the Panel, and a resultant increase in workload. In order to assess the effectiveness of the procedures currently followed under the appeals system, the Committee will undertake a review of the process in early course.

Connétable J. Gallichan

Chairman, Privileges and Procedures Committee

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Dear Chairman,

I have pleasure in forwarding to you the report for 2008, which includes the resolution of matters outstanding as at the end of 2008. The following statistics show the work undertaken by the Complaints Panel during this period –

	<i>Application rejected</i>	<i>Appeal against refusal by Deputy Chairmen</i>		<i>Application deferred pending further action</i>	<i>Matter resolved before hearing held</i>	<i>Complaint upheld</i>	<i>Minister's decision upheld, report presented to the States</i>	<i>Withdrawn</i>
		Upheld	Reversed					
rd	0	1	0	1	0	0	0	1
	1	3	0	0	1	0	4	4
	1	4	0	1	1	0	4	5
2 matters were outstanding at the end of 2008.								

During the course of 2008, one hearing was chaired by a Deputy Chairman and 3 decisions that a complain should not be reviewed were referred as an appeal to the Deputy Chairmen in accordance with the procedure adopted in 2006. The Chairman's decision was upheld in each instance.

The Panel noted a significant increase in the number of matters referred to it during 2008, presumably as a result of the wider distribution of the guidance notes. Whilst it is right that members of the public should be aware of the process and take the opportunity to use the process, the Panel is aware that this has created a greater administrative burden for the Deputy Greffier of the States and her team. On behalf of the Panel I would like to thank Mrs. Harris and her team for their continuing support at all times.

The Panel was pleased to note that 2 complaints were successfully resolved, one by the Housing Department and one by the Social Security Department, without the need for a hearing. The Panel would like to thank those concerned for adopting a sensible and practical approach in these 2 matters.

Mrs. C.E. Canavan,
Chairman, Complaints Panel

The following is a summary of the outcome of the complaints which were outstanding in the 2007 Annual Report and of new complaints received in 2008 –

Outcome of complaints that were outstanding at the end of 2007 and which were referred to in the Annual Report for 2007 ([R.24/2008](#)) –

Planning and Environment

- (a) A Statement of complaint was received on 10th April 2007 relating to a decision of the Minister for Planning and Environment to refuse planning permission for the change of use from storage and maintenance of agricultural machinery to storage and repair of plant machinery in connection with the building industry at Les Goues, Le Câtillon, Grouville.

A hearing was held on 18th September 2007, and the Board upheld the complaint which it agreed –

- (i) was based wholly or partly on a mistake of law or fact by reason of the omission to consult with other relevant States departments and a failure to take into consideration Policy C19; and
- (ii) was contrary to the generally accepted principles of natural justice in that the applicant could reasonably have expected the Assistant Minister to have consulted as appropriate and taken into consideration the policy most relevant to the application.

The Board concluded that the Minister for Planning and Environment should be requested to reconsider the matter. It was agreed in November 2007 that the Assistant Minister would reconsider the application. The determination of the complaint is therefore complete.

- (b) A statement of complaint was received on 25th July 2007 relating to a decision of the Minister for Planning and Environment to refuse planning permission to build a house at Rosedale Farm, La Route des Issues, St. John.

The Chairman having a conflict of interest, the matter was referred to one of the Deputy Chairmen for consideration, and he agreed that a hearing should be held. Prior to the hearing, further negotiations took place and a hearing was therefore deferred.

The Chairman was advised by the Department that the Assistant Minister was minded to support the construction of a proposed new dwelling on the basis of a revised sketch scheme which had been submitted. This would need a fresh application, but the complaint was effectively resolved.

- (c) A statement of complaint was received on 1st November 2007 against a decision of the Minister for Planning and Environment to refuse planning permission to construct a storage shed at Mandorey Villa, La Grande Route de St. Jean (Field 1007).

The Chairman concluded that this was not an appropriate case for a hearing by a Board as she did not believe the Board would be able to consider the case in a meaningful way. An appeal was made to the Deputy Chairmen against the Chairman's decision.

The Deputy Chairmen concluded that they could not find any areas which would give them reason to suspect that the complainant would have any success in bringing an appeal before the Board and in such circumstances they upheld the Chairman's original decision.

New complaints received in 2008

Education, Sport and Culture

- (d) A statement of complaint was initially received on 28th February 2007 against a decision of the Education, Sport and Culture Department relating to the manner in which alleged bullying of a child at school had been handled by departmental officers. The complaint was re-activated in February 2008.

A hearing was held on 23rd July 2008 and the Board upheld the position of the Minister for Education, Sport and Culture, but requested the Minister and the Department to review the presentation of information on the Education, Sport and Culture section of the www.gov.je website to ensure that its procedures could be easily found by a layman using the site.

The findings of the Board were presented to the States on 20th August 2008 ([R.90/2008](#)).

- (e) A statement of complaint was received on 24th May 2008 against a decision of the Department for Education, Sport and Culture not to offer the complainant's child a place at Haute Vallée School.

The Board upheld the Minister's decision but considered that steps should be taken to communicate much more clearly and sympathetically with parents. The Minister agreed to review procedures and improve the Education, Sport and Culture section of the gov.je website accordingly.

The findings of the Board were presented to the States on 20th August 2008 ([R.90/2008](#)).

Further to the Board's recommendations, the Minister for Education, Sport and Culture confirmed on 28th August 2008 that a review of several aspects of the Department's appeals process in respect of admission to secondary schools had taken place and a number of changes made.

- (f) A statement of complaint was received on 2nd June 2008 against a decision of the Department for Education, Sport and Culture not to offer the complainant's child a place at Haute Vallée School.

The complaint was withdrawn prior to a hearing being held.

- (g) A statement of complaint was received on 26th June 2008 against a decision of the Department for Education, Sport and Culture to not to offer a place at Haute Vallée School.

The Board upheld the Minister's decision but considered that steps should be taken to communicate much more clearly and sympathetically with parents. The Minister agreed to review procedures and improve the website accordingly.

The findings of the Board were presented to the States on 20th August 2008 ([R.90/2008](#)).

Further to the Board's recommendations, the Minister for Education, Sport and Culture confirmed on 28th August 2008 that a review of several aspects of the Department's appeals process in respect of admission to secondary schools had taken place and a number of changes made.

- (h) A statement of complaint was received on 26th June 2008 against a decision of the Department for Education, Sport and Culture not to offer the complainant's child a place at Haute Vallée School.

The complaint was withdrawn prior to a hearing being held.

Health and Social Services

- (i) A statement of complaint dated 12th September 2008 was received against decisions of the Department for Health and Social Services regarding the care of the complainant's father.

The matter was reviewed on behalf of the Chairman by one of the Deputy Chairmen, who concluded on 18th November 2008 that this was not an appropriate case for a hearing by a Board.

An appeal against this decision under Article 3(5A) of the Administrative Decisions (Review) (Jersey)

Law 1982 was submitted by the complainant on 6th December 2008. Following consideration by the Chairman and the other Deputy Chairman, the decision not to proceed to a hearing was upheld as the subject fell outside what the Panel may legitimately consider.

Home Affairs

- (j) A statement of complaint was received on 23rd July 2008 concerning a complaint against the States of Jersey Police and the investigation of that complaint by the Jersey Police Complaints Authority.

The request for a hearing was refused by the Chairman on the grounds that the procedures of the States of Jersey Police were not a matter for administrative review, as they were operational matters. Furthermore, the appeals process of the Jersey Police Complaints Authority was not considered something which could be reviewed under the Administrative Decisions Law.

The complainant was informed of this decision in a letter dated 4th August 2008, and submitted an appeal in accordance with Administrative Decisions (Review) (Jersey) Law 1982 (Article 3(5A)) on 25th August 2008.

The Deputy Chairmen met to consider the appeal on 7th October 2008 and, following further consideration, decided to uphold the decision of the Chairman of the Complaints Board on the basis that the complaints made did not come within the remit of the States of Jersey Complaints Board.

Housing

- (k) A statement of complaint was received on 7th May 2008 against a decision of the Housing Department regarding undue delays throughout 2007 in the processing of rent abatement/rebate claims under the Housing Department scheme.

A hearing was held on 14th July 2008, and the Board concluded that insufficient grounds existed to uphold the complaint in accordance with Article 9(2) of the Administrative Decisions (Jersey) Law 1982. In particular the Board considered that the actions and inactions of the Housing Department fell short of conduct which could be described as unjust or oppressive. It considered that there had been an element of inequity and inflexibility in the position adopted by the Department concerning repayment of the outstanding arrears, and had therefore invited the Minister to consider adopting a more lenient approach, without precedent, in respect of any repayment schedules it might expect the complainant to comply with.

The findings were presented to the States on 23rd July 2008 ([R.82/2008](#)) and the Minister responded to the Board's findings in a letter dated 12th August 2008.

- (l) A statement of complaint dated 29th September 2008 was received concerning a change in the rules regarding eligibility for the Jersey Homebuy (Shared Equity) scheme.

A hearing was scheduled for 17th December 2008, but was cancelled following reconsideration by the Minister for Housing of the qualifying criteria for the scheme. On 5th December 2008 the Minister reviewed the policy and agreed that applicants who had previously purchased Share Transfer or Flying Freehold property would not be excluded from the scheme. Accordingly the complainant now qualified for a property through the Jersey Homebuy (Shared Equity) scheme, and the matter was therefore resolved.

Planning and Environment

- (m) A statement of complaint was received on 11th April 2008 regarding a decision of the Planning and Building department not to permit the change of use of Field 1007 from agricultural to domestic curtilage.

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, having concluded that this was not an appropriate

case for a hearing by a Board as the relevant planning policies had been followed.

The Deputy Chairmen upheld the decision of the Chairman on appeal.

- (n) A statement of complaint dated 19th June 2008 was received regarding a decision made by the Planning and Environment Department in respect of the construction of a 3-storey building plus flat roof and atrium on the site of Winchester Chambers, 6 Val Plaisant.

The Chairman concluded that this was not an appropriate case for a hearing by a Board as the Board would not be able to consider the case in a meaningful way. The request for a hearing was therefore refused on 5th August 2008.

- (o) A statement of complaint was received on 28th July 2008 relating to a decision of the Assistant Director, Development Control, under delegated powers to refuse retrospective planning permission for the addition of brick slip to the roadside elevation of Casa Mía Restaurant, 57 Kensington Place, St. Helier.

The Chairman reviewed the report presented by the Department and concluded that this was not an appropriate case for a hearing by a Board as she did not believe the Board would be able to consider the case in a meaningful way. 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.

An appeal to the Deputy Chairmen was withdrawn before consideration.

- (p) A statement of complaint dated 22nd September 2008 was received relating to a decision of the Planning and Building Services Department regarding the level of fees due for Planning Application P/2008/1461.

The Chairman reviewed the report presented by the Department and concluded that this was not an appropriate case for a hearing by a Board as the Department had acted *intra vires*, and the complainant was informed of this in a letter dated 17th December 2008.

On 18th December 2008, the complainant appealed against the decision of the Chairman not to proceed with a review. The matter will be considered by the Deputy Chairmen in early 2009.

- (q) A statement of complaint dated 15th December 2008 was received relating to a decision of the Minister for Planning and Environment to order the removal of parts of a fence erected at the property known as Saval, La Route des Côtes du Nord, Trinity.

The Chairman will consider the papers to determine whether a review is justified in early 2009.

Social Security

- (r) A statement of complaint dated 23rd October 2008 was received relating to the decision of the Social Security Department regarding the level of rent set and absence of correspondence.

Following receipt of the complaint by the Department, the claim was re-considered and resolved and the complaint was withdrawn on 25th November 2008, prior to review by the Chairman.