
STATES OF JERSEY



STATES OF JERSEY COMPLAINTS BOARD: FINDINGS – COMPLAINT BY MRS. X AGAINST THE MINISTER FOR EDUCATION AND STUDENT FINANCE REGARDING THE WAY IN WHICH AN APPLICATION FOR STUDENT FINANCE WAS ADMINISTERED

**Presented to the States on 7th August 2018
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 a decision of the Minister for Education and Student Finance regarding the way in which an application for student finance was administered.

Deputy R. Labey of St. Helier
Chairman, Privileges and Procedures Committee

STATES OF JERSEY COMPLAINTS BOARD

19th July 2018

**Complaint by Mrs. X against the Minister for Education and Student Finance
regarding the way in which an application for student finance was administered**

**Hearing constituted under the
Administrative Decisions (Review) (Jersey) Law 1982**

Present

Board members –

G. Crill (Chairman)
J. Moulin
G. Fraser

Complainant –

Mrs. X
N. Heath

Minister for Education –

Deputy J.M. Maçon of St. Saviour, Assistant Minister for Education
C. Walwyn, Chief Operating Officer, Education Department
G. Thebault-Tobin, Student Finance Officer, Education Department

States Greffe –

L.M. Hart, Deputy Greffier of the States
K.L. Slack, Clerk

The Hearing was held in public at 10.00 a.m. on 19th July 2018, in the Blampied Room, States Building.

1. Opening

- 1.1 The Chairman opened the hearing by introducing the members of the Board and outlining the process which would be followed. He indicated that the Board had no power to make an order, but if it came to the conclusion that all, or part, of the decision made by the Minister for Education, or Student Finance, was unjust, unfair, unreasonable or discriminatory, it could make recommendations and it would then be for the Minister to decide whether, or not, to act thereon.
- 1.2 Although the papers, which had been distributed by each party in advance of the hearing, referred to the Complainant by name, it had been agreed that the Complainant's name would not appear in the report of the hearing, or the findings of the Board, due to the sensitive financial nature of some of the evidence and the fact that a young person, under the age of 18, was the subject

of the hearing. The representatives of the media, who were in attendance, were asked to respect that decision when reporting on the case.

- 1.3 It was noted that Mr. J. Moulin, one of the members of the Board, knew Mrs. N. Heath, but not in a way which rendered him conflicted. Deputy J.M. Maçon of St. Saviour, the Assistant Minister for Education, declared that he knew the Complainant and Mrs. Heath through the review of student finance proposals undertaken by the Education and Home Affairs Scrutiny Panel, of which he had formerly been the Vice-Chairman.

2. Summary of the Complainant's case

- 2.1 The Complainant's case was that her daughter was a very talented dancer, who had successfully auditioned to start training for the level 6 diploma in professional dance (classical) at a vocational school from September 2018. The classical diploma was only available for students at post G.C.S.E. level and there was no option to apply after A levels. It was noted that a level 6 diploma was the vocational equivalent of a B.A. (Hons) degree and would take 3 years to complete.
- 2.2 In October 2017, Mrs. X had contacted Student Finance, to ascertain what funding might be available, before starting the application process. Mrs. X informed the Board that it was expensive to attend auditions – with each one costing approximately £500 – and mindful of her household's restricted budget, she had wanted clarity over the likely financial contribution that she would need to make before encouraging her daughter to audition for a vocational school, particularly as the tuition fees were higher at such establishments than at universities.
- 2.3 During October and November 2017 there had been a lengthy exchange of electronic mail messages between Mrs. X and Student Finance, from which it appeared that there had been a lack of understanding by the Department in relation to the course that Miss X wished to attend, because reference had been made to the requirement to 'convert' the diploma to a degree, despite the fact that a diploma level 6 was the equivalent of a B.A. (Hons) and to the payment of international rates, when mention had never been made thereof and that was not the reason for the tuition fees being higher than for a standard university course. During the exchange of electronic mail messages, Student Finance had made reference to the existence of a Student Finance Bursary ('the Bursary'), which could be used to make up the shortfall in funding between the Education Department's contribution towards tuition fees and those charged for the vocational school. The tuition fees for this particular school were £13,800 *per annum*.
- 2.4 On 3rd November 2017, Mrs. X had been informed that, subject to the completion of the standard application form, HE1, her daughter would be eligible to receive 'a full grant', together with the Bursary of £4,550 to fill the shortfall in funding. On this basis and having researched in depth the various vocational schools, which were recognised by Student Finance and which offered the level 6 diploma, an application had been made to the least expensive provider. Following an audition, Miss X had been offered – and had accepted –

an unconditional place on the course. She had informed her local school that she would be leaving and that she would not be studying for A levels.

- 2.5 On 28th November 2017, in his budget speech, the former Minister for Treasury and Resources had announced plans to provide additional financial assistance, with effect from September 2018, for Jersey students who wished to attend higher education. Mrs. X had not been concerned by this announcement because, based on the correspondence that she had received from Student Finance, she had been certain that the funding for her daughter's course was secure.
- 2.6 The Board was informed that applications for funding for courses, which were due to commence in the September, could be made from 1st January. On 5th January 2018, Mrs. X had submitted the HE1 form online. Over the ensuing weeks, there had been a further exchange of electronic mail messages between herself and Mr. G. Thebault-Tobin, Student Finance Officer, Education Department, where she had been asked to provide evidence of her daughter's level 3 qualifications – the equivalent of A levels. Although Miss X was not of an age to have taken A levels, her dance exams at grades 6 and above were nationally recognised as being the equivalent of level 3 qualifications, but the Student Finance officers appeared to have been unaware of this.
- 2.7 On 12th February 2018, Mr. Thebault-Tobin had sent an electronic mail message to Mrs. X, which had indicated that the Department would be able to *'provide the normal degree level funding'* for Miss X. The message had set out that a maximum of £9,250 would be paid towards the tuition fees and a maximum of £6,000 towards living expenses. At the bottom of the electronic mail message, it had been noted, *'Unfortunately the Student Finance Bursary will not be available for the upcoming year under the new proposal.'*
- 2.8 Having queried this with Mr. Thebault-Tobin, Mrs. X had been told that she would be liable to make up the shortfall each year of £4,550 between the grant from Education of £9,250 towards the tuition fees and the actual cost of the tuition fees of £13,800. This £4,550 equated to the amount that would have been covered by the Bursary. In an electronic mail message sent by Mr. Thebault-Tobin to Mrs. X, on 13th February 2018, he had stated: *'Due to the increased cost of the new student finance proposal the States of Jersey have had to make the hard decision to close this bursary to ensure that budget is available for the increased number of students who will now qualify. The scheme will remain for ongoing students but will no longer be open to new students. Unfortunately there will not be any extra funding available for these courses. I have attached a list of trusts and bursaries that we are aware of and if you require any further information please do not hesitate to contact me.'*
- 2.9 Mrs. X informed the Board that there was only one trust, or bursary, for which her daughter would have been eligible and it was in the sum of £1,000. She had applied, but even if successful, it would only cover the acquisition of some pointe shoes. She was simply not in a financial position to make a contribution of £4,550 per year towards the tuition fees. Notwithstanding that she had been informed that the Bursary was not available, it (and the 'skills bursary' – for which her daughter would not have been eligible) had continued to be advertised on the gov.je website, within the Department's guide for parents and

students on higher education funding for the academic year 2018 – 2019 until 27th April 2018.

- 2.10 Mrs. X had subsequently made contact with Mrs. C. Walwyn, Chief Operating Officer, Education Department, to ascertain what had happened in relation to the application for the Bursary and had been told that all the applications had been ‘put to one side’ until after 9th April 2018, because that was when the States Assembly would debate the higher education funding proposal ([P.33/2018](#) refers).
- 2.11 On 14th February 2018, having sought independent advice, Mrs. X. had submitted an appeal to Student Finance. The basis of her appeal had been that Student Finance had initially offered her daughter a grant at what had been the current rate, but had then offered a new proposal, denying Mrs. X. access to the Bursary, which she and her daughter desperately required. Despite frequent requests to the Department, it had not been until 26th April 2018 that Mrs. X had been given a date of 3rd May 2018 for her appeal, several weeks after the States Assembly had debated P.33/2018.
- 2.12 On 19th February 2018, the Education Department had released a response to a request, which had been made by Mrs. X Heath under the [Freedom of Information \(Jersey\) Law 2011](#) (‘FOI’) in relation to the Bursary. The request asked, *inter alia*, when the Bursary had been introduced and what Ministerial Order, or Regulations, covered the same. The Department’s response had been as follows, *‘the student finance bursary was formed in 2015/2016 in order to enable students, who have shown real dedication and commitment to their chosen specialism in the years leading up to university, to be able to choose an institute not based on cost. The student finance bursary is still means tested but higher fees can be paid if the student can demonstrate why the institute is more suitable for them ... The bursary is not in a ministerial order, as the eligibility criteria for this grant are the same as for the normal grant and it is seen as an extension of this scheme.’*
- 2.13 On 9th April 2018, the States had approved the higher education funding proposal (P.33/2018). During the debate thereon, the former Minister for Treasury and Resources, who had acted as *rapporteur*, had described the new scheme as *‘an essential investment in our young people and importantly in their futures’* which *‘better supports those on lower incomes’*. He had concluded that *‘this proposal is a significant improvement on the current grant scheme. It is affordable, targeted and simple’*.
- 2.14 Mrs. X’s appeal had been heard on 3rd May 2018, by the Grants Appeal Panel, whose membership had included Mr. Thebault-Tobin, which Mrs. X felt was wrong on the basis that he had been involved in the initial decision against which she had appealed. On 10th May 2018, Mr. Thebault-Tobin had sent an electronic mail message to Mrs. X, with the decision of the Panel. It had set out 2 scenarios. The first had been the funding that would have been provided if the States had not approved P.33/2018 on 9th April 2018. In that scenario, the parent/student contribution towards the tuition fees would have been £1,500 and the Education Department’s contribution thereto, £7,750. The Bursary of £4,550 would have made up the shortfall towards the total tuition fees of £13,800. The Education Department would have contributed £6,000 towards

maintenance and, accordingly, the total annual contribution by the Education Department would have been £18,300.

- 2.15 The second scenario had set out the subsidy available under the new funding proposal. In that scenario, the parent/student contribution towards the tuition fees would have been £4,550 and the Education Department's £9,250. The Education Department would also have contributed £7,500 towards maintenance, equating to a total contribution by the Department of £16,750. On the basis that the second funding total had been £1,550 less than the first, the Appeal Panel had decided to make an additional payment, in that sum, to Mrs. X. The rationale given was that '*although the Student Finance Bursary is no longer available, it was in place when you made your initial enquiry into the funding that may have been available for [Miss X]*'.
- 2.16 Mrs. X made the case that notwithstanding the additional grant of £1,550, she would have to find an additional £1,500 toward the tuition fees, which she was unable to do. The increase of £1,500 in the maintenance component payable by the Education Department had been to cover the loss of the loan that students had previously been able to apply for from Nat West. However, her daughter would not, in any event, have been able to apply for that loan, because of her age. Mrs. X indicated that she was currently in receipt of Income Support. From 30th June, all children in Year 11 would be considered for income support purposes as an adult, and this adult component would be removed if Miss X went to vocational school.
- 2.17 Mrs. X informed the Board that no-one could provide evidence to show that the Bursary had formally been closed. By the Department's own admission, in response to questioning from the Board, top-up fees would still be made available from the Bursary for the 5 or 6 students who were currently away studying, having previously qualified for the same, and they would find themselves in the fortunate situation of receiving an increased contribution towards their maintenance – by virtue of the new scheme – as well as the Bursary. That this discretion existed to continue to pay top-up fees from the Bursary for these students was an indication that a payment to Miss X would not have set a precedent.
- 2.18 Mrs. X drew the attention of the Board to Appendix K of the Minister's bundle of papers, which had been circulated on 5th July 2018, in advance of the hearing. Appendix K was an unsigned letter, dated 2nd July 2018, from Mr. Thebault-Tobin to Mrs. X, the first paragraph of which read: '*Thank you for attending the meeting of the Grants Appeal Panel on Friday 4th May 2018. I am pleased to inform you that the panel have agreed to fund the additional tuition fees up to the £13,800 at the [vocational school]*'. On reading this letter, Mrs. X had been ecstatic and had immediately contacted Mr. Thebault-Tobin to confirm that this was correct, before moving to vacate the Complaints Board hearing. However, Mr. Thebault-Tobin had indicated that the letter had been included in the bundle in error. Because the Grants Appeal Panel had met on a Friday, he had drafted 2 letters. One had been in the event of a successful appeal and one for an unsuccessful appeal. The Panel had not made a decision on that day, so he had subsequently sent the electronic mail message, which is referenced at paragraphs 2.14 and 2.15 above to Mrs. X the following week, after the Panel had reconvened to finalise their decision. The appeal had not

been successful, so the letter at Appendix K had never been sent. The date of 2nd July had been automatically generated.

- 2.19 Mrs. X had been totally devastated to have her hopes raised in this way and then dashed. She indicated to the Board that the letter was evidence that even at the time of her appeal, in May 2018, the Grants Appeal Panel had had it within its power to fund the additional tuition fees for her daughter. In her view, the Department had failed to apply the legislation, which had been in force at the time of the application, but had, rather, sought to apply the new provisions, which had not yet been enshrined in legislation, which had the effect of requiring her to make up a shortfall of £4,550 *per annum*, of which she was financially incapable.
- 2.20 Mrs. Heath emphasized that it had been highlighted to the Department, on many occasions, that the information provided by Student Finance, in relation to funding, was inadequate and ‘sloppy’. She reminded the Board that as a result of the findings of the Independent Jersey Care Inquiry, the Council of Ministers had undertaken to place children at the centre of everything, and yet the Department had acted in a grossly unfair way by preventing an extremely talented young person from attending vocational school.
- 2.21 Mrs. X indicated to the Board that the stated aim in bringing forward new proposals for student funding had been that no student should be ‘worse off’ than before, and yet she and her daughter were being discriminated against. To the best of her knowledge, theirs was the only case that had been adversely affected in this way, and it was particularly upsetting because she had done everything in her power to ensure that the necessary funding would be available for her daughter, before discussing the options with her, to avoid raising her expectations. Without the additional funding, Mrs. X could not afford to send her daughter to vocational school in September, a fact of which her daughter was currently unaware.

3. Summary of the case of the Minister for Education and Student Finance

- 3.1 The Department’s case was that Mrs. X was being offered exactly the same amount of overall funding as she would have received under the previous ‘regime’. This had followed the decision by the Grants Appeal Panel to award an additional £1,550 to Mrs. X, to address the difference between the 2 scenarios, as set out in paragraphs 2.14 and 2.15 above.
- 3.2 Mrs. Walwyn indicated that when Mrs. X had appealed against the grant for her daughter, the Department had considered her entitlement under the [Education \(Discretionary Grants – Amounts\) \(Jersey\) Order 2008](#) and against the new scheme, which would be introduced following the approval by the States Assembly of the higher education funding proposal. Under the ‘old’ scheme, the Department would have paid an additional £1,550 to Mrs. X, so this amount had been offered to her. Mrs. Walwyn maintained that, as a result of this, Mrs. X’s position was currently no worse than it had been in October 2017, when she had first made enquiries of the Department.

- 3.3 In relation to the Bursary, Mrs. Walwyn stated that this was no longer in existence and had been discretionary. Its purpose had been to make up any shortfalls in tuition fees, not in maintenance costs. It was acknowledged that if a student was already in receipt of the Bursary and the tuition fees increased, the contribution from the Bursary would increase accordingly. The Panel queried what 'safety net' would be introduced to help students whose tuition fees exceeded £9,250 *per annum*, following the removal of the Bursary, which would, formerly have made up the shortfall. The Department conceded that there was no longer a safety net. The funding provided by Student Finance was now more generous than previously, because the amount of maintenance payable had increased from £6,000 to £7,500, which was more costly for the Department, and it was for individuals to choose a course to suit their finances. The principle of funding for students was, in Mrs. Walwyn's opinion, a partnership between the parents, the students and the States. However, she accepted that, depending on the course chosen by the student, those who were worst-off might be penalised because of the removal of the Bursary.
- 3.4 Mr. Thebault-Tobin indicated that the Bursary had been established 2 years previously, specifically to address situations where tertiary education establishments had charged international fee levels for Jersey students. The funding had been met from within the student finance budget, which had a residual amount of money as a result of fewer students applying to study. Applications for the Bursary were assessed by the Senior Management Team, on the basis of a personal statement submitted by the applicant. When allocating the Bursary, the Management Team judged the application on the student, rather than the course. In Mr. Thebault-Tobin's view, it was easier for students of the arts to obtain the Bursary, as they were more able to document their achievements.
- 3.5 Mrs. Walwyn informed the Board that applications for the Bursary had been placed on hold until after the debate in the States on 9th April 2018, because the Department had not wanted to raise anybody's expectations. She indicated that when P.33/2018 had been approved by the States, the Department had been aware that funding from the Bursary would no longer be available. The Board queried whether the Student Finance team had analysed which students would be adversely affected by the introduction of the new scheme. Mrs. Walwyn stated that the final version of P.33/2018, which had been lodged *au Greffe*, had differed from earlier versions thereof, because it had been noted that some individuals would have been disadvantaged financially, so amendments had been made. However, there were 1,600 students and it was not possible to analyse in depth the impact on each individual. She claimed that until Mrs. X had come forward, the Student Finance team had not been aware of any student being worse off under the new proposal.
- 3.6 The Board expressed the view that the introduction of the new scheme had led to a situation where, rather than providing assistance to individuals at the bottom of the financial scale, those who had a high income were now being supported, to the detriment of the former. The Department contended that most people would benefit and that only a small minority would be adversely affected. Mrs. Walwyn stated that, when introducing any new scheme, it was important to consider its impact on the majority. The Assistant Minister for

Education acknowledged that the introduction of the new scheme had been ‘*rushed*’, thereby resulting in some ‘*anomalies*’, which needed to be addressed.

- 3.7 Board members asked the Department to deal with Miss X in the same way as it was already treating any other student who was already in receipt of the Bursary, to ensure that she was not financially disadvantaged, or discriminated against. The Board indicated that the funding was available this year, as existing recipients of the Bursary would continue to receive the same. Officers indicated that they could not give that undertaking. Mrs. Walwyn stated that to do so would be contrary to the current policy, and the Department needed to be clear which system was being applied. In between January and April 2018, the Department had not known what scheme would be applied to students going away in the future. She reiterated that Mrs. X had been offered everything that she would have received under the former system, and that officers had been instructed not to exercise discretion.
- 3.8 Mr. Thebault-Tobin informed the Board that the Minister for Education would have the discretion to amend the Order relating to the grants payable by the Education Department, but once the Order was in place, there would be no facility to fluctuate from the figures contained therein. Mrs. Walwyn emphasized that there was no discretion to operate a hybrid scheme, whereby Miss X could benefit from the Bursary and an increased maintenance grant. It was noted that the legislation relating to the new scheme was not yet in force, and could not be debated by the States Assembly until September 2018.
- 3.9 The Board queried how families on a low income, who had talented offspring, could afford to send them to vocational schools where the fees payable exceeded the maximum grant for fees from the Education Department. It asked what could be done to ensure that Miss X could attend the vocational school from September 2018.

4. Closing remarks by the Chairman

- 4.1 The Chairman thanked both parties for their time and contributions and indicated that, given the urgency in this particular case, it was hoped that the report could be distributed within 2 weeks. The findings of the Board would, normally, be appended thereafter, but in this particular case, with a view to minimising any delay, it was intended to distribute them in tandem.

5. The Board’s findings

- 5.1 The Board accepts that the Department has placed a great deal of importance on ensuring that no student is ‘worse off’ under the new student funding scheme. However, the Department appears not to appreciate that delaying Miss X’s application, so that it could be assessed in accordance with the new scheme approved by the States Assembly, has placed her in a position where she is undoubtedly ‘worse off’.
- 5.2 The Department failed to apply the provisions as they existed at the time of the application. Officers had a duty to apply what was in force at that time, rather than delaying, or ‘parking’, applications to await a new scheme, which was imminent. Similarly, the delay of the appeal meeting until after the debate date

appears to have been contrived to enable the new system to be applied. None of this was fair, or reasonable. The funding application should have been assessed against the existing scheme and included the Bursary. Had the application been assessed in this manner, Mrs. X would have received funding for her daughter's fees in full, thanks to the 'top up' from the Bursary, and faced a parental contribution of £1,500.

- 5.3 The fact that the Bursary was clearly still in place at the time of Mrs. X's application and remained on the website until late April, despite the fact that the Department had deemed it to have been withdrawn 2 months before the new system was debated, remains concerning. The Bursary is not prescribed in statute, and it is questionable whether the Department's determination that it no longer 'existed' in February 2018, was justified, or even legitimate. There appears to the Board to have been no reasonable justification for announcing its withdrawal until the substance of the new scheme was endorsed by the States Assembly (P.33/2018 refers). The Board was surprised that the Report submitted to the Assembly in support of the new scheme made no reference to the Bursary, or to its proposed withdrawal. Had it done so, the removal of the 'safety net' for poorer applicants may well have been brought to the attention of States Members, who may have then sought appropriate safeguards for less advantaged students. The adoption, or otherwise, of new funding provisions was a political matter, and not one to be assumed by administrators whose task is to administer the provisions as they exist at any given time.
- 5.4 The Board is disappointed by the intransigence of the officers from the Student Finance Department and their failure to grasp that by increasing the parental contribution from £1,500 to £4,550, they were making a student 'worse off' under the new scheme. The Department advised that 5 or 6 students currently received the bursary 'top up' and would continue to do so under the new scheme for the duration of their courses. This small number would suggest that that the exercise of discretion in relation to Miss X's case would not set a precedent and result in other students seeking similar treatment, as was implied by the Department.
- 5.5 The Department's actions between January and April 2018 could be argued as discriminatory, and officers did not adhere to the provisions which existed at that time. Indeed, it is noted that the Department had now issued guidance notes and was effectively implementing an interim scheme when, at the time of this hearing, the legislative framework had yet to be confirmed and the Orders had not yet been made. Whilst the Board recognises that this situation is far from ideal, it demonstrates that the Department can adopt a flexible approach and that discretion is available. What the Board cannot understand, is why this discretion and flexible approach cannot be exercised in relation to Miss X's funding.
- 5.6 The Board is also disappointed by the Department's lack of understanding of the impact of this saga on Mrs. X and her family. Mrs. X had made every effort to prepare the groundwork before her daughter embarked on auditions for a college place, in order to ensure that the course was affordable and to avoid raising her daughter's expectations unfairly. Having secured a funding commitment, she has then had to endure months of anguish whilst shielding her daughter, who was concentrating on her G.C.S.E. exams, from the fact that the

pursuit of her dream career could be prevented on financial grounds. This was exacerbated by an administrative blunder which resulted in the erroneous inclusion of a letter, ostensibly offering full funding, in the Ministerial bundle for the Complaints Board hearing.

5.7 The Board finds that the way in which Mrs. X was treated by the Education Department was contrary to Law as the existing legislative framework was not applied and the Bursary – which was not governed by statute – was withdrawn arbitrarily some 2 months before political approval was given to a revised scheme. It was unjust, oppressive and improperly discriminatory, as those already in receipt of the Bursary will not only continue to receive it, but will also see an increase in maintenance funding of £1,500, whereas Mrs. X is required to fund £4,550 in parental contributions, when no-one else is required to make such a contribution, and Miss X will receive £1,500 less in maintenance. The decision by the Department could not have been made by a reasonable body of persons after proper consideration of the facts, and it was contrary to the generally accepted principles of natural justice.

5.8 The Board requests that the application is reconsidered urgently, in order to enable a very talented young Islander to access her studies this September. In upholding Mrs. X’s complaint, it recommends that her funding application should be reconsidered as if it had been considered before the new scheme came into effect (i.e. when the application for funding was submitted), when Mrs. X would have had the benefit of the Bursary to top up the tuition fees and would subsequently have had the benefit of the uplift of the maintenance grant under the new scheme. Had she been able to submit her application for funding (including the Bursary) when she should have been, then she would have been in the same position as the students already receiving Bursary support when the new scheme came into effect.

Signed and dated by –

G. Crill, Chairman Dated:

J. Moulin Dated:

G. Fraser Dated: