
STATES OF JERSEY



STATES OF JERSEY COMPLAINTS BOARD: FINDINGS – COMPLAINT AGAINST A DECISION OF THE MINISTER FOR SOCIAL SECURITY AND THE DEPARTMENT FOR SOCIAL SECURITY REGARDING THE HANDLING OF AN APPLICATION FOR INCOME SUPPORT

**Presented to the States on 15th November 2013
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 the Minister for Social Security and the Department for Social Security regarding the handling of an application for Income Support.

Deputy J.M. Maçon of St. Saviour
Chairman, Privileges and Procedures Committee

STATES OF JERSEY COMPLAINTS BOARD

16th October 2013

**Findings of the Complaints Board constituted under
the Administrative Decisions (Review) (Jersey) Law 1982 to consider a complaint
by Mr. P. Bellas
against the Minister for Social Security and the Department for Social Security
regarding the handling of an application for Income Support**

1. Present –

Board Members

Advocate R. Renouf, Chairman
Mr. C. Beirne
Mr. D. McGrath

Complainant

Mr. P. Bellas
Deputy G.P. Southern of St. Helier

Department for Social Security

Mr. I. Burns, Operations Director
Mr. J. Anderson, Senior Adviser, Income Support
Mr. M. Micheletti, Senior Adviser, Income Support
Miss L. Eden, Assistant, Work Zone
Mrs. C. Fernandes, Team Leader, Work Zone

States Greffe

Mrs. L. Hart, Assistant Greffier of the States

The hearing was held in public at 2.30 p.m. on 16th October 2013 in Le Capelain Room, States Building.

2. Summary of the dispute

- 2.1 The Board was convened to hear a complaint by Mr. Paul Bellas (the Complainant) against a decision of the Minister for Social Security and the Department for Social Security to regard a payment made on the termination of his employment as earnings for the purposes of Income Support.
- 2.2 The Chairman formally welcomed both parties to the meeting and outlined the terms of Article 9 of the Administrative Decisions (Review) (Jersey) Law 1982, against which the complaint would be considered. He advised that, having reviewed the summary of the complaint, the Board considered that the

case was somewhat unusual and he suggested that after the Complainant had opened his case, the representatives from the Department for Social Security (the Department) should withdraw and be heard by the Board on a singular basis. It was agreed that Mr. I. Burns, Operations Director, would remain at the meeting throughout this process, as would the Complainant and Deputy G.P. Southern of St. Helier, who was representing Mr. Bellas.

3. Summary of the Complainant's case

- 3.1 Deputy Southern contended that there had been a conflict between the Complainant and the Department regarding the events which had occurred in May 2013, when Mr. Bellas had sought assistance. He maintained that the Complainant was an honest, hardworking and independent man who had only sought financial assistance from the Department once before in 2004. Mr. Bellas was self-sufficient and had been determined that he would find work without the aid of the Department, but had made an application for Income Support in order to provide for his family should employment be not so easy to find. He was not someone for whom claiming benefits was a 'way of life'. When he had called into the Department on 2nd May 2013, it had been with the express purpose of clarifying his position in respect of claiming Income Support and to ascertain whether the lump sum he had received from his former employer would have any bearing on that claim. Deputy Southern maintained that the Complainant had presented the letter provided by his former employer, dated 26th April 2013 and countersigned by Mr. Bellas, which stated that he had accepted a 'severance package' to resign from his position. This was a sum of £6,000 less social security contributions and tax. Deputy Southern claimed that the Complainant had been told by the Adviser that the sum would not impact upon his Income Support claim and would be counted as savings and therefore not regarded. He had therefore left the meeting at the Department with the impression that benefit would be forthcoming and the £6,000 could be used to pay off bills in the interim. However, the Department claim that they did not see the letter until it was submitted on 13th May 2013 and, having considered its contents, had decided that the lump sum should be treated as earnings, which delayed Mr. Bellas' entitlement to Income Support by over 11 weeks. Deputy Southern questioned why the Department maintained that the letter had not been seen at Mr. Bellas' initial meeting when the express purpose of that visit had been to clarify its impact on his claim.
- 3.2 Deputy Southern acknowledged that there were some minor inconsistencies within the Complainant's submission, but argued that these had been overstated within the papers submitted by the Department to imply that the Complainant was a dishonest person, which was inappropriate. Deputy Southern alleged that the Department had made a mistake and he did not believe that the Complainant should be held accountable for that mistake. He recognised that the Department dealt with an average of 1,000 visits and 400 phone-calls a day in what was often a highly stressed environment, and there was a relatively high staff turnover. He suggested that this could lead to inconsistencies in the advice given, and gave examples of cases in which he had recently intervened where mistakes had been made.

- 3.3 Deputy Southern questioned the Department's judgement of the 'severance' package. He argued that it had been incorrect to distinguish between redundancy and 'severance' and that effectively the Complainant had been dismissed by compromise, and he did not believe that the lump sum should have been regarded as payment in lieu of notice. Deputy Southern considered that there existed a degree of confusion amongst officers in relation to 'regardable' payments. In a recent written response to a question in the States Assembly it had been stated by the Minister for Social Security that household income was not treated as capital for Income Support purposes; yet, when Deputy Southern had posed a similar question to one of the Income Support officers, he had been informed that 'Redundancy pay is treated as capital. Pay in Lieu of notice is treated as income'. Deputy Southern argued that, in viewing the £6,000 lump sum as earnings as opposed to capital, the Department had significantly altered the amount of benefit to which the Complainant was entitled.
- 3.4 The Board was advised that the Complainant had sought a second determination of his claim and had submitted an appeal, but this had not been pursued. The Registrar of Appeals and Tribunals Registrar had suggested that if the Complainant considered that an administrative error had been made, then he could pursue a complaint through the Administrative Appeals Board, although this would cease his Appeal to the Social Security Tribunal. Mr. Bellas expressed dismay at his treatment by the Department. He was adamant that he had shown the letter to staff at his first visit to the Department and considered that, whatever the outcome of the hearing, he had been honest and had a clear conscience. He had gone to the authorities for help at a distressing time and had acted in good faith upon the advice he had been given.
- 3.5 The Board questioned the distinction made by the Department in relation to redundancy, severance or payment in lieu of notice, and was advised that in the guidance used by officers in the Department, earnings were classified as payments from employment. Payment in respect of redundancy and sums awarded by a Tribunal as compensation for loss of employment, as defined within the Employment (Jersey) Law 2003, was classed as capital and not earned income. There was no guidance in respect of 'severance' or compromise agreements which were recognised as a common mechanism used to avoid the Tribunal process.
- 3.6 The Board questioned why the Department had made a judgement regarding the status of the payment from Mr. Bellas' employer on 11th June 2013 without waiting to receive confirmation or further explanation from the company. An e-mail had been sent to the company on 5th June 2013 requesting confirmation of the breakdown of the sum of £6,000 stating that it was important for the Department to determine whether or not it was redundancy/compensation or payment in lieu of notice. On 10th June 2013, the company responded by e-mail, forwarding a copy of the letter which Mr. Bellas had signed on 26th April and asking the Department whether there was a 'social or tax refund'. The Department had then e-mailed the company back on 10th June to point out that Mr. Bellas had already provided a copy of the letter and noting that it did not confirm whether the sum related to payment in lieu of notice or redundancy and again requesting greater

clarification of the response The decision to classify the ‘severance’ pay as earnings had been made on 11th June 2013 without the additional information which had been requested from the company. The Board pointed out that, in the initial response received on 10th June, the company had queried whether the social security contributions or tax should be refunded. Furthermore, the pay slip which was presented indicated that the pay period was 22nd to 26th April 2013, which did not therefore reflect payment in lieu. Deputy Southern maintained that many employers did not understand what deductions needed to be made when employment contracts were terminated, and in this instance the lack of clarity had impacted upon Mr. Bellas’ ability to claim his entitlement.

4. Summary of the Minister’s case

- 4.1 Mr. Burns advised the Board that the purpose of the Social Security Department was to help people achieve and maintain financial independence, and to provide support for the times in people’s lives when such independence was not possible. The Department was proud of its work and the service it provided. It was recognised that staff dealt with the public in often difficult circumstances and worked hard to provide a consistent service. Staff underwent extensive training, and customer feedback was sought to ensure standards remained high. A member of the Department’s staff had recently won a customer service award. Mr. Burns accepted that mistakes were sometimes made, although the risk of this occurring was minimised by the procedural controls which existed. Staff were obliged to record all interactions with customers and the investment in training was high; with induction, side-by-side coaching and work-shadowing just some of the elements in place to ensure a continuity of service. As Income Support was an income-related benefit which covered a number of components, it was very specific to each individual claimant. There had been changes made to policy since the introduction of Income Support in 2008, in order to adjust the system where necessary, and the redetermination and appeals processes were available should the system not meet a claimant’s expectations. Mr. Burns advised the Board that Mr. Bellas had been offered the opportunity to appeal but had instead pursued an Administrative Appeal. He considered that the focus of the complaint was whether the letter from Mr. Bellas’ former employer had been seen by the Department on 2nd May 2013. The letter itself was quite unusual, and Mr. Burns contended that, had it been shown to any of the 3 staff Mr. Bellas saw on 2nd May 2013, they would have commented upon it within their computerised records, as its contents were far from typical of the termination letters generally submitted. Moreover, the nature of Mr. Bellas’ employment termination formed the basis of his Income Support claim, and influenced his entitlement to unemployment credits, so it was very likely that officers would have noted having seen the letter.
- 4.2 After Mr. Bellas had made his complaint, the 3 staff he saw on 2nd May 2013 had been interviewed to establish whether the letter had been presented. All 3 staff members had made statements based on the records they had made on 2nd May 2013, and all maintained that they had not been shown the ‘severance’ letter on that date. However, they had acknowledged that Mr. Bellas had made reference to the way in which his employment had been

terminated and had urged him to contact the Jersey Advisory and Conciliation Service (JACS) for further advice.

- 4.3 Mr. Burns advised the Board that the first meeting with an Income Support officer would normally involve a discussion regarding the claimant's eligibility and a claim form would be issued. When applicable, claimants were advised that, based upon the information given, they were eligible to make a claim, but Mr. Burns stressed that no assurances were given about whether or not any benefits would be forthcoming at that stage in the process, and it was always made clear that no decision could be made until the information provided had been verified. It was common for claim forms to differ from the initial indications given by the claimant. It appeared that Mr. Bellas had made a financial decision regarding the use of the 'severance' payment, based upon receiving advice on his first visit to the Department that he would be eligible to claim Income Support. The officers maintained that the letter had not been seen at the initial meeting on 2nd May 2013 and Mr. Burns opined that Mr. Bellas' claim that he had used the money to 'clear his debts' was not substantiated by his bank statements. The Board was advised that the employment termination payment had been calculated to cover an 11 week period following which Mr. Bellas would have been entitled to Income Support. The Department considered that Mr. Bellas had been mistaken about presenting the letter to officers on 2nd May 2013.
- 4.4 The Board asked whether it was normal practice for a firm to make a redundancy payment and take social security contributions from that sum, and was advised that redundancy payments were not subject to social security and were not taxable up to £50,000.
- 4.5 The Board questioned why the Department had not pursued a further response from the company to clarify Mr. Bellas' 'severance' payment, particularly as this letter was pivotal to the payment of his Income Support claim. Mr. J. Anderson, Senior Adviser, Income Support, who had been the second Determining officer for the claim, advised that because the company had confirmed that it was not a redundancy, no further action was required in relation to the letter. Officers had followed the departmental guidelines in relation to the determination of the claim. The Board requested a copy of the relevant guidelines. It further requested a copy of the original claim forms to establish whether Mr. Bellas had indicated whether the end of his employment had been as a result of redundancy, dismissal or 'other'. Had he indicated the latter, there was an expectation by the Board that the circumstances would have been further investigated. The Departmental officers then withdrew, with the exception of Mr. Burns.

5. Verbal statements

- 5.1 Mr. Bellas reiterated that he had visited the Department with his wife on 2nd May 2013 and had been very upset and angry about being unemployed. The Income Support Adviser he saw had asked him about the circumstances surrounding his termination, and he remained convinced that he had shown him the 'severance' letter and had asked how the lump sum payment would affect his entitlement to Income Support. After having looked at the letter, the Adviser had informed Mr. and Mrs. Bellas that the amount would be classified

as capital and that the sum had to exceed £10,000 before it was regarded. Mr. Bellas subsequently used the money to pay off bills, having recently married, as he was convinced that when he did find employment it would be at a lower wage, and therefore meeting larger commitments would be difficult. He claimed that he had then visited the Work Zone and showed the letter to Miss L. Eden, Assistant, Work Zone, and she had been confused by its contents and had been unsure as to whether he would be entitled to unemployment credits. She had called upon her supervisor, Mrs. C. Fernandes, Team Leader, Work Zone, who had joined them at the desk. Mrs. Fernandes, having recognised that Mr. Bellas was agitated, had suggested that he calm down and then return with a clearer head. Mr. Bellas had then applied to an agency for work. He had considered the staff at the Department to have been friendly and helpful, particularly Miss Eden, and had subsequently taken in a box of chocolates for them by way of thanks. He was upset that the staff now claimed he had not shown them the letter, but accepted that it was their decision and that they 'had to live with themselves'. He was 100% certain that he had presented the letter to the staff, and sought an apology for the way in which he had been treated subsequently.

- 5.2 The Board called Mr. M. Micheletti, Senior Adviser, Income Support, back to the meeting. He recollected meeting Mr. and Mrs. Bellas on 2nd May 2013 and that Mr. Bellas had been quite despondent, claiming to have been 'forced out' of his job. Mr. Micheletti also recalled seeing the couple later that day in the Work Zone area. During his meeting with Mr. Bellas and his wife, he had gone through a calculator to check their eligibility for Income Support. He outlined the various aspects which were considered in calculating eligibility, and advised that he had entered a short comment onto the system after the interview. Mr. Micheletti maintained that Mr. Bellas had not mentioned any payment from his former employer and the conversation had been calm and cordial. The only paperwork which Mr. Micheletti had seen in relation to Mr. Bellas had been the claim form which he had handed to Mr. Bellas for completion, and Mr. Micheletti had talked through the various sections, highlighting the required fields, as it was imperative that the form was filled in correctly and fully. He advised that claims could be delayed if all fields were not adequately completed. The Board questioned whether the section referring to the reason for making a claim had been highlighted, and was advised that this would be evident on the form if it had been discussed. Mr. Micheletti advised the Board that the savings ceiling for a couple was £15,145, and he insisted that he had not advised the couple that it was £10,000 as claimed. He had made the first determination of Mr. Bellas' claim once the relevant paperwork, documents and claim form had been received by the Department on 13th May 2013. He had determined the payment from the company as earnings in lieu of notice.
- 5.3 Mr. Micheletti was asked whether it would be regarded as a serious error if the £6,000 had been discussed and not mentioned in the log-notes, and he asserted that he would have admitted it if he had made a mistake, but he was resolute that the letter had not been shown nor any mention made of any 'severance' package. He reiterated that no decision had been made at the first interview, and no commitment about an Income Support payment had been given. Mr. Micheletti had been employed by the Department since 2010 and had

joined the Income Support team in January 2013, although he had been involved in Income Support calculations since 2010.

- 5.4 The Board called Miss L. Eden, Assistant, Work Zone, back to the meeting. She had joined the Department in March 2013 and had clear recollections of her dealings with Mr. Bellas, as he had been the first agitated customer she had served as a new member of staff. He had been distressed regarding the way in which he had been 'unfairly dismissed', but she affirmed that he had not presented a letter in relation to this claim. Mr. Bellas had mentioned the £6,000 lump sum payment, which Miss Eden had described as a 'redundancy payment' in her file notes, and she had placed a warning on record requesting that he be asked for a copy of the letter, referred to as a 'resignation letter' in her notes, in order that a judgement could be made about his unemployment credits entitlement. Miss Eden advised the Board that she did not know the savings ceiling for Income Support.
- 5.5 Miss Eden advised the Board that she had received a month's intensive training when she had started work at the Department in March 2013, and by May she was operating with a colleague shadowing her on the front desk. Unemployment credits were issued if a claimant was made redundant or had lost their job through no fault of their own, but this needed to be verified in writing by the employer. Miss Eden emphasized that she would have recorded having seen the letter, had it been presented. Credits were not covered if an individual had voluntarily left their employment.
- 5.6 The Board called Mrs. C. Fernandes, Team Leader, Work Zone, back to the meeting. She had held her position in the Department for over a year. Mrs. Fernandes advised that she had been requested to attend the Work Zone by Miss Eden, as a customer had become agitated and required reassurance. Mr. Bellas had been angry and considered that he had been 'unfairly dismissed'. Mrs. Fernandes had advised him to speak to JACS. She had then outlined the services available to assist his job search and, once the situation had been diffused, she had left the desk. She maintained that she had not seen any documents and she had not asked to see a letter from the employer, although she recalled Mr. Bellas mentioning that he had received a 'severance' payment of £6,000.
- 5.7 Mrs. Fernandes stated that she had not made her own case note in respect of her interaction with Mr. Bellas, as she had assumed Miss Eden would include aspects of the discussion in her record of the interview.
- 5.8 The Board called Mr. J. Anderson, Senior Adviser, Income Support, back to the meeting. Mr. Anderson had redetermined Mr. Bellas' claim after he had appealed the initial determination. Part of that redetermination process had been a review of the system notes, contribution and benefit history, as well as the capital amounts which had been declared. The Board, having been furnished with copies of the original claim forms, questioned what the grounds had been for Mr. Bellas' application, given that on the first form he had not ticked any of the boxes relating to the termination of his employment. Mr. Anderson countered that the information had been evidenced later in the form when Mr. Bellas had stated that his employment had ceased through severance ('severance package offered to resign'). The Board asked whether

the meaning of this was sufficiently clear, or should have been investigated further. Mr. Anderson advised that the guidelines deemed any award received in the termination of paid employment as earnings.

- 5.9 The Board was advised that, had Mr. Bellas pursued a claim for unfair dismissal via JACS, any consequential award would have been reflected in his Income Support claim. However, it was noted that most Tribunals took some 6 months to be convened. The Board asked whether legal advice had been sought from the Law Officers' Department regarding the legality of the 'severance' package, but Mr. Anderson contended that the Department, acting in accordance with current guidelines, had been provided with sufficient information upon which to base its decision.
- 5.10 The Chairman thanked both parties for attending the meeting and they then withdrew from the meeting to enable the Board to consider its findings.

6. **The Board's findings**

- 6.1. The Board considered whether the decision of the Department could be criticised on any of the grounds outlined in Article 9 of the Administrative Decisions (Review) (Jersey) Law 1982, as having been –
- (a) contrary to law;
 - (b) unjust, oppressive or improperly discriminatory, or was in accordance with a provision of any enactment or practice which is or might be unjust, oppressive or improperly discriminatory;
 - (c) based wholly or partly on a mistake of law or fact;
 - (d) could not have been made by a reasonable body of persons after proper consideration of all the facts; or
 - (e) contrary to the generally accepted principles of natural justice.
- 6.2 The Board recognised that staff at the Social Security Department worked in a difficult environment and it commended the service they provide. Furthermore, the Board concluded that the staff members who had attended the hearing had been professional and responded to the questions put to them honestly, openly, thoroughly and proficiently.
- 6.3 The Board considered that it was unable to conclusively state whether or not Mr. Bellas had shown the 'severance' letter on 2nd May 2013 as he claimed. The Board, having recognised the highly emotional and stressful situation in which Mr. Bellas had found himself, acknowledged that honest people could be mistaken. Although it was possible that in the heat of the moment he had forgotten to show it to the officers, the Board was satisfied that he had clearly discussed its contents with at least two of them.
- 6.4 The Board found that there had been some discrepancy amongst the 3 officers' statements regarding the classification of his termination, but it appeared that none of the officers had questioned whether the 'severance'

should be treated as compensation for loss of employment rather than payment in lieu of notice. The treatment of the payment of £6,000 in lieu of notice appeared to have been disproportionate, in view of Mr. Bellas' weekly pay rate and should have prompted further enquiry. Just one other officer, Mr. J. Day, had attempted to follow up the matter, but he had been advised by another colleague to classify the payment as earnings on the basis that social security and tax deductions had been made by the employer. It is not the Board's intention to direct the Department as to how the payment should have been classified, but it considers that more should have been done to analyse the nature of the payment.

- 6.5 The Board regarded the interpretation of the 'severance' letter to have been a crucial element of the administration of Mr. Bellas' claim. The fact that it had not been properly considered or explored was a failing on the part of the Department, particularly as its contents were pivotal to the determination of the claim. The Board noted that the letter did not state that Mr. Bellas was being paid in lieu of notice, but the payment seemed to have been confused by the employer as a capital sum in consideration of the early termination of his employment without recourse to a Tribunal – in effect a compromise agreement. The Department should have awaited clarification from the company or made a greater effort to obtain a response from a person in authority at the company, before determining the claim. The mere fact that tax and social security contributions had been deducted by the employer should not have been the determining factor – particularly as the employer, prior to the determination, had expressed some uncertainty as to whether such deductions had been required in the first instance.
- 6.6 The Board considered that the payment to Mr. Bellas had been unconventional and it concluded that officers should have adopted a flexible approach to its determination. The officers had complied with guidelines, but these were inadequate in respect of the situation in which Mr. Bellas had found himself. Although all the staff recognised that the letter was unusual, not one of them had acted upon this. It was not unreasonable to expect that the full facts would be investigated before a determination was made.
- 6.7 The Board found that the first determination had been made prematurely without a full and thorough enquiry into all of the facts, including a further response from the employer, which was requested the day prior to the determination of the claim. The second determination had ignored this lacuna and has similarly appeared to dismiss the need for a full response from the employer.
- 6.8 The Board concluded that the decision made by the Department could be criticised on the grounds of Article 9(b) of the Administrative Decisions (Review) (Jersey) Law 1982. It considered that the decision to classify Mr. Bellas' lump sum 'severance' payment entirely as earnings on the basis of the letter from his former employer without further investigation of the facts was unjust.
- 6.9 The Board considered that the legality of the letter and indeed, whether the payment, or part thereof, should have been treated as capital, should be investigated and legal advice taken. It further recommended that the guidance

notes in respect of the classification of sums paid on the termination of employment should be revised to allow a degree of discretion to be exercised by Determining Officers in respect of unusual or unconventional circumstances, following a reasonable examination of the evidence available, or capable of being discovered by further enquiry.

- 6.10 The Board applauded the policy within the Department obliging all staff to record notes within the computer system describing any interaction they had with a member of the public. The need for completeness and accuracy could not be overstated. The Board recommended that, in circumstances whereby 2 members of staff dealt with a client together, then the second person should be required to endorse the record made of that interaction. Furthermore, if the second person was not present throughout the entire interaction, this should be clearly stated, and the endorsement given for only the part of the record for which they were actually present.
- 6.11 The Board asked the Minister to consider the above comments, and to advise it within 28 days of any action he proposed to take.

Signed and dated by:
Advocate R. Renouf, Chairman

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Mr. C. Beirne

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Mr. D. McGrath