

STATES OF JERSEY



PUBLIC SERVICES OMBUDSMAN: ESTABLISHMENT OF OFFICE (P.32/2018) – COMMENTS

**Presented to the States on 19th March 2018
by the Privileges and Procedures Committee**

STATES GREFFE

COMMENTS

The Privileges and Procedures Committee does not support the proposition of Senator P.F.C. Ozouf ([P.32/2018](#)).

Those who advocate the establishment of an Ombudsman because they believe that the current system lacks ‘teeth’ are perhaps labouring under a false impression, as no public sector Ombudsman in the U.K. can make binding findings, and there is no logical reason to expect that Ministers would be more responsive to the findings of an Ombudsman than they are at present to the findings of Boards. Any system is likely to be criticised by those who do not obtain the redress they are seeking, and the U.K. system does not provide the perfect remedy for everyone who makes a complaint. Furthermore, it would be unreasonable to expect that the findings of Boards should be made binding, as this would effectively empower an independent, unelected body to override the decisions of democratically elected politicians.

The present system is undertaken at virtually no cost to the taxpayer. The Chairman and members of the Panel give their time free of charge, and no additional staff are employed in the States Greffe to fulfil the administrative duties required. There is a budget of £3,000 which is used to cover transport and room hire costs for hearings. There is no recharge made for the Deputy Greffier’s time nor the administrative resources (photocopying, postage). Senator Ozouf suggests that the cost of establishing a Public Sector Ombudsman would be between £200,000 and £250,000. PPC considers that this would be a substantial cost, when the actual service provision to the Public would essentially be the same as that available now.

Complaints are a valuable source of feedback for the States: they provide an audit trail and can be an early warning of failures in service delivery. When handled well, complaints provide an opportunity for the States to improve their services and their reputation. Moreover, prompt and efficient complaint handling and learning from complaints, can save the States time and money, by preventing a complaint from escalating unnecessarily, and by reducing the number of complaints received in the future.

The Complaints Panel (“the Panel”) deals with complaints from across the whole States administration, whose complaints processes are quite varied. However, certain principles should be common to all. Good complaint handling should be led from the top, focused on outcomes, fair and proportionate and sensitive to complainants’ needs. The process should be clear and straightforward and readily accessible to customers. It should be well-managed so that decisions are taken quickly, things put right where necessary, and lessons learnt for service improvement.

The Panel, comprising independent members, has been in operation since 1997. The system enables anyone who is aggrieved by any decision of a Minister or States Department to apply to the Greffier of the States with a request that the matter be reviewed by a Board of 3 people chosen from the Complaints Panel which is appointed by the States.

PPC oversees the appointment of the members and Chairman of the Panel, and receives an annual report outlining the work undertaken and complaints received and administered, which it presents to the Assembly ([most recently R.12/2018](#)). It also receives and publishes the findings reports of any Boards which are established to

formally review a complaint. The Panel is therefore relatively autonomous, working within the guidelines of the [Administrative Decisions \(Review\) \(Jersey\) Law 1982](#) (the “1982 Law”). It is supported by the Deputy Greffier of the States, who provides administrative support and advice to the Chairman, Deputy Chairmen and members.

The present system, which relies on well-respected, independent members of the community with a wide range of professional and personal backgrounds, has many advantages, and the Jersey scheme has met the strict criteria set out by the British and Irish Ombudsman Association (of which the Island is a Complaint Handler Member) as an effective scheme.

Complaints are generally directed to the Deputy Greffier in the first instance, who deals with complainants, mostly in writing and over the phone. Every effort is made to explain to a complainant that the Panel’s remit is to consider whether the subject matter was dealt with in accordance with the policies and procedures of the Department concerned; it is not the decision itself which is scrutinised, but the way in which the decision was reached. The Deputy Greffier also ensures that the complainant is aware of the potential timescale involved and that the Panel is only able to make recommendations to a Minister – it cannot demand that a decision be changed. The Panel can only deal with complaints which fit within the remit prescribed within the 1982 Law.

Each complainant is required to send in details of their complaint in writing, and then a brief résumé of their case is produced by the Department concerned, usually within a two-week period. The 2 submissions are then sent to the Chairman or Deputy Chairmen, if the former is conflicted in any way, and a decision is made as to whether the complaint justifies further review. Since 2015, this process has been altered so that a member of the Panel joins the Chairman to adjudicate on the case on a rota basis.

If it is considered appropriate, the Chairman will attempt an informal resolution. If a hearing is convened, both the complainant and the Minister/Department are given the opportunity to make a presentation to the Board (made up of 3 Panel Members, including the Chairman or one of the 2 Deputy Chairmen), and respond to questions. A written report containing the findings is presented to the States, and Ministers are expected to produce a formal response, usually within 30 days of the publication of the main Report. One major change made in recent times is that copies of the Minutes of the hearing, which form the body of the report, are sent to both parties so that they can be confirmed as an accurate record of the proceedings. Both parties are able to adjust any factual or typographical errors before the findings and recommendations are then appended. The full document is then embargoed for a few days before its formal publication, in order that both the respondent and the complainant have sufficient time to absorb the contents.

Senator Ozouf refers to the recommendations made in 2002 in the Clothier Report, and in 2017 by the Jersey Law Commission, that an Ombudsman should be established.

Following the Clothier recommendations, a Sub-Committee of the Privileges and Procedures Committee reviewed the operation of the system, and a report was subsequently presented to the States ([R.C.20/2004](#) refers). The key recommendations contained within R.C.20/2004 included some proposed amendments to the 1982 Law, most notably that the Chairman should determine whether a complaint should be referred to a Board (this had formerly been the role of the Greffier); the introduction of informal resolutions where appropriate; the publication of findings and the responses of

Ministers; the publication of clear guidelines; greater publicity for the scheme; and a change of name to the 'Complaints Panel'. The proposed amendments to the 1982 Law were subsequently approved by the States on 14th February 2006. The revised Law came into force on 1st December 2006, and all of the recommendations were implemented by the Panel. The Panel has continued to implement changes to its procedures as it has evolved, in order to improve the process by which complaints are handled.

PPC and the Panel challenged a number of the assertions contained within the Law Commission's report in 2017, and disagreed with many of its recommendations. Comparisons with the Gibraltar Ombudsman, for example, were misleading, as that office is the first port of call for ALL Public Service complaints in that jurisdiction. In Jersey, the Panel is only able to investigate a complaint once the respective complaints procedure within a Department has been exhausted.

PPC has the ability to give greater power to the Panel by amending the 1982 Law, to direct that a Minister must stipulate in detail the reasons why he or she has decided to ignore the findings of the Board (setting out why the findings of the Board are considered to be flawed and the precise reasons why they have decided to refuse to accept them). At present, Ministers are able to 'cherry-pick' the elements of the findings with which they agree or find fault, and are not required to respond to each specific element in detail.

The present view of the Panel is that it does not require additional statutory powers, such as the ability to make binding decisions or to impose penalties. These powers should be reserved to the courts or the States Assembly. Rather, the Panel considers that its role, the weight of its findings and the purpose of the Law are not given sufficient attention by the Executive. Not only is the Law intended to provide a relatively accessible channel of complaint to aggrieved members of the Public, but the Panel also regards it as an important independent means of making the administration of government more efficient.

Prospective Panel members are interviewed with an Appointments Commission representative present to ensure that they are appropriately skilled. The majority of the existing Panel have very strong mediation skills and experience: one is a trained mediator who has worked at Relate and Citizens Advice; 2 are highly respected lawyers (one a Q.C.); 2 served in the Police Force (one of whom within the Police Complaints and Disciplinary division); one is a former Chief Ambulance Officer who served as President of the Jersey Civil Service Association and was regularly involved in mediating between staff, the unions and the Employer's side; and one was the Chairman of the Registration Board of the British Association for Counselling and Psychotherapy.

PPC considers that, as lay-people, the Complaints Panel members more than ably fulfil their remit, and we are very grateful for the outstanding service they provide. PPC is supportive of any improvements which can be made to the existing system, especially if there is a direct benefit to the Public, and will work with the Complaints Panel to bring forward amendments to the existing legislation which will encourage the Executive to place a greater emphasis on complaints and the outcome of hearings.

Statement under Standing Order 37A [Presentation of comment relating to a proposition]

These comments were submitted to the States Greffe after the noon deadline as set out in Standing Order 37A as it was not possible to gain approval from all Committee members before that time.