
STATES OF JERSEY



STATES OF JERSEY COMPLAINTS PANEL: REPORT FOR 2015

Presented to the States on 22nd April 2016
by the Privileges and Procedures Committee

STATES GREFFE

CHAIRMAN'S FOREWORD

The Privileges and Procedures Committee is pleased to present the report of the States of Jersey Complaints Panel for 2015, 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. 2015 saw some changes to the Panel, following the retirement of 4 of its members.

The Committee would like to thank the retiring members, namely Mr. Frank Dearie and Mr. Stephen Platt, both of whom served for 6 years, and also Mr. John Mills, C.B.E., who was a member of the Panel since 2012. The Committee recognises that they are extremely busy people and generously gave their time freely to serve the community, for which the Committee is very appreciative. The Committee wishes to pay particular tribute to Mr. Nigel Le Gresley, who retired from the Panel after 12 years' service (as Deputy Chairman and most recently as Chairman). On behalf of all members, I would like to pass on our sincere gratitude to him for the incredible service he has given to the Island on an honorary basis.

The Committee recognises that the Panel's aim is to ensure that public services are administered in accordance with accepted policies and procedures. Complaints are only taken forward by the Panel once a complainant has exhausted the internal complaints procedures available. It is therefore vital that every Department has a complaints procedure which is accessible and readily publicised, and maintains a register of complaints.

2015 saw the end of a period of change within the membership of the Panel, which had started the previous year when Mr. Richard Renouf, now the Deputy of St. Ouen, stood down as Chairman after his election to the States Assembly. He was replaced by Mr. Nigel Le Gresley, who served for a short period as Chairman until July of this year, when his term of office expired and he was replaced by Mr. Geoffrey Crill, who is serving on the Panel for a period of 5 years. Mr. Crill has been ably assisted by Mr. Stuart Catchpole, Q.C. and Mr. Chris Beirne as his Deputy Chairmen. Mr. Catchpole was appointed as a Deputy Chairman in 2014 ([P.180/2014](#) refers – adopted by the States on 21st January 2015); and Mr. Beirne was appointed as the second Deputy Chairman in 2015 ([P.133/2015](#) refers – adopted by the States on 2nd December 2015).

Whilst the Committee considers that it is important to appoint new members, it is also vital to maintain some continuity, which is crucial on a Panel of this nature, where experience in dealing with complaints is built up over time. I am convinced that the appointments made in 2015 put in place a very strong team, who have proven themselves to be extremely measured, reasonable and fair-minded. The Panel now consists of 10 members.

The following have been members since 2009 –

Mr. R. Bonney
Mr. C. Beirne.

These members were first appointed in 2012 –

Mr. D. McGrath
Mr. G. Marett.

The following 6 new members joined the Panel in 2013. ([P.106/2013](#) refers – adopted by the States on 8th October 2013) –

Ms. Claire Boscq-Scott
Mr. Stuart Catchpole, Q.C.
Mr. Geoffrey George Crill
Mrs. Janice Eden
Mr. John Moulin
Professor Edward Sallis, O.B.E.

**ADMINISTRATIVE DECISIONS (REVIEW) (JERSEY) LAW 1982:
REPORT OF THE STATES OF JERSEY COMPLAINTS PANEL FOR 2015**

Dear Chairman,

I have pleasure in forwarding to you the report for 2015, which also includes the resolution of matters outstanding as at the end of 2014. The following statistics show the work undertaken by the Administrative Appeals Panel during this period –

		<i>Hearing held</i>	<i>Request for hearing refused/ withdrawn/ matter not pursued</i>	<i>Complaint upheld</i>	<i>Informal Resolution</i>	<i>Complaints carried forward (some of which may be resolved informally)</i>
<i>Complaints received 2015 (including 5 carried forward from 2014)</i>	14	1	0	1	0	4
<i>Complaints received 2014</i>	20	1	11	0	4	5

Five complaints were carried forward into 2015 and there were 9 new complaints received during the year.

The Panel noted that the complaints received in 2015 related to decisions made by a wide variety of Ministers, when in previous years they had been mostly concentrated on planning matters. The majority of complaints received were considered not to relate to matters of maladministration, and therefore had not justified a hearing being convened.

Only one hearing was convened during 2015. This was chaired by myself, then Deputy Chairman, and the complaint was upheld. A report was subsequently presented to the States Assembly ([R.24/2015](#) refers). Four complaints were carried forward into 2016.

There were a number of matters resolved informally, through the minor intervention of either the Chairman or Executive Officer.

Complaint against the Minister for Economic Development

The Board's findings were published as [R.24/2015](#) on 10th March 2015 and related to a decision of the Minister for Economic Development regarding the enforcement of a contract to use facilities at Bouley Bay. The Board concluded that, whilst the Agreement was not in itself oppressive or discriminatory, the enforcement of the Agreement had the potential to be discriminatory and oppressive by virtue of the fact that the supervision of the same was almost entirely reactive to complaints made by members of the Bouley Bay Boat Owners' Association, who had clear antipathy towards the complainant. The Board therefore considered that the complaint could be upheld on the grounds of Article 9(b) of the [Administrative Decisions \(Review\) \(Jersey\) Law 1982](#).

The Panel does not intend for the recommendations contained within its findings to be taken as a criticism of the sterling work undertaken by those employed within the public sector or appointed to serve the community, but acknowledges that mistakes are occasionally made.

The Panel wishes to express its thanks to the Deputy Greffier of the States and the States Greffe staff, who provide efficient and professional administrative and advisory support to the Boards.

GEOFFREY CRILL
Chairman, Complaints Panel

THE FOLLOWING IS A SUMMARY OF THE OUTCOME OF THE COMPLAINTS WHICH WERE OUTSTANDING IN THE 2014 ANNUAL REPORT AND OF NEW COMPLAINTS RECEIVED IN 2015 –

OUTCOME OF COMPLAINTS THAT WERE OUTSTANDING AT THE END OF 2014 AND WHICH WERE REFERRED TO IN THE ANNUAL REPORT FOR 2014 (R.79/2015) –

(i) 1386.2.1.2(322)

An initial statement of complaint was received on 4th March 2014 regarding the processing of a planning application. A résumé was received from the Planning and Environment Department but, owing to the poor health of the complainant, a full submission of the complaint was not received until early 2015. In the interim, it was made clear to the complainant that the Panel could not consider any complaint in respect of the planning applications which had been already determined and upheld by the Royal Court (the Court having found that the process of consideration of the applications was entirely in order), nor the process of the Court appeal or its outcome. In 2015, efforts were made to identify a specific aspect of the complaint which could be taken forward by the Panel, but the complainant did not furnish the Panel with the requisite information and the case was deemed to have been closed.

Status: closed

(ii) 1386.2.1.22(1)

A statement of complaint was received on 10th March 2014 against the States Employment Board regarding the withdrawal of an offer of employment to Dr. XX at the Jersey General Hospital.

A résumé was received from the States Employment Board and submitted with the complaint to the Chairman, but the case was subsequently deferred whilst the complainant pursued the matter through the Employment Tribunal process. On 6th December 2014, the complainant wrote to advise that he had withdrawn from the Jersey Employment Tribunal process, and the submissions were then sent to the Chairman for consideration. A hearing was scheduled to take place in April 2015, but was deferred at the Complainant's request and will now take place on 16th March 2016.

Status: ongoing as at 31/12/2015

(iii) 1386.2.1.13(3)

A statement of complaint was received on 28th October 2014 against the Minister for Economic Development regarding the enforcement of a contract to use the facilities at Bouley Bay.

A résumé was received from the Economic Development Department and submitted to the Chairman, who considered that the matter justified further review. A full hearing was held on 10th February 2015 at Trinity Parish Hall. It was chaired by the then Deputy Chairman, Mr. G. Crill, and Messrs. C. Beirne and J. Moulin served alongside him.

The Board concluded that whilst the Agreement was not in itself oppressive or discriminatory, the enforcement of the Agreement had the potential to be discriminatory and oppressive by virtue of the fact that the supervision of the same was almost entirely reactive to complaints made by members of the Bouley Bay Boat Owners' Association (BBBOA), who had clear antipathy towards the complainants. The Board therefore considered that the complaint could be upheld on the grounds of Article 9(b) of the Administrative Decisions (Review) (Jersey) Law 1982.

The Board made no comment on the *vires* of the purported delegation of responsibility to the BBBOA. However, the Board was concerned about the lack of direct policing of the pier and the facilities by POJ and the powerful role assumed by the BBBOA by default. In addition, the Board was concerned about the "one sanction fits all" approach. It was felt that this could be materially oppressive and unfair, particularly in the case of more intensive users of the facilities, such as the complainants.

Whilst the Board recalled that POJ and, in particular, the Harbourmaster, had confirmed that there was sufficient discretion as far as the Sanctions set out in the Agreement were concerned, the Board concluded that it would prefer to see the removal in any future amendments to the Agreement of stipulated periods of suspension for first or subsequent breaches, in order that the punishment was appropriate in all the circumstances. It would, for example, prompt an outcry if a failure to secure the crane hook resulting in serious injury was punishable only by a suspension of one week (assuming a first offence). In addition to the above, the Board decided to make the following recommendations –

- (a) that the Minister provide the complainant with a letter of comfort making it clear that provided the complainants sign the Agreement, and as long as the rules were abided by and did not obstruct other users, a degree of flexibility on sanctions would be exercised;
- (b) that the Minister explore the possibility of creating separate terms of use for commercial fishermen, perhaps through the use of permits. These could be tailored to the needs of fishermen and possibly carry different sanctions. The Board suggested that such a system could, for instance, permit larger fishing boats whilst restricting the size of leisure craft, giving commercial users the option of either applying for a more generous permit but risking greater sanction, or abiding with the universal Agreement. This could be applied to all of the outlying harbours to provide an equitable and generic approach;
- (c) that an officer from POJ be given direct responsibility for Bouley Bay Pier and, more specifically, the policing of the Agreement. The Board did not consider that this would necessitate the recruitment of additional staff, given that it had been informed that there were already existing staff with responsibility for the outlying harbours. The Board felt that it was inappropriate for the Minister to continue to rely upon the BBBOA to police the Agreement, as the potential existed for discrimination and the Agreement was, after all, between users and the POJ. Users of the pier could be provided with a direct contact number for the nominated officer. This would be most useful on the infrequent occasions when a user was likely to be in breach of the terms of the Agreement as a result of a particular set of circumstances. For example, it might be necessary to park

on the pier for longer than the stipulated period when carrying out an emergency repair to a vessel; and

- (d) that the wording of the Agreement be amended so that under the section entitled “sanctions” the first sentence was preceded with the words “*without prior approval*” (... contravention of these conditions may result in withdrawal of access). This would afford all users the opportunity of liaising with the officer (referred to in paragraph 6.4(c) above) to seek permission for a specific activity, rather than arriving at a situation where a breach automatically occurred.

The Minister’s response was presented to the Assembly on 8th April 2015 ([R.40/2015](#) refers) and the conclusions stated –

“It follows that I have accepted and acted upon (although on occasions this meant reminding harbour-users of the existing position) the following –

- Letter of comfort to all Bouley Bay users as regards flexibility and sanctions (6.4(a)).
- Officer of Ports of Jersey with direct responsibility for Bouley Bay (6.4(c)).
- Direct telephone number for such Officer – although practicality dictates that the Coastguard number continues to be used (6.4(c)).
- Prior approval possible where individuals have reasonable need to act contrary to ordinary rules (6.4(d)).

I must stress that the [Harbours \(Administration\) \(Jersey\) Law 1961](#) and the [Harbours \(Jersey\) Regulations 1962](#) make the Harbour Master the primary decision-maker in these matters, and not me as the Minister. The Board has raised various problems that might arise when the Agreement is brought into effect – but unless there are specific examples of reports being made in bad faith, such issues remain abstract.

Should those problems be realised, it might well be necessary for the Harbour Master to abandon the attempt to regulate Bouley Bay by way of this semi-consensual or medium-touch route for regulation in favour of something heavier. The issues raised by the Board as to the desirability of having wholly flexible sanctions so as to meet the seriousness of the offence is one that would doubtless be best met by introducing the more heavy-touch regulation of permits. In such circumstances, it would be necessary to consider issues such as permit charges, and possibly giving different rights to high-frequency users would lead to a similar approach in terms of differential charges.

Fortunately, such time and expense has not been necessary in respect of the other outlying harbours. As such, I cannot accept the Board’s recommendation that such regulation should be introduced in respect of those outlying harbours where there is no evidence of any necessity.”

Status: closed

(iv) 1386.2.1.18(6)

A statement of complaint was received on 23rd December 2014 against the States of Jersey Police for unfair dismissal.

Following referral to the Chairman, the complainant was advised that the matter did not fall within its jurisdiction, especially as the case had already been adjudicated by an Employment Tribunal.

Status: closed

(v) 1386.2.1.2.21(2)

A statement of complaint was received on 30th January 2013 relating to a decision of the Minister for Transport and Technical Services in respect of the failure to honour an undertaking given by the Public Services Committee to the Transport and General Workers' Union (now Unite) in 2001.

A résumé was received from the Minister for Transport and Technical Services and his Department on 11th February 2013, and the matter was referred to the Chairman, who requested further information from the complainant. This was finally received on 19th November 2013 and the case was then referred to the Chairman to decide whether it merited a Board being convened. Following much discussion, a Board was set to be convened in June 2014, subject to agreement that any review would be restricted to an examination of the Minister's actions in relation to Clause 18.3 of the Connex contract. It was emphasized that it would not be possible to pursue the complaint on the basis of the political undertaking given to Unite in 2001. This was rejected at the eleventh hour by Unite, and the case was subsequently referred to the newly appointed Chairman. He was appreciative of the viewpoint expressed by his predecessor, and it was out of respect for him that the current Chairman decided to support the basis upon which the complaint *could* proceed. He was of the very firm opinion that asking the Complaints Panel to look into legal matters fell beyond its remit, and that the correct course of action should really be a judicial review.

Given the discussions to date, the Chairman felt it was only fair that this decision should be referred to the Deputy Chairman, in order that a definitive conclusion regarding whether the matter should proceed or not could be reached. The Deputy Chairman did feel that the case warranted a hearing and, following some delays, the hearing will take place on 23rd February 2016.

Status: ongoing as at 31/12/2015

OUTCOME OF COMPLAINTS RECEIVED DURING 2015**(i) 1386.2.1.9(14)**

A complaint was received on 15th January 2015 regarding the inaction of the Environmental Health Team to deal with a noise complaint. The complainant, who was in poor health and housebound, lived next door to a recently converted gym in town, and was unhappy about the disturbance caused very early in the morning and also throughout the day, by loud motivational music and use of heavy gym equipment.

Although this was not a case which warranted a hearing, the Deputy Greffier of the States sought to resolve the matter informally. Having contacted Environmental Health, it was clear that this was an ongoing matter and that the Department had visited the complainant on numerous occasions, but had determined that the noise levels were not excessive.

The Deputy Greffier contacted the landlord, and also the Planning Department, to confirm that the correct Change of Use Planning Consents had been applied for, and to seek assurances that the terms of the licences were adhered to by the holders so that no music would be played before 8 a.m. There was no further communication on this matter.

Status: closed

(ii) 1386.2.1.7(14)

A statement of complaint was received on 14th April 2015 relating to a decision of the Minister for Social Security regarding the receipt of incorrect and incomplete advice in relation to an Income Support claim.

Following receipt of the request for a résumé, the Department contacted the Deputy Greffier of the States and invited the complainant to a meeting to discuss her complaint; she advised that she was content with this outcome, and the complaint was therefore withdrawn.

Status: closed

(iii) 1386.2.1.2(324)

A statement of complaint was received on 10th April 2015 relating to a decision of the Minister for Planning and Environment regarding the refusal to accept an application for the variance of a planning condition in relation to the use of a shed at Field 1007, St. John.

A résumé was received from the Minister for Planning and Environment and his Department on 27th April 2015, and the matter was referred to the Chairman. The Chairman maintained the view that there was no justification for a hearing, but he was sympathetic to the complainant's situation and, mindful of the case history, was willing to try to resolve the matter informally. Meetings were held with Planning Officers, and the complainant was encouraged to submit a revised application, which it was anticipated would be considered sympathetically.

Status: ongoing as at 31/12/2015

(iv) 1386.2.1.3(22)

A statement of complaint was received on 22nd April 2015 relating to a decision of the Minister for Education, Sport and Culture regarding the refusal to grant a primary school place at a specific school.

A résumé was received from the Minister for Education, Sport and Culture and his Department in early May 2015, and the matter was referred to the Chairman. Having reviewed the papers submitted and the relevant Law and published policy regarding allocation of places at States' primary schools, the Chairman was satisfied that there was nothing to indicate that the Minister or the Department had departed from their obligations or their established policy in this matter. The Chairman, seeking an informal resolution of this case, asked the Department to consider allocating a place at the preferred school if a place became available. The Department confirmed that the child had been placed on the waiting list for a place at the school concerned.

Status: closed

(v) 1386.2.1.20(3)

A statement of complaint was received on 14th May 2015 relating to the administration by the Property Holdings Department of the freehold leased properties at Clos des Sables, St. Brelade.

A résumé was received from the Department on 4th June 2015, and the matter was referred to the Deputy Chairman of the Complaints Panel (as the Chairman was in hospital and unavailable).

The Acting Chairman concluded that this was not an appropriate case for a hearing by a Board. He considered that Property Holdings had no jurisdiction in the matter, save as a co-owner of a number of lots in the Housing Association. The Acting Chairman acknowledged that there might have been a complaint against the Association Representative for acting beyond their powers. However, the Complaints Panel was not able to intervene, as the complaint did not directly relate to a decision of a Minister or a States Department, and therefore the Panel had no jurisdiction over the issue.

Status: closed

(vi) 1386.2.1.3(21)

A statement of complaint was received on 25th March 2015 relating to a decision of the Minister for Education, Sport and Culture regarding the processing of an appeal for a place at Hautlieu in Year 10.

A résumé was received from the Minister for Education, Sport and Culture and his Department on 8th April 2015 and the matter was referred to the Chairman, who did not feel that there was justification for the matter to be reviewed. The matter was subsequently referred to the Deputy Chairmen for review. They confirmed that the Chairman's decision not to hold a review was justified.

The Deputy Chairmen did not consider that any of the criteria for upholding a complaint had been met. The Department's policy on admission to Hautlieu had been published, was clearly defined to include the interview process, and the procedure appeared to have been followed in respect of the complainant's child's application.

Status: closed

(vii) 1386.2.1.2(325)

A statement of complaint was received on 23rd June 2015 relating to a decision of the Minister for Planning and Environment regarding the consideration of Planning Application P/2015/0526.

A résumé was received from the Minister for Planning and Environment and his Department on 15th July 2015 and the matter was referred to the Chairman. The Chairman concluded that the Department had processed the application properly, and there was therefore no justification for the matter to be the subject of a formal complaints hearing. However, the Chairman considered that it was only right and proper that the complainant be entitled to a review of the decision to refuse his planning application. He therefore decided to intervene on the complainant's behalf, in order to resolve the matter informally.

Following the Chairman's discussions with Planning, it was agreed that the complainant's application would be placed before the Planning Applications Committee for a review of the refusal to grant planning consent.

Status: closed

(viii) 1386.2.1.2(326)

A statement of complaint was received on 15th September 2015 relating to alleged discrimination by officers of the Planning Department and an appeal against an enforcement notice.

A résumé was received from the Minister for Planning and Environment and his Department on 7th October 2015 and the matter was referred to the Chairman, who determined that it did not fall within the remit of the Panel.

Following referral to the Deputy Chairmen to review the Chairman's decision, both agreed that the appeal against the Enforcement Notice was not a matter on which the Complaints Panel should rule while the determination of the appeal was outstanding. The Deputy Chairmen considered that an allegation of systematic denial of fair and impartial consideration by the Director of Planning to any case involving the complainant would be worthy of investigation, but agreed that the complaint should be addressed in the first instance to the Chief Executive of the States.

The Deputy Chairmen therefore upheld the decision of the Chairman not to progress this complaint to a hearing. However, they urged the complainant to contact the Panel again if it was considered that the Chief Executive of the States failed to properly investigate the complaint or he was dissatisfied with the outcome, as that would be something upon which the Complaints Board could act.

Status: closed

(ix) 1386.2.1.7(16)

A statement of complaint was received on 3rd November 2015 relating to the Social Security Department, regarding the lack of payment of benefits to a claimant during his treatment for cancer (JY103391B).

A résumé was received from the Minister for Social Security and his Department on 25th November 2015, and the matter was referred to the Chairman. The Chairman was extremely sympathetic to the complainant's situation, but did not see any evidence that the Department had acted outside its established procedures and policies. The complainant was advised of this decision on 12th December 2015, and requested that the matter be reviewed by the Deputy Chairmen.

Status: ongoing as at 31/12/2015