

‘The Jersey Way’

This submission is an updated version of the submission dated 24 July 2019, and included further relevant authorities, as well as facts.

Both my wife and myself are senior citizens. Some years ago we wished to explore possibilities of replacing our substandard bungalow as built on a large site by a two generation house for use of two generations of our family.
The bungalow was in a ‘built up area’ as per the Island Plan.

Since there was an uncertain boundary of the grounds of the house with an adjacent agricultural field, we tried to come to an agreement with the owner of the field. Direct attempts to achieve an agreement failed and also our lawyers tried in several attempts to get an agreement, all of which also failed.
The owner of the field did agree however with our proposal for the Viscount to determine the boundary. There is a set procedure in place for this determination by the Viscount. The boundary uncertainty is finally resolved once the procedure has been carried out. The entire cost of the work is payable by the party or parties who ask for it to be carried out.

The Viscount, together with a panel of ‘experts’ appointed by the Viscount, did attend and the procedure was implemented, but only in part. In fact a major uncertainty in the location of the boundary remained, and this fact was immediately brought to the attention of the Viscount by our lawyers.
The Viscount failed to take note of this incomplete determination.
Surprisingly, although the costs of the Viscount’s involvement should follow the event, no charge was made by the Viscount.

A direct complaint was made by the writer to the Viscount’s Department about the incomplete determination. In a formal reply the Viscount responded to advise that the only avenue open to a complainant is to bring an action in the Royal Court.

Several years later after the part determination, the Viscount’s Department raised a substantial bill to us direct for their involvement. We attempted to communicate with the Viscount’s Department, however the Department would not communicate with us direct and instead did contact our lawyer and advised that it would only communicate with us through our lawyer.

Accordingly, we needed to instruct a lawyer to deal with the matter of the bill. This of course caused further expenditure. In contacts between our lawyer and the ‘Viscount Substitute’ the latter did not give a reason for the incomplete task and is on record as stating that ‘the taxpayer should not have to pay for the work done’.
We were forced to pay the Viscount’s bill, since failure to pay would have caused being taken to Court by the Viscount.

Thereafter, a senator was consulted, who commented that generally accepted consumer rights logically entitle work or services to be carried out in full when that work or services was agreed. The senator also stated that the Viscount should carry out the determination again, but this time entirely paid out of the ‘people’s purse’.

The matter was brought to the attention of our Parish Deputy, who kindly referred us to the States of Jersey Complaints Board, and the complaint was raised with that Board. However, the Board declined to deal with the complaint, since it considered it not to be part of their remit.

Separately from the above, and very recently, the Comptroller and Auditor General has compiled a report which identifies that there is no oversight of individual bodies described as Non-Ministerial bodies. The Viscount's Department is specifically identified as an autonomous and Non-Ministerial body. The Department does not have a complaints procedure.

In our view it is a fundamental breach of natural justice for the Viscount's Department to hold that in the case of a complaint there is only one avenue open to the complainant, that avenue being bringing the matter to the Royal Court. Such position is contrary to the general comments made by successive Bailiffs, in that parties should endeavour to resolve matters before bringing a matter to the Royal Court.

In our view, this is a demonstrable and clear case of 'The Jersey Way'. Islanders were forced to pay for incomplete work by a government authority without there being any redress.

Frederic J. Fokkelman
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