# STATES OF JERSEY

# STATES OF JERSEY COMPLAINTS PANEL: REPORT FOR 2013

**Presented to the States on 22nd April 2014**
**by the Privileges and Procedures Committee**

**STATES GREFFE**

2014 Price code: C R.51

## CHAIRMAN'S FOREWORD

The Privileges and Procedures Committee is pleased to present the report of the States of Jersey Complaints Panel for 2013, 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. 2013 saw new faces joining the Panel following the retirement of Mr. John (Geoffrey) Davies, who had completed 10 years as a member of the Panel. The Committee wishes to pay tribute to the dedication and willingness of Mr. Davies to serve the community and wholeheartedly thanks all of the remaining members for giving their time freely to undertake this important work.

The Committee shares the concerns expressed by the Panel regarding the responses of Ministers and Departments to the findings of the Boards held in 2013. The Committee would urge Ministers and Departments to recognise 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.

On 17th July 2012, the States, in accordance with Article 5(2) of the Administrative Decisions (Review) (Jersey) Law 1982, appointed the following persons as members of the States of Jersey Complaints Panel, from whom members of Complaints Boards can be drawn, for the following periods (P.64/2012 refers) –

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| **Chairman** | Advocate Richard John Renouf (3 years) |
| **Deputy Chairmen** | Mr. Nigel Peter Edgar Le Gresley (3 years)<br>Ms. Christine Vibert (18 months) |
| **Members** | Mr. Christopher Beirne (3 years)<br>Mr. Robert Frederick Bonney (3 years)<br>Mr. Frank Dearie (3 years)<br>Mr. Stephen William Platt (3 years)<br>Mr. John Frederick Mills C.B.E. (3 years)<br>Mr. Graeme George Marett (3 years)<br>Mr. Patrick David McGrath (3 years). |

On 8th October 2013, the States, in accordance with Article 5(2) of the Administrative Decisions (Review) (Jersey) Law 1982, appointed the following persons as additional members of the States of Jersey Complaints Panel, from whom members of Complaints Boards can be drawn, for a period of three years (P.106/2013 refers) –

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| **Members** | Mrs. Claire Boscq-Scott<br>Mr. Stuart Catchpole, Q.C.<br>Mr. Geoffrey George Crill<br>Mrs. Janice Eden<br>Mr. John Moulin<br>Professor Edward Sallis, O.B.E. |

**ADMINISTRATIVE DECISIONS (REVIEW) (JERSEY) LAW 1982:**
**REPORT OF THE STATES OF JERSEY COMPLAINTS PANEL FOR 2013**

Dear Chairman,

I have pleasure in forwarding to you the report for 2013, which also includes the resolution of matters outstanding as at the end of 2012. The following statistics show the work undertaken by the Administrative Appeals Panel during this period –

| | | *Hearing held* | *Request for Hearing refused/ withdrawn/ matter not pursued* | *Complaint upheld* | *Informal Resolution* | *Complaints carried forward (some of which may be resolved informally)* |
|---|---|---|---|---|---|---|
| *Complaints received 2013 (including one carried forward from 2012)* | 17 | 4 | 5 | 4 | 1 | 7 |
| *Complaints received 2012* | 7 | 1 | 4 | 1 | 1 | 1 |

One complaint was carried forward into 2013 and there were 16 new complaints received during the year. This represented more than double the amount considered in 2012, although 3 went no further than the initial application, having been considered not a matter which fell within the Panel's jurisdiction or received beyond the 12 month deadline. The Panel noted that the complaints received in 2013 related to decisions made by a wide variety of Ministers, when in previous years they had been mostly concentrated on planning matters. It was acknowledged that the majority of complaints received were considered not to relate to matters of maladministration, and therefore had not justified a Hearing being convened.

Four Hearings were convened. Two were chaired by the Chairman, 2 by the Deputy Chairman, and all 4 complaints were upheld by the individual Boards and a report subsequently presently to the States Assembly (R.67/2013, R.142/2013, R.144/2013 and R.157/2013 refer). Seven complaints were carried forward into 2014, although the majority of these were cases in which the Chairman was attempting to reach an informal resolution.

The complaint carried forward from 2012 was resolved informally by the Deputy Chairman, Ms. Christine Vibert. She successfully brokered a compensation settlement between a Complainant and the Planning and Environment Department in relation to a disagreement which dated back over 9 years. The Panel considers this to be a good example of the way in which it is able to review a matter in an independent and impartial manner and mediate between the 2 parties involved to achieve a mutually acceptable outcome.

The Panel was disappointed that the recommendations contained within 3 out of the 4 findings reports produced in 2013 were mostly ignored by the respective Ministers and Departments concerned.

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**Complaint against Minister for Transport and Technical Services**

The Board's findings were published as R.67/2013 on 24th June 2013, and related to a decision of the Minister for Transport and Technical Services in respect of restrictions placed upon the PSV licence issued to the business known as 'Pet Cabs'. The Board concluded that the decision made by the Minister could be criticised on the grounds of Article 9(d) of the Administrative Decisions (Review) (Jersey) Law 1982, namely that it could not have been made by a reasonable body of persons 'after proper consideration of all the facts'.

The Minister agreed that the Complainant would be placed back on the waiting list for a regular taxi licence, but did not accept the Board's findings.

**Complaint against the Minister for Planning and Environment**

The Board's findings were published on 19th November 2013 (R.144/2013 refers). The Board concluded that the Enforcement Notice dated 30th June 2010 was not issued in accordance with the procedure laid down in the Department's scheme of delegation in force at the time, and no authorisation was sought from a senior, by the officer responsible for the decision, to serve the Notice and who signed it as required by the Minister's code of practice. These particular failings led the Board to conclude that the Enforcement Notice was *ultra vires*. Over and above these considerations of lawfulness, first, the Notice was decided upon by officials, and duly signed and served, without any reference to, or analysis of, the notion of 'continuousness' and 'materiality' as factors in the interpretation of the '8-year rule' in Article 40(1), which the Department brought into play afterwards in seeking to justify its actions, in response to requests for information from the Complainant's lawyer. Secondly, it was maladministration on the part of the Department that the Complainant's protagonists were informed about the Enforcement Notice before he received it. Thirdly, it was unacceptable that a document of such material significance to the citizen concerned was signed with an illegible and unknown signature and not demonstrably executed in accordance with prevailing delegated powers.

In his response, the Minister apologised to the Complainant and agreed to review departmental procedures in relation to enforcement notices, but did not accept the Board's findings that the issue of the notice had been *ultra vires* or that the application had been maladministered.

**Complaint against the Minister for Social Security**

The Board concluded that the decision made by the Department in relation to the classification of a lump sum severance payment as earnings 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 the lump sum entirely as earnings on the basis of the letter from the Complainant's former employer, without further investigation of the facts, was unjust. 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.

The Minister responded to the Board and chose to ignore or refute some of the key findings. He maintained that the existing administrative processes were robust when it had been clearly evidenced that staff did not sufficiently record discussions with customers.

**Complaint against the Minister for Home Affairs**

The findings were published on 19th December 2013 (R.157/2013) relating to a decision of the Chief Officer of the States of Jersey Police to terminate the contract of an officer under the Attendance Management policy.

The Board concluded that all relevant powers relating to the appointment of a Police Officer and the termination of that appointment rested with the Minister. Neither the Chief Officer nor his Deputy had powers in relation to the appointment or termination of an Officer's appointment under the Police Force (General Provisions) (Jersey) Order 1974. The Board gave consideration to the terms of the Managing Attendance Policy. It noted that, as the title implied, this was a Policy. It was not an Order by the Minister. By definition, it could not confer wider powers on any person other than permitted by law.

The Minister accepted the Board's findings and the Board was encouraged by his thoughtful and appreciative response.

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In summary, the Panel takes its responsibilities very seriously, and members expend a great deal of thought, time and effort before, during and after a Hearing, ensuring that the matter is considered objectively. The Panel is therefore troubled by the inflexible stance adopted by some Ministers, despite being presented with the considered, independent and impartial findings of the various Boards. The Panel does not intend for its recommendations 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 is concerned that Ministers and officers seem reluctant to acknowledge that mistakes are occasionally made. Many of the complaints received in 2013 related to delays in responding to enquiries, and could have been avoided had Departments made efforts to discuss matters with Complainants in a more timely manner.

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

Advocate Richard Renouf
Chairman, Complaints Panel

**THE FOLLOWING IS A SUMMARY OF THE OUTCOME OF THE COMPLAINTS WHICH WERE OUTSTANDING IN THE 2012 ANNUAL REPORT AND OF NEW COMPLAINTS RECEIVED IN 2013 –**

**Outcome of complaints that were outstanding at the end of 2012 and which were referred to in the Annual Report for 2013 (R.53/2013) –**

(i) **1386.2.1.2(314)**

A statement of complaint was made on 13th July 2012 against the Minister for Planning and Environment regarding the delay in resolving a claim for compensation in relation to an historic planning application in respect of the former Mont de la Rocque Hotel, St. Brelade. (The developer's complaint in relation to the refusal of the application itself was heard by a previous Complaints Board, who upheld the decision of the then Planning and Environment Committee to refuse the application.)

A resumé from the Minister for Planning and Environment and the Planning and Environment Department was received on 30th July 2012 and forwarded to the Chairman, who was conflicted, and therefore the matter was redirected to one of the Deputy Chairmen. After consideration of the matter, she concluded that the circumstances of the complaint justified review, but not on the grounds submitted. She contended that it was not in the remit of the Complaints Panel to be able to rule on the actual value of any compensation, but if the Complainant wished to limit the application to the question of the reasonableness of the proposed interest payment calculation, bearing in mind the time delays that had occurred, then a Board was recommended. This was not accepted by the Complainant.

The Deputy Chairman was keen to resolve the matter informally, and approached the Planning and Environment Department requesting information regarding how the compensation offer was calculated. An informal meeting between the Department and the Complainant was held on 24th July 2013, at which a consensus was reached that the interest would be calculated at the Royal Court Rate plus bank base rate for the interest period, which, it was subsequently agreed, would extend back to 2004 when compensation was first discussed with the Department. The Department also extended an apology to the Complainant for the extensive delay in resolving the matter, and a compensation payment was finally made in November 2013.

**Outcome of complaints received during 2013**

**(a) 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 resumé was received from the Minister and the Transport and Technical Services 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.
*(status as of 31st December 2013 – ongoing)*

**(b) 1386.2/1/21(3)**

A statement of complaint was received on 12th April 2013 relating to a decision of the Minister for Transport and Technical Services in respect of restrictions placed upon the PSV licence issued to the business known as 'Pet Cabs'.

A resumé was received from the Minister and the Transport and Technical Services Department on 24th April 2013, and the matter was referred to the Chairman. After consideration of the matter, he concluded that the circumstances of the complaint justified review and a Board was convened on 7th June 2013.

The Board's findings were published as R.67/2013 on 24th June 2013. The Board concluded that the decision made by the Minister could be criticised on the grounds of Article 9(d) of the Administrative Decisions (Review) (Jersey) Law 1982. It considered that the decision to issue the licence with certain conditions imposed upon it could not have been made by a reasonable body of persons 'after proper consideration of all the facts'. Whilst there had been some confusion on both sides, the responsibility for issuing the licence rested with the Minister and the Department, and the Board considered that due diligence should have entailed more than a verbal assurance from the applicant that the business idea was viable.

The Board considered that the phrasing of Condition 11 provided little or no scope for it to be enforced legitimately. The Board accepted that the Minister and his Department had acted in good faith and been well-intentioned, wishing to help an individual with his business proposal, but the phrasing of the conditions, particularly Condition 11, essentially made the licence unworkable. This condition determined that the cab could only be booked if the passenger was accompanied by an animal for at least one half of the complete journey and, despite further clarification by the Department that "at least one leg of any return journey [must include an animal]" it was clear that it would be difficult for any casual observer to know whether or not there was indeed an animal on board; or whether an unaccompanied occupant was on a legitimate return journey.

The Board acknowledged that there had also been fault on the part of the Complainant. His business plan had been inadequate and short of detail. He had delayed appealing against the conditions imposed upon the licence and had accepted the plate, even though he had realised that it would not be possible to run his business as he had intended. He had also neglected to exercise, within the prescribed time limit, the right of appeal to the Royal Court provided by Article 9(7) of the Motor Traffic (Jersey) Law 1935, against the imposition of the conditions. Furthermore, the Complainant had allegedly been working in contravention of Condition 6 of his licence, which stipulated that all work had to be pre-booked.

The Board recognised that there was currently no provision for the Department or Minister to alter or remove conditions from an existing licence, but argued that Condition 11 rendered the licence defective and therefore deficient in Law. It recommended that Condition 11 should be annulled and replaced with a version which was as unambiguous, enforceable and explicit as practicable. The Complainant could then choose either to surrender the licence and wait his turn to be allocated a white plate, or to continue to work under revised and unequivocal restrictions.

The Minister's response was published on 1st August 2013 (R.93/2013) and he responded in the following terms –

> *"Having considered the comments in the Report (R.67/2013), I can now advise the States of the action I propose to take.*
>
> *It was recommended at paragraph 5.8 of the Report that condition 11 of the Complainant's licence should be annulled and replaced with a version which is unambiguous, enforceable and as explicit as practicable. The existing conditions of the licence were approved by Ministerial Decision dated 18th January 2013. To revoke the Ministerial Decision would require the revocation of the Complainant's licence, which can only be done on the grounds at Article 10(1) of the Motor Traffic (Jersey) Law 1935, i.e. where the holder is no longer a fit and proper person or where the vehicle has been used or operated in contravention of a condition set out in the licence. It would not be right to revoke the licence on one of those grounds only to issue another licence, with amended conditions, immediately after.*
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> *In addition, it is not at all clear how the above recommendation is consistent with the Board's finding at paragraph 5.4 of the Report that there is nothing in law that enables the Minister to impose a rule that the cab can only operate in conjunction with the welfare of an animal. If there is some condition that in the Board's view could lawfully limit the cab service to an animal-related service, it would have been helpful for the Board to have suggested the wording that it considered acceptable. It is also unclear what condition would be acceptable to the Board given its comments at paragraph 5.5 of the Report regarding the viability of the business if the carrying of regular passengers is not allowed.*
>
> *In light of the above, and bearing in mind his wish that the licence had never been issued, the Complainant will be invited again, as he has been already, to surrender his licence. The Complainant remains on the waiting list for an "ordinary" restricted taxi-cab licence and for the avoidance of doubt the grant of the conditional licence which is the subject of present focus (and the events surrounding it) have not altered the position that the Complainant would otherwise have occupied on that list. The Complainant will then be treated in the normal way based on his position in that list when making any further application."*

**(c) 1386/2/1/18(3)**

A statement of complaint was received on 3rd April 2013 relating to a decision of the Chief Officer of the States of Jersey Police to terminate the contract of an officer under the Attendance Management policy.

A resumé was received from the States of Jersey Police on 23rd April 2013, and the matter was referred to the Chairman, who requested further information from both parties. Having fully considered the submissions, he determined that there was justification for a Hearing to be convened. A public Hearing was held on 19th October 2013. The findings were published on 19th December 2013 (R.157/2013).

The Board considered that the key issue was whether the Chief Officer and his Deputy had the power to appoint and dismiss a Police Officer, and whether this was able to be determined by the proper construction of the relevant primary and subordinate legislation.

The Board's review of the relevant legislation led to the firm conclusion that all relevant powers relating to the appointment of a Police Officer and the termination of that appointment rested with the Minister. Neither the Chief Officer nor the DCO had powers in relation to the appointment or termination of an Officer's appointment under the Police Force (General Provisions) (Jersey) Order 1974. The Board gave consideration to the terms of the Managing Attendance Policy. It noted that, as the title implied, this was a Policy. It was not an Order by the Minister. By definition it could not confer wider powers on any person other than permitted by law.

The Board concluded that neither the Deputy Chief Officer nor the Chief Officer had the power to dismiss the Complainant in the way that they did. The Board considered that the Complainant's dismissal was also invalid on at least 2 other grounds. On 21st September 2011, he was set a target of no more than 6 days' absence over the ensuing 12 month period. The Complainant was led to believe that 6 days represented the average absence for the Force at that time, although the actual 'average' for the Force at the relevant time was 10.91 days. The Chief Officer informed the Board that an average of 6 days' absence in any year was an 'aspirational' target. Whilst the Board appreciated the difficulties faced by the Chief Officer and the Deputy Chief Officer in managing the Force, including reducing the time taken on sick leave where possible, in the Board's view the Complainant was reasonably led to expect that as long as he was within the average for the Force, his appointment was secure. The Board did not consider that the policy was rationally applied particularly as his illness was genuine and debilitating and this was not disputed. It was only once the illness was diagnosed that the Complainant had begun to receive appropriate treatment for it. In those circumstances, the Board found it to be unreasonable to have taken into account the Complainant's absences before he was diagnosed and receiving appropriate treatment in determining whether his ongoing attendance was acceptable.

Accordingly the Board concluded, pursuant to Article 9(2) of the Administrative Decisions (Review) (Jersey) Law 1982, that the decision made by the Deputy Chief Officer was contrary to law, unjust, based wholly or partly on a mistake of law and could not have been made by a reasonable body of persons after proper consideration of all the facts.
*(status as of 31st December 2013 – awaiting response)*

**(d) 1386/2/1/1(317)**

A statement of complaint was received on 24th May 2013 relating to a decision of the Minister for Planning and Environment in connection with Planning Application P/2011/1673 for the construction of 28 dwellings at the former Plémont Holiday Village site.

This case was somewhat different to other complaints in that the Complainant was not someone with a 'personal' interest in the application, such as the site-owner or developer, but was a group of interested persons, namely the Council for the Protection of Jersey's Heritage.

A brief resumé was received from the Minister and the Planning and Environment Department on 12th June 2013, and the matter was referred to the Chairman, who was conflicted. The matter was then referred to an Acting Deputy Chairman. Legal advice was sought regarding the interpretation of Article 4(e) of the Administrative Decisions (Review) (Jersey) Law 1982, in which it states that: *"The Chairman (or a Deputy Chairman) of the Panel shall not decide that any circumstances justify a review of any matter by a Board if in his or her opinion the complainant has not a sufficient personal interest in the subject matter of the complaint."* Historically the Panel has always interpreted '*sufficient personal interest*' to mean an interest in a property, *et cetera* and not in the sense of 'being interested' in the subject of a complaint.

The test in Article 4(e) was designed to mirror the concept of *locus standi* in judicial review matters. The Greffe has always sought to ensure that any person bringing a complaint to the attention of the Board has some personal connection with the issue and therefore a standing to bring proceedings. The legal advice received was not conclusive.

In the interim, the Minister issued the planning permit and the Parish of St. Ouen commenced a Third Party Appeal. As a result, the Complaints Board process was deferred as the matter was *sub judice*. Subject to the outcome of the Third Party Appeal, the complaints process will be resumed in 2014, once the Panel has met to discuss the legal advice and determine a way forward.
*(status as of 31st December 2013 – ongoing)*

**(e) 1386/2/1/2(316)**

A statement of complaint was received on 10th May 2013 relating to a decision of the Minister for Planning and Environment regarding the issue of an Enforcement notice and failure to respond to the applicant.

A resumé from the Minister for Planning and Environment and the Planning and Environment Department was received on 12th June 2013 and forwarded to the Chairman, who considered that the matter did not justify a Hearing. He referred to Article 4(b) of the Administrative Decisions (Review) (Jersey) Law 1982, which barred the review of a decision if the Complainant had knowledge of it for more than 12 months, unless there were special circumstances. The matter was then referred to the Deputy Chairman, who decided to convene a Hearing as she decided that there were sufficient grounds for the 12 month rule to be extended in this case.

A public Hearing took place on 23rd October 2013, chaired by the Deputy Chairman. The Board's findings were published on 19th November 2013 (R.144/2013 refers). The Board concluded that the Enforcement Notice dated 30th June 2010 was not issued in accordance with the procedure laid down in the Department's scheme of delegation in force at the time, R.40/2010, which was presented to the States on 15th April 2010. No authorisation was sought from his senior by the officer responsible for the decision to serve the notice and who signed it as required by the Minister's code of practice. These particular failings led the Board to conclude that the enforcement notice was *ultra vires*. Over and above these considerations of lawfulness, first, the notice was decided upon by officials, and duly signed and served, without any reference to, or analysis of, the notion of 'continuousness' and 'materiality' as factors in the interpretation of the '8-year rule' in Article 40(1) that the Department brought into play afterwards in seeking to justify its actions, in response

to requests for information from the Complainant's lawyer. It was clear from the file that these factors were developed only in 2013 as a device for seeking to justify the Department's position in the face of legal challenge and when the failure to reply to the Complainant's lawyer was becoming a matter of embarrassment if not concern to officers. Secondly, it was maladministration on the part of the Department that the Complainant's protagonists were informed about the enforcement notice before he received it. Thirdly, it was unacceptable that a document of such material significance to the citizen concerned was signed with an illegible and unknown signature and not demonstrably executed in accordance with prevailing delegated powers. The Board was of the firm view from the evidence it had seen and heard that the '8-year rule' was not properly considered by senior officers at the time that the decision was made to issue the Enforcement Notice in 2010, and that attempts by the Department to address the possible challenge to the Order under the '8-year rule' by creative interpretation of the same only arose after the "rule" came to the Complainant's attention some 2 years after the Order had been issued.

The Board considered that it was totally unacceptable that it took almost 8 months for the Planning and Environment Department to provide a substantive response to correspondence raising fundamental issues relating to the Enforcement Notice, and that it was wholly inappropriate that the Department had confided to an interested party's representative that the Department was unsure about the '8-year rule' under Article 40(1) of the Planning and Building (Jersey) Law 2002. The Board also concluded that it was very wrong that substantive correspondence to a third party about the Complainant's case, correspondence which, moreover, raised a question of doubt about the lawfulness of the Department's case, had not been copied to the Complainant at the time, nor apparently disclosed at the subsequent Royal Court Appeal Hearing.

The Minister responded in the following terms on 18th December 2013 (R.157/2013 refers) –

> *"I have considered the Board's findings as I am required to do. As discussed above, some of these will certainly be considered as part of the ongoing review of the enforcement service and will help us improve the service. I am in a difficulty however as regards issues where the Board disagree with the highest authority of the island, the Royal Court, and with regard to the Board's view on the vires of the decision.*
>
> *I also have a responsibility to consider all material planning factors including the impact upon and the views of the neighbour, and cannot simply refuse to consider these as the Board can.*
>
> *As photographic evidence shows, Mr. M has in recent years restricted the area of the site occupied by unauthorised, non-agricultural storage, and kept this relatively tidy. This is acknowledged and welcomed. Indeed if the level of such storage were reduced to the level evident in 2008, we have already stated that would be considered de minimis. If kept to that level thereafter, the matter would be closed. However, a greater level than that is not de minimis, and I cannot ignore the fact that Mr. M has been using this piece of land without consent.*

*I appreciate the Board's comments and will act on these as stated above. I do not however agree that the Notice is ultra vires, or that my case to the Board in regard of the 8 Year Rule was invalid. The Notice therefore is still in place. Mr. M may of course submit an application as you suggest if he wishes to seek a conditional approval, which if it were approved could also potentially resolve the matter. Alternatively he can reduce the level of storage to the 2008 de minimis level. If however the use continues at a level which is not de minimis then that would be vulnerable to further action."*

**(f) 1386/2/12(318)**

A statement of complaint was received on 1st July 2013 relating to a decision of the Minister for Planning and Environment regarding the storage of building materials on land at the rear of a property in Great Union Road, St. Helier.

Following a brief deferral pending the outcome of a Magistrate's Court Hearing, a resumé from the Minister for Planning and Environment and the Planning and Environment Department was received on 26th July 2013 and forwarded to the Chairman, who considered that the matter did not justify a Hearing, as there appeared from the submissions to be no evidence of injustice or maladministration. The Complainant requested that the matter be referred to the Deputy Chairmen and they concurred with the Chairman. The Complainant was informed of the decision on 27th September 2013.

**(g) 1386/2/1/7(9)**

A statement of complaint was received on 14th July 2013 relating to the handling of an application for Income Support by the Minister for Social Security and the Social Security Department.

A resumé from the Minister for Social Security and the Social Security Department was received on 30th July 2013 and forwarded to the Chairman. He determined that a Hearing should be convened. A public Hearing was held on 16th October 2013 and the findings were published on 15th November 2013 (R.142/2013 refers).

The case centred on the way in which a letter from the Complainant's former employer had been interpreted in respect of his entitlement to Income Support. 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. The Board considered that it was unable to state conclusively whether or not the Complainant had shown the 'severance' letter on 2nd May 2013 as he claimed. The Board, having recognised the highly emotional and stressful situation in which the Complainant 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.

The Board considered that more should have been done to analyse the nature of the payment, and regarded the interpretation of the 'severance' letter to have been a crucial element of the administration of the Complainant's 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 he 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.

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 the lump sum 'severance' payment entirely as earnings on the basis of the letter from the Complainant's former employer without further investigation of the facts was unjust.

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. 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 only for the part of the record for which they were actually present.

The Minister's response (R.157/2013) was published on 17th December 2013. The response was in the following terms –

> ***"Professionalism of Social Security Staff***
> *Firstly I am pleased to note the Board commends (6.2) the service provided by staff at my Department. The Board also acknowledges that they work in "a difficult environment". I am also pleased that the Board concludes that the members of staff who had attended the Hearing had been "professional and responded to the questions put to them honestly, openly, thoroughly and proficiently".*
>
> ***Mr & Mrs. B did not provide the letter dated 26th April to the Department on 2nd May.***
> *I note that the Board agrees (6.3) with the Department that there was inconclusive proof that Mr & Mrs. B provided the letter at the core of the complaint to the Department on 2nd May.*

***Social Security assessed Mr & Mrs. B's claim correctly***
*The Board also agrees (6.6) that Mr & Mrs. B's claim for Income Support was correctly assessed in accordance with our current guidelines for assessing Income Support claims.*

*As is standard procedure, Mr & Mrs. B were given an opportunity to appeal this decision with the Social Security Tribunal. Mr. B initially lodged an appeal but stated to the Registrar that he was not disputing the way the Department had calculated his Income Support claim. He was in fact disputing the statement that the Department had not received his former employer's letter on the date that he said he had provided it. He was therefore advised by the Registrar that his appeal did not fall under the remit of the Social Security Tribunal as this was an administrative issue rather than a legislative one.*

*Further to this he withdrew his appeal request and submitted his complaint to the States of Jersey Complaints Board instead.*

*Had Mr. B advised the Registrar at the time of submission of the original appeal that he was disagreeing with the Income Support Guidelines regarding the treatment of his payment this matter would have been open to consideration by the Social Security Tribunal.*

*For the avoidance of any doubt, the Department correctly assessed Mr & Mrs. B's claim and will not be reviewing this decision any further.*

***Income Support Guidelines were applied correctly***
*Having confirmed that the claim has been accurately assessed within the Income Support Guidelines, the Board suggests (6.6) that perhaps the Guidelines are inadequate to cover the circumstances of Mr. B's termination from his employer.*

*Income Support Guidelines are based on the Income Support legislation which requires a household's total income to be taken into account unless the legislation allows for certain aspects to be disregarded or treated differently i.e. income as capital. Article 7 Income Support (Jersey) Law.*

*Income Support Guidelines require that these funds are treated as income and the £6000 payment that Mr. B received from his employer is therefore attributed over the same period as if Mr. B had been paid his current weekly wage, which in this case was 13 weeks.*

*Therefore this payment was classed as income for the first 13 weeks in the assessment of Mr & Mrs. B's claim. This income was sufficient that they would not receive any Income Support for this period. Mr & Mrs. B were then able to claim Income Support at the end of this period.*

*It is reasonable to expect a household to utilise the receipt of such a payment prior to claiming Income Support. It is financially responsible for a household to utilise a large payment over a number of weeks, particularly when having just lost employment.*

*If the payment was not treated as earnings in this way then Mr & Mrs. B would have received approximately £2,960 of Income Support whilst retaining £6,000 of earnings.*

*It is important to note that Mr & Mrs. B did not seek any advice from the Department prior to Mr. B as leaving the employer.*

*The Income Support Guidelines, agreed by the Minister, do currently make an exception when a claimant has been made redundant. Any redundancy pay is not treated as earning and is disregarded. In essence the Guidelines confirm that redundancy payments are treated as capital and that all other remuneration from an employer, at the end of employment, as income.*

*I am satisfied that the current Income Support Guidelines are just and will remain unchanged.*

***The Department correctly established that Mr. B was not made redundant***
*The Complaints Board suggests (6.8) that the Department could have done more to clarify the basis of Mr. B's termination and that it may have been unjust in its actions.*

*To confirm, the Department was informed verbally (June 5th) by the employer that Mr. B was not made redundant and this was sufficient to assess the claim which the Complaints Board agrees was correctly actioned by the Department.*

*I had also personally confirmed (June 26th) with the employer verbally that Mr. B had not been made redundant.*

*In response to the Complaints Board's comments the Department has sought and now received written confirmation from the employer that Mr. B as was not made redundant.*

*This further confirms that the claim was assessed correctly.*

***Complaints Board recommendation***
*The Complaints Board recommends that the Department seek legal advice in relation to the letter dated 26th April. As requested, legal advice has been sought and the Department remains satisfied that the claim has been assessed in accordance with Income Support Guidelines.*

***Mr & Mrs. B did not act on advice from the Department***
*On May 2nd the Department recommended to Mr & Mrs. B as that they (5.6) should seek advice from JACS in relation to the termination of employment, however, they did not act upon this advice.*

*Mr & Mrs. B did not seek any advice from the Department prior to Mr. B as leaving the employer on April 26th.*

*Whilst presenting the case (3.1), Deputy Southern stated that Mr. B had only sought financial assistance from the Department once before in 2004. In fact he was party to an Income Support claim between August 2009 and January 2011.*

***The Department's policy on recording interactions with customers is robust***
*I am pleased that the Board applauds (6.10) the existing policy within the Department of obliging all staff to record notes on customer interactions within the Department's computer system. As in the evidence supplied by the Department on this case, all notes recorded on our system were provided and consistent with our decision on this case.*

*The Board then recommends (6.10) that in the circumstances of two members of staff dealing with a customer that they both make notes onto the Department's computer system. Whilst the rationale of the recommendation in relation to this particular case is understood, the existing procedures are robust and the Department will not be adopting this recommendation at this time.*

**(h) 1386/2/2/1/4(96)**

A statement of complaint was received on 25th September 2013 relating to a decision of the Minister for Housing and Housing Department in respect of advice regarding an eviction notice and resulting claim for court costs amounting to £2,353.84.

A resumé from the Minister for Housing and Housing Department was received on 30th September 2013, but the matter was deferred until the Complainant had met with departmental officers to attempt to resolve the matter informally. The submission was sent to the Chairman for consideration on 7th November 2013, but the Chairman was conflicted, and therefore the matter was referred to one of the Deputy Chairmen for review.
*(status as of 31st December 2013 – ongoing)*

**(i) 1386/2/1/21(4)**

A statement of complaint was received on 8th October 2013 relating to a decision of the Minister for Transport and Technical Services regarding the level of consultation with residents in respect of road closures associated with the Paperclix Rally 2013.

Initially, an informal resolution was sought, given that the Rally was due to take place the weekend of 11th and 12th October 2013. However the Complainant wished to continue to a formal Hearing and so the formal procedure was then followed.

A resumé from the Minister for Transport and Technical Services and the Department was received on 11th November 2013 and forwarded to the Chairman. The Chairman reviewed the submissions made and, whilst he did not consider that there had been sufficient administrative error to justify a Hearing, he wished to try to resolve the matter informally. He requested that a meeting be convened between the Complainant and the Department, which he would Chair.
*(status as of 31st December 2013 – ongoing)*

**(j) 1386/2/1/4(97)**

A statement of complaint was received on 30th October 2013 relating to a decision of the Minister for Housing and the Housing Department regarding access to the Complainant's housing records.

A resumé from the Minister for Housing and the Housing Department was received on 21st November 2013 and forwarded to the Chairman. He wrote to the Data Protection Registrar for advice in order to attempt an informal resolution of the matter.
*(status as of 31st December 2013 – ongoing)*

**(k) 1386/2/1/7(10)**

A statement of complaint was received on 30th October 2013 relating to the way in which the Social Security Department had processed an Income Support claim.

A resumé was requested from the Minister for Social Security and the Department on 6th November 2013, but the matter was then deferred as the Department attempted to resolve the matter informally. The Complainant met with Departmental officers on 27th November 2013 but subsequently maintained her request for a Hearing to be convened. The Departmental resume was forwarded to the Chairman on 11th December 2013.
*(status as of 31st December 2013 – ongoing)*

**(l) 1386/2/1/5(24)**

A statement of complaint was received on 2nd December 2013 against the Minister for Treasury and Resources and the Treasury and Resources Department, concerning overcharging on a loan made to the Complainant by the States of Jersey in 1999.

A resumé from the Minister and the Treasury and Resources Department was received on 19th December 2013 and forwarded to the Chairman.
*(status as of 31st December 2013 – ongoing)*

**Complaints which were not progressed**

**(i) 1386.2/1/3(19)**

A statement of complaint was received on 13th March 2013 relating to the allocation procedure for secondary school placements. The Complainant was advised that he should pursue an appeal through the Education, Sport and Culture Department in the first instance.

**(ii) 1386/2/1(319)**

A statement of complaint was received on 15th July 2013 relating to the proposed demolition of part of the historic sea-wall along the Esplanade, St. Helier. The Complainant was advised that, as his concerns related to the potential undermining of the political process by actions of officers, his complaint should be redirected to the Chief Executive or Chief Minister.

**(iii) 1386/2/1/2(320)**

A statement of complaint was received on 27th July 2013 relating to a decision of the Minister for Planning and Environment regarding a planning application for a property in St. John. The Complainant was advised that the complaint was 'out of time', having been submitted after the 12 month deadline. Furthermore, the case itself, which was essentially a dispute over land ownership, was not a matter upon which the Board could arbitrate.