
STATES OF JERSEY



**STATES OF JERSEY COMPLAINTS
BOARD: FINDINGS – COMPLAINT BY
MR. A. LUCE AND MR. J. MALLINSON
AGAINST THE MINISTER FOR
INFRASTRUCTURE AND JERSEY
PROPERTY HOLDINGS REGARDING
THE HANDLING OF FORESHORE
ENCROACHMENT CLAIMS (R.71/2018) –
RESPONSE OF THE MINISTER FOR
INFRASTRUCTURE (R.71/2018 Res.) –
RESPONSE OF THE
COMPLAINTS BOARD**

Presented to the States on 8th August 2018
by the Privileges and Procedures Committee

STATES GREFFE

RESPONSE OF THE COMPLAINTS BOARD TO THE RESPONSE OF THE MINISTER FOR INFRASTRUCTURE

States of Jersey Complaints Board

On 11th April 2018, a Complaints Board Hearing constituted under Article 9(9) of the [Administrative Decisions \(Review\) \(Jersey\) Law 1982](#) was held to review complaints by Mr. A. Luce and Mr. J. Mallinson against the Minister for Infrastructure and Jersey Property Holdings regarding the handling of foreshore encroachment claims.

On 1st June 2018, the Privileges and Procedures Committee presented to the States the findings of the Complaints Board Hearing (*see* [R.71/2018](#)).

Response of the Minister for Infrastructure

The Minister, having reconsidered the decision as required by the Board under Article 9(9) of the Law, presented his response to the States on 7th August 2018 (*see* [R.71/2018 Res.](#)).

PPC now presents to the States the Complaints Board's response to the Minister's response.

Response of the Complaints Board

In his reply to the Board's findings, the Minister appears to have misdirected himself on a couple of major points.

In his response to paragraph 8.2 of the report, the Minister states that Jersey Property Holdings ("JPH"), on behalf of the Public, acted in accordance with MD-PH-2006-0094 "to extract the optimum benefit from the Public's property assets". In his response, the Minister asserts that the expression "the Public" is simply a conventional description of property owned by the States on behalf of the Island community.

In his response and in JPH's dealings with the Complainants, the Minister appears to consider that all property owned by the Public is held – and thus should in all circumstances be dealt with – on the same basis. That is clearly nonsense. Some property may be held for entirely commercial purposes (for example the Waterfront), some for the provision of public services (roads, schools, hospitals), and some for more esoteric public benefit (such as Sites of Special Interest, historical monuments). The Minister has chosen to apply an interpretation of maximizing monetary return to the expression "optimum benefit", when clearly that is not appropriate in respect of each and every basis on which the Public holds property.

The basis on which any Public land is dealt with must first be determined by the basis on which that land is held. JPH did not make that assessment in the case of the Complainants, but dealt with it as purely and simply extracting maximum commercial value. Given that in each Complainant's case there was no market for the respective pieces of foreshore other than the Complainants themselves, it could be argued that the land itself had no value other than what the Complainants were prepared to pay for it.

The Board's findings found that JPH had no regard to the benefit to the Public (i.e. the States in its administrative function) in establishing a clear landslide boundary of the

foreshore. Similarly, the Minister, in his response to the findings, makes no acknowledgement of the benefit to the Island community of a substantial number of local home-owners being able to identify for the first time a clear seaside boundary of their properties, which a well-defined and consistent foreshore policy would provide. This stems from the Minister's failure to accept that "the Public" may have different, and even conflicting, responsibilities in its ownership of a particular piece of land or land in general.

It follows that the Board considers that the Minister's obligation of transparency and disclosure in negotiations will be quite different depending on whether those negotiations are of an entirely commercial nature or otherwise. The Board reiterates that it does not consider it to have been appropriate that JPH approached negotiations on an exclusively commercial basis.

The Board is very surprised that the Minister maintains that 16 months was an appropriate period within which to conclude negotiations with the Complainants. Whether that is simply a matter of workload, or commercial transactions being given priority, the Board maintains its view that negotiations in these cases were unnecessarily protracted, and thus stressful and detrimental to the Complainants.

Furthermore, we hope that once a clear policy regarding the fixing of the boundary of the foreshore and the payment of compensation in relation to any encroachments has been adopted, the Minister will review the terms concluded with Messrs. Luce and Mallinson and refund them any difference between the compensation each of them paid and the amount of compensation that would be payable had the new policy been in place at the time.