
STATES OF JERSEY



STATES OF JERSEY COMPLAINTS BOARD: FINDINGS – COMPLAINT BY MS. MAYER AGAINST THE MINISTER FOR TREASURY AND RESOURCES REGARDING THE ADMINISTRATION OF THE CO-FUNDED PAYROLL SCHEME

**Presented to the States on 7th June 2023
by the Privileges and Procedures Committee**

STATES GREFFE

REPORT

Foreword

In accordance with Article 9(9) of the [Administrative Decisions \(Review\) \(Jersey\) Law 1982](#), the Privileges and Procedures Committee presents the findings of the Complaints Board constituted under the above Law to consider a complaint against the Minister for Treasury and Resources regarding the administration of the Co-Funded Payroll Scheme.

Chair, Privileges and Procedures Committee

KLS/

STATES OF JERSEY COMPLAINTS BOARD

8th March 2023

**Complaint by Ms. Mayer against the Minister for Treasury and Resources
regarding the administration of the Co-Funded Payroll Scheme**

**Hearing convened and constituted under the Administrative
Decisions (Review) (Jersey) Law 1982**

Present

Board members –

G. C. Crill, Chair

P. Chapman

K. Leadbetter

Complainant -

N. Mayer

S. Nash

Representative of the Minister for Treasury and Resources –

Connétable A.N. Jehan of St. John, Assistant Chief Minister

Deputy S.M. Ahier of St. Helier North, Assistant Minister for Treasury and Resources

P. Ashley, Head of Cost Benefit Analysis and Investment Appraisal, Treasury and Exchequer

D. Auffret, Senior Manager – Pensions and Care, Customer and Local Services Department

M. Pestana, Advisor, Customer and Local Services Department

States Greffe –

K.L. Slack, Specialist Secretariat Officer, States Greffe

The Hearing was held in public at 10.30 a.m. on 8th March 2023, in the Blampied Room, States Building.

1. Opening

- 1.1 The Chair opened the Hearing by introducing the Board and setting out its remit. He outlined the process which would be followed and clarified that the Board would only uphold a complaint if it felt that the decision, which had given rise to the complaint, was contrary to law, was unjust, oppressive or improperly discriminatory, was based wholly or partly on a mistake of law or fact, could not have been made by a reasonable body of persons after proper consideration of all the facts, or was contrary to the generally accepted principles of natural justice (Article 9 of the Administrative Decisions (Review) (Jersey) Law 1982).
- 1.2 Mr. Crill indicated that the hearing was not a trial, but an examination of the complaint. Those present would be entitled to ask questions and express their views with the aim of eliciting the facts and clarifying any doubts or misunderstandings.

2. Complainant's case

- 2.1 The Complainant's case centred around the Co-funded Payroll Scheme ('CFPS'), which had initially been established by the Government in March 2020, in response to the impact on the economy of the COVID-19 Pandemic, with further iterations following thereafter. The scheme provided a percentage support of up to 90 per cent of total income to a maximum of £2,500. Ms. Mayer, who was a self-employed individual, had accessed funds from the CFPS for a total period of 6 months from April – August 2020 and again in December 2020.
- 2.2 Ms. Mayer described the time at which she had first applied for the CFPS as 'nerve wracking' due to the number of cancellations of work commitments which she had experienced due to the Lockdown. She had anticipated her business flourishing in Summer 2020 as, due to a change in personal circumstances, she had taken an increased number of bookings. She was grateful that the scheme had been introduced and was aware that any over claims would have to be repaid. Accordingly, she had read the guidance carefully, had spoken with other people in a similar position, had rung the helpline to check that she was claiming the correct amount and had taken all possible steps to seek

clarity with regard to the meaning of ‘monthly gross income’ for a sole trader under the CFPS. She told the Board that she had no reason to believe that her application for the CFPS was incorrect, as she ‘had submitted it so carefully’. She informed the Board that she had not received more money from the CFPS than she would have earned through her work in normal circumstances.

- 2.3 The CFPS required new applications to be made for each month claimed. Ms. Mayer indicated that she would have made the same online submission each time, stating that it was ‘complex enough the first time’.
- 2.4 Ms. Mayer had been telephoned on 13th January 2022 by the Customer and Local Services Department to inform her that it was thought that she had been overpaid through the CFPS and had received a subsequent email on the same day. The email indicated that checks had been carried out against the income declared on her 2019 income tax return and this had resulted a discrepancy being identified in the submitted claim for CFPS. It had subsequently emerged that her CFPS claim had related to business turnover, as opposed to actual earnings, with the former being significantly higher. Ms. Mayer informed the Board that she found the tone of this email ‘quite threatening’ and referred to an extract which read, ‘People who have claimed CFPS in error normally repay in full, immediately’. It also made reference to legal action being taken to recover any outstanding funds. She described the request for repayment as a ‘kick in the teeth’, noting that she did not have the money to repay Government immediately and could not understand why it was thought that she had overclaimed as she believed that she had submitted the request according to the instructions received. She described the upsetting impact of receiving such an email and stated that whilst she had received a telephone call in advance, others had not.
- 2.5 The Board was informed of the initial amount sought, but income arising from other business takings had not been taken into consideration and based on additional information provided, the figure had been reduced to £3,365.63 in May 2022 and repayment was now being sought in respect of that sum.
- 2.6 Ms. Mayer contended that the issue had arisen as a direct result of a lack of clarity in the information provided by the Government in relation to the

guidelines associated with the CFPS and this had led to a number of individuals, including her, making claims in good faith and later being pursued for monies owed. Reference was made to the eligibility criteria, as published in July 2020, which stated, among other things, that a business, charity or sole trader must operate in an eligible sector and have suffered a 30 per cent loss in turnover during the month being claimed for and as a result of the disruption caused by the pandemic. Turnover for a business was defined as the total operating income before the deduction of allowable expenses. For sole traders or partners, turnover was defined as trading income before the deduction of allowable business expenses. Ms. Mayer believed that the information she had provided accorded with this guidance. She also noted that applicants had originally been requested to compare month on month figures but this had later changed to overall monthly average, which would have presented challenges for seasonal businesses such as hers.

- 2.7 Ms. Mayer referenced a Corporate Services Scrutiny Panel report which had considered the CFPS and she highlighted the fact that the Panel had noted that the guidelines for the eligibility criteria and the application process had been refined during the pandemic. In its report, the Panel had recognised that, despite best efforts to ensure clarity, guidelines associated with the criteria and the application process itself appeared to have been misunderstood and at times miscommunicated. Ms. Mayer contended that her application for payroll support had been made with honest intentions and had been based on the published eligibility criteria at that time. She questioned whether there was a difference between the guidance and the frequently asked questions ('FAQs') to which applicants had been directed by the helpdesk, as many others had come to the same conclusion.
- 2.8 Turning her attention to the absence of a proper appeals process, Ms. Mayer advised that this had caused further anxiety. In its report, the Corporate Services Scrutiny Panel had noted that whilst there was no right of appeal, reviews had been undertaken in some cases. Ms. Mayer advised that she had contacted Jersey Business at the suggestion of former Senator K.L. Moore, in her capacity as Chair of the Corporate Services Scrutiny Panel, in the hope of seeking a

review only to discover that the support provided by Jersey Business related to the establishment of payment plans.

- 2.9 Noting that an appeals process had been introduced by the Government that had been elected in June 2022 and that 353 appeals had been received, Ms. Mayer suggested that this figure would have increased threefold if people understood the system. She indicated that it was ‘very stressful’ and she had felt ‘railroaded’ through the appeals process. She had written several emails to the Covid Support Schemes Audit Team, asking for clarification around where she had ‘gone wrong’ in her application to the CFPS and had not received any response. She questioned whether she had been deliberately ignored and suggested that the Government was making an effort to get those who had been overpaid to repay ‘out of fear’, particularly as her questions had not been responded to.

3. Minister’s case

- 3.1 The Board was advised that the first phase of the CFPS had been established on 23rd March 2020 and whilst there had been several subsequent phases, the fundamental rules of the scheme had remained largely unchanged, save for some variance in the level of detriment a business/sole trader was required to have, the level of support Government would provide and the breadth of businesses covered by the scheme – dependent on the level of Government imposed restrictions on the various sectors of the economy at any given time. However, for the purposes of the current complaint, the rules had not changed and those that formed the bases for the turnover edibility test and supportable personal income had remained static since they had been launched in April 2020.
- 3.2 The scheme had a number of inbuilt rules which required checks to be passed, where practicable, before payments were made. Claims were made via an online application form which contained declarations confirming understanding of the rules and also agreeing to an audit at any stage to ensure that entitlement was correct and that any monies overclaimed by a business/sole trader would be repaid. In addition to the provision of a dedicated electronic mail address and telephone number which was serviced by the Customer and Local Services

Department, Jersey Business also supported individuals with the claims process and this had been well publicised.

- 3.3 The first stage of the process included an eligibility test, which Mr. Ashley, Head of Cost Benefit Analysis and Investment Appraisal, Treasury and Exchequer, indicated was what the Complainant had referred to in her case (paragraph 2.6 referred). Once it had been established that an applicant qualified for support, it was necessary to determine the quantum of that support and the baseline for the calculation was their personal income. Applicants were asked to declare their average gross monthly income which, for sole traders, was their income after the deduction of allowable business expenses. The reason why the Complainant had been asked to repay monies was that she had declared her turnover (which was required for the eligibility test) in the section of the claim form where she was required to declare her personal income. Monthly applications had to be made because, whilst it was accepted that many would remain static month on month, it was necessary to show detriment and this could not be known in advance. In any normal year, the income of some businesses would reduce, but a drop of 30 per cent (or 20 per cent as was the qualifying figure later in the scheme) was likely to be linked to the pandemic. Conversely, some businesses had thrived during lockdown – such as takeaways – so had never qualified for support. Mr. Ashley stated that the intention had been to provide targeted assistance. At the time relevant to the complaint, it took an average of 5 days for applicants to receive their money. The onus was placed on the applicant to provide accurate information and whilst any significant anomalies would be identified, the process was largely automated.
- 3.4 It was noted that, whilst Government would normally undertake financial checks before making the payment of a ‘grant’, due to the nature of the scheme and the need to make funding available as soon as possible, retrospective checks had been put in place, in line with the advice from key international institutions, including the World Bank, which advocated applying the controls after payment of the grant, as it had been a priority to get money to businesses to support the economy and individuals’ livelihoods. This inevitably created risk, but it was felt to be at a tolerable level given the importance of attaining an appropriate balance between the needs of the economy and the potential requirement to

reclaim a small amount of money that might be overclaimed. In most cases, the 2019 tax return was felt to be the appropriate comparator, as the last full year before the COVID-19 pandemic. However, for growing businesses or ‘start ups’, the figures from January or February 2020 could be used. As an alternative, if 2019 had been a particularly bad year, the 2018 tax return could be referenced, within the scope of the rules, with the intention of achieving a ‘fair outcome’ and businesses were afforded an element of flexibility in this regard.

- 3.5 The intention was to facilitate applications from qualifying businesses and to reduce the bureaucratic burden on them. An audit had been introduced part way through 2020 to ascertain the level of detriment being suffered by businesses and, from September 2020, a new question had been included in the claim form, requiring businesses to submit supporting figures alongside their claim. The second stage of the audit was a comparison between the personal income declared for the CFPS and the figures provided by Revenue Jersey. It was during this process that it had become evident that the figures entered by Ms. Mayer as her average monthly wage for the purpose of the CFPS were erroneous. Ms. Mayer had subsequently submitted additional information in relation to earnings associated with other business and the initial figures for overclaimed monies had reduced as a result and a new figure produced, based on Ms. Mayer’s actual earnings as opposed to business turnover.
- 3.6 The Government position had consistently been that the CFPS was a payroll/salary support scheme which provided a percentage support up to 90 per cent of income (up to a maximum of £2,500) and the principles had been set out on the Government website, within the application form and the associated guidance and FAQ documentation. It was reasonable to assume that any individual receiving a greater amount of money via CFPS than they would normally receive would have queried this. In this particular case, Ms. Mayer had declared monthly earnings of a certain figure in her 2019 income tax return but had indicated that she was earning a larger amount on her application for CFPS. This meant that she had overclaimed £3,365.63, and the Board received a breakdown of the amount.

- 3.7 The Board was informed that when individuals contacted the helpdesk, they were directed to the guidance and the FAQs. Mr. Ashley explained that at times there was the potential for those operating the helpdesk to have been speaking at ‘cross purposes’ with applicants and that there was the facility for calls to be directed to policy officers such as himself. He informed the Board that when the CFPS had initially been introduced, the website had contained an email address for the Economy Team, who had been responsible for devising the policy, but emails had subsequently been channelled through one route. There had been a high volume of claims for CFPS and 14,000 jobs had been supported. Officers had worked long hours in order to respond to individuals and no-one had missed out on financial support ‘due to the delay in waiting for advice’.
- 3.8 Whilst there had initially been no appeals process, one had been introduced by the incoming Government and the Board was informed that it was open to claimants to provide additional information at all points in the process, as had been the case when Ms. Mayer had furnished details of her other business income, thereby leading to a reduction in the amount owed. Mr. Ashley indicated that the initial tests were ‘black and white’, but that the extra information would assist in making a different judgement.
- 3.9 The Board heard from Connétable A.N. Jehan of St. John, Assistant Chief Minister, who chaired the Appeals Panel, which considered cases on an anonymous basis. Ms. Mayer’s appeal had been dealt with by the officer review group which handled most of the straightforward cases. Whilst there were lessons to be learnt, he stated that Jersey should be proud of the CFPS, which had been established at speed. There had been 353 appeals, but in fewer than 20 instances had individuals overtly stated that they had taken advice from the helpline. It was noted that there had been 2 occasions where claimants had been provided with ambiguous information and the repayment required had been reduced in those cases. Mr. Ashley stated that in all other circumstances when individuals stated that they had contacted the helpline, in the absence of proof that ambiguous information had been given, there was no facility to reduce the repayment figure, only to extend the time period.
- 3.10 Due to the fact that the economy was still in recovery, it had initially been agreed that repayments could be made over a 24 month period and for those

whose required a longer repayment, due to individual circumstances, a period of 5 years had been permitted. It had since been determined that repayments could be made over a period of up to 10 years, depending on individuals' income, to avoid hardship and to enable businesses to thrive and grow. Mr. Ashley informed the Board that the Complainant's repayment period was 8 years and 9 months and that, in all cases, the maximum amount reclaimed *per annum* would be 2.5 per cent of the relevant taxable income, using 2019 figures. If an individual's income reduced, this figure could be re-evaluated and *in extremis* the Debt Management Team could undertake a line by line review of income and expenditure, but this had not been necessary to date and legal proceedings had not been taken against any claimant. The *de minimis* level for any reclaimed money was noted to be £100.

- 3.11 In the event that a business had ceased trading, but had received a request for CFPS money to be reimbursed, the repayment would not be progressed as it would be considered that the scheme had failed in its outcomes and this was noted to be the situation in 14 cases where the business had been able to provide verifiable evidence of the cessation of trading. With regard to the Complainant's belief that her income would have increased during the Summer of 2020, Mr. Ashley stated that it was not possible to operate a scheme based on individuals' forecasts and that the policy relating to the CFPS did not allow for what could have been a 'better year'. The administrative burden of trying to decipher what were legitimate forward bookings would have been prohibitive. He acknowledged that the level of support provided by the scheme was 'imperfect' and that, in an ideal world, Government would have provided full support for all losses associated with the COVID-19 pandemic, but this would not have been affordable, so the maximum level of support for each worker, based on the median wage for the sectors in scope of the scheme, had been provided, which was what Government could afford to meet individuals' basic personal financial needs.
- 3.12 Mr. Ashley indicated that the Complainant's scenario had not been foreseen at the time that the guidance had been written, as he had felt that the requisite information was clear if applicants read the FAQs. However, in the event of the scheme being reintroduced in the future, he would include more information on

the claim form in order to minimise the risk of misinterpretation. It was only a small minority of individuals that found themselves in the same situation as Ms. Mayer, namely 8 per cent of cases.

- 3.13 The Government had learnt from experience and had moderated the tone of the emails that were sent to people from whom repayment was sought. The correspondence had previously made use of ‘nudge behavioural techniques’ on the basis that until the consequences of inaction were set out most people would do nothing. “I don’t want you to think it was heartless”, stated Mr. Ashley. “We wanted to help people and not cause them any mental distress or financial hardship” and indicated that the introduction of the appeal process had been of assistance. If individuals raised particular specific points at the appeal stage, he and colleagues would explain how a case had been judged. At the initial stage when comparing declared income for the CFPS with tax returns, the discrepancy would be noted but without any understanding of why the difference existed. The appeals process enabled officers to learn the full set of circumstances.

4. Findings

- 4.1 The Board upholds the complaint of Ms. Mayer on the basis that it finds that the decision of Treasury and Exchequer was contrary to the generally accepted principles of natural justice (paragraph 9(2)(e) of the Administrative Decisions (Review) (Jersey) Law 1982 refers).
- 4.2 The Board acknowledges that the COVID-19 pandemic was an unprecedented event and that the introduction of the CFPS was a bold and brave initiative by Government, which provided invaluable and speedy support to many Islanders and small businesses in particular. The Board acknowledges the exceptional initiative by the then Government in making assistance available on the basis of self-assessment, rather than after all declared information had been checked. The Board further acknowledges that Treasury and Exchequer made it clear that applications would be checked retrospectively and where any overpayment was found to have been made, the Department would seek to recover the amount overpaid.

- 4.3 However, the Board finds that a key element of this case has been around poor communication. The representative from Treasury and Exchequer had a good grasp of the Scheme, which was understandable, as he had devised its latter phases. He felt that people should have been able to understand what they could claim for by reading the Guidance Notes and the FAQs, but this case has shown that the difference between the eligibility criteria and the amount that could be claimed from the CFPS was not clear to some applicants.
- 4.4 The Department used the term ‘turnover’ in determining an applicant’s eligibility for assistance under the Scheme, while using the term ‘gross income’ in order to calculate the level of support. The Department considered that the distinction between the two terms was - or should have been - clear to applicants.
- 4.5 The Board does not share that view. Whilst the Department clearly intended that different criteria be used to determine eligibility for assistance on the one hand and the amount of assistance on the other, the Board does not consider that the Department took adequate steps to ensure that the distinction was understood by all applicants.
- 4.6 It is acknowledged that a helpline was established, but claimants who accessed that helpline were simply referred back to the guidance and the FAQs relevant to the CFPS. When Ms. Mayer had contacted the helpline, she had not been given the clarification that she had sought. The Department had had the opportunity to explain precisely what was required but because those operating the helpline had a scripted response, they did not provide an adequate answer to Ms. Mayer. It seems clear to the Board that the Scheme had not been ‘road tested’ and that whilst those who had established the scheme considered that the application process was perfectly clear and straightforward, they could not grasp that others might not understand the requirements.
- 4.7 The crucial determinant of the grant should have been clearly expressed and highlighted and applicants should have been provided with the direct contact details of someone from whom they could obtain specific personal clarification
-

and support, rather than simply be routed to the helpline manned by the Customer and Local Services Department. All applicants appear to have been dealt with in a binary manner rather than receiving advice tailored to the relevant applicant's personal situation.

- 4.8 Within the context of the scheme, Ms. Mayer did receive more money than the amount to which she was entitled and she should be required to make a repayment. However, the Board feels that there should be an acknowledgement by the Department that she did not understand what figures she was required to submit as it had missed the opportunity to help her understand. Accordingly, the Department should accept some responsibility and the Board suggests that an *ex gratia* reduction in the repayment amount sought from the Complainant should be forthcoming.

5. **Recommendations:**

- 5.1 The Board considers that the then Government and the members of the Treasury and Exchequer team which established and administered the CFPS should take considerable and justifiable pride in the speedy and effective support that the Scheme provided. That the Scheme was devised and implemented in so short a time was commendable. It is of course to be hoped that exceptional circumstances do not again arise which necessitate a similar major scheme affecting so many Islanders, however, on the basis of 'hope for the best but plan for the worst', it must be assumed that some sort of emergency Government intervention to provide essential support for Islanders will again be required at some time in the future.
- 5.2 It is understandable that the creation and implementation of such a scheme becomes wholly immersive for all involved. The Board acknowledges that the Department engaged with outside bodies in the development of the Scheme, but the Board considers that the application process should have been 'road tested' with a cross-section of likely applicants before being implemented. Representative bodies are likely to have a greater level of financial sophistication than many individuals, and so - particularly where a 'one size fits all' application is intended as in this case - it is essential that all elements of a

proposed scheme and its application process are trialled by as wide a range of intended beneficiaries as is practicable in the circumstances.

5.3 The Board is also concerned that as soon as an overpayment had been identified, its recovery was put into the Department’s debt recovery system, with threats of legal action in default of repayment. Given that in the vast majority of cases - and certainly in the case of this Complainant - any overpayment was the result of genuine mistake or misunderstanding, this was insensitive, excessive and deeply distressing for people who were suffering considerable financial hardship even with the benefit of the assistance provided under the Scheme.

5.4 It is accepted that the Department did negotiate repayment terms with individuals, but that was with the spectre of debt recovery through the courts ever-present. The Board recommends that the threat of legal proceedings should have only been introduced as a last resort following a complete failure by the alleged overpayment to engage with the Department.

Signed and dated by:

G. Crill, Chair Dated:

P. Chapman Dated:

K. Leadbetter Dated: