
STATES OF JERSEY



STATES OF JERSEY COMPLAINTS BOARD: FINDINGS – COMPLAINT BY MR B. CHAMBERS AGAINST THE CHIEF OPERATING OFFICE REGARDING THE GOVERNMENT’S RECRUITMENT AND COMPLAINT HANDLING PROCESSES

**Presented to the States on 25th March 2021
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 Chief Operating Office regarding the recruitment processes applied by the Health and Community Services Department and the handling of a subsequent complaint.

Chairman, Privileges and Procedures Committee

STATES OF JERSEY COMPLAINTS BOARD

26 November 2020

Complaint by Mr B. Chambers against the Chief Operating Office regarding the recruitment processes applied by the Health and Community Services Department and the handling of a subsequent complaint

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

Present

Board members –

G. Crill (Chairman)
J. Moulin.
A. Hunter.

Complainant –

B. Chambers.

Representatives of the Chief Minister –

S. Roberts, Director of the Civil Division, Law Officers' Department
G. Charsley, Associate Director, People and Corporate Services

States Greffe –

L.M. Hart, Deputy Greffier of the States
K.L. Slack, Clerk.

The Hearing was held in public at 10.00 a.m. on 26th November 2020, in the Blampied Room, States Building.

1. Opening

- 1.1 The Chair opened the hearing by introducing the members of the Board and outlining the format that the proceedings would take. He explained that the hearing would be informal and that both parties would have the opportunity to be heard. He indicated that the focus of the hearing would be on the processes that had been followed in dealing with Mr. Chambers' complaint following an interview.
- 1.2 The Chair informed those present that, notwithstanding the exceptional circumstances of the COVID-19 pandemic, which had led to extensions of time and an element of leeway, it was inappropriate that this complaint should have taken a year to reach a hearing. The essence of the Administrative Decisions (Review) (Jersey) Law 1982 ('the 1982 Law') was that it provided members of the public with a timely, informal, independent and transparent means to request that a decision by a Minister, or Department, of Government be justified. The fact that the 1982 Law had been in force, virtually unamended, for almost 40 years was indicative that successive administrations had welcomed that independent and transparent means of examining its processes. As a consequence, when that was deliberately obstructed by the Government, by refusing to engage with the process, it cast doubt on its oversight statements. The great strength of the Board was that it had no power – its decisions, findings and recommendations had no immediate consequence and it was for the relevant Minister to act upon the findings and recommendations accordingly. That should make for an open environment, in which all elements of the administration could be freely discussed, in particular the decision in respect of which the complaint had been made. However, the fact that the process had been obstructed in this case was indicative that the Government was not willing to maintain independent and transparent oversight of its processes.
- 1.3 If that was indeed the case, he suggested that it was timely for an Ombudsman, or other body, who had effective power and authority, to be appointed. He opined that the Government should take from the current hearing the message that the leeway that it had been afforded in the past and its delays in responding would not be tolerated in the future. If the Government did not adhere to set timeframes, the process would continue, that notwithstanding. He expressed the wish that those comments would be taken in the spirit in which they were intended and encouraged the administration to embrace the process and to view the Board as a co-operative and scrutinising element, rather than an opponent.
- 1.4 He indicated that a submission had been prepared by the Director of the Civil Division, Law Officers' Department, on 25th November 2020, on behalf of the Chief Minister, which the Board was willing to accept, in spite of its lateness. He acknowledged that there was a query as to whether the Board had the jurisdiction to consider questions arising from employment issues and indicated that he would determine the matter of jurisdiction on the basis of the submission provided by Mr. J. Quinn, the Chief Operating Officer, in his letter dated 17th November 2020. His decision in that regard would be included in the Board's conclusions.

2. Timeline

- 2.1 The Complainant had unsuccessfully participated in an interview, on 23rd September 2019, for a position in the Health and Community Services Department and had subsequently made a Subject Access Request 3 days later. He had received the documentation on 25th October 2019 and, during November

2019 had made 2 attempts to complain, via the customer feedback portal on the gov.je website, but these had not been acknowledged. Consequently, he had posted a letter of complaint at the end of that month and had received an electronic mail message, confirming receipt, on 2nd December. The Complainant had sought an update, on 6th, 12th and 16th December 2019. On 17th December he had been informed that the information regarding his complaint was being compiled. On 24th January 2020 he had requested a progress report and had been told that his concerns were being 'looked into'. On 19th February 2020 he had again contacted the Department and on 21st February had been informed 'So sorry, I do not have a completion date to give to you'. By that time, 92 days had elapsed since Mr. Chambers had first made his complaint.

- 2.2 On 2nd March 2020, Mr. Chambers had contacted Mrs. L.M. Hart, Deputy Greffier of the States, asking the Complaints Board to consider his complaint because he had been unable to obtain any information from the Department as to when the investigation into his complaint might be concluded, despite sending several messages to the Department and, as such, he did not believe that an investigation was being undertaken. Moreover, no effort had been made to discuss his complaint with him, or to inform him what process was being followed in dealing therewith.
- 2.3 On 18th March 2020, the Deputy Greffier had written to the Chief Operating Officer and the Chief Minister, to inform them of Mr. Chambers' complaint and requesting a *résumé* of the Department's case by 24th April 2020, to enable the Chair of the Panel to determine whether the complaint should be considered by a Board. On 24th March, the Chief Operating Officer had responded that Mr. Chambers had not exhausted the internal complaints process, but that the investigation was nearing completion.
- 2.4 On 6th May 2020, Mr. Chambers had received a letter (dated 1st May) from the Interim HR Director (Health and Community Services Department), enclosing the investigation report into his complaint. The Complainant had noted in his submission that this was the first formal correspondence that he had received relating to his complaint (other than with the Deputy Greffier) since 2nd December 2019.
- 2.5 On 1st July 2020, having sent several unanswered electronic mail messages to officers, the Deputy Greffier had written to the Chief Minister, copying in the Chief Operating Officer, to enquire when a summary of the Department's case would be forthcoming. No response had been received to this letter, so having discussed the complaint with the Chair of the Complaints Panel, the Deputy Greffier had again written to the Chief Minister, copying in the Chief Operating Officer, on 7th October 2020, informing him that a hearing would take place on 19th November 2020. She had written:

'This case is highly unusual in that normally the Chairman's decision would have been made after consideration of the submission from the complainant and a summary report from the Department. However, despite repeated requests, the Department had failed to provide a summary. This is the first time since I took over as Executive Officer of the Panel in 2008, that this has occurred and is both discourteous and disrespectful to the Panel, but also to the complainant who has already waited many months for a resolution of the case ... To date I have still not received anything officially from the Chief Operating Office, although I have raised this with officers and most recently with the States Employment Board...'

- 2.6 On 19th October 2020, the Chief Operating Officer had written to the Deputy Greffier, copying in the Chief Minister and indicating that the investigation into Mr. Chambers' complaint had been concluded and that no further action was required. The letter ended, 'Beyond this, matters of internal process and policy of employers are a matter of private law and not public administration and therefore I do not believe it is in the remit of the States Complaints Board. We will therefore not be making any further submissions regarding this matter'.
- 2.7 On 21st October 2020, the Deputy Greffier had responded to the Chief Minister, informing him that the Chief Operating Officer's letter had been forwarded to the Chair of the Panel and that, in the latter's opinion, 'Mr. Chambers is alleging possible maladministration and this is very much within the scope of the Panel'. The letter notified the Chief Minister that the date of the hearing had been moved back to 26th November 2020, to facilitate the Chair completing a period of isolation on return from off-Island, so the Department was given a further week – until 12th November 2020 - in which to prepare a full report in response to Mr. Chambers' complaint.
- 2.8 On 17th November 2020, the Chief Operating Officer had written to the Chair of the Panel, setting out concerns that the Board was operating outside its remit by reviewing a complaint relating to a recruitment process, but noting that the Board would, nevertheless, convene to hear the case. He wrote, 'Following the discussion with your secretariat ... I am advised that papers would be sent out regardless of resolving our differing understanding and that we should submit papers to allow the Panel to consider the matter regardless. By submitting papers, we would tacitly acknowledge participation in a review that we do not believe to be within the remit of the [Board].'
- 2.9 The Chair had responded by way of electronic mail correspondence, via the Deputy Greffier, on 19th November, noting the Chief Operating Officer's refusal to co-operate and submit documents, indicating that the hearing would proceed - irrespective of whether the Chief Minister was represented at what would be a public hearing - and expressing disappointment at the stance adopted by the Department, particularly in raising challenges around jurisdiction at a late juncture, having been in receipt of the Complainant's papers for several months.
- 2.10 On 24th November, the Chief Operating Officer had contacted the Deputy Greffier and informed her that Ms. S. Roberts, Director of the Civil Division, Law Officers' Department and Mr. G. Charsley, Associate Director, People and Corporate Services, would attend the hearing in order to represent the Chief Minister. On 25th November 2020 (as referenced at paragraph 1.4 above), the Director of the Civil Division had provided a submission on behalf of the Chief Minister, which contained *inter alia* an apology to the Complaints Panel 'for the delay in responding to the Panel's requests for information' and an unreserved apology to Mr. Chambers 'both for the delay in responding to his complaint, and that the delay in undertaking the investigation was not communicated to him.'

3. Jurisdiction

- 3.1 As referenced at paragraph 2.8 above, the Chief Operating Officer had questioned the jurisdiction of the Board in his letter of 17th November 2020 to the Chair of the Panel. Therein, he had noted that, in accordance with the provisions of the 1982 Law, a person who was aggrieved by any decision, act or omission, relating to any 'matter of administration' by any Minister or Department, or anyone acting on their behalf could apply to have the matter reviewed by a Complaints Board.

He had suggested that an ‘administrative decision’ was usually one made by public authorities pursuant to statutory, or customary law, powers and which affected members of the public. He argued that they were public law decisions, rather than private law decisions, but acknowledged that the dividing line between the two was not always clear.

- 3.2 He had made reference to the report by the Jersey Law Commission, entitled ‘Improving Administrative Redress in Jersey’ in which it had been stated that, ‘An “administrative decision” is a determination by a public body that has legal effects on a particular individual, business or organisation. In the typical scenario, there is (1) a law either passed by the States Assembly or in a few situations found in Jersey customary law, which (2) empowers a public authority, such as a Minister or Connétable, to (3) make a decision about a person’s rights.’ He indicated that the report defined various types of ‘administrative decision’, but did not make mention of the processing of administration within Government.
- 3.3 He had further contended that the internal processing of administration for the purposes of human resources management was a matter for private law and that any review by a body that was not within the regulated environment had the potential to create a liability for the Government, for which it was not indemnified. That included employment law, discrimination law and safety at work matters. He indicated that those areas were regulated and complaints in respect thereof were overseen by bodies that were independent of Government. As a consequence, he was concerned by the ‘principles of the [Board] extending its remit to employment administration.’ He had cited part of Article 4 of the 1982 Law, which provided 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 matter complained of is not within the jurisdiction of a Board’. He had opined that ‘shall not’ was an absolute prohibition on the Board acting outside its remit.
- 3.4 ‘If this Panel doesn’t, who does have oversight?’ asked the Chair of the Board. Ms. Roberts opined that it rested with the States Employment Board (‘SEB’) because, whilst it did not generally become involved in the *minutiae* of decision-making on individual cases, it was responsible for setting the overarching recruitment and selection processes used within Government, to ensure that the best candidates were appointed and would wish to assure itself that the approved policies were being followed consistently. It also had the responsibility for ensuring that, when the system ‘failed’, the relevant adjustments were made to the recruitment process, to make it fair and transparent.
- 3.5 Mr. Chambers stated that the SEB had never communicated with him in respect of his complaint and he wouldn’t have wished it to have done so, because he felt there was inadequate distance between the Board and the civil servants involved in his case. ‘I wouldn’t have faith in the SEB looking at it’, he said.
- 3.6 The Board questioned to which body – if not the Complaints Panel - a person should make a complaint if, having raised their grievance with the SEB, they remained dissatisfied. Ms. Roberts suggested that if they had exhausted the complaints procedure, they might wish to take the matter to the Employment Tribunal. However, the Board opined that Mr. Chambers’ complaint was not one which fell within the remit of the Employment Tribunal, because it related to the process and the delays in handling his complaint. Ms. Roberts indicated that she would have expected that to be pursued up the hierarchy within the Government.

- 3.7 The Board stated that amongst the functions of the SEB, as set out in Article 8 of the Employment of States of Jersey Employees (Jersey) Law 2005, was the requirement to issue codes of practice concerning the procedures for recruitment of States' employees. It suggested that if someone wished to challenge those codes of practice on the basis that they were either 'unfair', or 'unjust', that was surely a matter for the Complaints Panel. Ms. Roberts suggested that there was a fundamental issue around Article 2 of the 1982 Law and that, clearly, the Panel and Government held differing views in respect thereof. The Panel was a creature of statute, established by the 1982 Law and its jurisdiction was set out in Article 2. The Chair countered that the SEB was, likewise, so established.
- 3.8 Ms. Roberts opined that the fact that no forum existed, to which to complain about a particular issue, did not mean that that vacuum should automatically be filled by the Complaints Panel. She did not believe that what could be characterised as private law disputes were properly matters which fell within the scope of Article 2, but acknowledged that this should be discussed and debated outside the forum of a particular complaint.

4. Summary of the Complainant's case

- 4.1 Mr. Chambers informed the Board that his initial complaint to the Department, which he had made in November 2019, had related to an interview process. He indicated that when he had eventually received the report into that complaint, in May 2020, he had not agreed with the outcome, but acknowledged it to be 'thorough and detailed' and accepted that, as a consequence, his initial complaint had been resolved.
- 4.2 The Chair stated that whilst Mr. Chambers' complaint to the Board centred on the Department's handling of the complaint and whilst the Board had no intention of reviewing whether the appropriate candidate had been selected at the interview, there were some issues around the recruitment process that the Board wished to consider.

Element of the original complaint to the Department (largely based on the information contained within the Report into the complaint)

- 4.3 The post for which Mr. Chambers had applied within the Health and Community Services Department had initially been advertised without a licence. Although he had not been resident in Jersey for the requisite 5 years, he had applied, but because none of the applicants were 'entitled' (able to work anywhere without requiring permission to be employed), the position had been allocated a licence and re-advertised. Mr. Chambers had re-submitted his original application at that time. However, because he had previously applied for the same role, he did not appear as a 'new' applicant, so his application had not been sent on to the recruiting manager, because it was already in the system. That was in line with the recruitment protocol that only required newly submitted applications to be forwarded to recruiting managers for shortlisting. Mr. Chambers' submission, as a previous applicant, would not have been automatically forwarded unless he had sent in a brand new application in response to the second advert.
- 4.4 Because the People Hub had not re-submitted Mr. Chambers' original application, the recruitment Manager had assumed that the Complainant had withdrawn his application. It was subsequently clarified that this was not the case, that he remained interested in the position and this error was rectified prior to the interviews by adding Mr. Chambers to the shortlist.

‘I thought the application would carry through and it didn’t’, Mr. Chambers informed the Board.

Complaint to the Complaints Board

- 4.5 Mr. Chambers explained that his rationale for bringing a complaint to the Complaints Board was that it had taken such a long time for the Department to provide him with any acknowledgment that his initial complaint was being actively considered. He had not received confirmation that the processes were being followed and nor had he been furnished with any timescales for the investigation of his complaint. He had found himself regularly contacting the Department, requesting an update. ‘I don’t believe that I hectorred, or was overly zealous’, he said. He indicated that he was not convinced that his initial complaint would have been dealt with if he had not contacted the Deputy Greffier, with a view to having his complaint heard by a Board, which had prompted her to write to the Chief Operating Officer. ‘I am not satisfied that the Government of Jersey took the matter seriously’, he said. ‘My perception was that they regarded the nature of the complaint with contempt.’
- 4.6 When the Board asked to whom he had addressed his initial complaint, Mr. Chambers explained that he had twice attempted to send it via the gov.je website, as referenced at paragraph 2.1 above. On each occasion, he had received an automated notification to the effect that it had been successfully submitted, but because he had not been subsequently contacted, he had written a ‘physical’ letter and posted it several weeks later, addressed to Human Resources. He had sought clarification on whether the issue he had around the interview process should be classified as a ‘grievance’ or a ‘complaint’, but had not received a response to his query, so had remained uncertain whether he was following the correct process.
- 4.7 The Chair of the Board asked Mr. Chambers what he hoped to achieve by bringing his complaint to the Board. He stated that he had now received an apology, but sought assurances that the Department had learnt lessons and that the situation in which he had found himself would not be replicated for himself, or any other person, in the future because it had been ‘totally unacceptable’. Mr. G. Charsley, Associate Director, People and Corporate Services indicated that he apologised, on behalf of Government, to Mr. Chambers and acknowledged that in handling his complaint ‘it shouldn’t have taken this length of time’. He also provided the assurances sought.

5. Summary of the Minister’s Case

- 5.1 With regard to part of the initial complaint around Mr. Chambers almost missing the opportunity to be interviewed for the licensed position within Health and Community Services Department, Mr. Charsley stated, ‘Ordinarily, if we change the essential criteria it is a new process. In best practice, you go back to the previous applicant pool to see if we should carry anyone forward.’ He indicated that, in his opinion, any employable person, who had previously applied for a position, should be contacted, to ascertain whether they still wished to be considered for that position, when it was re-advertised, rather than relying on an automated process.
- 5.2 He explained that the shortlist for a position would be compiled by the panel supporting the recruiting manager in making the appointment and that the same individuals would also carry out the interviews. Typically, this would comprise 3 people *viz* the line manager of the prospective employee, who would chair the panel, an independent person from another Department (who was not necessarily

an HR practitioner) and one other. The independent would ensure that the interview questions were being asked appropriately and that all candidates were afforded the same opportunities. After the interviews, each candidate would be scored by the panel against the criteria relevant to the position. This would potentially result in one, or more, people who did meet the requisite standards. At that point, it was important to have clarity around which was person was the better candidate. 'I always recommend that if you have people who are appointable, but who are not appointed, they are put in a pool and you go back to them in the future,' said Mr. Charsley.

- 5.3 Mr. Charsley clarified that any candidates within the talent pool would not receive preferential treatment. They would have demonstrated that they were appointable, but it was important for them to be compared and contrasted with other applicants as part of a fair process. He indicated that there was not a Government-wide talent pool, but explained that a Department might have a similar position to one for which a person had narrowly been beaten by another candidate and decide to invite them for interview. Whether an applicant was in the talent pool, or not, would not impact on whether they would be selected for the post.
- 5.4 The Board noted that one of the recommendations, which had been made by the author of the Report referenced at paragraph 2.4 above, had been that consideration should be given to 'adding all appointable candidates to the talent pool as the chances of new roles becoming available cannot be predicted'. It enquired as to whether this recommendation had been implemented, but Mr. Charsley indicated that he did not know.
- 5.5 Mr. Charsley informed the Board that at the time that Mr. Chambers had made his initial complaint – both electronically and in hard copy - it would have been received by a Human Resources ('HR') team located within the Health and Community Services Department. During the Summer of 2020, after Mr. Chambers had made his complaint, responsibility for handling complaints about that Department had been transferred to a central HR team and it was noted that this had already happened for other Departments. In addition to the central HR team, each Department was allocated an HR business partner to provide support. The Chair suggested that at the time of Mr. Chambers' complaint, when the HR function had been located within the Health and Community Services Department, there should have been an identifiable system and that it should have been easier to manage just the complaints relating to that Department. 'In principle you might think that', responded Mr. Charsley. 'We have acknowledged that the processes were not clear and that there was an unacceptable delay in responding. If there had been clearer processes, he would have received a more timely response.'
- 5.6 It was noted that the investigation report into Mr. Chambers' complaint had been prepared by a Senior HR Business Partner within the Health and Community Services Department and the Board queried whether it was normal practice that the report should be written by someone in the Department about which the initial complaint had been made. 'This was a complaint about recruitment and selection, so it was not unusual. It was done by someone from HR, who would understand that function', explained Mr. Charsley. However, he indicated that ACAS guidance was now followed for complaints of this type, which would involve the appointment of an 'independent' investigator from another section of the Government of Jersey. In the event that a matter was very serious and independence crucial, someone from outside the organisation could be used, but

this had not been the case with Mr. Chambers' complaint. Mr. Charsley explained that in adhering to the ACAS guidance, it was possible to identify any particular issues or concerns and to have an overview of the length of time taken to deal with complaints and to provide information to complainants.

- 5.7 If Mr. Chambers were to have made his complaint at the current time, he could have expected a much 'cleaner' process, suggested Mr. Charsley. He would have been contacted in a timely manner to confirm receipt of the complaint and would have been provided with a clear indication of the process that would be followed in reviewing the complaint and also an indicative timeframe for resolution. He would have received notification that an investigation was going to be undertaken and would have been contacted as part thereof. In the event that any issues required further clarification, which slowed the process, he would have been updated as to the rationale for the delay. Mr. Charsley informed the Board that there was written guidance and a diagram on the gov.je website, which clarified the 3 levels of complaints handling and provided indicative timescales, although the time taken to resolve a complaint would depend on the complexity thereof, although it generally took between 4 and 8 weeks. The Chair asked the Complainant whether he felt that to be a reasonable period of time. 'Yes, absolutely. Perfectly fine', he said. 'I would have expected to be communicated with as described, but in reality the opposite happened.' 'So we come back time and again to a breakdown in communication', suggested the Chair. 'He heard nothing for 6 months and had no idea what was happening, but you're saying that has now completely gone and he would be completely involved from the time of the complaint and receive feedback.'
- 5.8 The Board queried whether, in handling complaints, the Government employed a 'stop the clock' system, which would ensure that complainants were fully apprised of any delay in the processing of their grievance. Mr. Charsley indicated that there was no formal guidance to that effect, but that the people who investigated complaints understood the broad timelines and could explain any anticipated delays to complainants. He stated that there was a commitment to progress complaints and complete investigations within the shortest possible timeframe.
- 5.9 The Board was informed that the person leading the casework management team, which was located within People Services and comprised HR professionals, would decide who should investigate a complaint. Oversight of the investigation would rest with the case manager, who was also an HR professional, who would liaise with the investigator and the complainant and confirm that things were appropriately documented. A standard process existed whereby the Manager was responsible for ensuring that all recommendations were followed up, in order that a case could be closed. 'It is important to have a positive mindset when complaints are made and to see them as an opportunity to improve', stated Mr. Charsley, emphasising the importance of acting on the recommendations in order to enhance the system.
- 5.10 Mr. Charsley was asked whether it had been immediately clear to him that the treatment of Mr. Chambers' complaint had not met the requisite standards. He indicated that from a casework management perspective it had been closed, because the report had been issued in the May. However, he had not personally dealt with the case as part of his own personal portfolio, because it had gone to the Health and Community Services Department, whereas his role included management of the HR managers team.

- 5.11 Ms. Roberts reiterated the apology that had been made to Mr. Chambers and apologised to the Board, on behalf of the Department, for the difficulties that had arisen.
- 5.12 Mr. Charsley emphasised the improvements that had been made to the handling of complaints, since Mr. Chambers had complained. ‘There is a human side to every complaint,’ he said ‘and you wouldn’t want people to be stressed because complaints are taking an unnecessary time.’

6. Closing remarks from the Chairman

- 6.1 The Chairman thanked both parties for attending and for their input. He stated that a report of the hearing would be prepared in due course, which would be circulated to both parties for their feedback on the factual content. Thereafter, the Board’s findings would be appended thereto.

7. Jurisdiction

- 7.1 In accordance with Article 3 of the Administrative Decisions (Review) (Jersey) Law 1982, the Chairman and Deputy Chairmen considered the issue of jurisdiction as a threshold question – i.e. whether or not the present complaint, is or is not, within the jurisdiction of the current Board. This part of the Decision sets out their conclusion on the issue of jurisdiction.
- 7.2 Having carefully considered the submissions made, the Chairman and Deputy Chairmen unanimously concluded that the complaint was within the jurisdiction of the Board.
- 7.3 The Respondents had repeatedly failed to fully engage with the process and made no submissions despite having been afforded many more opportunities to do so than was normally the case. Such lack of engagement is unacceptable and unprecedented. As a preliminary matter, the Board notes that the jurisdictional objections were raised for the first time very late in the proceedings, many months after the complaint had first been made and referred to the Respondents. This is inappropriate and should not happen in future cases unless there is some extremely good reason to justify the delay in raising the issue. In litigation generally, if a jurisdictional challenge is going to be made, it must be made promptly. The same is true for proceedings before a Board.
- 7.4 Any other procedure – and certainly challenges as late as the one made in the present case – risk unfairness to the complainant in an individual case who, as here, had been proceeding for a very considerable period of time on the basis that the merits of the complaint would be investigated in a public hearing, only then to be told at the eleventh hour that there was an objection to that investigation proceeding. It also risks wasting cost (both to the public purse where civil servants have been involved in preparing for the hearing and legal costs in those cases where any of the parties are legally represented). Further, not every Board will be chaired by someone with legal experience and many complainants do not have the benefit of legal representation.
- 7.5 In future, therefore, any challenge on jurisdiction should be formulated and submitted to the Chairman of the Panel as soon as is reasonably possible after the papers are referred to the putative Respondent and should, as a minimum, contain a fair and balanced explanation of the relevant facts and copies of all relevant legislation and policies, together with any legal submissions, to enable the

Chairman or one of the Deputy Chairmen to make an informed decision on the issue in accordance with Article 4(a) of the Law.

- 7.6 The jurisdiction of a Jersey Complaints Panel and any Board constituted to determine a complaint derives solely from the Administrative Decisions (Review) (Jersey) Law 1982 ('the Law'). The provisions of the Law that are particularly relevant for present purposes are as follows:

2. *Where any person (referred to in this Law as the "complainant") is aggrieved by any decision made, or any act done or omitted, relating to any matter of administration by any Minister or Department of the States or by any person acting on behalf of such Minister or Department, the person may apply to the Greffier to have the matter reviewed by a Board.*

...

9. ...

(2) *Where a Board after making enquiry as aforesaid is of opinion that the decision, act or omission which was the subject of the complaint –*

- (a) *was contrary to law;*
- (b) *was unjust, oppressive or improperly discriminatory, or was in accordance with a provision of any enactment or practice which is or might be unjust, oppressive or improperly discriminatory;*
- (c) *was based wholly or partly on a mistake of law or fact;*
- (d) *could not have been made by a reasonable body of persons after proper consideration of all the facts; or*
- (e) *was contrary to the generally accepted principles of natural justice;*

the Board, in reporting its findings thereon to the Minister, Department or person concerned, shall request that Minister, Department or person to reconsider the same.

...

(8) *In any case where a Board requested reconsideration of any matter, the Board may, if it considers its findings have been insufficiently considered or implemented, present a report to that effect to the Privileges and Procedures Committee.*

...

11. *The provisions of this Law shall be in addition to, and not in derogation of, any other remedy which may be available to a complainant.*

- 7.7 The policy of the Law is clear. It was enacted to provide a mechanism by which those aggrieved by, in simple terms, any matter of administration by a public authority could, in appropriate cases, have that decision investigated in public by an independent Tribunal comprised of individuals from the community. It provides for an open and transparent review, at no cost to the complainant, of the decisions, acts or inaction of those who are in the service of the public, which have adversely affected the complainant in question. Through the mechanism of the Complaints Panel's consideration of individual complaints, it also provides the opportunity for public scrutiny, consideration and recommendations by an independent body drawn from members of the community in Jersey. Importantly, the Complaints Panel has no power to grant financial or other relief, beyond

reporting its findings to the public entity about whom a complaint has been made, to request a reconsideration of any matter, to report to the Privileges and Procedures Committee and to make recommendations in such reports on individual cases or more generally in its annual report to that Committee. This leaves the ultimate decision as to whether to give redress to a complainant in an individual case, to investigate or reform apparent examples of administration and practice which fall below the requisite standard, and whether or not to sanction any individuals or departments involved, with the elected members of the States and those in public service charged with responsibility for the same.

- 7.8 As will be apparent from that brief summary, the Jersey Complaints Panel is a relatively unique body. It is made up of volunteers from members of the community in Jersey. It is not exercising the powers of a Court or a Tribunal: our ‘power’ is simply to expose the administration in an appropriate case to public scrutiny, ensure that any failings on the part of the administration are made public but, ultimately, drawn to the attention of those who are democratically elected in Jersey to control and direct the administration of the Island. The fact that the Complaints Panel is not intended to be a substitute for a Court, or Tribunal, is reinforced by Article 11 of the Law, which expressly provides that the right of any complainant to invoke the jurisdiction of the Complaints Panel is in addition to, and not in derogation of, any other remedy which may be available to a complainant.
- 7.9 The jurisdiction of a Board is drawn widely. The reference to ‘*any Minister or Department of the States or by any person acting on behalf of such Minister or Department*’ is a broad description which covers the decisions, actions or inactions of any person engaged in the public service. Although it appears to be suggested that the Board’s jurisdiction to intervene in this (and other) cases is limited to those limited category of cases in which the supervisory jurisdiction of the Royal Court could be engaged (i.e. by an application for judicial review), that is incorrect. Had that been the intention of the States in enacting the Law, it would have said so. Such a limitation on jurisdiction is straightforward to formulate: to take but one example, in the UK Terrorism Act 2000, the Proscribed Organisations Appeal Commission has jurisdiction to hear appeals against a refusal to overturn the proscription of entities as terrorist organisations and provides that the ‘*Commission shall allow an appeal against a refusal to deproscribe ... if it considers that the decision to refuse was flawed when considered in the light of the principles applicable on an application for judicial review*’.
- 7.10 As will be apparent from the terms of the Law set out above, the States has not limited the jurisdiction of the Complaints Panel in such a way. It has done the opposite. That is evident from the fact that the grounds on which a Board may make recommendations is expressed in much wider terms than the grounds on which an application for judicial review might succeed. The grounds in Articles 9(2)(c) to (e) summarise the grounds on which an application for judicial review might historically succeed (certainly at the time the Law was originally enacted).
- 7.11 The grounds in Articles 9(2)(a) and (b) go wider than that.
- 7.12 The reference in Article 9(1)(a) as being ‘contrary to law’ must be a reference to law in the wider sense (i.e. to encompass private law issues) because otherwise the subsection would be otiose (since errors of law in the public law sense are covered by Articles 9(2)(c) to (e)).

- 7.13 The grounds in Article 9(2)(b) are deliberately framed to cover ‘unfairness’ in a more general sense, including where there has been injustice (by the standards of ordinary persons), oppression or discrimination including circumstances where the individual may have been acting lawfully in the sense that there was an underlying law or practice which they were following. Further, the concepts of ‘unjust’ and ‘discrimination’ in particular may be relevant to an application for judicial review, but they also cover matters which are covered by other enactments (for example, unfair dismissal and discrimination on the grounds of sex, age or race). They also afford a Board the opportunity to enquire into and make recommendations in relation to actions which appear to be unfair, or oppressive, or discriminatory, even if there is not public law or private law remedy available to the complainant. That is consistent with a clear public policy underlying the Law that the consequences of decisions, actions, or omissions by those in the service of the public should not *prima facie* be unfair, in the sense of being unjust, oppressive, or improperly discriminatory, whether that is in relation to issues which raise matters of public or private law, or more generally.
- 7.14 One would have thought that such a statement should be uncontroversial. If there are cases which cause unfairness/injustice or are oppressive or appear to discriminate against a citizen, or group of citizens, there must, at the very least, be a real public interest in having that decision scrutinised by an independent body and in public; and if that body finds that there has been such unfairness/injustice, oppression or discrimination, there must be real public interest in the public servant or Department responsible for it being required to reconsider it or to justify it, this time under the particular scrutiny of the public and the States. That underlines the unique status of the Complaints Board to which we have referred above: we cannot change the decision or substitute our decision for that of the public service or Department in question; all we can do is identify failings where we conclude that they have occurred, require those responsible for making the decision or taking the action to rethink it or justify themselves in public and/or before the States and make observations and recommendations to the Privileges and Procedures Committee about matters that have come to our attention which they, or other appropriate public servants, may wish to investigate or change.
- 7.15 We should, however, record our concern at what is, in our view, a recent tendency of some public servants and Departments to avoid public scrutiny of their actions by the Complaints Panel. This is not the only case where issues of jurisdiction have been (belatedly) raised, or by not fully engaging with the process once a complaint has been referred for consideration by a Board. With respect, such attempts should stop: if the States wishes to limit the jurisdiction of the Complaints Panel, it should change the Law accordingly and explain in public why it is opting for less transparency and public scrutiny of the public service in Jersey.
- 7.16 For the reasons we have set out in this section, our conclusion is that, in principle, a Board has jurisdiction in relation to the decisions, acts and omissions of the States Employment Board (SEB). The SEB is established by the Employment of States of Jersey Employees (Jersey) Law 2005. This Law establishes the SEB, the employment under contract of persons by SEB on behalf of the States or an administration of the States, the determination by SEB of the terms and conditions of such contracts of employment, the establishment of the Appointments Commission to oversee the appointment of persons to significant public positions and determine procedures for the appointment of certain persons employed by

other persons on behalf of the State and the regulation of certain political activities of certain States' employees. Its functions are listed under Article 8 –

8 Functions of States Employment Board

(1) The States Employment Board shall –

- (a) employ persons on behalf of the States and administrations of the States;
 - (b) ensure that the public service conducts itself with economy, efficiency, probity and effectiveness;
 - (c) ensure the health, safety and well-being of States' employees;
 - (d) determine any other matter that may reasonably be considered necessary for the proper administration and management of States' employees; and
 - (e) discharge any other function conferred on it by or under any enactment.
- (2) The States Employment Board shall, for the purpose of the discharge of the functions described in paragraph (1)(a) to (c) –
- (a) give directions regarding consultation or negotiation with States' employees, or with representatives of States' employees, concerning the terms and conditions of employment of States' employees;
 - (b) issue codes of practice concerning –
 - (i) the training and development needs of States' employees,
 - (ii) the procedures for recruitment of States' employees,
 - (iii) the procedures for appraisal of the performance of States' employees,
 - (iv) the procedures for disciplining, suspending and terminating the employment of States' employees, and
 - (v) interventions by the Commission under Article 26A.

7.17 It can be seen from the foregoing that the processes and procedures, by which decisions are made and the policies adopted are all matters which would seem to us to fall within the ambit of Article 2 of the Law and we have therefore concluded that the Board has jurisdiction to consider the complaint.

8. Findings

- 8.1 The Board having decided that there was jurisdiction for a Board to consider the complaint raised by the Complainant as a preliminary matter, proceeded to consider the substance of the complaint made.
- 8.2 The Respondent's refusal to cooperate and submit documents for the hearing was of great concern to the Board. It goes without saying that it is disrespectful of the Board and its role. The refusal to co-operate is something which, in itself, should be a matter of public concern.
- 8.3 On a more practical note, the refusal to engage could have resulted in the Chief Minister, as Chair of the States Employment Board, having no representation at what was a public meeting. The Board considered that the lack of engagement was a challenge to the proper oversight of public administration by a body charged by the States of Jersey to ensure open and fair administration by Departments and Ministers, and an attempt to avoid any scrutiny of actions taken. The Board does not believe such an approach constitutes good governance

consistent with effective and transparent administration and was pleased that eventually a decision was taken for officers to attend the meeting.

- 8.4 The Board upheld the complaint in accordance with Articles 9(2) (b) and (e) of the Administrative Decisions (Review) (Jersey) Law 1982 on the grounds that the Department's actions had been oppressive and contrary to the generally accepted principles of natural justice.
- 8.5 The Board considered that there had been a failure to deal adequately with this complaint. The process had been flawed and the time taken to respond to the complaint had been unacceptable. The Board was reassured to hear that the complaints process has subsequently been overhauled, but recommends that the following be implemented to enhance the system further -
- The complaints process should set out a clear timetable by which the various stages should be completed. Both sides should be aware of their obligations and entitlements under the process at the outset. In order to provide for exceptional circumstances which make adherence to the timetable impractical (rather than merely inconvenient), there should be a "stop the clock" provision, which is notified to both sides in the event of any delay in the handling of the grievance;
 - that there should be an appeal process available; and
 - that the system should automatically escalate the complaint to the next stage of the process in the event that any of the designated timescales are not met.
- 8.6 Mindful that this was a centralised Government-wide complaints system, the Board expects that there should be an annual report produced and presented to the Assembly detailing the cases dealt with throughout the year, providing a breakdown of those cases on a Departmental basis and the outcomes delivered, showing any recommendations arising and the extent to which they had been delivered.
- 8.7 The Board is unclear who holds ultimate political oversight of the Feedback complaints system and requests that this be confirmed and made public.
- 8.8 The Board recognises that there has been an unreserved apology made to the Complainant and expresses the hope that the revised complaints system will obviate the need for a similar case to be heard by the Board in future. It is also hopeful that those charged with the administration of the Island who are appointed by the States will be prepared to have their decisions considered by an independent body, in public and co-operate fully with that process. The Board expects that will promote best practice in administration and the public service rather than hinder it; and will certainly give the public greater confidence in the public administration in Jersey.
- 8.9 The Board wishes to receive a Ministerial response to its Report and Findings within 3 months of publication.

Signed and dated by –

G. Crill, Chairman Dated:.....

J. Moulin Dated:.....

A. Hunter Dated:.....