
STATES OF JERSEY



STATES OF JERSEY COMPLAINTS BOARD: FINDINGS – COMPLAINT BY MRS. ELAINE HUGGETT AGAINST THE MINISTER FOR SOCIAL SECURITY REGARDING THE WAY IN WHICH HER PENSIONS CLAIM WAS ADMINISTERED

**Presented to the States on 20th December 2018
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 by Mrs. Elaine Huggett against a decision of the Minister for Social Security regarding the way in which her pensions claim was administered.

Deputy R. Labey of St. Helier
Chairman, Privileges and Procedures Committee

STATES OF JERSEY COMPLAINTS BOARD

8th November 2018

**Complaint by Mrs. Elaine Huggett against the Minister for Social Security
regarding the way in which her pensions claim was administered**

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

Present

Board members –

C. Beirne (Chairman)
G. Fraser
D. McGrath

Complainant –

Mrs. E. Huggett
Mrs. S. Huggett

Minister for Social Security –

D. Auffret, Head of Contributory Benefits, Social Security Department
T. Noel, Senior Adviser – Pension Zone, Social Security Department

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 8th November 2018, in the Blampied Room, States Building.

1. Opening

- 1.1 The Chairman opened the hearing by introducing the members of the Board and outlining the process which would be followed. He indicated that the proceedings were informal and that it was an opportunity for Mrs. Huggett to have a fair hearing within a supportive environment. He informed both parties that the Board was not a court of law and that its members were independent professionals, who would listen to the evidence and provide Mrs. Huggett with advice and support if appropriate. Although the Board did not have the power to order the Minister for Social Security to take any action, it could make recommendations.

1.2 The Chairman clarified that the Board operated in accordance with the provisions of the Administrative Decisions (Review) (Jersey) Law 1982 (“the 1982 Law”) and was responsible for considering whether any decision, act or omission, which was the subject matter of the complaint –

- was contrary to law;
- was unjust, oppressive or improperly discriminatory, or was in accordance with a provision of any enactment or practice which was or might be 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.

1.3 The Chairman informed Mrs. Huggett that it was important that he brought this to her attention, because in 2017 she had appealed the decision of the Social Security Department (“the Department”) in respect of the backdating of her pension to the Social Security Appeal Tribunal (“the Appeal Tribunal”), and it had been dismissed. The Appeal Tribunal had not found that the Department had acted in a way which was contrary to law, and the Chairman indicated that this would not be a finding of the Board, but it could comment on whether or not it considered the way in which the Department had dealt with Mrs. Huggett to be contrary to the generally accepted principles of natural justice.

2. Summary of the Complainant’s case

2.1 Mrs. Huggett had been born in 1955 and had registered with the Department prior to 1st January 1975. As a consequence, the provisions of Article 25(7) of the [Social Security \(Jersey\) Law 1974](#) applied to her. This meant that, as a woman, she had been entitled to claim an old age pension on reaching the age of 60 in March 2015. The Board noted that Mrs. Huggett was one of a relatively small group of women who were in a position to claim their pension at that age.

2.2 In November 2013, Mrs. Huggett had contacted the Department and had been provided with a pension forecast application form. On the basis that some of her paperwork, including her *decree absolute*, had been abroad, where, for the last 20 years, she had spent several months each year, Mrs. Huggett had not been able to return the form until February 2014. In March 2014, the Department had written a 2 paragraph letter to her to advise that she would be entitled to her pension at 60 at a rate of £73.13 per week.

2.3 Mrs. Huggett informed the Board that at some point that year, she had become aware that the pension age had increased ‘*everywhere*’. As a consequence, she had logged on to the pensions area of the gov.je website in order to access the pension calculator. When she had entered her date of birth, the calculator had provided a pension age for someone born on that date of 65 years and 2 months, which would be reached in May 2020. Mrs. Huggett stated that she had not noticed anything on the website about women who had registered with the Department before 1st January 1975 being able to claim a pension at 60.

- 2.4 It was suggested to Mrs. Huggett that she should have sought an explanation from the Department as to why there had been a difference between the retirement age on the forecast that she had been sent, and the age given by the pension calculator. She stated: *‘if the law changes, it overrides what has been said, surely?’* She provided an example of a previous instance, when abroad, where she had been given information, which had subsequently altered as a result of changes in legislation.
- 2.5 Towards the end of 2014, the Complainant had rung the Department to ask about her pension. She told the Board that she had been informed that she would not be eligible to receive her pension until she attained the age of 65 years and 2 months. Whilst she would normally have asked for the name of the person to whom she had spoken, she had not done so because she had not imagined that it would become a material fact, although she recalled that the employee had been a female. She indicated that she had made the call from her mobile phone, which had been on a ‘pay as you go’ contract, and which she no longer possessed as the mobile telephone number had been re-allocated after 6 months had elapsed. She could not remember whether or not she had been asked to provide her full name, or social security number, and indicated that she could not prove that she had been advised incorrectly, and neither could the Department evidence that she had not, because it had no record of the contact on its system. *‘It’s a case of he said, she said,’* she conceded.
- 2.6 She later cited an occasion when she had contacted the Department in order to notify a change of address, but the staff member to whom she had spoken had admitted that it had not been logged on the system, so she did not feel that the absence of a record in the Department was proof that she had not made the enquiry.
- 2.7 Mrs. Huggett stated that she had regularly kept the Department informed of the address in Jersey to which correspondence for her should be sent, so there was no reason why she should not have been informed about her pension. *‘I did my part of it’*, she explained. She indicated that she felt that she had been discriminated against, because she had not received notification of an award of a Jersey old age pension, whilst her sister-in-law, who lived abroad and had not been a contributor for some time, had received a letter. She opined that there was *‘one rule for one and not for another’*. She informed the Board that her former husband had claimed his pension, but she had not received any notification.
- 2.8 On the basis that Mrs. Huggett had believed that she could not claim her old age pension until reaching the age of 65 years and 2 months, the Board queried why she had not then waited until 2020 to apply for her pension. She indicated that, in January 2017, she had had a chance encounter with an old school friend, who had observed that it was strange to think that they were both of an age where they were able to draw their pension. This had prompted the Complainant to go to the Department and make a claim. *‘If I hadn’t bumped into her, I would still be waiting’*, she said.

- 2.9 The Board noted that a claim for an old age pension was required to be made in writing, and should be made within 3 months of the date upon which the person claiming the pension became entitled thereto. Mrs. Huggett had formally submitted her online pension claim at the end of January 2017, some 22 months after she had become eligible to claim her pension. She had been informed by the Department that the maximum period for which her pension could be backdated was 6 months.
- 2.10 Mrs. Huggett notified the Board that she had received pension payments for the backdated 6 months, but had not received any money for the remaining period during which she could have been receiving her pension. It was thought that this equated to a figure of approximately £6,500. *'The money was paid in for it and I'm entitled to it. I want something back for what I've given'* she stated. *'If you knew you were entitled at 60, why wouldn't you claim it?'* she asked the Board. She indicated that she was aware of other women who were in a similar situation and also believed that their pension age had changed.
- 2.11 Mrs. Huggett had requested the Department to re-determine her pension claim, which it had done in April 2017, resulting in the initial decision being upheld. She had subsequently appealed the reconsidered decision to the Appeal Tribunal, which had convened a hearing in July 2017. Although, as alluded to in paragraph 1.3 above, the Appeal Tribunal had decided that it could not override the statutory limitation upon the period for the backdating of claims, *viz* 6 months, it had opined that the information on the website should be clearer, and that departmental staff should be made aware of the existence of claimants such as Mrs. Huggett. It had declined to comment on the fairness, or possible discriminatory nature, of the practice of the Department in only sending out letters in certain cases, because it believed that this was a matter which – together with an assessment of the fairness of the current statutory provisions in terms of their inherent fairness, and the possible issue of a potential complainant being misled – would be better considered by the Complaints Board.
- 2.12 Mrs. Huggett indicated that the whole situation, including the process of going to the Appeal Tribunal, had been very upsetting and stressful. Her daughter-in-law informed the Board that the Complainant was the most organised person that she knew, especially in relation to dates, and was *'always on top of things'*. She understood why her mother-in-law was so frustrated that she had not known that she could have been claiming her pension. The Complainant indicated that this experience had led to her no longer trusting any organisations and feeling the need to photocopy, or create backups, of all correspondence received.
- 2.13 She informed the Board that she felt that the Department should make a payment offer to her. *'There has to be someone on the Island who can pay me the money owed to me. I have given you that money, who have you given it to?'* she asked the Departmental officers. She reiterated that she was speaking on behalf of other women who would be entitled to claim their pension at the age of 60, but might not be aware of that fact, and urged the Department to write to those individuals. *'We don't all go online to look for information ... some people won't stand up for themselves and I want to speak for them,'* she concluded.

3. Summary of the case of the Minister for Social Security

- 3.1 The Head of Contributory Benefits, Social Security Department, rejected the contention that the Department had acted in a discriminatory way towards the Complainant. He indicated to the Board that it was standard practice for the Department not to send a notification of an award of a Jersey old age pension to anyone who had not made a contribution during the 6 years preceding them attaining pension age. He drew an analogy to people claiming sickness benefits and stated, '*we don't write out to check they're well*'. He expressed the view that people were generally aware of the age at which they could draw their pension, because it was a significant event in their life. Moreover, he emphasised that Mrs. Huggett had requested a pension forecast and opined that he would have expected her to check the relevant date.
- 3.2 The Board indicated that there was nothing within the March 2014 forecast letter, which had been sent to Mrs. Huggett, to remind her of the need to claim her pension within 3 months of retirement age, or to alert her that the pension could only be paid in arrears for a maximum of 6 months. It was suggested that an extra paragraph should be added to pension forecast letters to make individuals aware of the '*urgency*' around the making of a claim. The Senior Adviser – Pension Zone, stated that, following the publication of the report by the Appeal Tribunal, the forecasts which were now issued did contain that information.
- 3.3 In relation to Mrs. Huggett's sister-in-law having received a notification, despite not having contributed during the preceding 6-year period, the Head of Contributory Benefits, Social Security Department, informed the Board that this would have been because her husband had contacted the Department to claim his pension with a dependency increase for her. She was therefore linked to his claim and would have been contacted automatically. The fact that Mrs. Huggett's former husband had claimed his pension would not have resulted in her receiving a notification, because her record was completely separate from his as a result of the divorce, and she was treated as a single person, albeit the contributions that he had made during the marriage would have counted towards Mrs. Huggett's pension. From the time of the divorce, Mrs. Huggett would have been liable to pay her own contributions, and she would have been responsible for making her own claim.
- 3.4 Despite Mrs. Huggett's assertion that she had not seen anything on the pensions area of the gov.je website to indicate that women who had registered with Social Security before 1st January 1975 were able to claim a pension at 60, the Head of Contributory Benefits informed the Board that the information had been on the website from the outset; and he circulated a screenshot of the page as it would have looked at the time that the Complainant had accessed the pensions calculator. He acknowledged that, since the Appeal Tribunal had published its findings, the information had been placed in a number of other areas of the site; although Board Members who had accessed the website on the morning of the hearing had not found the information to be displayed in a prominent manner.

- 3.5 The Head of Contributory Benefits informed the Board that the Department had a process by which any contact received from individuals was endorsed against that person's personal record. When contact was made with the Department, the officer would open their record, which contained all the key dates pertinent to that individual, *inter alia* their date of birth and retirement age. He stated that he found it '*very difficult to believe*' that any staff member who had been contacted by Mrs. Huggett with a query in respect of her retirement age, would not have been able to find accurate information on the system, albeit he acknowledged that he did not know how the conversation had unfolded between Mrs. Huggett and the person to whom she had spoken.
- 3.6 The Head of Contributory Benefits argued that the Department had done all it could under the Law to assist Mrs. Huggett. He accepted that she was frustrated, but indicated that she had received the maximum permissible amount of back-paid pension, *viz* 6 months, and referenced the findings of the Appeal Tribunal that it could not override the statutory limitation upon the period of backdating such a claim. He informed the Complainant that the Department was bound by legislation, and that it was not possible for him to make a payment offer to her, or to increase her pension each week in order to offset the shortfall.
- 3.7 It was noted that the number of women in the Island who would be eligible to retire at 60 was 404. The Senior Adviser, Pension Zone, was unable to state how many of these women had not recently been paying contributions and, as such, would not automatically receive a notification of an award of a Jersey pension, nor what percentage of that number were resident off-Island. It was suggested by the Board that they should be written to in order to alert them to their pension age, and to recommend that they should contact the Department within 3 months of turning 60. This proposal was rejected by the Head of Contributory Benefits, who indicated that to do so would be to favour one particular group of potential pension claimants, and that the onus was on claimants to approach the Department. '*We don't reach out to those who are 65 ... we would be setting a precedent for this group of people*', he said. The Board suggested that the group of women who were eligible to claim at 60 was diminishing in number, in contrast to the growing number of people turning 65. The Head of Contributory Benefits stated that he had taken on board the comments made by the Board about this group of women who were in a similar situation to the Complainant.

4. Closing remarks by the Chairman

- 4.1 The Chairman thanked both parties for their time and contributions. He commended Mrs. Huggett for her laudable stand in raising awareness of the situation in the hope of assisting others in the same position as her, and indicated that the Board did not wish to see any one of them also having to bring their case to the Board.
- 4.2 The Chairman stated that a report of the hearing would be prepared in due course, which would be circulated to both parties for their input on the factual content. The findings of the Board would subsequently be appended thereto and would be forwarded to the Privileges and Procedures Committee, which would be responsible for presenting it to the States in the Reports series. At that juncture, it would become a public document.

5. The Board's findings

5.1 The Board considered whether the complaint could be upheld on any of the grounds outlined in Article 9 of the Administrative Decisions (Review) (Jersey) Law 1982, as having been –

- (a) contrary to law;
- (b) 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) 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) contrary to the generally accepted principles of natural justice.

5.2 After due consideration, the Board decides that it is unable to uphold Mrs. Huggett's complaint against the Minister. It is not of the view that the Department acted in a way which was contrary to law, because, in accordance with the legislation, the maximum period for which a pension could be backdated was 6 months, and this had been paid to Mrs. Huggett. Nor does the Board find that the Department has behaved in a manner which was discriminatory towards her, because it acted within the bounds of the legislation and was not required to proactively contact Mrs. Huggett to advise her that she would have been entitled to claim her pension from the age of 60. The Board suggests that Mrs. Huggett should have been a little more proactive in seeking an explanation from the Department as to why she had been provided with conflicting information.

5.3 However, the Board questions whether it is reasonable that a person who is of an age to claim their pension but has not done so, can only receive 6 months of backdated payments when they, or their spouse, have made the necessary contributions that would have entitled them to receive a pension from the point at which they reached the relevant age. The Board understands that the process adopted by the Department might reflect that which is in operation in other jurisdictions. However, it suggests that the Minister reviews the provisions of the legislation under which the Department operates, to determine the fairness of this 6-month rule.

5.4 Moreover, the Board is of the view that the Department should be more proactive in providing information to alert people to the date from which they are able to claim their pension. Albeit the Department might have included the information that was of specific relevance to Mrs. Huggett and other women in the same situation, in more places on the gov.je website since the Appeal Tribunal published its findings, the Board Members did not find it easy to locate, despite specifically looking for it. Accordingly, it recommends that this matter should be addressed, and suggests that because only a few hundred women are in the same situation as Mrs. Huggett and their pension age is

unaffected by subsequent changes in legislation, the Department should take active measures to ensure that they are aware of the position.

- 5.5 The Board is also strongly of the view that the Department should be more explicit in alerting people that they might lose money if they fail to claim a pension within 3 months of attaining the relevant age. It is pleased to note that the Department has added an additional paragraph to its pension forecast letters to encourage people to claim within the 3-month period, but re-asserts that individuals should be made aware of the ‘urgency’ of making a claim, and feels that the letter which was sent to Mrs. Huggett should have been more ‘robust’.
- 5.6 In the light of the increases in the pension age that are due to be made in the future, the Board feels that it is extremely important that people are provided with clear information in respect of the date from which they can claim their pension. The Department currently places the onus on individuals to take action, which might not be problematic for people who are in good mental and physical health. However, the Board is mindful that some people may have lost capacity, and it is essential that the letters sent out from the Department are easy to understand and clear about the date from which a person can claim, and the implications of not doing so.
- 5.7 The Board will be extremely disappointed if other people who would have been entitled to claim their pension, but were not aware of the fact, appear before it in the future, and feels that departmental procedures should be improved.

Signed and dated by –

C. Beirne, Chairman Dated:

G. Fraser Dated:

D. McGrath Dated: