

Dear Deputy Gardiner,

PAC Review of Government of Jersey Performance Management

Thank you for your letter of 22 December.

As you will be aware, the States Complaints Panel (the Complaints Panel) is established under the provisions of the Administrative Decisions (Review) (Jersey) Law 1982, as amended (the Law). Under the Law, the Complaints Panel is constituted by persons appointed by the States, from which Panel a Board is constituted to consider a complaint "by a person 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 any such Minister or Department" (Article 2 of the Law).

Under Article 5 of the Law, the Panel establishes its own rules of practice and procedure.

The sole power of the Complaints Panel - if, after completing its enquiry into a complaint, it is of the opinion that the decision, act or omission complained of

- a) was contrary to law;
- b) was 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 after proper consideration of all the facts;
- e) was contrary to the generally accepted principles of natural justice,

is to report its findings to the relevant Minister and to request that the matter complained of be reconsidered. If the Complaints Panel considers that its findings have been in sufficiently considered or implemented, then it may report accordingly to the Privileges and Procedures Committee.

In your letter, you enumerate six specific questions, but given the unique relationship of the Complaints Panel with Government, it is not possible to address those questions directly. I shall however, seek to clarify and explain how the Complaints Panel presently regards its relationship with Government.

As I have already explained, the Complaints Panel is a creature of statute, with a clear jurisdiction to consider complaints from members of the community regarding matters of public administration. (It has to be said at the outset that with the corporatisation of significant sections of public administration, the jurisdiction of the Law has been materially reduced in practice.) As such, all States' departments acknowledge and accept the role of the Complaints Panel, albeit that in specific cases there be arguments about its jurisdiction.

The Complaints Panel has the power to determine its own procedures and these have adapted over time to minimise delay in dealing with complaints, to minimise the burden on departments in responding to complaints, and to maintain as accessible, informal and flexible a process as possible to ensure transparency and independence.

The Complaints Panel considers that at the heart of its function is the improved efficiency of public administration and decision making, with its consideration of individual complaints the litmus test of the internal processes of any given department. Whilst no doubt all Departments and Government generally would claim to share that desire constantly to improve Government decision making, in reality a Complaints Panel's enquiry into a complaint is met with defensiveness and sometimes

prevarication. It is the rule rather than the exception that a Department has to be chased for its response to a complaint after the generous period for submission has expired and it is not uncommon for departments to seek to limit or deflect the scope of a particular enquiry.

The Complaints Panel acknowledges that steps have been taken across government to improve its complaints-handling procedures. Those steps have not involved the Complaints Panel; indeed, on the face of it, it appears that Government does not know how it wishes to “deal” with the Complaints Panel. We have been invited (once) to attend a Council of Ministers meeting, with the suggestion that it should become a regular occurrence (it hasn’t). The former Chief Executive promised closer dialogue with the Complaints Panel, but in fact there has been none.

The spectre of the appointment of a States Ombudsman shadows the work of the Complaints Panel, but, apart from the power to instigate enquiry at its own behest rather than merely in response to a particular complaint, the proposed powers of the mooted ombudsman appear no greater than those currently available to the Complaints Panel.

The Complaints Panel has never sought any authority to override a decision taken by or on behalf of a democratically appointed Minister - only the States Assembly or a court of law should be able to do that. The Complaints Panel is however aware that the decision of a Minister to disregard the findings of a Complaints Board or to fail or refuse to implement those findings, becomes a political, rather than an administrative, matter, and that it therefore falls to the States Assembly to hold the Minister to account in those circumstances. Presently, it appears that there is no established process for that to happen, and a Minister can therefore ignore the findings of the enquiry with impunity, or alternatively expect to ride out a very brief political squall should an individual Member of the Assembly attempt to highlight matters arising from an upheld complaint.

Whether it be by a Complaints Panel or States Ombudsman, oversight of administrative decision making by Government is meaningless if it not supported politically. The findings of an independent body, whether that be the Complaints Panel or States Ombudsman should automatically prompt a political process to which the relevant Minister is accountable. If the findings support the original decision, the subsequent political process will presumably be short and reinforce the particular policy or decision-making process, but if the findings show the complaint to be well-founded and that the Minister has chosen to ignore those findings, then the Minister should be obliged to face rigorous examination, almost as if facing a vote of confidence. That would not be to give additional powers to the Complaints Panel, but to the States Assembly.