

# **STATES OF JERSEY**



## **BOARD OF ADMINISTRATIVE APPEAL: EVENTS SURROUNDING HEARING OF 26TH MARCH 2003**

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**Presented to the States on 10th June 2003  
by the Privileges and Procedures Committee**

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**STATES GREFFE**

# REPORT

## Introduction

1. The Privileges and Procedures Committee (PPC) was given responsibility for the administrative appeals system when the functions of the former Special Committee to Consider the Relationship between Committees and the States were transferred to the PPC on 12th December 2002. The Committee has a duty to investigate any issue associated with the operation of the system. This report must be seen in that context.

## Basis of complaint

2. On 26th March 2003, a hearing by a Board of Administrative Appeal against a decision of the Housing Committee was held in the Halkett Room at Morier House. The Board was chaired by Mrs. C.E. Canavan who was sitting with Board members Miss C. Vibert and Mr. J.G. Davies. The complainant was represented by Deputy G.P. Southern.
3. Members of the PPC became aware later that day, initially through media reports, that the President of the Housing Committee had, in the words of the Jersey Evening Post, 'walked out' of the hearing stating that it was a 'charade' and that 'the Greffier had a lot to answer for' in allowing the hearing to proceed. **(Appendix 1)**
4. Following the hearing Deputy Southern submitted a formal complaint about Deputy Le Main's behaviour to the President by e-mail and this was later confirmed by letter. **(Appendix 2)**
5. On receipt of the complaint, and also in response to the media reports on this matter, the PPC requested the Greffier and Deputy Greffier of the States to prepare a report setting out the factual background to the incident. This report was submitted to the PPC on 31st March 2003. **(Appendix 3)**
6. The PPC requested the Greffier of the States to seek the views of Mrs. Canavan as chairman of this Board and her response was received on 10th April 2003. **(Appendix 4)**
7. The actions of Deputy Le Main at this hearing were the subject of comment, a cartoon and of several letters in the Jersey Evening Post in the days following the hearing.
8. On 4th April 2003 the PPC established a sub-committee comprising the President and Connétable D.F. Gray to investigate the complaint and Deputy Le Main was informed of this by the President the same day. Deputy Le Main contacted the President by telephone the following day to explain that he would not attend on the PPC if requested to do and that he did not wish to co-operate with any enquiry.

## Grounds of complaint

9. The PPC has given careful consideration to the circumstances surrounding the complaint and has concluded that Deputy Le Main's conduct was unsatisfactory for a number of reasons.
  - 9.1 Deputy Le Main's conduct before the Board was clearly unbecoming of the President of a major Committee. The Committee concurs with the view of Mrs. Canavan that he should not have made reference to an appeals procedure which has been set up by statute as a 'charade'.
  - 9.2 In addition his attitude to the appeals procedure was inappropriate as he made it clear that, whatever the findings, he would not be changing his mind in relation to the case. As Deputy Southern points out in his letter of complaint this undermined the authority of the Board. In addition his conduct clearly upset the Complainant and made her consider that there was no point in continuing with her appeal.

The PPC believes that the actions of Deputy Le Main could seriously damage the credibility of the

administrative appeals system as they could lead to a perception among members of the public that Presidents have no respect for the system which, at present, is often the only means of redress for a person aggrieved with a decision of a Committee or Department.

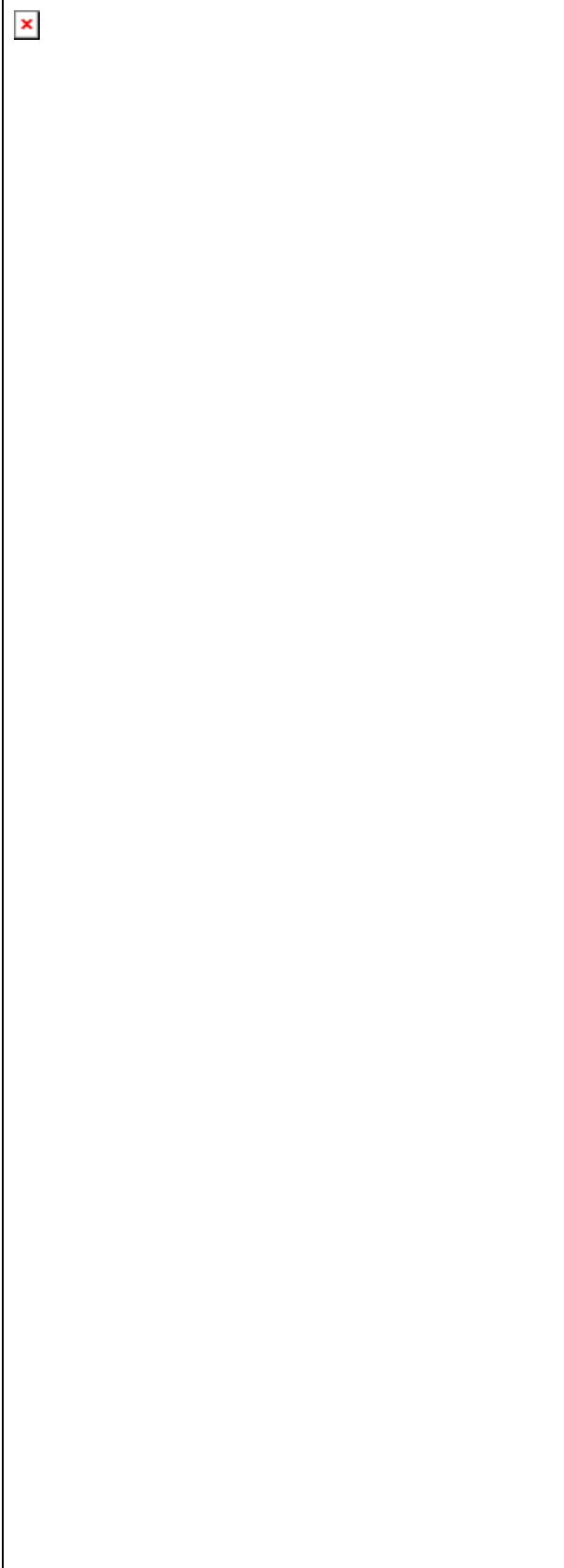
- 9.3 The Committee was extremely concerned with criticism of the Greffier of the States made by Deputy Le Main. The Greffier of the States is an officer of the States who is unable to respond to such criticism. The Committee wishes to make it clear that at no time since this incident has the Greffier or his Deputy made any complaint or comment to it concerning the public criticism made of them other than by submitting the factual report as requested. The Committee believes that, as a general rule, it is inappropriate for individual public servants to be publicly criticised by members but, more importantly, it is satisfied that the criticism of the Greffier and his Deputy in relation to this case is entirely unjustified. The Greffier is given a statutory duty under the provisions of the Administrative Decisions (Review) (Jersey) Law 1982, as amended, to decide whether the circumstances of a complaint justify review by a Board. Mrs. Canavan has made it clear that she maintains that the Greffier's decision to admit the complaint was the correct one in this case. The PPC accepts that Deputy Le Main clearly considered that the original decision of his Committee was correct and that the complaint was without merit but the appropriate course of action would have been to argue the case strongly before the Board in the usual way and not to suggest that the case should not have been referred to a Board.

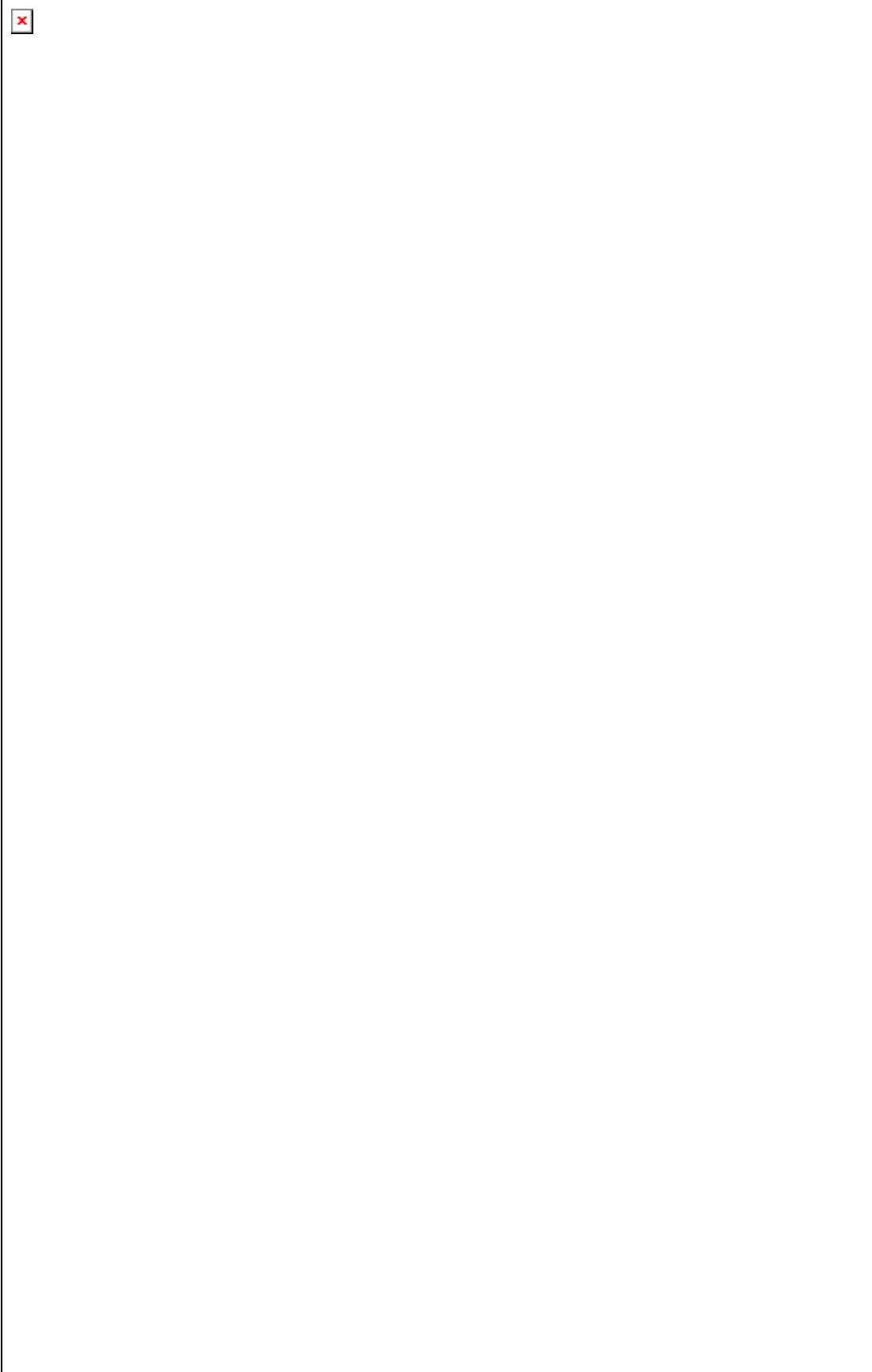
It is clear from the report of the Greffier and his Deputy that Deputy Le Main had at no time before the day of the hearing indicated that he had any concern about the fact that the case had been referred to a Board. If he had, the matter could, of course, have been discussed in advance. The Committee is therefore surprised that Deputy Le Main's decision to leave the hearing was clearly premeditated as he produced a written statement to the Board which had been prepared in advance.

- 9.4 The Committee is concerned with the contents of the statement submitted to the Board by Deputy Le Main which, it is understood, was circulated to the local media on the morning of the hearing. The statement is produced on Housing Committee paper and contains inflammatory and inappropriate comments about the Complainant and about the administrative appeals process which are quite inappropriate.

## **Conclusion**

10. The PPC forwarded a copy of this report and appendices to Deputy Le Main on 1st May 2003. He was requested to reply in writing by the end of May but he informed the Greffier of the States that, although he was willing to meet the President and the Connétable of St. Clement to discuss the matter, he did not wish to reply in writing. On 30th May 2003 the Committee decided to present this report to the States for information. The Committee considered that an appropriate response would be for Deputy Le Main to take the necessary steps to apologise for his conduct to the Chairman and members of the Board and others as appropriate and the Committee is pleased to note that he has now done this. The Committee therefore considers the matter to be closed.





**BOARD OF ADMINISTRATIVE APPEAL**  
**26th March 2003**

**Mrs Cecilia Vieira represented by Deputy G.P. Southern**

1. This report has been prepared in response to a request from the President of the Privileges and Procedures Committee for details surrounding an incident when the President of the Housing Committee refused to stay to present the Committee's case at a Board of Administrative Appeal hearing on 26th March 2003.
2. On 9th December 2002 a statement of complaint was submitted to the Greffier of the States by Deputy G.P. Southern acting on behalf of Mrs. Cecilia Vieira ('the Complainant') against a decision of the Housing Committee to evict the complainant from 17 Whiteley Close, Grands Vaux.
3. On 12th December 2002 the Deputy Greffier of the States sent a standard letter to Deputy T.J. Le Main, President of the Housing Committee, asking for the Committee's response to the complaint. A response was requested within 4 weeks in accordance with usual practice. The letter was copied to the Chief Executive Officer of the Housing Department.
4. The response of the Committee was received on 14th January 2003 under cover of a letter from Mrs Frances Ferris, Director of Finance at the Housing Department. On 16th January 2003 the Deputy Greffier of the States sent the original complaint and the Committee's response to Mr. R.R. Jeune CBE, Chairman of the Panel, to ascertain in his views in accordance with the provisions of Article 3 of the Administrative Decisions (Review) (Jersey) Law 1982, as amended, ('the Law') which requires the Greffier of the States to consult with the Chairman before deciding whether the circumstance of the case justify review by a Board.
5. The Chairman replied on 23rd January 2003. He drew attention in his letter to the fact that the Mr and Mrs Vieira had been good tenants and had regularly paid their rent. He also referred to the fact that even though Mr and Mrs Vieira were joint tenants the Committee had only addressed correspondence to Mr Vieira. In his letter Mr Jeune pointed out that '*This is quite a strong point*'. The Chairman accepted that there were nevertheless aspects of the papers which showed that the Committee had exercised its power using its discretion justly and concluded '*The final decision as to whether the matter should be referred to a Tribunal is for the Greffier*'.
6. The relevant parts of the Law for the purposes of this report are found in part of Article 3 and Article 4 which are in the following terms –

*ARTICLE 3*

*On receipt of any such application the Greffier shall enquire into the facts of the matter and, if satisfied as a result of his enquiries[, and after consultation with the Chairman or, in his absence, one of the Deputy Chairmen, of the Administrative Appeals Panel,] that the circumstances justify a review of the matter by a Board, he shall refer the matter to a Board which, [the Chairman or, in his absence, one of the Deputy Chairmen of the Administrative Appeals Panel, in consultation with the Greffier, shall constitute for that purpose]:*

(...)

#### ARTICLE 4

*The Greffier shall not refer any complaint to a Board if in his opinion -*

- (a) the matter complained of is not within the jurisdiction of a Board;*
- (b) the matter complained of relates to a decision, act or omission of which the complainant has had knowledge for more than twelve months [unless he is satisfied that there are special circumstances which make it proper to do so];*
- (c) the subject matter of the complaint is trivial;*
- (d) the complaint is frivolous, vexatious or is not made in good faith;*
- (e) the complainant has not a sufficient personal interest in the subject matter of the complaint.*

7. Having received the views of the Chairman, the Greffier of the States considered whether the circumstances justified review by a Board. Although it was possibly not one of the strongest cases the Greffier considered that there were certain discrepancies between the facts set out in the Complainant's case and the Committee's response and it seemed that these could only be resolved at a hearing. The issue referred to in paragraph 5 above, namely that correspondence had only been addressed to Mr. Vieira, appeared in particular to be a significant point that needed to be addressed by a Board. It was clear that none of the matters set out in Article 4 above applied to prevent the case being referred to a Board and the Greffier therefore took the decision that the circumstances justified a review. It should be mentioned that when dealing with cases there will normally be a presumption in favour of referring a case to a Board unless there are clearly good reasons not to do so. It should be pointed out that, unlike many UK Ombudsmen schemes, the fact that a case has '*no reasonable prospect of success*' is not a ground that the Greffier can rely on when deciding whether or not the circumstances justify a review.
8. In the usual way the Greffier's Secretary began to take steps to arrange the hearing. As the Chairman was unavailable on the dates suggested, Mrs C E Canavan, one of the Deputy Chairmen, was invited to chair the Board. On 20th February 2003, having checked the availability of the proposed Board members and of the complainant, the Greffier's Secretary sent an e-mail entitled 'Cecilia Vieira Review Board' to the President of the Housing Committee. The e-mail asked if the President was available for a hearing at 9.30 on March 26th. The President replied on the same day in the following terms – '*Yes I am OK for that time and date*'. Mrs Ferris sent an e-mail stating that she would be on leave on 26th March but pointing out that '*our Chief Officer will attend. He is familiar with the case and has attended the Committee meetings*'.
9. On 19th March 2003, one week before the hearing, (in accordance with usual practice) the papers for the hearing were circulated to all parties and were sent to the President of the Housing Committee under cover of a letter from the Deputy Greffier of the States which was copied to the Chief Executive of the Housing Department.
10. The Board convened as planned on 26th March 2003. At the commencement of the hearing, the parties were invited in to the Halkett Room. At this point both parties and a member of the Jersey Evening Post staff were in the lobby outside the room, and Deputy T.J. Le Main, President of the Housing Committee, and Chief Executive of the Housing Department were in conference.
11. Deputy G.P. Southern, the Complainant and the Jersey Evening Post reporter took their seats, and before sitting down Deputy Le Main exclaimed that he was most unhappy with the fact that

an appeal had been allowed and that he did not wish to participate *'in this charade'*. He presented a typewritten statement to the Chairman at this point. He advised the Board that Mrs. F Ferris, his Director of Finance, who had been dealing with the case was on leave and was unable to attend, and he would have preferred her to be present. The Chief Executive advised the Board that he had undertaken to present the response of the Housing Department on her behalf (see paragraph 8 above).

12. The Chairman of the Board tried to call the meeting to order and to advise how the hearing would proceed, however, Deputy Le Main continued in a very agitated manner, and threatened to leave the hearing as he did not feel able to participate in it. A short adjournment was called by the Chairman in order to enable the President and Chief Executive of Housing to hold a private meeting. While out of the room, the Deputy Greffier showed the file to the Chairman of the Board to apprise her of background correspondence. After approximately 8-10 minutes, the Deputy Greffier was requested by the Board to remind the department delegation of the provision of Article 8 that –

*'For the purposes of this Law a Board and the Greffier shall have power to call for documents from any Committee, Department or officer or employee of any Committee or Department **and to hear any person in connexion** with any complaint.'*

13. The Chief Executive appeared to have been placed in an extraordinarily difficult position whereby he was not clear as to whether he could continue without the express permission of his President. Deputy Le Main gave his permission in stating *'you can do as you like'*. Having reiterated the terms of Article 8 that someone needed to answer questions, Deputy Le Main stated *'you can, but I'm having nothing to do with it'*. It is highly likely that the Board, other party and media could hear these exchanges.
14. The Housing delegation returned to Halkett Room, and Deputy Le Main advised that he would leave the hearing but his Chief Executive would respond to the Board's questions. The Hearing then continued, but was adjourned following the late submission of key information by the Housing Department. Before submitting the evidence, the Chief Executive of the Housing Department had withdrawn from the meeting to seek authorisation from an unknown source to the disclosure. The Board was unable to continue without providing the complainant time to comment on the document, the information in which she disputed.
15. In addition to distributing it at the hearing the President of the Housing Committee also circulated the message entitled *'Make stand against this charade'* on Committee letterhead to the local news media on the morning of 26th March 2003.
16. In conclusion it should be pointed out that although the President of the Housing Committee had been aware of the request for a hearing since 12th December 2002 he had at no time contacted the Greffier or Deputy Greffier of the States to express concern about the case. The Deputy Greffier of the States, who acted as Clerk to the Board on the day of the hearing, has confirmed that the Chairman and members of the Board were absolutely satisfied, having heard the facts, that the Greffier's decision to refer the case to a Board had undoubtedly been the correct one.

Greffier of the States  
Deputy Greffier of the States

31st March 2003.



**Annex**

Message circulated by President of the Housing Committee on 26th March 2003.

