

# **Keeping the Complaints Panel or creating the Ombudsperson?**

**1 July 2024**

**Jersey Law Commission  
Consultation report**

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The Jersey Law Commission is an independent body appointed by the States Assembly to identify and examine aspects of Jersey law with a view to their development and reform. This includes in particular: the elimination of anomalies; the repeal of obsolete and unnecessary enactments; the reductions of the number of separate enactments; and generally, the simplification and modernisation of the law.

Members of the Law Commission serve on a part-time basis and are unremunerated. This report has been prepared at no cost to the Government of Jersey or States Assembly.

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# 1 Aims of the report

## The basic questions

**‘What are the desirable features of Jersey’s independent complaints body?’** is the main question explored in this report.

We are publishing this report as a contribution to the long running debate over whether Jersey’s independent complaints body dealing with islanders’ grievances against public authorities should continue to be the States of Jersey Complaints Panel (founded in 1979) or a Jersey Public Services Ombudsperson (first proposed in 2000).

The Jersey Law Commission’s position is that an Ombudsperson is required; but if the States Assembly opts to retain the Complaints Panel significant reforms would be needed.<sup>1</sup>

## The recent law reform background

After the 2022 general election Chief Minister Deputy Kristina Moore announced that the new Council of Ministers would lodge au Greffe a Law to establish a Jersey Public Services Ombudsperson in place of the States of Jersey Complaints Panel by the end of 2023. This did not happen.

The mid-term change of Council of Ministers in January 2024 led to a review of the Ombudsperson policy. On 16 April 2024, Chief Minister Deputy Lyndon Farnham told the States Assembly<sup>2</sup>

The matter is still under consideration by the Council of Ministers, largely due to concern over the high estimated cost of establishing the service and ongoing running costs. [The Council of Ministers] would like to see our existing complaints process significantly enhanced, and work is being done to address this. When the work has been concluded, we can then consider the rationale for increasing public spending on an ombudsperson scheme and whether legislation is required to support improvements to our complaints-handling processes instead.

At his quarterly meeting with the Corporate Services Panel on 7 June 2024, the Chief Minister noted that the internal review was continuing.<sup>3</sup>

As I have said before, we were concerned about the cost. The previous Assembly earmarked £400,000 per annum to fund an ombudsperson, but we, upon further review, that is likely to be the

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<sup>1</sup> Our position is set out in more detail in chapter 12 below.

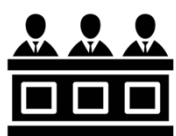
<sup>2</sup> Hansard, 16 April 2024 ([link](#)).

<sup>3</sup> See transcript ([link](#)), in answer to questions from Connétable David Johnson of St Mary; and Rod McLoughlin, ‘Doubts over paid ombudsperson’, *Jersey Evening Post*, 8 June 2024 p 9.

very minimum required and if its remit was extended to Health, for example, then the budget would need to be far higher; well in excess of £1 million. Before we commit to that expenditure, we are engaging with the States Greffe and P.P.C. (Privileges and Procedures Committee) to see if we cannot enhance the complaints service, the State's Complaints Board, that we already have. [...]

... first and foremost, we want to have an improved complaint procedure. I would like to see, I think the Council of Ministers would like to see, a complaints procedure with more teeth than it has now. We think we can do that as effectively as an ombudsperson, and probably financially for better value if we look at doing that through the existing structure rather than set up a new one. That is the work we are doing now and as soon as we have concluded that piece of work we can make a final decision and then come back to the Assembly with what we plan to do.

## Explainer: current and proposed complaints body



**Current States of Jersey Complaints Panel.** If a person has a complaint about a Government of Jersey department that hasn't been resolved through the customer feedback process, they can apply in writing to the Greffier of the States to have the issues looked at

independently by the Complaints Panel. This consists of 13 volunteer members of the public. The Panel tries to reach an informal settlement but if this doesn't succeed, 3 members of the Panel form a 'board' and hold a public hearing (usually in the States Building). The complainant makes an oral presentation of their case, followed by officials and sometimes the Minister. The board writes a report with findings and recommendations, which is published on the States Assembly website. The Minister decides whether to accept what the board says and publishes a response on the States Assembly website.



**Proposed Jersey Public Services Ombudsperson.** If a person has a complaint about any public body in Jersey (departments, parishes, social housing providers, etc) that hasn't been resolved through the body's internal processes, they will be able to contact the Ombudsperson's office. This will

consist of a full-time professional investigator and two assistants, with legal guarantees of their independence. The Ombudsperson will try to reach an informal settlement but if this doesn't succeed, they will carry out an investigation. This will be a confidential process designed to protect the complainant's privacy. The Ombudsperson will write a report with findings and recommendations, which will be published on the Ombudsperson's website (ensuring the complainant remains anonymous). The public body will decide whether to accept the report. In addition, the Ombudsperson can launch an 'own initiative' investigation into a public body (without needing a complaint to trigger the process) and where appropriate investigate jointly with another body (such as the Children's Commissioner). They will also hear from 'whistleblowers' (staff inside public bodies who have concerns). The Ombudsperson's office will work proactively with public bodies to improve their internal complaints processes.

## What is the role of the Jersey Law Commission in this debate?

As the island's independent and politically neutral law reform body, our role is to carry out research and conduct public consultations that generate proposals for improving Jersey's law. Since 2015, we have been looking at laws about how people aggrieved by decisions of public bodies (Ministers, officials, Parishes, etc) can seek redress. The Complaints Panel vs Ombudsman debate is just one aspect of this. We have also looked at the island's administrative appeals tribunals and the role of the Royal Court in hearing administrative appeals and applications for judicial review and made recommendations on these.<sup>4</sup> In 2018, the Government of Jersey commissioned us to undertake research into the design of an ombudsperson scheme suitable for a small jurisdiction.<sup>5</sup> We are currently evaluating the impact of the Human Rights (Jersey) Law 2000 and will bring forward preliminary findings and recommendations later in 2024.

The Council of Ministers and ultimately the States Assembly are the bodies that decide whether to accept or reject our recommendations.

## The aims of this report

This report has been written with five aims in mind.

First, we want to **help public understanding of the issues at stake** by providing an overview of the Complaints Panel vs Ombudsperson debate (chapter 2).

Second, we argue that **it is necessary to be clear about the nature and scale of the problem** that either the Complaints Panel or the Ombudsperson is seeking to address (chapter 3). Without clarity about the problem, it is difficult to know what solution is proportionate.

Third, the report works through **the different choices about the basic design of the Jersey's independent complaints handling body**. These considerations are relevant whether the decision is taken to keep a reformed Complaints Panel or go forward with the Ombudsperson (chapters 4 to 11). These design questions are as follows:

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<sup>4</sup> Jersey Law Commission, *Improving Administrative Redress in Jersey* (2017). There was an earlier consultation report with the same title in 2016 ([link](#)).

<sup>5</sup> Jersey Law Commission, *Designing a Public Services Ombudsman for Jersey* (November 2018).



- Chapter 4      Should Jersey’s independent complaints body continue to focus on resolving individual complaints **or** have a wider role of championing general improvements in public administration and service delivery?
- Chapter 5      How can Jersey’s independent complaints body be accessible and transparent?
- Chapter 6      Should the jurisdiction of Jersey’s independent complaints body continue to be over Ministers and Government of Jersey Departments **or** should it have a wider remit (for example, parishes and Andium Homes)?
- Chapter 7      Should the people who decide cases remain unpaid members of the community **or** be changed to professional investigators?
- Chapter 8      Should the formal complaints resolution process continue to be public **or** become confidential and anonymous?
- Chapter 9      Should the independent complaints body continue to adjudicate on the complaint at a hearing **or** use investigation as the main method of work?
- Chapter 10     Should the grounds of review remain as set out in the Administrative Decisions (Review)(Jersey) Law 1982 **or** change to ‘maladministration’ and ‘service failure’?
- Chapter 11     Are changes needed to improve the culture of cooperation and acceptance of the independent complaints body’s recommendations?

In chapter 12, **we restate our position on the Complaints Panel vs Ombudsperson debate**. This has remained the same since our October 2017 report. **We conclude that an Ombudsperson is needed; but if the Complaints Panel is retained it should be reformed.**

We also argue that, **if the Council of Ministers decides to retain and reform the Complaints Panel, a good quality law reform process with a high level of external input should be followed.**

Finally in chapter 13, we return to a question we asked in October 2017, which has not yet been answered by the Government of Jersey. Having removed States Members from the Complaints Panel in 1998, **is it right that States Members continue to have a role in determining appeals in other contexts?**

## Style of the report

The subject matter of this report should be of interest to a wide range of people in Jersey – including members of the public, journalists, people working in the Government of Jersey and other public bodies, and States Members. It may also be of interest beyond the island to policymakers and academics interested in independent complaints bodies. We have therefore tried to write in a straightforward way for a broad readership.

If you are reading this report online, the pdf document contains clickable links to source materials (shown underlined). The Jersey Law Commission is not responsible for these third-party websites and overtime the links may stop working.

### Discussion points

Throughout the report we have included discussion points, intended to be helpful prompts for clarifying issues and preferences.

They are designed primarily for readers' own use rather than as a formal consultation exercise. (We carried out a public consultation on some of the issues in 2016).

We welcome comments and questions about any of the issues raised in this report by email to [commissioners@jerseylawcommission.org.je](mailto:commissioners@jerseylawcommission.org.je)

If you would like your response to be treated in confidence, please say so.

## 2 Understanding the Ombudsperson vs Complaints Panel debate

### Explainer: Legal frameworks



The **Complaints Panel** operates under the Administrative Decisions (Review)(Jersey) Law 2018 ([link](#)).



The Government has not published the draft **Jersey Public Services Ombudsperson** Law. Our understanding of the proposals is therefore based on (a) Jersey Public Services Ombudsman Consultation Feedback Report (January 2020) ([link](#)) and (b) Government's instructions to the Legislative Drafting Office ([link](#)). There are some differences between the two documents, and it would be normal for further refinements to have been made during the law drafting process.

### Law reform options currently on the political agenda

From a law reform perspective, in 2024 there seem to be three main choices for the Council of Ministers and ultimately the States Assembly.

- To keep the Complaints Panel substantially in its current form
- To radically reform the Complaints Panel
- To adopt the Law establishing the Jersey Public Services Ombudsperson.

### Why independent complaints bodies matter

Before going any further, it is worth restating why independent complaints bodies (whether an ombudsperson or another type of grievance handler such as Jersey's Complaints Panel) have become features in most countries' constitutional systems.

First, they provide **an avenue of redress for injustice felt by individuals**. Many types of grievance against governmental decisions are not suited to litigation in tribunals or going to court. Most people cannot afford to engage lawyers or risk having to pay the public body's legal costs if they lose a case in court. So, since the 1960s, many countries have set up independent complaints bodies to provide a free, easy to use service for citizens who have exhausted internal complaints systems but still feel aggrieved by a public body's decision or conduct. This function is sometimes called their 'firefighting' role.

Secondly, individual complaints can provide a window into the workings of government bodies. As well as redress for individuals, **independent complaints bodies can make recommendations for improvement in public administration and service delivery for everyone's benefit**. Some independent complaints bodies have been given own-initiative powers so that their improvement function is not dependent on individuals coming forward. This function has been called their 'fire prevention' role.

## Independent complaints bodies in other small jurisdictions

When evaluating reform options for Jersey, it may be **helpful to know what arrangements for independent complaints resolution exist in other places**. This can be of assistance both on the level of overall institutional design (an Ombudsperson or Complaints Panel) but also for fine-tuning whatever political choice is made for Jersey. In this section, we look at the other two Crown Dependencies (Guernsey and the Isle of Man) and the European British Overseas Territory (Gibraltar).

### Guernsey

In Guernsey a person aggrieved by an administrative act or omission of the States can apply for it to be reviewed to the Guernsey **Complaints Panel**.<sup>6</sup> If the complaint is within the Panel's jurisdiction, it may be referred to a Review Board. The Board will have four members, including one People's Deputy, a Dean of Douzaines (elected non-salaried Parish officeholders), and an independent appointed member.<sup>7</sup>

The grounds for review are similar to those used by the Complaints Panel in Jersey. The Review Board 'is not a court of law and cannot make definitive findings of fact', cannot quash the decision, or award compensation.<sup>8</sup>

The process is run by the Guernsey Reviews and Tribunals Service. Complainants are encouraged to telephone for guidance, if needed. They can either fill in an online form or, if they prefer to make a paper application download and print the form. The Review Board holds a public hearing. If a complaint is upheld, the Review Board may make recommendations. Review Board reports are published.<sup>9</sup> We do not have any details of running costs for the Guernsey Complaints Panel; it is reasonable to assume that the support costs are subsumed with the budget of the Guernsey Reviews and Tribunals Service.

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<sup>6</sup> Administrative Decisions (Review) (Guernsey) Law 1986 ([link](#)); and website ([link](#)).

<sup>7</sup> There is a published role description for independent members ([link](#)) and the role is advertised ([link](#)). There appear to be a pool of 19 independent members, whose number include 4 Advocates ([link](#)).

<sup>8</sup> Guernsey Reviews & Tribunals Service, *Guidance to making a complaint under the Administrative Decisions (Review) (Guernsey) Law 1986* ([link](#)).

<sup>9</sup> Only one decision is currently published ([link](#)). Compared to Jersey Complaint Panel board decisions, the Guernsey report is very short (6 paragraphs).

As in Jersey, there has been a debate about replacing the Guernsey Complaints Panel with an Ombudsperson, including the option of a joint body with Jersey. In February 2024, a majority of Guernsey Deputies voted for a proposition from Policy & Resources Committee:<sup>10</sup>

That in the current financial climate and with the need to find savings across the public service, and given the recent review of the existing system for public service complaints, establishing a Public Services Ombudsperson is not a priority use of resources and should not be pursued further at this time.

It was reported that the States of Deliberation will 'look at the plans again in 2026 as part of a planned review of finances'.<sup>11</sup>

## Isle of Man

The Isle of Man has ended up with two independent complaints bodies.

The **Tynwald Commissioner for Administration** (informally referred to as the Tynwald Ombudsman) was created in 2011.<sup>12</sup> The Commissioner is an officer of Tynwald (the Isle of Man parliament). The matters within the Commissioner's remit are maladministration in respect 'any action taken by or on behalf of a listed authority in the exercise of administrative functions of the authority' or 'any alleged service failure'.

Complaints may be made by email or post. The Commissioner is based in the Legislative Buildings in Douglas.<sup>13</sup>

Complaints are investigated rather than being adjudicated on at a public hearing. The Annual Report notes that cases 'under investigation are not in the public domain and to publish a summary of such ongoing investigations would be both premature and an inappropriate invasion of the confidentiality of both the complainant and the listed authority'.<sup>14</sup>

A report contains a comprehensive 'statement of facts', which is sent in draft to the complainant and public body for comment before it is finalised, but findings and recommendations are no longer circulated to the parties in draft.<sup>15</sup> Reports are anonymised to ensure the complainant cannot be identified. Reports are laid before Tynwald and published online. If recommendations are not implemented, the Commissioner may lay a 'special report' before Tynwald.

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<sup>10</sup> P.2023/137 ([link](#)).

<sup>11</sup> John Fernadez, 'Independent complaints body plans ditched', [BBC News](#), 21 February 2024.

<sup>12</sup> Tynwald Commissioner for Administration Act 2011 ([link](#)).

<sup>13</sup> Tynwald ombudsman website ([link](#)). This new website was launched in November 2023.

<sup>14</sup> Tynwald Commissioner for Administration, *Seventh Annual Report, April 2024*, PP 2024/0060 para 2.1.

<sup>15</sup> Tynwald Commissioner for Administration, *Seventh Annual Report, April 2024*, PP 2024/0060.

In 2023, the case load was: 12 complaints under investigations; 10 rejected; and 1 on hold pending the outcome of a tribunal ruling.

The annual budget set for 2024-25 is £36,185. It is clear from recent annual reports that this level of financing is regarded as inadequate and not sustainable. The Commissioner is a part-time appointment (currently held by an Advocate). The post of Assistant Commissioner is unfilled due to budget constraints. There is a part-time administrator. The Commissioner is remunerated on a fee basis on submission of detailed timesheets and a monthly invoice. The current fee is set at £4.48 for a 3-minute unit. The Commissioner charges only for work on investigations and reports and has not invoiced for a range of other work (such as developing the website, taking part in consultations, etc).

A separate **Health and Social Care Ombudsman Body (HSCOB)** was launched in 2022.<sup>16</sup> This is a corporate body. The chairperson must be a qualified lawyer of not less than 7 years standing; there are between 7-10 members 'who have such experience in the fields of health, social care, dispute resolution and administrative justice as the Appointments Commission considers appropriate'. The chairperson and members are paid on an hourly basis (£107 and £89.50 respectively) and may claim travel expenses. The HSCOB website explains:<sup>17</sup>

The primary function of the [HSCOB] is to review complaints. It does this by considering the process followed by the service provider investigating your complaint, the substance of the complaint and the decision reached at the end of the complaints procedure. Usually this is done by reviewing all the relevant documentation. However, the members reviewing your complaint may ask to meet with you in person to clarify anything that is unclear. You have the right to request to meet with the Ombudsman should you wish to do so. Investigation of complaints is the responsibility of the service provider and it is expected that this will have been undertaken before you refer your complaint to the Ombudsman.

## **Gibraltar**

The **Gibraltar Public Services Ombudsman (GPSO)** was set up in 1999. The proposal for an Ombudsperson originally came from the Gibraltar legal profession and was realised 'after the Gibraltar Social Democrats (GSD), in their electoral manifesto, had pledged that if elected they would create such an authority'.<sup>18</sup> The GPSO's mission statement is:

To investigate and form opinions on complaints of defective public administration.

To promote fairness in the administrative actions of government departments or entities.

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<sup>16</sup> Health and Social Care Ombudsman Body (Constitution, etc.) Regulations 2022 ([link](#)) and section 26A of the Social Services Act 2011 ([link](#)).

<sup>17</sup> HSCOB website ([link](#)).

<sup>18</sup> GPSO website ([link](#)). Public Services Ombudsman Act 1998 ([link](#)).

To provide a non-adversarial, professional, impartial and independent, investigative service in a timely, fair and sensitive manner.

Investigate complaints without undue formality.

The principal GPSO is an officer of the Gibraltar Parliament, with guarantees of independence.

In December 2019, the Gibraltar Parliament voted to give the GPSO own-initiative investigation powers but amending legislation appears not yet been brought forward.

GPSO received 203 complaints relating to public bodies in 2023.<sup>19</sup>

Potential complainants may visit in person at the GPSO office, telephone, or make a Skype call, for guidance. Information is available in Spanish and Arabic as well as English. There is an online complaints form. Attachments may be sent by email, posted (freepost service within Gibraltar), or delivered by hand to the office.

Cases that are accepted as within jurisdiction are either resolved through informal action or after a formal investigation. The ground for investigation is alleged maladministration. Findings and recommendations are not legally binding on public bodies 'but in most cases the government do follow [the GPSO's] recommendations'.<sup>20</sup>

The GPSO has 8 staff: the principal GPSO, a legal adviser/senior investigating officer, an investigating officer, IT controller, public relations officer/PA to the PSO, and two complaints handling coordinators. The GPSO budget for 2022-23 was £469,000.<sup>21</sup>

## Vehicles for implementing reforms in Jersey

### Reforming the Complaints Panel



If the States Assembly's decision is to reform the Complaints Panel, there are four possible ways (from a law reform perspective) of achieving the desired changes. These should be considered at a formative phase of any reform process to ensure there is clarity about the quick wins that might be realised, and which reforms would need underpinning legislation.

- Some changes could be implemented without any legal formality (for example, creating a website to help islanders better understand the Complaints Panel's work).

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<sup>19</sup> Annual Report 2023 ([link](#)).

<sup>20</sup> GPSO website ([link](#)).

<sup>21</sup> Government of Gibraltar Estimates 2022/2023, Appendix A ([link](#)).

- The Administrative Decisions (Review)(Jersey) Law 2008 Article 5(3) gives power to the Complaints Panel to 'issue rules of practice and procedure which shall apply in matters arising under this Law'. These rules are not subject to any process in the States Assembly before becoming effective. It is not clear whether the Complaints Panel has issued any rules: none are published on the Complaints Panel's page on the States Assembly website.
- The Standing Orders of the States Assembly (for example, in 2021 Order 68AA was introduced requiring Ministers to make statements in response to findings of the Complaints Panel).
- Substantial reforms would require amendment of the Administrative Decisions (Review)(Jersey) Law 1982. As with any change to a principal Law, this would require Ministers and officials to develop drafting instructions for the Legislative Drafting Office, the States Assembly would need to debate and adopt the amendments, the Law would need to be reviewed by the UK Ministry of Justice, and Royal Assent would need to be obtained from the King in Council.

There would be scope for using all four vehicles, capturing 'quick wins' where possible but recognising that larger scale change will require legislation.

### Setting up the Ombudsperson

If the Council of Ministers and States Assembly's decision is to proceed with the Ombudsperson, obviously this requires adoption of a Law. We understand that this has already been drafted. As noted above, while the Law has not been published, detailed drafting instructions have; this report relies on the latter.



### How the Jersey Ombudsperson proposal has unfolded

The idea of an Ombudsperson for Jersey to investigate maladministration in government first surfaced in 2000 as a recommendation of the panel chaired by Sir Cecil Clothier into modernising Jersey's machinery of government.<sup>22</sup> Although downplayed as merely 'machinery of government', the review in effect proposed a reformed constitution for Jersey in the new millennium. Sir Cecil was acutely aware of the significance of role of ombudsperson from his own service as the UK Parliamentary and Health Service Ombudsman 1978-84. The report said, 'The argument in favour of an Ombudsman for Jersey is strengthened by the proposal to shift more of the administrative decision-making in the system to the Civil Service' (para 9.1). The report envisaged, 'The workload of a Jersey Ombudsman could not in the nature of things be great and could be




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<sup>22</sup> States of Jersey, *Report of the Review Panel on the Machinery of Government in Jersey* (December 2000).



discharged by a part-time appointment' and floated the idea of a shared appointment with the other Channel Islands (para 9.7).

In our research and public consultation work during 2015-17, culminating in the Jersey Law Commission wide-ranging report *Improving Administrative Redress in Jersey* (October 2017), our expert view was that a public services Ombudsperson was desirable. We were, however, careful also to set out proposals for strengthening the Complaints Panel system if this turned out to be the States Assembly's preferred option.<sup>23</sup>

During our public consultations in 2016, the Ombudsman Association (which promotes the work of all major public and private sector ombudsperson schemes and complaints handling bodies) expressed support for the proposal to establish a public services ombudsperson in Jersey.<sup>24</sup>

In March 2018, shortly before the general election, the States Assembly voted 24 'pour', 8 'contre' for P.32/2018, a proposition brought by Senator Philip Ozouf calling for progress to be made on implementation of an ombudsperson, including further research and consultation.<sup>25</sup> The Government of Jersey quickly commissioned the Jersey Law Commission to carry out in-depth research to develop options for the design of an ombudsperson scheme suitable for a small island community.<sup>26</sup>

When the Independent Jersey Care Inquiry published its 2-year review report in September 2019, they said<sup>27</sup>

We have referred above to the role of a Public Services Ombudsman and would reemphasise that we consider it to be essential that proposals currently under discussion are taken forward without delay. This role is a key element for further strengthening the rights of children and others to have their voices heard and their concerns and complaints dealt with effectively. Properly constituted, the operation of the role will go some way to resolve deficiencies in complaints processes and to dispel public perceptions of lack of transparency and of partiality in decision-making.

In her valedictory December 2019 report *Governance – a Thinkpiece*, the Comptroller and Auditor General Karen McConnell said<sup>28</sup>

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<sup>23</sup> Jersey Law Commission, *Improving Administrative Redress in Jersey* (2017). Chapter 5 examines the Complaints Panel.

<sup>24</sup> OA, *Consultation response*, 29 July 2016.

<sup>25</sup> *Hansard*, 22 March 2018 (starting at 6pm).

<sup>26</sup> Jersey Law Commission, *Designing a Public Services Ombudsman for Jersey* (November 2018). Most of the cost of this work was supported by Economic and Social Research Council (ESRC) funding and the UK Administrative Justice Institute (UKAJI) based at the University of Essex. Led by Andrew Le Sueur, the contribution of research fellows Margaret Doyle and Varda Bondy to this project is acknowledged.

<sup>27</sup> *Report of the Independent Jersey Care Inquiry Panel 2019 (Two-year Review)* R.123/2019 para 32.

<sup>28</sup> Office of the Comptroller and Auditor General, *Governance – A Thinkpiece* (2019) para 9.5.

In my view, establishment of a Public Services Ombudsman, with wide powers reflecting modern legislation in other jurisdictions, sends an important message about transparent, accountable services that embrace feedback and a commitment to improve.

In February 2020, the Legislation Advisory Panel (asked to provide political direction for the development of the proposed Ombudsperson on behalf of the then Chief Minister) published a ‘consultation feedback report’ concluding that respondents ‘want a new independent ombudsman who will investigate complaints about public service failings’, optimistically suggesting that ‘it is anticipated that the [ombudsperson] will be established in 2021’.<sup>29</sup> LAP said its ‘provisional policy position’ was that the Government of Jersey should proceed with legislative drafting.

The Jersey Care Commission, the body providing independent assurance about the quality and safety of a range of health and care services in Jersey, said in 2020<sup>30</sup>

The Care Commission welcomes the proposal to establish the office of a Public Services Ombudsman in Jersey (JPSO) and provided detailed feedback during the period of the consultation response. In particular, in reflecting upon its experience as the health and social care regulator, the Commission concluded that the need to provide for the independent investigation into complaints about public services and the expert oversight of how public bodies design and operate their complaints policies and procedures were each clearly evidenced.

In December 2021, the States Assembly Care of Children in Jersey Review Panel published its report *Redress and Accountability Systems in Jersey* recommending that ‘The Chief Minister should ensure that the necessary legislation to give effect to the Jersey Public Service Ombudsman is brought forward for lodging so that the debate can take place in the States Assembly prior to the 2022 election’, though the Panel was careful to say that there was ‘a mixed view from the evidence received as the necessity’ for an ombudsperson, and it made its recommendation ‘on balance’.<sup>31</sup>

In the 2022 general election several candidates pledged support for creating an ombudsperson. Deputy Steve Ahier said ‘We must not delay any further the establishment of a Public Service Ombudsman. Once this has been achieved, I will propose the creation of a Health Ombudsman to provide much needed oversight’.<sup>32</sup> Deputy Catherine Curtis, said ‘Health – an ombudsman is urgently needed’.<sup>33</sup> In their 2022 manifesto, Reform Jersey stated<sup>34</sup>

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<sup>29</sup> Legislation Advisory Panel, *Jersey Public Services Ombudsman: Consultation Feedback Report* (2020) and press release.

<sup>30</sup> Redress and Accountability Systems in Jersey, *Consultation Response*: The Jersey Care Commission.

<sup>31</sup> Care of Children in Jersey Review Panel, *Redress and Accountability Systems in Jersey*, S.R.22/2021.

<sup>32</sup> Vote.Je, *Constituency of St Helier North: Candidate Manifestos* (2022) p 12.

<sup>33</sup> Vote.Je, *Constituency of St Helier Central: Candidate Manifestos* (2022) p 14.

<sup>34</sup> Reform Jersey, *The ‘New Deal’ for Jersey* p 23.

To improve accountability in government, we **pledge** to support the establishment of a Public Services Ombudsman. The current government had committed to setting one up in the previous term of office but has failed to do so. We will ensure that adequate funding is provided in the Government Plan to ensure that this body can be up and running as soon as practical.

In October 2022, Chief Minister Senator Kristina Moore approved drafting instructions to request new legislation to establish ‘a Public Services Ombudsperson’ in Jersey. These instructions provide a detailed blueprint for the proposed scheme.<sup>35</sup>

## How the Complaints Panel has evolved since 1979



Over its 45 years of existence, the Complaints Panel has been subject to several reforms.

For the first 17 years the Panel consisted of elected States Members (1979-96). Concerns grew that in this composition the Panel was perceived by islanders as lacking independence and impartiality – a sense that politicians were marking each other’s homework, however careful the Panel was to ensure that the Members looking into the complaint had not been involved in the original decision.

Since 1996 (so more than 28 years), the Complaints Panel has been made up of people proposed to the States Assembly by Privileges and Procedures Committee (PPC) following a recruitment process. They cannot be States Members.

Following a review by the States Assembly’s Privileges and Procedures Committee (PPC) in 2004,<sup>36</sup> further amendments were made in 2006:

- The Complaints Panel was renamed; it was previously ‘The States of Jersey Administrative Appeals Panel’.<sup>37</sup>
- A new initial procedure was created, including providing the Chair or a Deputy Chair with express powers to ‘attempt informal resolution of the matter’.
- The power of the Greffier of the States to dismiss a complaint without reference to the Chair was replaced with power for the Chair (or a Deputy Chair) to decide that a review by a board is not justified. The role of the Greffier of the States was limited to enquiring into the facts of the matter and presenting a dossier to the chair of the Complaints Panel.

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<sup>35</sup> Government of Jersey, Law Drafting Instructions: Jersey Public Services Ombudsperson (2022).

<sup>36</sup> PPC, Administrative Appeals System: Proposals for Improvement – Consultation Report (2004).

<sup>37</sup> Note on terminology: the Complaints Panel is the statutory institution consisting of all appointed members (currently 12). A ‘board’ is the 3-member committee convened for the hearing of a particular complaint. This distinction is routinely confused, even in official publications.

- The Complaints Panel was given powers to ‘issue rules of practice and procedure’.
- The Complaints Panel is required to make an annual report to PPC, and PPC was placed under a duty to present the report to the States Assembly.

In 2021, a new States Assembly Standing Order, proposed by PPC, was adopted. This requires a Minister responding to a report by a board of the Complaints Panel to make a statement to the Assembly and answer questions from Members, rather than simply lodging a report. In the *2021 Annual Report*, the Chair of the Complaints Panel noted that this ‘strengthens the accountability of Ministers and ensures that our findings are not roundly ignored and if the recommendations are not accepted, that Ministers have to explain to the Assembly their rationale for rejecting them’.

Since it assumed responsibility for the Complaints Panel in 2002, PPC has been resolute in defending the Complaints Panel against suggestions that it should be replaced by an Ombudsperson. The PPC subcommittee carrying out the May 2004 review concluded<sup>38</sup>

The present administrative appeals system [this was a reference to the Complaints Panel], which relies on well respected, independent, members of the community with a wide range of professional and personal backgrounds, has many advantages and the Committee notes that the Jersey scheme has met the strict criteria set out by the British and Irish Ombudsman Association, of which the Island is an Associate member, as an effective scheme.

As noted above, in that report PPC went on to propose several reforms, which were implemented in 2006 as amendments to the Administrative Decisions (Review)(Jersey) Law 1982.

In our October 2017 report, the Jersey Law Commission anticipated that Ministers and the States Assembly, whose decision this ultimately is, might adopt a policy of retaining the Complaints Panel in preference to an Ombudsperson. Accordingly, we developed several recommendations designed to strengthen the Complaint Panel’s effectiveness.<sup>39</sup>

In February 2020, the Legislation Advisory Panel (LAP) reported<sup>40</sup>

7 of 69 written responses did not favour the establishment of the [ombudsperson]. These were from the existing Complaints Panel, PPC, the Comité des Connétables and four members of the public.

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<sup>38</sup> PPC, *Administrative Appeals System: Proposals for Improvement – Consultation Report* (2004) para 49.

<sup>39</sup> Jersey Law Commission, *Improving Administrative Justice in Jersey* (2017). Chapter 5 examines the Complaints Panel.

<sup>40</sup> Legislation Advisory Panel, *Jersey Public Services Ombudsman: Consultation Feedback Report* (2020).

For the 2022 general election, Deputy Tom Binet's manifesto pledged to 'Revise the procedure for dealing with Jersey Complaints Board outcomes to ensure fair and timely redress for successful complainants'.<sup>41</sup>

#### Discussion points

What do you regard as the relative strengths and weaknesses of the independent complaints bodies in Guernsey, the Isle of Man, and Gibraltar?

What lessons can Jersey learn by looking at these other three jurisdictions?

In Gibraltar, there seems to be political consensus supporting the work of the Ombudsman and the level of funding (£469,000 for a population of 33,000) for the service. In Jersey, Guernsey, and the Isle of Man investment in independent complaints bodies remains politically contentious. What might explain the differences in political views about financial priorities?

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<sup>41</sup> Vote.Je, *Constituency of St Saviour: Candidate Manifestos (2022)* p 12. In 2019, Mr T Binet and Ms R Binet (as they then were) used the Complaints Panel in relation to grievances about the processing of planning applications: see [R.125/2019](#), [R.125/2019 Res.](#), and [R.125/2019 Res.Res.](#)



## **Explainer: What would the Jersey Public Services Ombudsperson look like?**

The most up-to-date official information we could find in the public domain is from the Guernsey States of Deliberation, Policy & Resources Committee, Proposition P.2023/137 prepared in November 2023 and debated in February 2024 (when Deputies rejected a proposal for a joint ombudsperson with Jersey).

It is estimated that 'low hundreds of complaints will be lodged per year, with around 50 being determined by the JPSO and the rest being refused or resolved at an earlier stage'.

The Principal Ombudsperson salary will be in the range £100,000 to £125,000 per year (approximately £150,000 with on-costs).

Two officers would support the Principal Ombudsperson, covering both investigative and administrative work.

The overall budget provision is £400,000 to cover costs of IT provision, office rental and, relating to set-up work, consultancy fees.

'The JPSO's remit will exclude Health in the first phase given the anticipated volume and complexity of complaints and need for additional specialist staff, but they will have a timeframe for inclusion and Social Care will be in scope from day one'. 'Factoring in Health complaints as well, Jersey expects this budget could double'.

### 3 Nature and scale of the problem

Before looking at design choices – whether the Complaints Panel is retained or replaced with the Ombudsperson – we need to be clear about the problem.

An unknown Yale academic once said ‘If I had only one hour to solve a problem, I would spend up to two-thirds of that hour in attempting to define what the problem is’.<sup>42</sup> It is important that policymakers and legislators state with clarity what they think is the nature of the problem in Jersey’s public administration and public services and in the island’s arrangements its independent complaints body.

To assist with this, we start by identifying two standpoints.

#### **Standpoint A: The quality of public administration and delivery of public services in Jersey is generally good and improving**

From this standpoint: there is no fundamental or largescale problem in relation to service delivery and decision-making in Jersey’s public services. The States Employment Board has published a *Code of Practice: Standards in Public Service* setting out clear expectations about the values within public services, standards in public service, duty to disclose and report, and accountabilities.<sup>43</sup> As in any large organisation, occasional mistakes are made in decision-making, or interactions between frontline staff and islanders fall below expected standards. A new Customer Feedback Policy is being implemented and developed, with oversight from the Comptroller and Auditor General.<sup>44</sup> In her 2023 follow-up report, the C&AG concluded ‘Improvements made since my 2020 report are very encouraging: I have observed the Government’s ambition to develop customer centric services through its Customer Experience and Customer Insight developments’.<sup>45</sup>

From this standpoint: while the 2017 Independent Jersey Care Inquiry report and the 2021 Norfolk Police inquiry into Planning (see below) are acknowledged, the matters they dealt with are historic, lessons have been learnt, and the island should move on. The Mascie-Taylor (2022) and Royal College of Physicians (2023) reviews of matters in the

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<sup>42</sup> A version of this aphorism is commonly but wrongly attributed to Albert Einstein: see [Quote Investigator](#), 22 May 2014.

<sup>43</sup> States Employment Board, *Code of Practice: Standards in Public Service* (undated).

<sup>44</sup> Office of the Comptroller and Auditor General, *Handling and Learning from Complaints* (2020) and *Handling and Learning from Complaints – Follow Up* (October 2023).

<sup>45</sup> Office of the Comptroller and Auditor General, *Handling and Learning from Complaints – Follow Up* (October 2023) para 13.

Hospital are of little or no relevance to questions about Jersey's independent complaints body (Complaints Panel or Ombudsperson).

From this standpoint: there is no fundamental problem relating to the Complaints Panel. In the foreword to the Annual Report 2023, the chair of the Privileges and Procedures Committee (PPC) says 'the Panel have continued to provide a stellar complaints service for Islanders' and referred to the Panel's 'fantastic work'.<sup>46</sup> In 2022, Connétable Shenton Stone referred to the Panel's 'unwavering commitment to service improvement across the public sector' and that 'the public also benefits from the wealth of local experience Panel members possess, gleaned from being a part of the Island community'.<sup>47</sup> The relatively small number of cases currently received by the Complaints Panel should not be a cause for concern. As the C&AG says, 'The vast majority of complaints are dealt with within Government and do not reach a Complaints Panel and so are unlikely to reach an Ombudsman'.<sup>48</sup> Focus on 'right first time' decision-making and service delivery in conjunction with improved internal complaints handling should see still fewer islanders feeling the need to seek redress from an external complaints body independent of government. There is, in short, no clear evidence of any unmet need<sup>49</sup> for external resolution services.

## **Standpoint Z: There are profound failings across Jersey's public services**

From this standpoint: there are fundamental problems inside Jersey's public services. While acknowledging the dedication of Jersey's front line public service workers and officials, evidence points to individual and system-wide failure and wrong-doing, for example:

- In 2017, the Independent Jersey Care Inquiry identified individual and systemic failings relating to children's services in service delivery and management and at the level of policy and lawmaking.<sup>50</sup>
- In 2021, the Norfolk Constabulary concluded a 3½ year investigation into allegations of historic misconduct in public office in the Planning Department after 12 islanders came forward with complaints.<sup>51</sup> No prosecutions resulted but it was

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<sup>46</sup> States of Jersey Complaints Panel [Annual Report 2023](#), R.86/2024 (Connétable Karen Shenton Stone) p 2.

<sup>47</sup> States of Jersey Complaints Panel [Annual Report 2022](#), R.178/2023.

<sup>48</sup> Office of the Comptroller and Auditor General, *Handling and Learning from Complaints* (2020) para 5.

<sup>49</sup> In this context, the concept of 'unmet need' is that there is a discrepancy between the number of people with legitimate grievances that remain unresolved by internal complaints handling and the number of people who take their case to the Complaints Panel.

<sup>50</sup> Government of Jersey, 'About the Independent Jersey Care Inquiry' ([link](#)). The inquiry cost £23 million.

<sup>51</sup> 'Jersey planning officers accused of misconduct will not face prosecution', [ITV](#), 16 December 2021. The cost of the police inquiry was reported as £48,000.



reported that police ‘officers did uncover: examples of poor oversight, and a lack of proper training; a lack of clear guidance as to how regulations should be applied; and that planning officers were working without an approved or published enforcement procedure’.<sup>52</sup>

- In 2022, a report by Professor Hugo Mascie-Taylor into the General Hospital referred to ‘ingrained attitudes and behaviours of many years, probably decades’, ‘a current non-accountable and individualistic culture’ resistant to change in Jersey’s secondary health care system, concluding ‘the processes that provide assurance that care is good, or even acceptable, are not well-developed and need urgent improvement. The clinical governance is weak, and the risks are substantial’.<sup>53</sup> The Professor noted that ‘There is not a culture of transparency and indeed, resistance to it from some who view any form of governance with suspicion and any move towards assuring quality and safety with transparent accountability as, at best, unnecessary, and at worst, frustrating bureaucratic interference’.
- In 2023, a review by the Royal College of Physicians of the rheumatology service at the General Hospital reported severe failings in clinical care and governance arrangements.<sup>54</sup> The Minister for Health and Social Services (Deputy Karen Wilson) is reported as saying ‘The initial findings from this audit highlight some serious problems in the rheumatology service and it is clear these underlying issues may extend into other parts of HCS. We have fallen behind “best practice” in a number of areas and we now need to redouble our efforts to strengthen clinical governance and quality of care within HCS’.<sup>55</sup>

From this standpoint: there are fundamental problems with the current independent complaints body (the Complaints Panel). There is unmet need because the Panel receives and resolves only a small number of cases every year. In its 2004 review of the Complaints Panel, PPC highlighted ‘the small number of complaints each year (no more than 20 to 25) leading to a perception that some persons who are aggrieved do not bother to use the system’.<sup>56</sup> Over the ensuing 20 years, the number of complaints received seems to have declined. In 2023, the Complaints Panel logged 12 new formal complaints, achieving informal resolution in 10 cases and holding two hearings. In 2022, there were 14 new complaints, with 6 informal resolutions and one hearing (a reconvened case). Small jurisdictions that have set up ombudsperson schemes see far

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<sup>52</sup> Fiona Potigny, ‘Planning corruption investigation exposes “dysfunctional” system’, *Bailiwick Express*, 17 December 2021.

<sup>53</sup> Government of Jersey, *Review of Health and Community Services (HSC) Clinical Governance Arrangements within Secondary Care* (August 2022)

<sup>54</sup> Royal College of Physicians, *Report of the invited service review to Health and Community Services* (2023).

<sup>55</sup> “‘Serious problems’ found in Jersey rheumatology’, *BBC News*, 4 August 2023.

<sup>56</sup> PPC, *Administrative Appeals System: Proposals for Improvement – Consultation Report* (2004) para 5.

higher levels of use.<sup>57</sup> The Complaints Panel currently lacks the resources and powers needed to tackle the scale of the problem within Jersey's public services and administration. Ministers reject too many of its findings and recommendations.

## Assessing the problem

The two standpoints described above have been presented as opposites, but some observers may see elements of truth in both or have an altogether different diagnosis. The point we are making, from our perspective as the island's law reform body, is that it is important to define what the problem is before looking in detail at legal and other solutions.

### Discussion points

What is your assessment of the nature and scale of problems in Jersey's public service?

What are the implications of your assessment for the choice between keeping the Complaints Panel or taking forward the Ombudsperson proposals?



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<sup>57</sup> See chapter 2 on the Gibraltar Public Services Ombudsman and chapter 5 (Access) below.

## 4 Individual justice or systematic improvement?

### Typical functions

An important basic design choice for the island's independent complaints body (whether that is the Ombudsperson or a reformed Complaints Panel) is what functions it should exercise.

<b>Complaints Panel</b> 	<b>Ombudsperson</b> 
<p>Strong focus on achieving just resolution for individual complainant</p> <p>Board reports on individual complaints sometimes make suggestions for future improvement of decision-making process</p> <p>No systematic follow-up on whether improvements are being implemented</p>	<p>Strong focus on achieving just resolution for individual complainant</p> <p>Can launch own-initiative investigation aimed at improving decision-making processes and service delivery standards</p> <p>Can work with other bodies (e.g. Children's Commissioner and Jersey Care Commission) to achieve joined-up approach to system improvements</p> <p>'Whistleblower' function to receive concerns from staff in public bodies</p> <p>Proactively works in partnership with public bodies on improving their internal complaints handling processes (e.g. publishing guidance, training)</p>

As we noted in chapter 2, independent complaints bodies typically carry out two main functions, though the balance between them varies:

- providing an avenue of redress for injustice felt by individuals that has not been resolved by internal complaints systems (sometimes referred to as the 'firefighting function')
- seeking to improve public administration and service delivery more generally, for everyone's benefit not just the individual complainants (sometimes called the 'fire prevention function').

All ombudspersons and similar bodies are engaged in individual redress. The extent to which they can or should have a broader fire prevention role in improving administration

and service delivery is a little more controversial.<sup>58</sup> On one view, this should be left to the public bodies themselves, who are best placed to engage in continuous improvements without outside lesson-learning help from an external complaints body. Another view sees external complaints body as important catalysts for transformation and systematic improvement.

## Complaint Panel functions



The current Complaints Panel's functions are focused on achieving justice in the circumstances of the individual complaint.

Some, though not all, board decisions also make boarder recommendations for future improvements. We looked at board reports since 2000 to understand what these system improvement recommendations were:

Report	General recommendations
<u>R.39/2024</u>	The Department should 'review the nature and relevant [sic] of all communications to ensure that these focus on patient case and do not inadvertently adopt an unnecessary tone which could be misconstrued as patronising or condescending' (para 6.1).  'Patients involved with ... complaints processes should be allocated a dedicated liaison officer to ensure ongoing and clear communication ... (para 6.3)
<u>R.105/2023</u>	There should be adequate and robust communications protocols in place, particularly as the Complainant and those in a similar position to her, are victims in this matter (para 3.5)
<u>R.31/2023</u>	<b>This was the third hearing of this case.</b> The board's report said that 'While Mr. Newman's complaint has now been resolved, a number of the Board's more general recommendations in our previous two Reports (R.139/2020 presented by the PPC on 9th December 2020 and R.110/2022 presented on 4th August 2020) have not, as far as the Board is aware, been considered or acted upon. In particular, we repeat the findings and recommendations in paragraph 6.24, 7.2, and 7.13 of R.139/2020 and paragraph 66.2 of R.110/2022' (para 4.3).
<u>R.94/2023</u>	'The Board recommends that the threat of legal proceedings should have only been introduced as a last resort following a complete failure by the alleged overpayment [sic] to engage with the Department' (para 5.4). It is not clear whether this is a 'finding' relevant to the particular case or a broader recommendation for government-wide improvement.
<u>R.110/2022</u>	<b>This was the second hearing of this case.</b> We recommend that a general direction is given to all Ministers, departments, civil servants and appointees to public offices or bodies established under Jersey law (i.e., including "quangos" and bodies corporate established under Jersey law and effectively under the control of the States) that the presumption is that

<sup>58</sup> For an academic discussion of the issues, see Professor Chris Gill 'What can government agencies learn from the ombudsman?' in M Hertogh and R Kirkham (editors) *Research Handbook on the Ombudsman* (2018) ([link](#)).

	<p>their acts, omissions, processes, and decisions are subject to the jurisdiction of the Complaints Panel in accordance with the Law and any successor body (para 66.2.1).</p> <p>If, in an exceptional case, it is felt necessary, notwithstanding the presumption set out above, to dispute the jurisdiction of the Complaints Panel in an individual case, we recommend that a direction is given that the relevant Respondent should make that challenge immediately on receipt of notification of the relevant complaint or of the essential facts and matters that give rise to the objection to jurisdiction (para 66.2.3)</p> <p>Further, in a case where, following a challenge to its jurisdiction, a Complaints Board rejects the challenge and rules that it has jurisdiction, we recommend that a direction is given that the relevant Respondent must either accept the finding of the Complaints Board or itself challenge that finding by seeking a Declaration from the Royal Court in a claim for judicial review of the Complaints Board’s decision (para 66.2.4)</p> <p>We recommend that a policy should be introduced which provides expressly that all Ministers, departments, civil servants and appointees to public offices or bodies (i.e., including “quangos” and bodies corporate established under Jersey law and effectively under the control of the States) should co-operate fully and proactively with any investigation undertaken by the Complaints Board, including a transparent explanation of the relevant processes and full disclosure of any documentary evidence that may be relevant to the consideration of the individual complaint or any wider policy issues that may arise out of it. This should be a positive duty of co-operation and candour. (para 66.2.5)</p> <p>We recommend that a policy and direction should be given to all Ministers, departments, civil servants and appointees to public offices or bodies referred to in para 61.2.5 that there is a strong presumption that a Respondent to a complaint will accept the findings of and implement forthwith the recommendations of a Complaints Board in an individual case. (para 66.2.5)</p> <p>We recommend that a (very) senior official or group of officials are given responsibility for changing and modernising the attitudes of the public sector in Jersey towards transparent and good administration and the interaction with those charged with scrutinising their actions and decisions. This would be aimed at changing the attitudes that we have identified above. (para 66.2.7)</p> <p>We (strongly) recommend in the case of the [pension scheme] and equivalent schemes, that all members are given an express, statutory right to appeal any decisions to an independent body whether that is the Court or another body with power to make binding decisions, including quashing decisions and awarding compensation, interest, and costs. (para 66.4)</p>
<u>R.45/2021</u>	<p>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</p>

	<p>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. (para 8.5).</p> <p>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. (para 8.6)</p> <p>The Board is unclear who holds ultimate political oversight of the Feedback complaints system and requests that this be confirmed and made public. (para 8.7)</p>
<p><u>R.137/2021</u></p>	<p>The Board therefore recommends that the appeals process under the Law is modified to mirror the system used in Planning appeals, where three States members who have had no involvement in the original decision should first review the decision and submit their guidance to the Deputy Chief Minister who, likewise, will have had no direct involvement in the original decision. The appellant should have the opportunity to address the Deputy Chief Minister, who will then make his or her adjudication. The Board considers that the appellant’s right to put forward his own case is fundamental to any appeals process and should apply as a matter of course. (para 4.9).</p> <p>The Board wishes to record its concern that the provisions of Paragraph 65 of the Policy Guidelines (headed ‘Caring for another person outside the Island’) are unreasonably restrictive, in that they refer only to caring for a parent or child. They make no reference, for example, to a spouse or partner or any other person who may be in essential need of care. The Board recommends that consideration be given to the removal of any reference to a particular relationship with the person cared for, leaving it to the applicant to make the case that his or her absence as carer was essential. (para 4.10).</p>
<p><u>R.139/2020</u></p>	<p><b>This was the first hearing of this case.</b> ‘Naturally, if we have misunderstood the position, and the Committee of Management, the Chief Minister, Minister for Treasury and Resources and the Treasurer agree and accept that people in the position of Mr. Newman would have a private law cause of action for damages in the event that they established any one of the grounds listed in Article 9 of the Law in relation to the administration of their pension or any other private law cause of action, it would be of considerable benefit if they said so, publicly and unequivocally, identifying the tribunal or Court within which such claims can be brought. We recommend that any such unequivocal clarification is given by way of a formal public statement to the States.’ (para 6.24).</p> <p>‘As a preliminary matter, drawing on their combined experience in pensions matters and public administration, the Board expressed surprise that such a significant change to the pensions process could have been implemented without there having been a notice period communicated widely to the Fund members. It was also a matter of some concern that there were no written procedures, or a Service Level Agreement, which could be applied to valuations, or indeed detail the procedure to be followed whenever that service was altered. The Board considered that there should be clear guidance provided to Members, outlining the difference in approach to active and inactive employees in respect of the service</p>

	<p>delivery, as this had been mentioned several times by the Head of Shared Services.’ (para 7.2)</p> <p>‘There was also some disquiet that the Chair of the Committee of Management had made the decisions regarding the Level 4 appeal on his own, without broader reference to the Committee of Management. The Board considers it inappropriate that there was no consultation with the Members’ representatives of the Committee and that the decision was based solely on advice given by the officers who had administered the case. The Board is concerned about the internal procedures which were in place and considers that there should be some independent oversight of the appeals process and/or consideration of appeals.’ (para 7.13)</p>
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A researcher trying to understand the impact of system improvement recommendations made by the Complaints Panel meets hurdles. First, board reports are not consistent in setting out system improvement recommendations in a section which a clear heading, so we found relevant points in different places in different reports. Secondly, there is no organised archive of Ministers’ responses to system improvement recommendations, so it is difficult to track down what (if anything) has been said and subsequently done by the Government. Third, the Complaints Panel’s annual reports do not contain any sort of ‘tracker’ or organised cumulative commentary on what impact board reports have achieved in system improvement. Further research would be needed to evaluate the Complaint Panel’s impact on system improvement. What seems clear, however, is that the Complaints Panel’s impact will be sporadic because of the very small number of reports it issues.

## Ombudsperson functions



Like the Complaints Panel, the Ombudsperson will seek resolution of individual complaints.

The Ombudsperson has been designed to have several other functions aimed at broader system improvement in the public bodies within its remit:

- It will be able to launch an investigation on its own initiative, without the need for an individual to come forward with a specific complaint.
- As the island’s ‘whistleblowing officer’, the Ombudsperson will receive in confidence concerns from employees in the public service and investigate them.
- The Ombudsperson could also work jointly with other bodies such as the Jersey Care Commission and Children’s Commissioner for Jersey.

- The Ombudsperson will have a duty to publish codes of guidance on whistleblowing and handling internal complaints and ensure that they were implemented.

Though not listed in the proposed Law, it is reasonable to assume that the Ombudsperson will engage in a range of activities aimed at achieving lesson learning such as publishing user-friendly guidance notes for staff and providing training sessions designed in partnership with public bodies.

## Next steps

A key decision for the States Assembly is whether Members want the island's independent complaints body to have a stronger function in bringing about system improvement.

**If the States Assembly opts to retain the Complaints Panel and considers that the island's independent complaints body should have a system improvements role**, there are some practical steps, not requiring legislation, that could enhance the Complaint Panel's role. For example:



- Board reports should be consistent in the presentation of their recommendations for system improvement (for example, always having a heading to this effect; and more generally distinguishing more clearly between 'findings', 'recommendations for resolution of the specific complaint' and 'recommendations for system improvement').
- The Complaint Panel's annual reports should provide a much clearer account of the system improvements they have recommended and the responses from government. This may require looking across over several years to monitor change. The evaluation should be based on quantitative and qualitative data.
- The States Assembly, whether through PPC or another committee or scrutiny panel, should adopt a joined-up approach to ensuing government accountability for system improvement that links lesson learning from internal complaint handling and external complaint process. As we discuss in chapter 11, the Assembly's scrutiny work looks less effective than it could be: for example, PPC has oversight of the Complaints Panel; Public Accounts Committee has worked on internal complaints; ad hoc scrutiny reviews have looked at aspects of the system; Legislation Advisory Panel had been involved in development of policy on the Ombudsperson; and Scrutiny Liaison Committee does not currently have a role (though will under the Ombudsperson Law).



Would it be feasible for the Complaints Panel to be conferred with powers envisaged for the Ombudsperson: own-initiative investigatory powers, a whistle-blower function, capacity for joint working with other bodies such as the Children’s Commissioner, and a role in publishing guidance and delivering training? Given the part-time, volunteer nature of the Complaints Panel’s membership, we doubt that this would be practicable.

**If the States Assembly opts to progress with the Ombudsperson and considers the island’s independent complaints body should have a system improvements role,** the new organisation will have a range of

powers to achieve lesson learning and system improvement. As described above, these include: own-initiative investigations, a role as the island’s whistle-blower officer; powers to work jointly with other bodies; and to publish guidance and deliver training courses.



#### **Discussion points**

Should Jersey’s independent complaints body have a role in promoting systems improvements?

To what extent does the Complaints Panel currently achieve system improvements? How could this function be strengthened?

Is the Ombudsperson more likely to have impact in achieving lesson learning and system improvement?

Could the States Assembly’s accountability role for system improvement be strengthened?

## 5 How to be an accessible and transparent independent complaints body

Another cluster of design choices is how to ensure the independent complaints body (Complaints Panel or Ombudsperson) is accessible and transparent.

The design choices examined in the other chapters of this report are mostly presented as ‘is X preferable to Y?’. But there is such strong consensus that public authorities should be accessible to users and transparent with the public that we approach these goals as a question of *how* to achieve them rather than whether they should be aims at all.

### Accessibility

Since the Complaints Panel was first set up in 1979, there has been a revolution in how we think and feel about the relationship between islanders and government bodies. Public administration and public service delivery in modern Jersey, as in many other countries, strives to be ‘customer-centric’<sup>59</sup> or ‘user centred’.

Viewed from this perspective, Jersey’s independent complaints body (whether the Complaints Panel or Ombudsperson) provides a dispute resolution service that should be attuned to the needs of those who are using – or might use – its services.

Accessibility is partly determined by the design of the independent complaints body’s legal framework. For example, in the United Kingdom under section 6 of the Parliamentary Commissioner for Administration Act 1967, ‘A complaint shall not be entertained under this Act unless it is made to a member of the House of Commons’. This MP filter to use the Parliamentary Ombudsman is widely criticised as an unnecessary barrier. Nobody has suggested that a similar feature should apply to the Complaints Panel or the Jersey Public Services Ombudsperson.

Accessibility (customer centricity) is also shaped by organisational culture and service design, independent of the body’s legal framework.

### Accessibility to the Complaints Panel

Our starting point in assessing the accessibility of the Complaints Panel is to return to the question of unmet need discussed in chapter 2. Should we in Jersey be concerned by what some people see as the Complaints Panel’s relatively



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<sup>59</sup> A term used by the Comptroller and Auditor General in relation to the Government of Jersey’s customer feedback policy.

low caseload? In discussing standpoints A and Z in chapter 2, we put forward two alternative hypotheses.

- There is no problem. There is no evidence of an unmet need. Indeed, as the Government of Jersey’s customer feedback policy beds in and continues to improve internal complaint handling, fewer islanders will need to resort to an independent complaints body.
- There is a longstanding problem. In its 2004 review of the Complaints Panel, the States Assembly Privileges and Procedures Committee (PPC) highlighted ‘the small number of complaints each year (no more than 20 to 25) leading to a perception that some persons who are aggrieved do not bother to use the system’. Over the ensuing 20 years, the number of complaints received seems to have declined.

Small jurisdictions that have set up ombudsperson schemes tend to have far higher levels of use than Jersey’s Complaints Panel. We noted in chapter 2 that the Gibraltar Public Services Ombudsman (population 33,000) receives more than 200 cases annually. Other points of reference, from their 2022 annual reports, could include the Bermuda Ombudsman (177 complaints with a population of around 65,000) and the Cayman Islands Ombudsman (178 complaints, population 60,000).

We understand that in developing the Ombudsperson proposals, the Government of Jersey has lent towards the latter view. It estimated that ‘low hundreds of complaints will be lodged per year, with around 50 being determined by the [Ombudsman] and the rest being refused or resolved at an earlier stage’.<sup>60</sup> The implication of this is that there are currently 100-plus islanders who are not using the current Complaints Panel, 45-plus of whom deserve to have their cases examined formally at a hearing by the Complaints Panel.

### Complaints Panel

2023: 12 new formal complaints, 10 informal resolutions, two formal hearings.

2022: 14 new complaints, 6 informal resolutions, one formal hearing (ongoing case from previous year).

### Ombudsperson

Estimated to receive ‘low hundreds of complaints’ each year.

Most resolved informally.

Around 50 complaints undergo investigation.

<sup>60</sup> Guernsey States of Deliberation, Policy & Resources Committee, Proposition P.2023/137 prepared in November 2023 ([link](#)).

So far as we know, the reasons why people in Jersey with legitimate complaints left unresolved by the internal complaints system do not go to the Complaints Panel have not been researched. An understanding of why this happens might help the Complaints Board or Ombudsperson develop their approach to accessibility. Barriers to using the current Complaints Panel might for example include some or all the following:

- People with potential complaints are not aware of the Complaints Panel
- People do not understand what the Complaints Panel does
- People feel they cannot access support to help them prepare and present their complaint.
- People are not confident that going to the Complaints Panel will help achieve a favourable resolution of their grievance
- People are put off from using the Complaints Panel because of its procedures (for example, the need to prepare and present a case at a formal public hearing).
- The Complaints Panel does not publicise a phone number or email address for people with initial inquiries to use.

To understand how the Complaints Panel compares to other independent complaints bodies, we did a piece of simple desk-based research looking at Jersey, Guernsey, the Isle of Man, and Gibraltar independent complaints bodies to see what communication arrangements exist for potential complainants (see table below). Our assessment is that the Complaints Panel does not score highly.

This is only one dimension of creating a customer centric service but is sufficient highlight significant differences in approach.

Independent complaints bodies should also ensure that users from different backgrounds can all have fair access to its services. This may include having information in minority languages, being clear about reasonable adjustments that will be made for a complainant who has a disability and emphasising that there is no charge for using the service.

The Complaint Panel's annual reports have not included data on user diversity. Without these data it is difficult to benchmark the Complaint Panel's success in ensuring its service is used by all sections of Jersey society (including, for example, islanders who are disabled and members of the Portuguese community).

## Accessibility to the Ombudsperson



There is little to say at this point about how customer centric Jersey's new Ombudsperson would be. All the public services ombudsperson in the British Isles have a strong commitment to customer centricity.

**Table: Basic communication tools used by independent complaints bodies**

	<b>Jersey Complaints Panel</b>	<b>Guernsey Complaints Panel</b>	<b>Isle of Man Tynwald Ombudsman</b>	<b>Gibraltar Public Services Ombudsman</b>
Published phone number	No	Yes	No	Yes. Help line open Monday to Friday
Published email address on first page of website	No	Yes	Yes	Yes
Other means of contact	No	No	No	Skype
Encouraged to visit in person with an inquiry	No	No	No	Yes. Website contains map and directions.
Prominent statement that service is free	No	No	Yes	Yes
Website or webpage	( <a href="#">link</a> )	( <a href="#">link</a> )	( <a href="#">link</a> )	( <a href="#">link</a> )
Information in minority languages available	No	No	No	Yes (Spanish and Arabic)
Social media accounts	No	No	No	Facebook, X, YouTube
Reasonable adjustments statement (for people with disabilities)	Yes (but not on landing page)	Yes	No	No

## Transparency

Transparency refers to how easy or hard it is to access information about a public authority's work. Potential complainants, members of the public, States Members, journalists, and researchers may all want to understand what a public authority is doing. Transparency is therefore closely linked to accountability.

### Complaints Panel: transparency duties and practices



The Complaint Panel has a legal duty to make an **annual report** under article 10 of the Administrative Decisions (Review) Law 1982. It must 'present to the Privileges and Procedures Committee on the following':

(a) complaints received; (b) results of any attempt at informal resolution of the subject matter of such a complaint; (c) a summary of the findings of any Board; and (d) the steps taken by the relevant Minister, Department or person when a Board has requested a reconsideration of the matter of such a complaint.

PPC must present a copy of the report to the States. PPC 'may examine the Panel on the contents of the Panel's report and may present to the States the Committee's own comments on the report'.

In 2023, the Comptroller and Auditor General published *Annual Reporting: Good Practice Guide*,<sup>61</sup> noting 'Public annual reporting, done well, enables stakeholders to understand – with trust and confidence – an entity's strategy and the risks it faces, how much money has been spent and on what, and what has been achieved as a result. It enables stakeholders to hold the entity to account effectively'.

**One 'overarching principle' of annual reporting is 'supporting accountability':** the best reports 'include clear action points to take forward'. It is not clear that the Complaint Panel's annual reports consistently provide such action points. For example, in board report R.110/2022 (presented by PPC to the Assembly in August 2022), a Deputy Chair made a series of far-reaching and detailed recommendations relating to a presumption that all public bodies fall within the Panel's jurisdiction (para 66.2.1), how disputes about jurisdiction should be managed (para 66.2.3), and calls for a 'direction should be given to all Ministers, departments, civil servants and appointees to public offices or bodies that there is a strong presumption that a Respondent to a complaint will accept the findings of and implement forthwith the recommendations of a [board] in an individual case' (para 66.2.6). Yet there is no explanation of how the Complaints Panel planned to take forward these proposals.<sup>62</sup>

<sup>61</sup> Comptroller and Auditor General published *Annual Reporting: Good Practice Guide* ([link](#)).

<sup>62</sup> We return to this point in chapter 11.

In respect of **reports by boards on individual complaints**, PPC 'shall present to the States a copy of any information or report that it receives' under article 9 of the 1982 Law.

### **Ombudsperson: transparency duties and practices**



The law drafting in instructions for the Jersey Public Services Ombudsperson outlines several transparency requirements:<sup>63</sup>

- The Law should state that the JPSO must produce an annual report on the performance of the functions of the JPSO for each financial year. The report must comply with the requirements for the annual reports of entities listed under Schedule 6 to the Public Finances (Jersey) Law 2019 under the Public Finances Manual. The annual report must also contain the Strategic Plan.
- The Law should state that the Principal Ombudsperson, with the support of the Board, will produce a Strategic Plan (as part of an Annual Report – see paragraph 29, above) on an annual basis, outlining the financial requirements for the next financial year, based on the previous year's performance and the expected programme of work in the next year – this may include the financial requirements for the own-initiative investigations.
- The Law should ensure that the JPSO will start from a presumption of transparency about the relationship between (1) the Principal Ombudsperson and the Board and (2) the JPSO and the Chief Minister.
- The JPSO will routinely publish but is not limited to the following: Board minutes; comments made by the Chief Minister on the Annual Report and the Strategic Plan; the responses of the Chief Minister to requests for ad hoc funding by the JPSO; the requests by the Chief Minister for the Principal PSO to consider an own-initiative investigation; performance data and other operational statistics.
- Findings and recommendations of investigations must be public to promote transparency. This might extend to a searchable database or an annual/quarterly casebook. The published reports of investigations will remove personal data and focus on findings, recommendations for resolving the individual dispute, and for improving the public service in question; this will be on a searchable database.

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<sup>63</sup> Government of Jersey, [Law Drafting Instructions: Jersey Public Services Ombudsperson \(2022\)](#).

## Next steps

**If the States Assembly opts to retain the Complaints Panel, there are several improvements that should be considered to aid accessibility and transparency.**



On accessibility, basic changes should include having an email address and telephone number displayed, so that potential complainants can seek advice about the process from an appropriate person in the States Greffe.

The current Complaints Panel webpage is two clicks deep within the States Assembly website (on a dropdown menu after 'Complaints Commissioner'). This lacks public visibility. If the States Assembly wants to offer an accessible independent complaints resolution service to the public, this should be prominently displayed and highlight that the service is free. Online information about the Panel should be kept up to date and be well designed for users.<sup>64</sup>

In our October 2017 report *Improving Administrative Redress in Jersey*, we recommended the States Assembly invest in a website for the Complaints Panel, the Complaints Panel agreed, but nothing has happened in more than six years.

There should be an archive of decisions that is searchable and developed with input from users (including academic researchers and journalists). This should tell the complete story of complaints, including ministerial responses.<sup>65</sup>

In relation to transparency, as the number of cases increases, the Complaint Panel's approach to using and publishing performance data and operational statistics should become more sophisticated. For example: what are the trends in relation to the time taken to achieve informal resolution and formal resolution?

Over several years, boards have made recommendations for general improvements to public administration and service delivery but currently there is a lack of transparency about the impact the Complaints Panel is achieving in this role (see chapter 4).

There is currently a lack of published data on user diversity. How does the Complaints Panel know whether it is reaching all sections of the island community?

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<sup>64</sup> The 'Recent findings by the Complaints Board' is not kept up to date (in June 2024, the only board decision listed was one from 2022 and the link led to a '404 NOT FOUND' error message).

<sup>65</sup> On the current webpage, the link to 'Archived complaints' confusingly starts with complaints received by the Complaints *Commissioner* (the entirely separate officeholder responsible for considering complaints about the conduct of States Members) rather than the Complaints *Panel*. This list does not include any Ministers' reports in response to those of the Panel, so does not provide a complete account of what happened in each case



If the Chair of the Complaints Panel is in communication with the Chief Minister, other Ministers or officials about matters outside individual complaints, the correspondence should be published. As we note in chapter 11, rebuilding partnership with Government requires dialogue yet it is unclear what (if any) exchanges take place.



**If the States Assembly opts to proceed with the Ombudsperson,** as described above there would be a comprehensive array of legal duties to ensure accessibility and transparency in the new Law. It is reasonable to assume that the new organisation will follow best practices across similar organisations in developing a customer-centric culture.

Discussion points

Are you concerned that the Complaints Panel is not as accessible at it should be?

Are there 'quick win' measures that could be put in place to improve accessibility and transparency?

If the States Assembly decides to set up the Ombudsperson, what practical arrangements would be needed to raise public awareness of its existence and role?

## 6 Focus on Ministers or extend the reach to many more public bodies?

Another basic design choice for the island's independent complaints body (whether a Complaints Panel or Ombudsperson) is deciding which public bodies should come within its jurisdiction.

### Complaints Panel



Jurisdiction defined as being over 'any **Minister or Department** of the States or ... any person acting on behalf of any such Minister or Department'

### Ombudsperson



Jurisdiction defined as **Government of Jersey, other public bodies** including parishes, head teachers and governing bodies of schools, and a long list of **specified bodies** including Andium Homes, Ports of Jersey, Jersey Post, Jersey Telecom, States of Jersey Development Company, and more than 30 other entities.

At future date, jurisdiction may be extended to GPs, dentists, pharmacists and other health care providers delivering public services.

## Bodies under the remit of the Complaints Panel



The public bodies within the jurisdiction of the Complaints Panel is currently defined as '... any Minister or Department of the States or by any person acting on behalf of any such Minister or Department' (Administrative Decisions (Review)(Jersey) Law 1982 article 2). This potentially leaves many public bodies outside its reach. Moreover, in recent cases the Complaint Panel's jurisdiction has been questioned (an issue we focus on in chapter 11 below).

In July 2015, Privileges and Procedures Committee (PPC) heard from the Complaints Panel Chair Designate (Mr Geoffrey Crill) that 'Of particular importance was ensuring that the work of the Panel covered all intended branches of government, to include newer bodies and departments'.<sup>66</sup> Seven years later in 2022, the Complaints Panel renewed its call for wider jurisdiction in recommendations made by a board:<sup>67</sup>

<sup>66</sup> PPC, 13<sup>th</sup> Meeting, 7 July 2015 ([link](#)).

<sup>67</sup> PPC, R.110 (re-issue)/2022 ([link](#)).

We recommend that a general direction is given to all Ministers, departments, civil servants and appointees to public offices or bodies established under Jersey law (i.e., including “quangos” and bodies corporate established under Jersey law and effectively under the control of the States) that the presumption is that their acts, omissions, processes, and decisions are subject to the jurisdiction of the Complaints Panel in accordance with the Law and any successor body (para 66.2.1).

As we discuss below, the Jersey Law Commission and the consultants developing the drafting instructions for the Jersey Public Services Ombudsperson Law considered in detail how to determine which public bodies, or bodies carrying out public functions, should be within reach. This model could be used for the Complaints Panel, if it is retained.

## Bodies under the remit of the Ombudsperson



The Ombudsperson will have jurisdiction over Ministers and Departments, using the modern terminology of the ‘Government of Jersey’. In addition, the Ombudsperson will cover the following **public bodies**:

- Officers on whom duties and powers are conferred by law, for example: Medical Officer for Health, Official Analyst.
- The Parishes (but not Honorary Police, Parish Hall Enquiries, or Church matters)
- Bailiff’s Chambers in relation to procedural and administrative functions such as liquor and public entertainment licencing (but not matters relating to judicial decisions)
- States Greffe (but only where it delivers a service to the public)

The Ombudsperson will cover the following **education bodies**:

- Head teachers exercising functions under Education (Jersey) Law 1999
- Governing bodies of schools exercising functions under Education (Jersey) Law 1999
- ‘Provided schools’ (listed in Schedule 1 to the Education (Jersey) Law 1999)
- Jersey Curriculum Council
- Religious Education Advisory Council.

And the following ‘**specified bodies**’. The criteria for inclusion on the list are discussed in detail in the Law Drafting Instructions, drawing on work by the Jersey Law Commission. They include whether the entity is: wholly owned by the

Government of Jersey; receives public funding; is staffed by Government of Jersey employees; and/or the body falls within the remit of the Appointments Commission.<sup>68</sup>

- Andium Homes
- Ports of Jersey
- Jersey Post Ltd
- JT Group Ltd (Jersey Telecom)
- States of Jersey Development Company
- Jersey Car Parking
- Jersey Fleet Management
- Jersey Electricity Company
- Jersey Water
- Jersey Bank Depositors Compensation Board
- Association of Jersey Charities
- Bosdet Foundation
- Brussels, London and Caen Offices of the States of Jersey
- Citizens Advice Jersey
- Jersey Advisory and Conciliation
- Jersey Arts Centre
- Jersey Arts Trust
- Jersey Community Relations Trust
- Jersey Employment Trust
- Jersey Childcare Trust
- Jersey Consumer Council
- Jersey Gambling Commission
- Jersey Health and Safety Council
- Jersey Heritage Trust
- Jersey Opera House
- Jersey Law Commission
- Jersey Overseas Aid Commission

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<sup>68</sup> Government of Jersey, Law Drafting Instructions: Jersey Public Services Ombudsperson (2022).

- Jersey Safeguarding Partnership
- Public Employees Contributory Retirement Scheme/Jersey Teachers Superannuation Fund
- Public Lotteries board
- Records Advisory board
- Royal Jersey Agricultural and Horticultural Society
- Skills Jersey
- Sport Jersey
- Tourism Development Fund
- Westaway Donations Council.

## Health complaints

As we noted at the start of the report, at his quarterly meeting with the Corporate Services Panel on 7 June 2024, the Chief Minister noted<sup>69</sup>

The previous Assembly earmarked £400,000 per annum to fund an ombudsperson, but we, upon further review, that is likely to be the very minimum required and if its remit was extended to Health, for example, then the budget would need to be far higher; well in excess of £1 million.

In trying to understand this, a starting point is to gauge the size of the health-related complaints caseload. Looking at what is on the public record, we see that data released following Freedom of Information requests show the total number of General Hospital *internal* complaints recorded annually between 2018 and 2023 were: 278, 279, 324, 388, 378, and 119.<sup>70</sup> Health and Community Services (HCS) also recorded 42 complaints against consultants (permanent and locum) in the period 2018-2022.<sup>71</sup> The Complaint Panel's Annual Report 2023 summarises 6 health-related complaints, only one of which required formal resolution by a board hearing. In addition, the Complaints Panel received 3 'informal inquiries' about HCS from potential complainants. These data could suggest that HSC internal complaint handling is effective at resolving grievances so that relatively few complainants need to go on to the Complaints Panel; or that there is unmet need, with people who remain aggrieved deciding not to pursue their case.

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<sup>69</sup> See transcript ([link](#)); and Rod McLoughlin, 'Doubts over paid ombudsperson', *Jersey Evening Post*, 8 June 2024 p 9.

<sup>70</sup> Fol disclosure ([link](#)).

<sup>71</sup> Fol disclosure ([link](#)).

What is not clear to us is what it means to say of the Ombudsperson ‘... if its remit was extended to Health’. Documents in the public domain suggest two somewhat different things.

- The **Drafting Instructions** propose that the Ombudsperson would have jurisdiction to receive complaints about ‘Administrative service failure in healthcare settings’ and ‘Clinical treatment (unless the complainant has a legal remedy for damages)’. Later, by Regulation and following consultation, it is envisaged that the Ombudsperson’s jurisdiction could be extended to other healthcare providers such as GPs, dentists, and pharmacists.<sup>72</sup>
- At an early point in the policy development process, the **‘provisional policy position’** was stated as ‘healthcare will be excluded from the JPSO remit in the first instance. The report and proposition that accompanies the draft legislation will, however, set out a timeframe for inclusion. Further careful consideration and discussion with key stakeholders and subject matter experts will be needed in relation to clinical decisions and how these may be incorporated.’<sup>73</sup>

It would be useful for the Government of Jersey to clarify the assumptions it is making when it refers to extending the Ombudsperson’s remit to health.

Further detail on why that including health-related complaints in the Ombudsperson’s remit would increase costs so much: is this because of the number of complaints that would be received, the need for specialist staff (investigators with health experience), or other reasons?

## Next steps

**If the States Assembly opts to retain the Complaints Panel, the Administrative Decisions (Review)(Jersey) Law 1982 could be amended to include a similar list of bodies to those proposed for the Ombudspersons Law.**



In our view it is desirable to have a definitive list rather than use a technique such as that used in the Human Rights (Jersey) Law 2000. That Law provides a general description of the types of body subject to ECHR rights (a ‘public authority’ or ‘any person certain of whose functions are functions of a public nature’). The Complaints Panel is a statutory body that does not, and should not, have ‘inherent jurisdiction’ like the Royal Court. A list of bodies within the Panel’s remit should reduce disputes over whether a complained about decision is in the Panel’s jurisdiction. The Legislative Drafting Office will want to

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<sup>72</sup> Government of Jersey, Law Drafting Instructions: Jersey Public Services Ombudsperson (2022).

<sup>73</sup> Jersey Public Services Ombudsman Consultation Feedback Report ([link](#)).

consider whether the list of bodies should be amendable by Regulations to make it easier to update.

Extending the Complaint Panel's jurisdiction to a much broader variety of bodies (and improving accessibility, as discussed in chapter 5) will have implications for its case load and the type of decisions the Panel may be called on to review. Careful modelling would be needed to ensure that a Complaint Panel of volunteer members of the public, with administrative support based in the States Greffe, can cope with a potential step change in the scale of their work.

**If the States Assembly opts to progress with the Ombudsperson**, the new Law will provide a clear list of bodies over which the Ombudsperson has jurisdiction.



#### Discussion points

Should Jersey's independent complaints body have jurisdiction over a wider range of public bodies?



Would it be feasible for the Complaints Panel to receive complaints from a wider range of public bodies than they currently do?

Would the Ombudsperson be better suited to handling complaints from this wider range of public bodies?

What exactly is (was) the Government of Jersey proposal for phasing in health-related complaints after the Ombudsman was established?

## 7 Citizen boards or professional investigator?

A further basic design choice for Jersey's independent complaints body relates to the type of decision-maker who should be responsible for seeking resolution of individual complaints and making recommendations for improving public administration.

<b>Complaints Panel</b> 	<b>Ombudsperson</b> 
<p>Unspecified number of members of the public selected by current Panel after advertisement and interview</p> <p>Serve for maximum of 9-10 years</p> <p>Panel members are unpaid</p> <p>Formally appointed by States Assembly on nomination of PPC</p> <p>Chair by convention legally qualified</p> <p>Chair and 2 Deputy Chairs work on informal resolution of cases</p> <p>3 members of Panel form boards to hear individual cases</p> <p>Supported by States Greffe</p>	<p>Principal Ombudsperson appointed for fixed term of 5-9 years</p> <p>Salary approx £150k including on-costs</p> <p>Formally appointed by the States Assembly on joint nomination of chair of Scrutiny Liaison Committee and Chief Minister</p> <p>Two other officers will support the Ombudsperson's role.</p> <p>Non-executive board of up to 8 unpaid islanders 'advise, support and challenge' and defend independence of Ombudsperson</p>

As we saw in chapter 2, different jurisdictions have reached a range of views on what is best.

<b>Guernsey Complaints Panel</b>	Panel of States Members, elected parish officeholders, and unpaid lay people. Cases heard by 4-member boards. Supported by Reviews and Tribunal Service.
<b>Isle of Man Tynwald Commissioner for Administration</b>	Investigations by a part-time investigator (currently a local advocate) with administrative assistant, paid by hourly fee. Officer of Tynwald.



<b>Isle of Man Health and Social Care Ombudsman Body</b>	Investigations by a legally qualified part-time chair and 7-10 appointed members with ‘experience in the fields of health, social care, dispute resolution, or administrative justice’. Paid an hourly fee and travel expenses.
<b>Gibraltar Public Services Ombudsman</b>	Professional salaried full-time ombudsperson with small staff.

In the following sections, we set out and analyse the case for the Complaints Panel and Ombudsperson in relation to the type of person doing the work.

## People on the Complaints Panel



The Administrative Decisions (Review)(Jersey) Law 1982 contains no express statement about the Complaint Panel’s independence.<sup>74</sup> Nor does it have any provision about how a Panel Member may be removed from office. The absence of these basic independence safeguards means that the composition of the membership at any given time must carry a lot of the weight in demonstrating, in fact and public perception, that the Complaints Panel is an independent body.

Members of the Complaints Panel are selected by current members after interview. They are formally appointed by the States Assembly on the nomination of Privileges and Procedures Committee (PPC). As the Comptroller and Auditor General has written, ‘Fixed terms of office provide an element of protection for the members of independent bodies and independent office holders. They also provide assurance to the public that independence is not impaired by over familiarity through holding office for a long period of time’.<sup>75</sup> The Jersey Appointment Commission’s *Code for Quangos and Tribunals* (May 2016 version) recommends that ‘members of independent bodies should not normally be appointed for terms in excess of nine years’<sup>76</sup> or the period may be 10 years.<sup>77</sup> All current members of the Complaints Panel have terms of office ending in September 2024. Whether it is 9 or 10 years, if the Complaints Panel is retained, there will be a need to recruit new members in the next year as some current members reach or exceed the total limit of their service.

<sup>74</sup> Compare e.g. Public Services Ombudsman Act (Northern Ireland) 2016 [section 2](#), about the Ombudsman ‘not subject to the direction or control of’ Ministers or the Assembly.

<sup>75</sup> C&AG, *Governance and Accountability of Independent Bodies and Office Holders: A Think Piece* (2022) para 31.

<sup>76</sup> Jersey Appointments Commission, *Code for Quangos and Tribunals* (May 2016) para 10.

<sup>77</sup> The most recent Report ([R.127/2023](#)) proposing appointments to the Complaints Panel refers to ‘Section 4.13 of the Appointments Commission’s Code of Practice recommends that the term of office of a member of a public body should not exceed 10 years, although in some circumstances this limit can be extended’ but we have been unable to find this document.

The Administrative Decisions (Review)(Jersey) Law 1982 requires that to be eligible for appointment, the Chair and two Deputy Chairs must be ‘suitably qualified by profession or experience’. Currently, the Chair and one of the Deputy Chairs are legally qualified and the other Deputy is a retired headteacher. The Law does not stipulate any minimum or maximum number of ordinary Panel members; currently there are 10.

The Chair is by convention a lawyer.<sup>78</sup> There is no prohibition on the following being members of the Complaints Panel: current Government of Jersey employees or consultants;<sup>79</sup> former Government of Jersey employees;<sup>80</sup> or former States Members.<sup>81</sup> The Panel is therefore not composed exclusively of ‘outsiders’ looking at the Government of Jersey. On the contrary, selection exercises have seen value in appointing members with ‘insider’ knowledge and experience of working in the Government of Jersey.

The 1982 Law does not set being resident in Jersey as an eligibility criterion but in practice all members live in Jersey (though some have been appointed within a relatively short time of moving to the island).

As well as looking at overall composition of the Panel, it is useful to look at the number of board hearings each Panel member has sat on since 2021.<sup>82</sup> Unsurprisingly, the Chair is most frequently involved in hearings sitting on 9 cases in the last 2½ years. Of the other Panel members, 1 has sat on three cases, 4 have sat on two cases, 5 have sat on one case, and 2 have not sat on any hearings. The Chair and Deputy Chairs are also involved in seeking to resolve complaints informally,<sup>83</sup> which can be assumed to be a heavy time commitment. Across the Panel, the scale of voluntary commitment of time is therefore variable. If the Complaints Panel is retained and reformed to expand the range of public bodies under its jurisdiction, and steps are taken to improve access, it would be reasonable to assume that the caseload will increase requiring more time from Panel members.

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<sup>78</sup> Chairs have been: Reg Jeune CBE; Carol Canavan; Richard Renouf; and Geoffrey Crill.

<sup>79</sup> One current member is an employee and another has undertaken consultancy work while a member.

<sup>80</sup> We have not counted but a safe working assumption is that across its history a significant proportion of members are retired States of Jersey employees (including the emergency services).

<sup>81</sup> Former Senator Reg Jeune served on the Panel 1997-2003.

<sup>82</sup> We use the sample period 2021 to June 2024 as 2021 was the first full year of service for several Panel members appointed in September 2020.

<sup>83</sup> Considered in chapter 9.

## Composition of Complaints Panel June 2024 and frequency of sitting on boards 2001-June 2024

Member	Background	Boards
Mr Geoffrey Crill (Chair)	Retired Solicitor of the Royal Court of Jersey	9
Mr Stuart Catchpole KC (Dep. Chairman)	Barrister, Deputy High Court Judge, qualified mediator	2
Mr Chris Beirne (Dep. Chair)	Retired headmaster	2
Mr John Moulin	Retired civil servant (Assistant Chief Ambulance Officer)	1
Mrs Sue Cuming	Retired senior human resources manager in the civil service	2
Mr Gavin Fraser	Senior finance professional and non-executive director	2
Mrs Christine Blackwood	Retired from career in health and social care regulation for the Government of Jersey and the Jersey Care Commission. She continues as a parttime policy consultant for the Jersey Government.	0
Mrs Penny Chapman	Full-time parent following career in commercial property management, Social Security Department, and work in probate department of Jersey law firm. Chair of a local charity.	1
Mrs Tina Chatterley	Career in company and trust administration before retaining as a psychotherapist and life coach. Formerly independent member of the Fostering Panel and trustee of a local charity.	2
Mr Andrew (Andy) Hunter	Career managing, financing, operating and being chair of companies in several industry sectors.	3
Mr David Curran	Dentist in the Dental Department of Jersey General Hospital.	0
Mrs Kerry Leadbetter	Career in customer service roles in NatWest International.	1
Mr Damian Warman	Director with Waitrose and Partners.	1

Sources: R.127/2023 ([link](#)); R.104 (re-issue)/2022 ([link](#)); 'Complaints Panel' webpage ([link](#)) visited 14 June 2024. Number of boards served on has been calculated from reports on States Assembly website up to R.110/2024 published on 25 June 2024; some additional boards may have sat but not yet reported.

What is valuable about the Complaints Panel's composition? **In the following section we set out the best case, as we see it, for the independent complaints body comprising members of the public.**

In some Jersey reform debates (such as over the dual role of the Bailiff or Connétables as ex officio members of the States Assembly) reference is made to the customary and ancient nature of the public office. In its current composition, the Complaints Panel is only 28 years old, so it is hard to make a case for its continuation purely on tradition.

Members of the Complaints Panel are unpaid. Clearly, this is important to the Panel and PPC who have often referred to it in annual reports. From the *perspective of users of the independent complaints service*, we are not sure how weighty this is as an argument in favour of retaining the Complaints Panel.<sup>84</sup> There are some public roles in Jersey where islanders give freely of their time without reward (for instance, Jurats, Centeniers, members of the Jersey Law Commission, unelected members of the Public Accounts Committee) and some which are remunerated (such as lay members of some tribunals, members of public inquiries, and States Members). We are not aware of any research that shows islanders and the Government of Jersey feel trust and confidence in the Complaints Panel simply by virtue of its members being unpaid.

The disadvantage of unpaid volunteers should also be acknowledged: the pool of potential recruits to the Panel may be limited towards retired people and business owners able to take time off as it suits them. A large proportion of Jersey residents cannot afford to volunteer indeterminate amounts of unpaid time.

The value therefore lies in some other feature of the Complaint Panel's membership.

'Lay' membership of decision-making bodies is not unusual. Generally, the term lay is defined negatively, for example, somebody who is **not a member of the profession under review**. An illustration of this is the disciplinary panel of The Law Society of Jersey, which consists of a mix of lay members (who are not legal professionals) and lawyers. Many past and present Complaints Panel members cannot be described as 'lay' in this specific sense, due to their former or current work for the Government of Jersey. It is easy to see why previous or current experience as a civil servant or other employee is helpful to the Complaints Panel, as it can give a board insight into working practices and other 'insider' knowledge. So, while contributing many advantages, we should be clear that former or current Government employees serving on the Complaints Panel over the past 28 years do not bring a 'lay' perspective in this sense to the Complaints Panel's decision-making.

In the context of the justice system, 'lay member' can be used in a different sense, of **not being a lawyer**. For example, some of Jersey's administrative appeals tribunals have a

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<sup>84</sup> It may be advantageous to the public purse, which is a different issue.

legally qualified chair and one or more lay members. A rationale for this is to prevent the tribunals becoming too legalistic or overly judicialized. This can be said to apply to most of the Complaints Panel members.

The case for the Complaints Panel's membership can however be put more broadly: **citizen participation** in external complaints handling promotes 'the democratic quality of justice' by incorporating 'public ideas about justice and fairness' into adjudication on complaints.<sup>85</sup> A citizen's panel can help counteract tunnel vision and ingrained professional assumptions inherent in modern large scale public administration. One way of understanding why in Jersey there a relatively low level of compliance by Government with Complaint Panel board reports is that there can be a clash of cultures.<sup>86</sup> The Government attaches weight to considerations such as ensuring the law is followed whereas boards sometimes take a broader view of what justice requires in a situation.<sup>87</sup>

The value of the Complaints Panel, therefore, can be described as 'incorporating the community's values and attitudes about justice' as a countermeasure to decision-making by a 'narrow, professionally trained elite' (civil servants)<sup>88</sup> or Ministers.

If citizen participation is the valuable feature of the Complaint Panel's composition, this creates a heavy **obligation to ensure that the Panel is reflective of Jersey's whole community**. If the Complaints Panel is retained, consideration should be given to making this a legal duty. Diversity has not consistently been achieved. In our report *Improving Administrative Redress in Jersey*, we pointed to the fact that in October 2017 only two of the then 12 members were female.<sup>89</sup> The gender balance has greatly improved since then. Responding to our consultation in 2016, the Complaints Panel Chair said

that is absolutely critical to the credibility of [the Panel], both with the public and with the executive, is that [the Panel] is seen to comprise a broad cross-section of members of the community who between them have no obvious political affiliations but have sufficient experience and expertise to justify the confidence of both "sides" that a board can reach an independent, reasoned decision based on the evidence before them.<sup>90</sup>

The last major recruitment of Panel members was in 2020. From 23 applications following advertisement, 14 candidates were interviewed and 8 were appointed in September 2020. PPC noted that 'During the selection process, the [interview] Panel [of

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<sup>85</sup> There is academic work on lay participation on legal decision making, including a special issue of the journal *Law & Policy* (2003) 25(2).

<sup>86</sup> See chapter 11 below.

<sup>87</sup> See for example [R.103/2021](#), where the Minister rejected the board's findings that the complainant receive a higher transfer value on his pension on the basis that 'as administrator for the PEPF's pension scheme, 'Treasury & Exchequer is required to administer benefits paid from the PEPF in accordance with the PEPF's governing law and regulations on behalf of the Committee'.

<sup>88</sup> Valarie P. Hans, 'Lay participation in legal decision making' (2003) 25 *Law & Policy* 83 p87 (she was not writing about Jersey in particular).

<sup>89</sup> Jersey Law Commission, *Improving Administrative Redress in Jersey* (2017) para 5.16.

<sup>90</sup> Jersey Law Commission, *Improving Administrative Redress in Jersey* (2017) para 5.17.

4 current members of the Complaints Panel] sought to appoint a balanced group of people in terms of gender, ethnicity, age, disability, sexual orientation, socio-economic status, experience and skills'.<sup>91</sup> It is not clear to what extent this ambitions have been achieved or whether still further progress is needed. One question that should be examined is the degree to which Panel's current and past composition and caseload reflects the island's Portuguese/ Madeiran community.<sup>92</sup>

A specific aspect of citizen participation is that it enables the boards hearing cases to bring **local knowledge** to bear on the complaint. In the foreword to the 2022 Annual Report, the Chair of the Privileges and Procedures Committee pointed directly to 'the public also benefits from the wealth of local experience Panel members possess, gleaned from being a part of the Island community'.<sup>93</sup>

## People in the Ombudsperson organisation



**In this section set out the best case, as we see it, for professional investigators rather than members of the public deciding on complaints.**

If the Complaints Panel is replaced by the Ombudsperson, there will be a change in the type of person independently handling external complaints. Day to day work will be done by the principal Ombudsperson supported by two officers. When the post is advertised, it is reasonable to assume that the person specification will have prior ombudsperson work experience as an essential criterion for appointment. Following advertisement and interview, the successful candidate will be jointly nominated to the States Assembly by the chair of Scrutiny Liaison Committee and Chief Minister. The term of office will be fixed at between 5-9 years.

Based on experience of filling other senior level public offices in Jersey, and considering the professional specialist skills needed, it is reasonable to assume that the principal Ombudsperson may need to be recruited from outside the island. This should not be seen as a disadvantage to the fairness of the external complaints system. In other contexts, the benefits of external perspectives have been acknowledged. Inspectors who decide planning appeals, most members of the Jersey Court of Appeal, and the first two Children's Commissioners come from outside the island. New outlooks brought to Jersey and experience of working on other jurisdictions would be a strength not a weakness. A Jersey Public Services Ombudsperson, linked to the worldwide network of ombudspeople, would ensure that the island's approach to external complaint handling keeps pace with best practices and latest thinking.

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<sup>91</sup> PPC, *States of Jersey Complaints Panel: Appointment of Members* (2020) [R.97/2020](#).

<sup>92</sup> In the 2021 census, one in 11 (9%) of Jersey residents identified as Portuguese or Madeiran ([link](#)).

<sup>93</sup> PPC, *Complaints Panel Report 2022* [R.178/2023](#) (Connétable Karen Shenton Stone).

The shift from volunteer effort to professional office holders happens when societies reach a tipping point where volunteer citizen effort is no longer able to cope with the demands of a world that is becoming larger, more complex, and increasingly difficult to manage. In the nineteenth century, Jersey had to acknowledge that the honorary police system had to be supplemented by a professional police service. In a different context, the island accepted that being a States Member should be a full-time, paid role. The scale and complexity of the island's public administration and wide range of public services require full-time, experienced external complaint handling professionals.

The creation of the Ombudsperson would not exclude citizen participation but it would take a different form. The Ombudsperson is a body corporate formally known as 'the Office of the Jersey Public Services Ombudsperson'. It will have a non-executive board consisting of a chair and 2-8 other board members serving for a maximum of 9 years. The board will 'advise, support and challenge the Principal Ombudsperson in discharging their functions related to finances, performance and strategic direction' and 'maintain and defend the independence' of the Ombudsperson.<sup>94</sup> This role is a more appropriate one for citizen involvement than the direct handling of individual complaints.

The Ombudsperson will have an array of duties and powers that cannot reasonably be performed by citizens. These include (as discussed in chapter 4): being the island's independent 'whistle blowing officer' investigating concerns of staff in public service; conducting own initiative investigations; writing reports on thematic maladministration; carrying out joint investigations with other independent bodies (such as the Jersey Care Commission or the Children's Commissioner); and working proactively with public bodies to develop and implement a code for internal complaint handling and whistleblowing.<sup>95</sup>

The need for a change-maker is also part of the argument for a shift away from boards of citizens looking at individual cases. The island has recognised the necessity of creating public offices to be filled by a senior officeholder exercising influence able to modernise areas of Jersey life – for example, the Children's Commissioner for Jersey. This need applies to complaints handling, where the recruitment of a highly experienced individual will be the catalyst for the next steps in modernising Jersey's public services. The law drafting instructions for the Ombudsperson make the transformational goal clear: 'The overall objective in establishing the JPSO is to drive a higher standard of administration by public services'.

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<sup>94</sup> Drafting instructions.

<sup>95</sup> See chapter 4 above.

## Next steps

**If the States Assembly opts to retain the Complaints Panel**, the island's independent complaints body will continue to be a group of islanders that aspires to be broadly representative of the community.



Given the Panel's need to consider legal issues, including questions about its own jurisdiction, consideration should be given to amending the Administrative Decisions (Review)(Jersey) Law 1982 to require the Chair to be legally qualified or have a background in law; it may be beneficial to have at requirement that at least one other Panel member has a legal professional background.

As the Complaints Panel and PPC have acknowledged, it is essential that the Panel's membership is drawn widely from the island community.

What has not, as yet, been tested is whether there would be benefits to a mixed model, if the Complaints Panel is retained – for example, incorporating a professional investigating officer into the Panel's work. This would, however, require a fundamental redesign of the current arrangements and would have costs implications.

**If the States Assembly opts to proceed with the Ombudsperson**, the new Law provides a framework for appointing professional complaints handlers as decision-makers and a non-executive governing body of islanders.



### Discussion points

What of value would be lost if citizens were no longer the decision-makers on complaints (if the Complaints Panel is replaced)?

What of value would be gained if a professional Ombudsperson became the decision-maker on external complaints (if the Ombudsperson is established)?



## 8 From very public to highly confidential?

Another basic design choice for Jersey's independent complaints body is how public or how confidential its processes should be.

### Complaints Panel

Complainants present their cases at a hearing open to the public and news media

Complainants' names published on States Assembly website

Information about complainants' financial, work, and family circumstances put in public domain

### Ombudsperson

Private investigation process

Standing Orders prevent complainants' names being referred to in States Assembly or parliamentary record

Complainants always anonymised

### Complaints Panel: a public process



The *How to complain to the States of Jersey Complaints Board* document downloadable from the States Assembly website explains:<sup>96</sup>

**All hearings should be open to the public.** For personal matters, in borderline cases, members of the media will be asked not to mention names or identifying material in their media reports. At the Chairman's discretion, the Board may hold the hearing in private. The report of any hearing held in private will have any names deleted. If you have any concerns about whether the hearing should be held in private, you should raise these when you submit your complaint.

The Annual Reports of the Complaints Panel list 'new formal complaints received' in the year under review and provide a brief précis of the status of the complaint (for example 'closed – resolved informally' or 'ongoing – hearing scheduled'). For most complaints there is insufficient detail to identify the complainant, but this is not always so. In the 2023 Annual Report, for example, one of the synopses states that an 'extremely close' neighbour of La Mare Vineyard had lodged a complaint about planning permission to erect a marquee.<sup>97</sup> As noted below, the Isle of Man Tynwald Commissioner for Administration regards it as wrong to publish any information about complaints under review.

<sup>96</sup> *How to complain to the States of Jersey Complaints Board* (undated) ([link](#)). Confusingly, this refers to the 'Board' rather than the 'Panel'.

<sup>97</sup> PPC, *States of Jersey Complaints Panel Report 2023*, [R.86/2024](#), pp 10-11.

To understand the level of disclosure of personal information by the Complaints Panel, we looked at the cases where boards sat to make a formal resolution of a complaint, taking as our sample hearings from 2021 (see table below).<sup>98</sup> We found:

- 7 of the 8 cases were heard in public, in a room in the States Building. Interested members of the public and the news media was entitled to attend these hearings.
- In 7 of the 8 cases, the board’s report referred to complainants by their names; in 1 case the report referred to the complainant as ‘Mrs X’ but here too there was a public hearing.
- The reports include reference to the complainants’ financial situation and employment history.
- One report also published personal information about third parties (Mr Ahmad’s mother had a stroke and his children were being home-schooled).
- All information about the complaint is published on the States Assembly website.

**Table: extent of disclosure of personal information in board reports**

<u>R.39/2024</u>	Complainant referred to as ‘Mrs X’ in report. Case concerned arrangements for treatment at University Hospital Southampton. Public hearing in Le Capelain Room, States Building.
<u>R.105/2023</u>	Complainant referred to by name (‘Ms Cabot’). Complaint concerned the administration of her complaint about PFAS poisoning and release of her blood tests to the media. Unusually, the case was decided at a private hearing in States Building with only board members and Greffier of the States present.
<u>R.31/2023</u>	Complainant referred to by name (‘Mr S Newman’) described as a former firefighter, and referred to an optional transfer payment from the PECRS pension scheme. Public hearing in Le Capelain Room, States Building.
<u>R.94/2023</u>	Complainant referred to by name (‘Ms Mayer’), described as a ‘self-employed individual’ and that she had accessed the Co-funded Payroll Scheme during the COVID-19 pandemic.
<u>R.110/2022</u>	Another report relating to Mr S Newman, the former firefighter (see R.31/2023) and his pension scheme. Public hearing in the Blampied Room, States Building.

<sup>98</sup> The table does not include R.110/2024, which was published as our report was going to press. This concerned an already very public dispute between the Jersey Life Boat Association (represented by Mr B Shenton) and did not relate to personal matters.

<u>R.45/2021</u>	Complainant referred to by name ('Mr B Chambers'). Case concerned unsuccessful interview for a position in HCS Department, disclosing his status as 'licenced' rather than 'entitled'.
<u>R.137/2021</u>	Complainant referred to by name ('Mr Ahmad'). Case concerned residential and employment status. Report contains details about Mr Ahmad's family circumstances (his mother had suffered a stroke in Pakistan, he could not afford to continue renting a property in Jersey while he took unpaid leave to look after her, he was home-schooling his children, etc). Public hearing in the Blampied Room, States Building.
<u>R.139/2020</u>	Another report relating to Mr S Newman, the former firefighter (see R.31/2023 and R.110/2022) and his pension scheme. Public hearing in the Blampied Room, States Building.

Evaluation of the high level of openness in the Complaint Panel's formal resolution process can be considered at two levels.

**The first is whether it is lawful.** The Complaints Panel is a public authority under the Human Rights (Jersey) Law 2000. This Law incorporated into Jersey law Article 8 of the European Convention on Human Rights (ECHR) – 'everyone has the right to respect for his private and family life, his home and his correspondence'. It is one of the qualified rights, meaning that a public body may interfere with the right but only if it is (a) in accordance with the law, (b) in pursuit of a 'legitimate aim', and (c) 'necessary in a democratic society'. As the Jersey Law Commission it is not our role to provide legal advice, and this is a somewhat complex matter,<sup>99</sup> so we say no more on this as a question of law.

**The second level is at the level of policy,** assuming current arrangements are compliant with ECHR Article 8. Arguments that may be put forward to support the current open approach include the following.

- Especially in a small island community, 'justice must not only be done, but seen to be done'. It would be wrong to anonymise the complainant or redact sensitive personal data from reports.
- Public hearings and the reports that follow are an essential part of the Jersey's accountability system by which Ministers must answer for their Department's alleged shortcomings. Hearings in public allow the complainant, the public, and

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<sup>99</sup> Courts and tribunals are governed by a different right, ECHR Article 6 on fair trials. This *requires* proceedings to be in public unless there is a compelling reason for privacy. The Complaints Panel is not a court or tribunal.

the news media to see senior officials and Ministers having to defend their conduct and answer questions in public.

- For complainants, it may be cathartic to be face-to-face with officials and a Minister, have their 'day in court', and for this to be reported in the news media.<sup>100</sup>
- If the complainants had pursued their grievance through an administrative appeal tribunal or legal proceedings in the Royal Court, hearings would have taken place in public, and judgments published, because this is required by ECHR Article 6 (right to a fair trial). Although the Complaints Panel is not a 'tribunal', and the hearings are not a 'trial', a similar approach should be taken to ensure open justice in the island.

The main arguments for a more private approach include the following.

- Especially in a small community, maintaining a sense of personal privacy is important. It is wrong to require complainants to present their case at a public hearing, which may be attended by the news media, and for their personal circumstances to be written up in the boards' reports.
- The open nature of the Complaint Panel's formal process may discourage some people from pursuing legitimate grievances and obtaining justice because they do not want their name or personal details in the public domain.
- The publication of so much sensitive personal data by a public body (the Complaints Panel as author, and the States Assembly as publisher) is out of step with modern notions of privacy, even if not contrary to the law.
- It is constitutionally inappropriate for the island's legislature (the Assembly) to include on its public record personal information about named individuals and their families. Under standing orders, Members are not normally permitted to refer to named individuals during debates and the same general principle should apply to reports presented to the Assembly by PPC.
- PPC's duty in the 1982 Law to publish board reports pre-dates the internet. Originally, interested people would have had to purchase a paper copy of the report from the States Greffe. Today, the contents of board reports are accessible to people all over the world without charge, greatly increasing their impact on individual privacy.

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<sup>100</sup> Chapter 11 looks at three case studies where the complainants used the news media to publicise their grievances.

## Ombudsperson: a confidential process

Public services ombudspersons operate with a high level of confidentiality for individuals.



This includes cases that are currently being investigated. For example, in the Isle of Man, the Tynwald Commissioner for Administration has recently said<sup>101</sup>

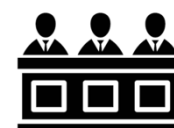
Reports under investigation are not in the public domain and to publish a summary of such ongoing investigations would be both premature and an inappropriate invasion of the confidentiality both of the Complainant and of the Listed Authority (even though partly anonymised).

The drafting instructions for the Jersey Public Services Ombudsperson Law show how there would be legal safeguards protecting complainants' privacy.

- 'The Law should provide that both investigations and agreements between the parts must be conducted in private ... An account of what happened and whether it was wrong is built by a caseworker investigating the matter. This is a confidential process'.
- There will be not normally be adjudication at a public hearing (though this may occur in exceptional cases and after consultation including with the complainant, and an adjudication hearing may be held in private).
- Reports will not include the names of individuals or any other particulars that might identify them.
- States Assembly Standing Order 104 will be strengthened to ensure that individuals are not named in the chamber (and if they are, names are removed from the parliamentary record).

## Next steps

**If the States Assembly opts to retain Complaints Panel and agrees that greater privacy is desirable**, amendments would be needed to the Administrative Decisions (Review)(Jersey) Law 1982 and States Assembly Standing Orders to achieve this fully. Changes in practice, for example not including complainant's names in board reports, could be achieved without a change in the law.



**If the States Assembly opts to proceed with the Ombudsperson**, the legal framework will provide a high level of privacy and anonymity for complainants.



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<sup>101</sup> Tynwald Commissioner for Administration, *Seventh Annual Report, April 2024*, PP 2024/0060 para 2.1.

Discussion points

In Jersey, do we want our independent complaint handling process to be public, like court proceedings, or would it be preferable to have a much more confidential dispute resolution?

If more confidentiality is desired, to what extent can this be achieved by reform of the Complaints Panel?

Do the proposals for the Jersey Public Services Ombudsperson strike the right balance between privacy and transparency?

## 9 From adjudication to investigation?

Independent complaints bodies typically use the following stages to achieve resolution:

- Stage 1: Triage to sort out cases that fall outside the remit of the independent complaints body
- Stage 2: If within jurisdiction, there is an attempt at informal resolution including, for example, speaking to officials in government department
- Stage 3: If resolution/determination is not achieved informally, escalation to a formal stage.

A design choice for Jersey's independent complaints body is what form the formal phase (stage 3) should take. The Complaints Panel adjudicates. The Ombudsperson would investigate.

### Complaints Panel

Onus is on complainant to gather the information needed to support the complaint.

Complainant 'sends in a letter explaining the problem' by post to the Deputy Greffier of the States.

Complainant must 'attach any relevant papers and if you know any cases that you think are similar, point them out now'.

Deputy Greffier may ask complainant for more information.

Deputy Greffier sends complainant's papers to the 'Minister and department concerned' asking for a brief response.

### Ombudsperson

We do not yet have detail about how islanders would first contact the Ombudsperson.

We noted in chapter 5 that Gibraltar PSO has telephone helpline, potential complaints may call in for guidance.

Many independent complaints bodies have online or printable forms to help complainants (some of whom will not be confident about writing formal letters) outline their case.

As this is an *investigatory* process, the Ombudsperson office will be proactive in gathering evidence.

### Stage 2 Informal resolution

Before turning to the formal stage, we should consider how the informal stage works for the Complaints Panel. Since 2006, the Complaints Panel has express powers to seek to resolve complaints informally under Article 3(3) of the 1982 Law as amended:

If the Chairman (or Deputy Chairman) decides that a review of the matter by a Board is justified, he or she may nevertheless first attempt informal resolution of the matter and in that case may use whatever means that he or she considers reasonable in the circumstances to achieve such a resolution.

In our October 2017 report *Improving Administrative Redress in Jersey*, we recommended that all members of the Complaints Panel, not only the Chair and Deputy Chairs, should have power to attempt informal resolution of complaints.<sup>102</sup>

### **Stage 3: Formal resolution: adjudication or investigation?**

At the formal stage, there is a fundamental difference between the process used by the Complaints Panel in Jersey and that used in public service ombudsman schemes elsewhere.

In Jersey, the formal stage is a hearing by a 3-person board, where the aggrieved person presents evidence and arguments to support their case, followed by a presentation by officials from the government department, and the board then retires to **adjudicate**. This normally happens in a public setting (but may be held in private, for example where a child is involved, or sensitive personal information will be discussed). This is broadly like how an administrative appeal tribunal operates.



The defining feature of ombudsman, in contrast, is that the process is an **investigation**. This does not involve a public hearing, the complainant does not have to gather evidence and make an oral presentation of their case in a public setting, and complainant and officials are not brought together face-to-face.<sup>103</sup> Caseworkers in ombudsman organisations are professionally trained in investigatory skills.



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<sup>102</sup> Jersey Law Commission, *Improving Administrative Redress in Jersey* (2017) para 5.71 onwards.

<sup>103</sup> Parliamentary and Health Service Ombudsman, *How we look into complaints: What happens when we investigate* (2019).



## Complaints Panel – if formal resolution required



### Adjudication<sup>104</sup>

Deputy Greffier arranges a hearing date (normally 14 weeks within receipt of complaint).

2 weeks before hearing, complainant gives Deputy Greffier names of any people attending on their behalf and who will be speaking at the hearing.

Deputy Greffier sends a 'bundle of papers' to complainant and Department.

On the day: 'A room is set out with 3 Board members at a table. This will face another table with you and your representative at one side, and the Minister and officer(s) at the other side. There are chairs set out for the public and the media to attend'.

'No other person will be allowed to speak or to sit at the table with you, or with the Minister, but may attend as a member of the public'.

'At the beginning of the hearing the Chairman will declare the meeting open.'

The complainant (or representative) makes oral presentation, followed by Minister or officials.

'Members of the Board can then ask questions of both parties to help them reach their conclusions about the complaint.'

'The hearing will then close, and the Board will consider its findings in private'.

Board report is written and published.

## Ombudsperson – if formal resolution required



### Investigation<sup>105</sup>

Ombudsperson devises an investigation plan, ensuring cost effectiveness, compliance with legal requirements, and focused on desired outcomes.

Gather evidence of what happened (from complainant, staff interviews or statements of evidence, review of relevant records).

Gather evidence of what should have happened (legal framework, policies, standards, published and internal guidance, etc).

Reach a conclusion on balance of probability.

Consider impact on the complainant.

Share initial views with the complainant and person complained about, providing them with opportunities to comment on interim findings.

Issue final response letter.

<sup>104</sup> Summarised from *How to complain to the States of Jersey Complaints Board* (undated) ([link](#)).

<sup>105</sup> Summarised from PHSO, *A closer look – carrying out the investigation* (2022) ([link](#)).

A shift from formal resolution by adjudication to investigation would be significant. In the Jersey setting, there would be advantages and disadvantages to this that need to be weighed up carefully.

During our 2016 research interviews, the centrality of public hearings was strongly defended by some interviewees as a 'good fit' for the Complaint Panel's remit. We were told that the Complaints Panel 'is not an arbitrator, is not an ombudsman service'. Ministers, we were told, should be compelled to justify their decisions in public. It was salutary to have a journalist from the *Jersey Evening Post* in the corner of the room when the minister did so, according to an interviewee with experience of serving on the Panel. We were told that hearings allow complainants to 'have their "day in court" without too much expense'.

A variety of premises have been used for hearings, including parish halls and rooms in the States Assembly building. Site visits may also been made. During the research interviews, we were told that some venues had poor acoustics. Another criticism was that there was inadequate public notice in advance of hearings, which hindered members of the public concerned about the issue from attending.

One interviewee suggested that the Complaints Panel's questioning of Ministers was superior to the 'quite amateurish' approach of States Assembly Scrutiny Panels and questioning by backbenchers and was therefore a valuable addition to political accountability in the island.

Other interviewees reported that complainants are usually very anxious about the public hearing stage of their complaint: they ask 'will it be like a court?' and 'will I need to wear a suit?' (inquired by a complainant who did not own one). We were told that it has become routine for the Minister to be represented by a lawyer and that departments come to hearings 'mob handed' (meaning with a full legal and official team). This, one interviewee observed, has created a different atmosphere to that which typically existed in the past. An interviewee connected to the Complaints Panel said the Panel tried to avoid hearings becoming 'a court room scenario' but this was now difficult or impossible as legal representatives raised 'pedantic' and 'legalistic' points.

The procedure adopted at hearings appears to be flexible. We were told that at some hearings elected States Members asked and were permitted to address the board (and this is confirmed in reports on some complaints). One criticism of the procedure made during the research interviews is that it is unfair that civil servants who are to give evidence may sit in during the hearing, enabling them to listen to evidence given by the complainant.

In our 2016 consultation report, we said we were unconvinced that adjudication at public hearings is the best way to resolve complaints about maladministration. We are not

aware of any other complaint handling schemes that work in this way. The more standard technique is investigation, in which the facts of the case are gathered through interviews and access to official files leading to the informal resolution or formal publication of a report. While there are strong constitutional and other reasons for courts and tribunals to sit in public, the same considerations do not apply independent complaints bodies whose focus is on maladministration.

In its response to our 2016 consultation, the Complaints Panel told us:

The [Panel] does not agree that public hearings of complaints should be dispensed with. It is critically important that any scrutiny process by which the executive is held to account is open and transparent, not only to reassure the public that complaints are being considered exhaustively, but also because the executive knows that it will have to justify its decisions in public. We consider this to be a very valuable incentive in achieving the best possible standard of public administration.

Article 7 of the Law requires a Board to “enquire into any complaint” and allows the [Panel] to determine its own procedure. Other than attempts at informal resolution, it is accepted that the default procedure is to consider the complaint at a public hearing. The [Panel] has not enquired into any complaint through an investigatory process, but the [Panel] accepts that there may be cases where that would be a more appropriate method of enquiry than a public hearing. The principal disadvantages that come to mind of an investigatory process as opposed to a public hearing are first, the benefits of the process being in public are lost, and second, there is a risk that an investigation would be more drawn out than a once and for all hearing. In an investigation, the onus is on the investigator to ensure that the investigation is exhaustive, whereas with a hearing it is for the parties to submit the papers and the witnesses on which they will rely (with the Board retaining the right to call for further documents or information it may require).

In our October 2017 report we said we welcomed the Complaint Panel’s openness to consider using investigations in future.<sup>106</sup> In light of this response, we did not propose any change in the 1982 Law.

## Next steps

**If the States Assembly opts to retain the Complaints Panel:** The Panel could decide more cases without convening a hearing. We note that in 2023, a board deliberated in private and decided the complaint on the basis of written submissions from the complainant and Department.<sup>107</sup> Private hearings are not, however, the same as ‘investigating’.



**If the States Assembly opts to proceed with the Ombudsperson:** most cases would be investigated. Following our recommendation in our October 2007 report *Improving Administrative Redress in Jersey*, the Ombudsperson



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<sup>106</sup> Jersey Law Commission, *Improving Administrative Redress in Jersey* (2017) para 5.84 onwards.

<sup>107</sup> R.105/2023 ([link](#)).

would, however, have power to hold a public hearing if, after consultation, this appears to be in the public interest.


Discussion points


Do you consider it is important that the main way of formally resolving complaints is by adjudication at a hearing?

Are there advantages to moving over to investigation?

# 10 Using ‘maladministration’ as the ground of review?

Another basic design choice for Jersey’s independent complaints body is how the grounds of review are defined.

Complaints Panel	
Contrary to law	
Unjust, oppressive or improperly discriminatory	
Mistake of law or fact	
Unreasonable	
Contrary to principle of natural justice	

Ombudsperson	
Maladministration	
Service failure	

## The Complaints Panel’s grounds of review



Article 2 of the Administrative Decisions (Review) (Jersey) Law 1982 states

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 any such Minister or Department, the person may apply to the Greffier to have the matter reviewed by a Board.

The definition of the Complaint Panel’s jurisdiction and the grounds of review have remained substantially unaltered since the 1979. The grounds on which a 3-person board should decide whether to uphold a complaint are set out in Article 9(2) of the 1982 Law:

Where a Board after making enquiry as aforesaid is of opinion that the decision, act or omission which was the subject matter 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 matter.

In our 2016 consultation report, we identified what we considered to be significant problems with this legal framework and how it has been interpreted by the Complaints Panel.

## Questions of law

The grounds of review set out in Article 9 of the 1982 Law have a strong focus on legal questions, referring to: 'contrary to law'; 'based wholly or partly on a mistake of law'; 'could not have been made by a reasonable body of persons' (a test that alludes to the legal principle of *Wednesbury* unreasonableness, a ground for challenging the legality of a decision in an application for judicial review to the Royal Court); and 'was contrary to the generally accepted principles of natural justice' (referring to the case law developed by courts since the 17th century on procedural fairness in decision-making).

It is surprising that the grounds on which the Complaints Panel reviews decisions are based so closely on legal questions or legal standards, given the initial composition of the Panel (elected States members)<sup>108</sup> and the current composition of the Panel (predominantly non-legally qualified members).

Over the years different views have been expressed about the Complaints Panel role in relation to legal questions. For example:

1. On 9 March 2010, the chairman of PPC answered a written question from the Deputy of St Martin, raising an issue that the Deputy had first raised on 30 June 2009, about the Complaints Panel's role when a complaint raises a point about human rights (which is a legal issue).<sup>109</sup> The question was prompted by perceptions that a board had been reluctant to address an issue related to a Convention right at a hearing. The chairman of PPC said: 'It would be inappropriate for the Complaints Board to operate as a kind of Human Rights Tribunal, as this is not the reason why it was established by Law in 1982. However, if Human Rights issues arise while reviewing a complaint about a specific decision, a Board will look into them, and if appropriate, seek legal advice'. (We comment: if the source of advice is the Law Officer's Department, grounds for a perception of lack of independence or impartiality in the Complaints Panel may be created if the Complaints Panel is receiving legal advice from the same source as the Minister whose decision is being challenged).

2. The Deputy Greffier of the States, who acts as the executive officer for the Complaints Panel, told a meeting of PPC on 6 March 2014 that 'It was within the Board's remit to be concerned with matters of law in accordance with Article 9(2) of the Administrative Decisions (Review) (Jersey) Law 1982'.<sup>110</sup>

<sup>108</sup> Though the first chairman of the Panel was Senator Reg Jeune, a Jersey lawyer.

<sup>109</sup> States of Jersey, 240/5(5175).

<sup>110</sup> States of Jersey, AG/SC/080.

3. In its annual report for 2014, the Complaints Panel provides information on progress dealing with a complaint relating to a decision of the Minister for Transport and Technical Services in respect of an undertaking given by the Public Services Committee to a trade union. It notes that the then chairman (Mr Le Gresley) ‘was of the very firm opinion that asking the Complaints Panel to look into legal matters fell beyond its remit, and that the correct course of action should really be a judicial review’.

4. A board of the Complaints Panel, consisting of three non-legally qualified members, heard the complaint and reported to the States Assembly in April 2016, concluding that ‘that the Minister had correctly interpreted his duties’.<sup>111</sup>

The straightforward interpretation of Article 9 of the 1982 Law is that it requires the Complaints Panel to deal with complaints based on errors of law or which depend on a board reaching a conclusion on a question of law or legal standard. This includes questions of law under the Human Rights (Jersey) Law 2000.

In response to the 2016 consultation, one former member of the Complaints Panel agreed with our interim proposal: ‘Even if the Chair is a lawyer, a Board is not constituted as a legal forum and it is inappropriate for it to make findings on questions of law’. Another response said, ‘In my view, either the existing statutory appeals or judicial review are best suited to deal with questions of law’. The Complaints Panel disagreed, telling us:

On the question of whether the [Panel] should deal with questions of law, the [Panel] considers that it should retain this power. If questions of law were to be excluded, it is envisaged that there could be significant arguments over whether or not complaints involved a question of law, not least because most administrative decisions derive from statutory powers. The [Panel] would therefore be deciding as a question of law whether or not something was a question of law and thus within its remit. It is acknowledged that important questions of law could arise during its deliberations, and in such circumstances, it should be possible for the [Panel] to refer such matters as it felt were of such importance or beyond its capabilities to determine to the Royal Court for determination. In practice, however, the [Panel] is of the view that in such circumstances the complainant would have already chosen to follow a judicial route for the resolution of the dispute, rather than the process laid down under the Law.

In our consultation report, we said that the composition of the Complaints Panel is not well suited to determining questions of law. This remains our view for three reasons.

First, the legal framework of the Complaints Panel is ill-equipped to enable the Panel to determine questions of law. There is no express requirement that the Chair of the Complaints Panel is legally qualified (though in practice all Chairs have been). Equally significantly, there is no requirement that a board convened to hold a public hearing shall

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<sup>111</sup> States of Jersey, *States of Jersey Complaints Board: Findings – Complaint Against a Decision of the Minister for Infrastructure Regarding the Minister’s Actions Under Clause 18.3 of the Connex Bus Contract*, Presented to the States on 1st April 2016 by the Privileges and Procedures Committee, R.31/2016.

always include a legally qualified member. Complaints involving points of interpretation of legislation have been heard by entirely non-lawyer boards.<sup>112</sup> The suggestion that a board will be able to seek legal advice if necessary does not commend itself as a practical work-around: this is likely to delay proceedings and runs the risk of a board deferring to the views of legal adviser rather than reaching a conclusion of its own (as a court or tribunal would do).

Second, there are reasons to doubt that a public hearing involving a point of law will be fair to a complainant. In such cases, the Minister will probably be legally represented but there is no provision for legal aid for a complainant who cannot afford to fund his or her own legal representation. There is a risk of inequality of arms.

Third, it is undermining of the constitutional principle of the rule of law for questions of law to be determined by a body whose remedy is limited to making recommendations which may be rejected by Ministers.

## The Ombudsperson's grounds of review



The drafting instructions for the Ombudsperson state

The LDO [Legislative Drafting Office] may wish to consider a general reference to maladministration and service failure (see section 11 Public Services Ombudsman (Wales) Act 2019), instead of exhaustively listing the types of actions that the JPSO may investigate. In general terms, maladministration refers to an 'administrative fault by the body in jurisdiction' and service failure is related to a 'failure in a service which it was the function of an authority to provide' or a 'failure to provide such a service'. However, subject to LDO advice, the Law might not provide a list of examples or particular circumstances related to those terms, since it appears desirable that the Ombudsperson should be able to decide whether a particular set of circumstances amount to maladministration and service failure.

So, maladministration and service failure are likely to be the grounds of review. In the UK legislation, maladministration is not expressly defined. It is, however, understood to cover 'bias, neglect, inattention, delay, incompetence, ineptitude, perversity, turpitude, arbitrariness and so on'.<sup>113</sup> Maladministration also includes:

rudeness (though that is a matter of degree); unwillingness to treat the complainant as a person with rights; refusal to answer reasonable questions; neglecting to inform a complainant on request of his or her rights or entitlements; knowingly giving advice which is misleading or inadequate; ignoring valid advice or overruling considerations which would produce an uncomfortable result for the overruler; offering no redress or manifestly disproportionate redress; showing bias, whether because of colour, sex, or any other grounds; omission to notify those who thereby lose a right of appeal;

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<sup>112</sup> For example, Connex complaint (see previous note).

<sup>113</sup> These factors are called 'the Crossman catalogue' as they are words used by Anthony Crossman MP, the minister in charge of the bill creating the first ombudsperson in the UK.



refusal to inform adequately of the right to appeal; faulty procedures; failure by management to monitor compliance with adequate procedures; cavalier disregard of guidance which is intended to be followed in the interest of equitable treatment of those who use a service; partiality; and failure to mitigate the effects of rigid adherence to the letter of the law where that produces manifestly inequitable treatment.<sup>114</sup>

## Next steps

**If the States Assembly opts to retain the Complaints Panel, consideration should be given to reforming the grounds on which the Panel may intervene.**



In 2017, we said that if the Complaints Panel is retained, in our view there would be advantages in redefining the grounds of review in Article 9(2) of the 1982 Law in terms of maladministration,<sup>115</sup> adding now 'service failure'. The Complaints Panel disagreed.

**If the States Assembly opts to proceed with the Ombudsperson,** the grounds will be 'maladministration' and 'service failure', as set out in the proposed Law.



### Discussion point

Should Jersey retain the grounds of review as currently set out in the 1982 Law or would it be preferable to use the language of 'maladministration' and 'service failure'?

<sup>114</sup> Quoted in the UK Parliamentary Ombudsman's *1993 Annual Report* and endorsed by Treasury Ministers in November 1994 in evidence to the House of Commons Public Administration Select Committee.

<sup>115</sup> Jersey Law Commission, *Improving Administrative Redress in Jersey* (2017) para 5.62 onwards.

# 11 How can cooperation and acceptance be improved?

A general design challenge for independent complaints bodies is how to create a political and professional culture in which there is (a) cooperation between the reviewer and the reviewed during the process of resolution and (b) Ministers' willingness to accept findings and implement recommendations, even though these are not legally binding.

## Cooperation in process

Many jurisdictions emphasise the value of partnership working between bodies when decisions of public authorities are under challenge. In Northern Ireland, for example, the judicial review practice direction refers to public law legal proceedings as lacking<sup>116</sup>

many of the trappings of private law litigation. This is reflected, first, in the notion of partnership with the Court. Every party and all representatives should be conscious of this partnership and its implications at every stage. It is illustrated particularly in the supremely important duties of candour and co-operation.

This principle of cooperation applies with equal force to how public bodies and independent complaints bodies (which are not courts) work together to seek resolution of an individual's case.

### Cooperation in process: the Complaints Panel

On several occasions in recent years, the Chair of the Complaints Panel has had cause to comment (in strong terms) on what he identified as lack of cooperative spirit from the Government of Jersey in the process leading to a board hearing. In a board report in November 2020 Mr Crill said<sup>117</sup>



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.

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<sup>116</sup> Judicial Review Practice Direction 3/2018, Preface ([link](#)).

<sup>117</sup> PPC, *States of Jersey Complaints Board: Findings – Complaint by Mr B Chambers against the Chief Operating Office regarding the Government's recruitment and complaints handling processes*, [R.45/2021](#).

If that was indeed the case, he [the Chair] 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.

In another board report in March 2022, Deputy Chair Stuart Catchpole KC wrote:<sup>118</sup>

We recommend that a policy should be introduced which provides expressly that all Ministers, departments, civil servants and appointees to public offices or bodies (i.e., including “quangos” and bodies corporate established under Jersey law and effectively under the control of the States) should co-operate fully and proactively with any investigation undertaken by the Complaints Board, including a transparent explanation of the relevant processes and full disclosure of any documentary evidence that may be relevant to the consideration of the individual complaint or any wider policy issues that may arise out of it. This should be a positive duty of co-operation and candour.

In the Complaints Panel Annual Report 2022, the Chair referred to ‘the increasing failure of elected and appointed officials, public servants and public bodies to co-operate with the Complaints Panel’.

There are no doubt cases, especially those resolved informally, marked by good levels of cooperation. But the statements by the Chair and a Deputy Chair of the Complaints Panel should be a cause of concern.

### **Are there practical changes that could be introduced to incentivise cooperation?**

We offer two suggestions.

First: Under article 5 of the Administrative Decisions (Review)(Jersey) Law 1982, ‘The Panel shall issue rules of practice and procedure which shall apply in matters arising under this Law’. We are not sure whether any such rules have been promulgated; none appear on the Complaints Panel’s webpage. As noted above, practice directions issued by courts in several jurisdiction emphasise the importance of candour and cooperation. In our view, it is within the current powers of the Complaints Panel to promulgate rules emphasising a positive duty of cooperation and candour. As an independent body, the Complaints Panel should assert its expectations rather than rely on the Government of Jersey to ‘introduce a policy’. A serious or persistent failure by a public body to follow the Complaint Panel’s published rules of practice and procedure issued under powers

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<sup>118</sup> PPC, *States of Jersey Complaints Board: Findings – Complaint by Mr S Newman against the Treasury and Exchequer Department regarding the valuation and calculation of pension entitlements*, R.110 (re-issue)/2022 para 66.2.5 ([link](#)).

conferred on it by the 1982 Law could lead to legal sanctions, though this should be a matter of last resort.

## Second: Under article 8 of the Administrative Decisions (Review)(Jersey) Law 1982

For the purposes of this Law a Board and the Greffier shall have power to require any document or information to be provided within one month (or such longer time as the Board, or the Greffier, respectively may allow) by any Minister, Department or officer, or employee, in an administration of the States for which a Minister is assigned responsibility, and to hear any person in connection with any complaint.

This provides a hard-edged power and corresponding duty for cooperation in the form of supplying a document or information within one month. It is not known to what extent the Complaints Panel asserts and insists on this right. A minister etc who fails to comply within the time limit acts unlawfully.

### Cooperation in process: the Ombudsperson



As discussed in chapter 9, the Ombudsperson would work in a fundamentally different way from the Complaints Panel by investigating complaints rather than adjudicating on them at a public hearing. This different process will also require a spirit of ‘candour and cooperation’.

The drafting instructions for the Jersey Public Services Ombudsperson Law outline the Ombudsperson’s powers:

- The JPSO ‘will have the authority to obtain information from public authorities and service providers as part of an investigation’.
- There will be ‘specific [criminal] offences if the JPSO is hindered in their information gathering powers’.

### Accepting findings and recommendations

A characteristic of independent complaints bodies – whether an Ombudsperson or Complaints Panel – is that they lack coercive powers to enforce their reports. This marks a fundamental difference from courts and tribunals, whose judgments are legally binding. Because independent complaints bodies ‘recommend’ rather than ‘order’, public bodies need to approach their outputs with a predisposition to acceptance. A criterion for recognition as a member of the Ombudsman Association – whether as a full

Ombudsperson or an associate ‘complaints handler’<sup>119</sup> – is ‘effectiveness’, which includes<sup>120</sup>

... a reasonable expectation that the Ombudsman’s [or complaint handler’s] decisions or recommendations will be complied with. In all those cases where they are not complied with, the Ombudsman should have the power to publicise, or require the publication of such non-compliance at the expense of those investigated.

## Acceptance of Complaint Panel board findings and recommendations

In Jersey, the Complaint Panel’s powers in article 9 of the Administrative Decisions (Review) (Jersey) Law 1982 can be analysed as having five steps when there is a formal determination following by a board hearing:<sup>121</sup> Non-acceptance has happened in each of these steps in different cases.



- **An initial determination that the matter complained about falls within the Complaint Panel’s jurisdiction.** Jurisdiction is defined in article 2 of the Law as ‘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’.
- **Fact-finding.** A board receives written and oral evidence from the complainant and the public body.
- **Evaluation stage.** The board must exercise its judgement to reach a conclusion on whether the matter complained of was contrary to law, unjust, oppressive or improperly discriminatory, etc – the grounds of review discussed in chapter 10 above.
- **Deciding on an individual remedy.** The board considers what, if any, should be done to correct any injustice. The remedial power is expressed as a power to ‘request that Ministers, Department or person to reconsider the matter’ and ‘it shall also request the Minister, Department or person concerned to inform it within a specified time of the steps which have been taken to reconsider the matter and the result of that reconsideration’. In practice reconsideration may not be possible if the action complained of is irreversible. Boards in practice also make other types of recommendation, for example that the Minister make a formal apology.
- **Proposing system improvements.** The 1982 Law is silent on this, but as we noted in chapter 4, boards often take it open themselves to make broader ‘lesson learning’ recommendations for improving the decision-making or service delivery process.

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<sup>119</sup> The States of Jersey Complaints Handler is an associate ‘complaints handler’.

<sup>120</sup> Ombudsman Association, Terms and Rules: Criteria for recognition of Ombudsman offices ([link](#)).

<sup>121</sup> Administrative Decisions (Review) (Jersey) Law 1982 article 9 ([link](#)).

After a month, the complainant may request that the board ‘consider reconvening’ or the board may reconvene of its own motion, if the board ‘considers that its findings have been insufficiently considered or implemented’. The board may report this to Privileges and Procedures Committee (PPC), which must present the report to the States Assembly.

In 2021, a new States Assembly Standing Order, proposed by PPC, was adopted. This requires a Minister responding to a report by a board of the Complaints Panel to make a statement to the Assembly and answer questions from Members, rather than simply lodging a report. In the *2021 Annual Report*, the Chair of the Complaints Panel noted that this ‘strengthens the accountability of Ministers and ensures that our findings are not roundly ignored and if the recommendations are not accepted, that Ministers have to explain to the Assembly their rationale for rejecting them’.

### **A culture of non-acceptance?**

For many years, Jersey has not experienced the very high levels of acceptance of board reports that other jurisdictions take for granted. For example, in England and Wales the Local Government & Social Care Ombudsman reported that ‘In 2021-22, the Ombudsman made 1,848 service improvement recommendations, with all but a vanishingly small number of councils complying (99.7%)’.<sup>122</sup> We noted above that ‘in most cases’ the government follows the Gibraltar Public Service Ombudsman’s recommendations.<sup>123</sup> Jersey seems to be an extreme outlier in levels of acceptance of independent complaints bodies’ reports.



In our October 2017 report *Improving Administrative Redress in Jersey*, we analysed the outcomes of formal hearings by the Complaints Panel. Looking at 11 hearings held between January 2013 and October 2017 and found:<sup>124</sup>

- In 5 cases (46%) the Complaints Panel found in favour of the complainant, but the Minister rejected the Panel’s findings, recommendations, or both.
- In 3 cases (27%) the Complaints Panel found in favour of the Minister.
- In 2 cases (18%), the Complaints Panel found in favour of the complainant and the Minister accepted the outcome.
- In one case (9%) the Complaints Panel found in favour of the complainant, the Minister rejected the Panel’s findings but nonetheless reconsidered the decision leading to a favourable outcome for the complainant.

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<sup>122</sup> Local Government & Social Care Ombudsman, ‘Ombudsman annual review of complaints: the power to change’ ([link](#)). It would be informative to repeat the study for the period November 2017 to date and carry out further analysis; we have not had time to do this.

<sup>123</sup> GPSO website ([link](#)).

<sup>124</sup> Jersey Law Commission, *Improving Administrative Redress in Jersey* (2017) chapter 5.

Successive Complaints Panel Annual Reports have highlighted the problem. In 2023, the Chair said<sup>125</sup>

What was disappointing was that it took [the complainant's] tenacity and the persistence of the Board to achieve this outcome. It should not be the case that justice is only served when someone fights doggedly against the system and that a Minister has to be told something three times before findings are accepted.

In 2022 the Panel Chair noted:<sup>126</sup>

The Complaints Panel held just one hearing in 2022 which was unusual because it was essentially a reconvening of an earlier hearing relating to a retired firefighter's pension evaluation following changes to the policy. .... There had been no positive response to the Board's findings report presented to the Assembly in December 2021 (R.110/2022) and whilst it was disheartening to have to reconvene a hearing to reaffirm the findings and urge for a resolution to be found, what made matters worse was the challenge made to the Board's jurisdiction in the complaint. The issues raised were of deep concern and importance, both for the complainant and for the proper administration of public sector-related powers and functions in Jersey. Sadly, the general approach of the body concerned was symptomatic of the increasing failure of elected and appointed officials, public servants and public bodies to co-operate with the Complaints Panel. Of particular concern was the refusal to accept findings of fact as determined by the Board which is, it must be remembered, an independent quasi-judicial body.

In the 2021 Annual Report the Chair spoke in strong terms:<sup>127</sup>

It was disappointing that several complaints remained unresolved even after there had been a Hearing at which the complaint had been upheld. Two cases in particular stand out as a very poor reflection of the level of regard which Ministers appear to have for the Complaints process ... These cases are of concern, because in both instances people with a wealth of experience, skills and knowledge have considered the details of the complaints and upheld them; yet the findings have been ignored. What compounds matters in both cases is the fact that these two complainants have been left with the impression that despite the fact that a Complaints Board Hearing has upheld their complaint, the Government doesn't care. They have been left to languish whilst waiting for the Government to do the right thing and the impact of that on them, both mentally and morally and on their families who share their experiences, is unacceptable. Whatever the future holds for the oversight of public sector administration in Jersey, I hope that the Government will be held more to account and required to respond and act on any recommendations made, because the current stance is totally unacceptable. Put simply, the States established the Complaints Panel and approved its membership for a purpose. Government chooses to ignore it. Unless it is to give the proposed Ombudsman statutory powers, there is nothing to indicate that role will be regarded by Government any differently than the Complaints Panel.

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<sup>125</sup> States of Jersey Complaints Panel Report 2023, R.86/2024.

<sup>126</sup> States of Jersey Complaints Panel Report 2022, R.178/2023.

<sup>127</sup> States of Jersey Complaints Panel Report 2021, R.170/2022.

A similar note was struck in the 2020 Annual Report by the Chair of PPC (Deputy Carina Alves):<sup>128</sup>

What was disappointing in 2020, was that several Departments disrespected the complaints process itself and sought to challenge the Panel’s jurisdiction. In some cases this simply took the form of delays in responding to the deadlines given for submissions, which required reminders from the Deputy Greffier. However, in a couple of cases this resulted in approaches from the Law Officers’ Department, just days before the scheduled hearing dates, seeking to postpone or cancel and claiming that the matters were not within the Complaints Panel’s remit and the hearings should never have been arranged. ... the current situation whereby there can be an absolute rejection of the Board’s findings on the basis of jurisdiction, with no agreement to review the situation, despite the Board upholding the complaint and finding fault in the process followed, is wholly inappropriate and completely unfair to Islanders.

To move from description of the problem to its analysis and solution, we examine two questions. First, why have Ministers in Jersey been critical of board reports? Second, what (if anything) can be done to change the culture in Jersey so that Ministers accept a much larger proportion of board reports, whether that be by the Complaints Panel or in future the Ombudsperson? In doing so, we acknowledge that there is grey water between ‘acceptance’ and ‘non acceptance’. In some cases, Ministers have not accepted findings but nevertheless provided a remedy for the complainant (for example, an apology) or agreed on a general systems improvement for the future.

## Why are Ministers critical of Complaint Panel board reports?

To understand what has been going on, we looked at each of the five steps of boards’ decision-making processes (see above), drawing on relevant complaints published on the States Assembly website.



### Step 1: Jurisdictional questions

Like all statutory bodies, the Complaints Panel must operate within the limits of its jurisdiction as defined by the law. Two recent cases illustrate disagreement between the Complaints Panel and Ministers on whether a board has jurisdictions.

In **R.45/2021** Mr Chambers complained about the recruitment process for a job he applied for (unsuccessfully) in Health and Community Services. The Chief Minister, advised by the Law Officers’ Department, argued that the Complaint Panel’s remit was over ‘administrative decisions ... made pursuant to statutory, or customary law, powers and which affected members of the public’. The board should therefore not examine this case, which was a private law matter, and any grievance should go to the Employment Tribunal. The Chair and Deputy Chairs determined that the Complaints Panel did have

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<sup>128</sup> States of Jersey Complaints Panel [Report 2020](#), R.166/2021.



jurisdiction 'in relation to the decisions, acts and omissions of the States Employment Board', noting there was (para 7.13)

a clear public policy underlying the [1982] 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.

The board added (para 7.15)

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.

In **R.139/2020** (the first of three board hearings), Mr Newman's complaint related to the handling of a request for a pension transfer valuation; he wanted to make a transfer out of the Public Employees' Pension Fund (PEPF) to invest with a private provider. The chair of PEPF committee of management, and the Treasurer of the States, took the view that this case fell outside the Complaint Panel's jurisdiction. The gist of their stance was that the committee of management was not acting 'on behalf of a Minister' and was performing a private financial services role not a public function. The two Deputy Chairs (Mr Catchpole KC and Mr Bernie) concluded, after lengthy analysis, that the complaint about the committee of management was within the jurisdiction of the board (para 6.2), though noting 'it is correct to record that we can see that there may be certain areas where the question of a Board's jurisdiction may be more debateable, for example on the question of whether or not to make a particular investment, but that is not what is in issue in this case' (para 6.22).

It is not appropriate for the Jersey Law Commission to express views on the specific jurisdictional questions set out above. We can, however, make the following observations.

**First, the Complaints Panel highlights that points about jurisdiction have been raised by public bodies too late in the process.** In the Newman complaint, the Deputy Chair stated at para 6.5 that

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.

As noted above, the Complaints Panel has power under article 5 of the Administrative Decisions (Review)(Jersey) Law 1982 to 'issue rules of practice and procedure'. Stating the requirement in a practice direction available on the Complaint Panel's webpage might be a more effective means of communicating expectations than mid-way through a detailed 24-page board report on an individual complaint.

**Second, there is a difference of view between the Complaints Panel and Government of Jersey about the Panel's remit over employment-related issues.**

One way forward would be to seek a determination of the Royal Court on the matter. The extent of the Complaint Panel's jurisdiction is a question of law, based on the correct interpretation of article 2 of the Administrative Decisions (Review)(Jersey) Law 1982. The matter could be brought before the Royal Court either by the Complaints Panel (by representation) or a public body challenging the Panel's assertion of jurisdiction (by application for judicial review).

A different approach would be for a policy decision to be made by Ministers on whether employment-related issues should be heard by the Complaints Panel and, if necessary, bring forward amendments to the 1982 Law for the States Assembly to consider.

**Third, as discussed in chapter 6 above, there is a much larger debate about which public bodies and bodies carrying out public functions should be within the reach of the island's independent complaints body** (whether that is the Complaints Panel or the Ombudsperson). We note from the drafting instructions that it is proposed that the Ombudsperson will have jurisdiction over the 'Public Employees Contributory Retirement Scheme/Jersey Teachers Superannuation Fund'.



**Step 2: fact finding**

A board must establish what happened leading up to the complaint. It does this by looking at written evidence provided by both sides and listening to what is said at the hearing. Some of the push-back from Ministers to board reports is because the Department does not accept findings of fact.

For example, in **R.111/2018 Res** (Mr I Barette's complaint about planning enforcement at Broughton Lodge) the Minister said

There is no evidence to support the Complaint's Board's finding that the floors and windows would have been condemned if viewed by Planning Officers. Mr. Barette destroyed any possibility of evidence and the state of the windows could not be determined.

And

It is also erroneous for the Board to assume that no compliance action would have followed. Any recommendation for prosecution was supported by the charging Centenier, and by the Attorney

General's office, and will have met the required evidential test and public interest tests. All these parties, therefore, agreed that a serious breach had occurred, and agreed with the line of regulatory action.

This case also illustrates that Ministerial objection about fact finding can relate to the process adopted by a Complaints Panel board:

I am disappointed that the Complaints Board did not interview the compliance officers concerned, as they have been unable to counter the allegations made against them. This is not in accordance with the principles of a fair hearing.

To take another example, in **R.156/2013** the complaint related to the Department of Social Security's handling of an application for income support from Mr P Bellas. A key issue was whether Mr Bellas had been made redundant by his last employer or had left for other reasons. The board found that the Department could have done more to clarify the basis of Mr Bellas' termination. The Minister responded to the board's report saying

To confirm, the Department was informed verbally (June 5th) by the employer that Mr Bellas was not made redundant and this was sufficient to assess the claim which the Complaints Board agrees was correctly actioned by the Department. I had also personally confirmed (June 26th) with the employer verbally that Mr Bellas had not been made redundant. In response to the Complaints Board's comments the Department has sought and now received written confirmation from the employer that Mr Bellas was not made redundant.

Some findings are 'mixed questions of fact and law'. In **R.108/2012** the complaint related to allocation of school places. The Minister said

I wish to place it on record that there are several points on which I disagree with the summary and findings of the Complaints Board ... the parent has the right under the Law to express a preference, but this is not the same as 'the right to choose', as asserted in paragraph 4.5 of the Board's findings. | The Law Officers' Department has been asked to advise on this point, in the light of the comments of the Complaints Board, and it has supported the Department's interpretation of the legal position.

What steps could be taken to reduce the risk of Ministers not accepting Complaint Panel boards' reports in relation to findings of fact?

**One approach would be to adopt a practice that the Complaint Panel shares a draft statement of facts with the complainant and Department before finalising its report, for review and comment, allowing concerns to be addressed at a formative stage.** This idea stems from the recent practice of the Tynwald Ombudsman [TCA] relating to the 'statement of facts' section of reports:<sup>129</sup>

The Statement of Facts is not intended to contain any analysis or commentary from the TCA. That analysis will form part of the reasoning and conclusions in the Report, but that Report will be written

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<sup>129</sup> Tynwald Commissioner for Administration, *Seventh Annual Report, April 2024*, PP 2024/0060 para 1.7.

only after the text of the Statement of Facts has been finalised to the satisfaction both of the Complainant and of the Listed Authority. Where there is a continuing disagreement, both points of view will be included in full.

This change would not require any amendment to the Law.

**A different approach, which would require a change in the law, would be to draw a clear legal distinction between (a) findings of fact and assessment that there was maladministration and (b) recommendations for correcting the injustice.** The legislative framework for the Local Government and Social Care Ombudsman in England is different from that creating the Complaints Panel/Ombudsperson in Jersey. However, the same concept can be applied. As long ago as 1988, the High Court in England held that ‘findings’ by the Local ombudsperson were binding on the local authority under investigation.<sup>130</sup> The High Court confirmed this approach in 2010.<sup>131</sup> In relation to findings

these are either hard-edged findings of fact, established after thorough and independent investigation by the [ombudsperson]; or they represent an assessment by the [ombudsperson] of maladministration and injustice which, by reason of his expertise, accumulated experience of local administration and panoramic view of the functioning (and malfunctioning) of local government, he is peculiarly well-equipped to make (para 26).

In England, if a local authority feels compelled to dispute findings of fact or assessment that there is maladministration, it must apply for judicial review to the High Court (the equivalent of our Royal Court) and demonstrate that the ombudsperson has acted unlawfully by misinterpreting the law, procedural impropriety, or irrationally. Clearly, the costs of bringing a legal challenge are a disincentive unless the local authority is clear that legal proceedings are in the public interest.

In relation to ‘recommendations’, the High Court in 2010 said

there is more scope for genuine disagreement on what, if any, steps are required to remedy a particular injustice. There may be a number of options, with varying effects on the use of scarce resources. Local authorities are, of course, accountable to their electors for the use of such resources. It seems to me that Parliament intended that local authorities should be entitled to consider the impact on the fair and efficient allocation of scarce local resources in deciding whether to accept a recommendation of the [ombudsperson] and, in an appropriate case, to reject such a recommendation because of a disproportionate effect on such resources. (para 27).

The rationale for a change along these lines in Jersey would be to strike a better balance between two considerations: (a) the Complaints Panel (or in future the Ombudsperson) – while not elected – is appointed by the States Assembly and should be accorded respect as the island’s independent and expert body with the task of establishing facts and

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<sup>130</sup> *R v Local Commissioner for Administration for the South, the West Midlands, Leicestershire, Lincolnshire and Cambridgeshire ex parte Eastleigh Borough Council* [1988] QB 855.

<sup>131</sup> *R (on the application of Gallagher v Basildon District Council* [2010] EWHC 2824 (Admin)([link](#)).

whether maladministration has taken place; and (b) Ministers – who are elected and accountable to the States Assembly and ultimately to the electorate – have a responsibility for deciding how public money should be spent.

Making a findings/recommendations distinction in Jersey would require a change in legislation – either amendment of the Administrative Decisions (Review)(Jersey) Law 1982 or the proposed legislation for the Ombudsperson.

### **Step 3: evaluation**

At this stage of the process, the Complaint Panel board must look at the facts (see step 2) and consider whether one or more of the grounds of review has been breached. This is an evaluative exercise. Ministers, in their published responses, have registered objections to boards' evaluation in several cases.

**R.53/2017 Res** concerned a complaint by Mrs X about the way her request for ill-health retirement was handled by the States Employment Board. SEB in its response stated:

Whilst the S.E.B. welcomes the Complaints Board's findings, it does not believe that the duty of care afforded to Mrs. X constitutes a practice that was or might be "unjust, oppressive or improperly discriminatory". Given the Complaints Board's conclusion that the decision not to grant ill-health retirement to Mrs. X was appropriate given the information available at the time, the S.E.B. does not believe that it follows that the decision not to grant ill-health retirement "could not have been made by a reasonable body of persons after proper consideration of all the facts". Finally, the S.E.B. rejects the Complaints Board's conclusion that the decision was contrary to the generally accepted principles of natural justice.

This prompted a response to the response from the Chair of the Complaints Board (R.53/2017 Res.Res.(re-issue)):

As Chairman of the Complaints Panel I am disappointed with the response provided by the States Employment Board, which I find to be poorly balanced, highly selective, and which ignores the context of the events surrounding the decision. ... The Complaints Board does not consider that Mrs. X received fair hearings at these earlier reviews, as she was not able to fully present her case.

As in step 2, the law in Jersey could be amended to make evaluation findings binding (leaving the Minister to take legal action if he or she wanted to challenge the report).

### **Step 4: deciding on an individual remedy**

In several cases, the reasons for the Minister not accepting a board's report were over concerns about the recommendation for resolution of the complaint's case.

For example, **R.67/2013**, **R.93/2013** was a complaint about taxi-cab licensing. In response to the board's report, the Minister said that the proposed remedy was not

legally appropriate (and suggested instead that the complainant should surrender his existing licence and reapply for a new one, taking his turn on the waiting list):

It was recommended at paragraph 5.8 of the Report that condition 11 of the Complainant's licence should be annulled and replaced with a version which is unambiguous, enforceable and as explicit as practicable. The existing conditions of the licence were approved by Ministerial Decision dated 18th January 2013. To revoke the Ministerial Decision would require the revocation of the Complainant's licence, which can only be done on the grounds at Article 10(1) of the Motor Traffic (Jersey) Law 1935, i.e. where the holder is no longer a fit and proper person or where the vehicle has been used or operated in contravention of a condition set out in the licence. It would not be right to revoke the licence on one of those grounds only to issue another licence, with amended conditions, immediately after.

The findings/recommendations distinction would leave acceptance of the recommended remedy at the discretion of the Minister

### **Step 5: proposing system improvements**

This was discussed in detail in chapter 4 above.

### **A general point: improving the quality of Complaint Panel boards' reports**

As discussed above, the reasons given by Ministers for publicly criticising or rejecting board reports include concerns they have about the quality of adjudication at a hearing (for example, a board did not take evidence from key officials before criticising them in their report) or the quality of reasoning in reports. As we stressed, we make no judgement about this. Any institution that holds others to account for *their* cultures of continuous improvement should *itself* be committed to ensuring that its members (and staff) engage in appropriate training and professional development. This should apply to roles that involve adjudication. For example, in England lay judges are required to undertake 3-5 days of training in their first year, along with meetings with a mentor, followed by 1-2 training days for the rest of their term of office.<sup>132</sup>

Opportunities for Complaints Panel members to engage with counterparts in other jurisdictions, and complaint handler/ombudsperson professional associations, may also be helpful. Perhaps this already happens, in which case describing these interactions in the annual report would help emphasise the body's commitment to excellence.

Another approach to continuous improvement of the quality of board reports could be to create a process for internal review of a draft, at a formative stage, by an experienced member who has not been involved in the hearing. A new pair of eyes may be able to suggest improvements.

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<sup>132</sup> UK Government, [Become a magistrate](#) (visited 14 June 2024).

These suggested changes would not require any amendment to the Law.

## Building a culture of acceptance

The previous section has examined in detail why Ministers have criticised or rejected some Complaint Panel board reports, focusing on the specific stages of the board's thinking. While the practical changes we suggest may help, given the scale of the problem there are a range of other proposals that should be examined. The aim for Jersey to move from a situation in which less than 60% of board reports are fully accepted by Ministers to one where 99% are (taking the benchmark of England's Local Government and Social Care Ombudsman)? The following proposals would be equally applicable to the Complaints Panel (if retained) or the Ombudsperson (if that goes ahead).



### **Ministers adopt a policy that reports will be accepted unless there is an overwhelming reason of public policy not to do so?**

This recognises the decision whether to criticise or publicly contest a report is a political choice. In one of the reports in the Newman case (R.110/2022), Mr Catchpole KC, writing for the board said:

We recommend that a policy and direction should be given to all Ministers, departments, civil servants and appointees to public offices or bodies ... that there is a strong presumption that a Respondent to a complaint will accept the findings of and implement forthwith the recommendations of a Complaints Board in an individual case. (para 66.2.5)

While the reports of Complaint Panel boards or the Ombudsperson are not legally binding it is equally true to say that there is no legal requirement that Ministers publish a line-by-line commentary on them or strive to correct any perceived error or difference of interpretation. The final resolution of the Foreshore complaint (case study 3 below) illustrates Ministers' authority to decide that the public interest favours implementation. This political judgement may involve rejecting official advice.

The rationale for the suggested policy is that there is an overarching public interest, beyond the circumstances of each complaint, in Jersey having an effective independent complaints body that islanders can have confidence in. It is arguable that the low rate of compliance in recent years means the Complaints Panel is at risk of not meeting the Ombudsman Association criterion that people have 'a reasonable expectation that ... decisions or recommendations will be complied with'. If an Ombudsperson is created, it would be important for the new body's credibility that Ministers are willing to accept its reports from day one.

This suggested change would not require any amendment to the Law. The Chief Minister could inform the States Assembly that a policy has been adopted.

### **Collective decision-making by Ministers?**

A stronger culture of acceptance could be built by requiring any decision not to accept a Complaint Panel/Ombudsperson's report to be made by Ministers collectively (as the Council of Ministers) not by the individual Minister whose department is criticised. The Law could be amended to require a report proposing to reject findings or recommendations to be considered at a full meeting of the Council of Ministers, with the Council of Ministers required to provide evidence that this has been done. This suggestion is based on a power that the Local Government and Social Care Ombudsman has in England, which may in its reports say<sup>133</sup>

The Council must consider this report and confirm within [three] months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this.

The rationale for this proposal is that it may help change the political dynamics where an individual Minister naturally has a sense of loyalty towards his or her Department's officials which encourages the Minister to feel it appropriate to publicly defend their actions. Making this a collective decision will (a) ensure that Ministers have a political sounding board outside their Department and (b) emphasising that there is an overarching decision to be made about ensuring the public interest in having an effective independent complaints body.

This suggested change would require amendment to the Law. Alternatively, a voluntary practice could be adopted.

### **Enhanced publicity if a Minister rejects findings or recommendations?**

To ensure that a Minister choosing to reject a finding or recommendation of a Complaint Panel board's report (or an Ombudsman report) feels fully accountable to islanders, a requirement to publicise the decision could be created. The idea for this suggestion comes from practice in England, where the Local Government and Social Care Ombudsman has a statutory power to require the public body 'to arrange for a statement to be published'.<sup>134</sup> This is typically a one-page advertisement taken out in 'any two editions within a fortnight of a newspaper circulating in the area', with publication 'arranged for the earliest practical date'. If the public body fails to do this, the ombudsman

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<sup>133</sup> For an example, see Investigation into a complaint against London Borough of Camden (reference number: 20 010 876) ([link](#)).

<sup>134</sup> Local Government Act 1974 section 31([link](#)).



arranges publication, and the public body must reimburse the cost. This change would require the Law to be amended.

### **Scrutiny hearing if a Minister rejects findings or recommendations?**

In relation to individual cases, PPC has tended to see its role as a 'post-box', presenting the Complaint Panel's board report to the Assembly without comment. For example, answering a question as Chair of Privileges and Procedures Committee (PPC) in 2020, Deputy Russell Labey said<sup>135</sup>

Just on a protocol, PPC is the conduit for the Complaints Board to publish their findings. We do not actually comment on the findings ourselves. As long as the findings, or whatever they want to publish, is within their terms of reference – and this matter clearly was and their second report on it clearly was – and so PPC will publish what they want published. PPC has never, to my knowledge, worked as an enforcer, badgering Ministers to enforce the recommendations of a Complaints Board finding. We do hit the age-old problem with this in that a non-elected body ... it is difficult and perhaps not correct for a non-elected body to force an elected Minister to a certain course of action. But if the Senator [Kristina Moore] is asking me personally if I feel that there have been poor responses from Ministers to Complaints Boards' findings I would have to agree with her.

In April 2016, however, PPC noted 'that if a Board felt that a Minister had not taken its recommendations seriously, it could refer the matter to the Committee, who could request the Minister to attend before it.'<sup>136</sup>

We are not aware if this has happened, but this would provide an enhanced level of scrutiny and accountability for Ministers' decisions to reject Complaint Panel board reports. While Standing Order 68AA now provide for scrutiny in the Assembly chamber, it is arguable that a deeper form of inquiry could be achieved in a committee setting.

### **More dialogue?**

In a recent interview with the *Jersey Evening Post*, the Chair of the Panel is reported to have said:<sup>137</sup>

A meeting with the former chief executive Charlie Parker yielded the suggestion that all complaints should be reported to him before they were investigated by the panel – unsurprisingly a proposal that did not find favour with the independent body. And, two governments ago, the panel was invited to a meeting of the Council of Ministers when a number of follow-up were suggested but did not ultimately materialise. That is pretty much it. Has the lack of contact, following the States decision to

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<sup>135</sup> OQ.26/2020 (2 April 2020). The question concerned the non-acceptance of findings and recommendations following a hearing on a complaint by Mr T Binet and Ms R Binet relating to processing of planning applications.

<sup>136</sup> PPC, 32<sup>nd</sup> Meeting, 19 April 2016 ([link](#)).

<sup>137</sup> Rod McLoughlin, 'The Saturday Interview: A Jersey Way to deliver the service of an ombudsman', (profile of Complaint Panel Chairman Geoffrey Crill) *Jersey Evening Post*, 8 June 2022, pp 10-11 (print edition only).

create a new body, made the task more difficult? “It has made us all the more determined that we will do a proper job, that we’re not going to slink away and that we have a responsibility to the complainant – and under the law – to discharge our functions. We are determined to do the job properly”, Mr Crill said.

Mr Catchpole KC, writing for the board in one of the reports in the Newman case (R.110/2022) said:

We recommend that a (very) senior official or group of officials are given responsibility for changing and modernising the attitudes of the public sector in Jersey towards transparent and good administration and the interaction with those charged with scrutinising their actions and decisions. This would be aimed at changing the attitudes that we have identified above. (para 66.2.7)

A periodic conference to discuss emerging issues could help develop a culture that moves beyond publishing reports, responses, and responses to responses. Any discussion at such a meeting would need to avoid undermining the independence of the Complaints Panel/Ombudsperson. It would be impermissible to discuss pending complaints or reopen past decisions. But there is a wide range of other topics on which dialogue could take place. This would be any opportunity to build trust and mutual understanding of respective constitutional roles and developments. This change would not require any change in the law.

Participants could include: one or more relevant Minister; officials; members of the Complaints Panel or Ombudsperson; the Greffier of the States; a representative of the Judicial Greffe; relevant States Members; a representative of the Law Officers’ Department; the Comptroller and Auditor General; the Children’s Commissioner; the Financial Services Ombudsman; a member of the Jersey Law Commission; and one or more independent complaints bodies from outside Jersey.

**Different approach to engagement by States Assembly?**

Another lever of change to bring about a better culture of implementation could involve States Assembly. A range of committees and panels do, or have done recent, work relating to complaints and continual improvement of public administration and delivery of public services. For example:

<b>Privileges and Procedures Committee</b>	Point of contact for Assembly with the Complaints Panel
<b>Scrutiny Liaison Committee</b>	Proposed point of contact for Assembly with Ombudsperson
<b>Public Accounts Committee</b>	Interest in internal complaints through work by Comptroller & Auditor General

<b>Legislative Advisory Panel</b>	Point of contact for Assembly with the Jersey Law Commission; past work on behalf of Chief Minister to develop policy on Ombudsperson
<b>Corporate Services Scrutiny Panel</b>	Scrutiny of Chief Minister’s responsibilities for complaints and promoting good governance
<b>Ad hoc scrutiny panels</b>	e.g. Care of Children in Jersey Review Panel, <i><u>Redress and Accountability Systems in Jersey</u></i> , S.R.22/2021

We are concerned about two features of the Assembly’s interest in complaints.

**First, the Assembly’s work in this area is not sufficiently joined-up.**

The publication of the annual report of the Complaints Panel (or in future the Ombudsperson) could provide a focal point.

This could be linked with an annual report from the Government of Jersey on internal complaints handling. In a board report, the Chair of the Complaints Panel suggested:<sup>138</sup>

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.

A short, carefully focused inquiry (with an oral evidence session and opportunity for outsiders to submit evidence) leading to a report would help triangulate internal complaints handling, the work of the independent complaints body, and the States Assembly’s own scrutiny functions.

**Second, there is a need for States Members to recognise that the independent complaints body should be held accountable (without undermining its independence)**

In other jurisdictions, parliamentary committees have a role of ‘critical friend’ to the national ombudsperson. This involves taking evidence from the ombudsperson, often linked to publication of the ombudsperson’s annual report. The process enables the

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<sup>138</sup> R.45/2021 ([link](#)).

ombudsperson to be held to account by elected representatives as well as lending weight to any problems the ombudsperson is encountering with the bodies within their remit.

Over many years, PPC's foreword to the Complaints Panel's annual reports have been uniformly laudatory. A more balanced and evidence-led approach by any States committee or scrutiny panel should not shy away from publicly exploring, in partnership with the Chair of the Complaints Panel (or in future the Ombudsperson) the weaknesses and challenges as well as the strengths and successes of their organisation.

In relation to the Complaints Panel, PPC (or another committee or panel) could carry out the functions of a non-executive board. This is, arguably, a missing piece in the governance arrangements for the Complaints Panel. The Ombudsperson will have a non-executive board of up to 8 unpaid islanders to 'advise, support and challenge' and defend independence of Ombudsperson'. Currently there may be insufficient 'challenge' to the Complaints Panel.

### **Examples of questions that States Members could ask of the Complaints Panel**

What plans do you have for improving the online presence of the Panel?

Are there ways in which the Panel could become more customer centric?

What if any concerns do you have about the recent caseload?

What are the main themes to emerge from recent complaints?

A board report outlined a series of proposals for improving acceptance of recommendations by Ministers. How are you taking this forward?

What is your thinking on succession planning and recruitment of new Panel members?

A board determined a complaint recently without holding a public hearing. What are your reflections on this and do you have plans to use this method again?

The 2021 census showed that 1 in 11 (9%) of the population identifies as Portuguese or Madeiran: how is this reflected in the Panel's caseload? Are you satisfied that the Panel is sufficient accessible to the Portuguese/Madeira community?

Recently, the jurisdiction of the Panel has been questioned. Without going into detail about the specific complaints, can you talk through the general issue and any proposals you have for handling this issue?

Can you outline arrangements for training and continuing development of Panel members?

Accountability questions such as these do not imperil independence; on the contrary, they ensure the island's independent complaints body is serving the needs of islanders.

In July 2015, members of Privileges and Procedures Committee (PPC) 'noted that the [Complaints] Panel might attend upon a future meeting of the Committee in order to discuss potential enhancements to its own procedures'.<sup>139</sup> This has happened from time

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<sup>139</sup> PPC, 13<sup>th</sup> Meeting, 7 July 2015 ([link](#)).

to time, but so far as we can see these meetings have tended not to be either in public (and webcast) nor have the minutes always subsequently made public.<sup>140</sup>

Article 10(3) of the Administrative Decisions (Review)(Jersey) Law 1982 provides that 'The Privileges and Procedures Committee may examine the Panel on the contents of the Panel's [annual] report and may present to the States the Committee's own comments on the report'.

## Three case studies

To understand the implications of non-acceptance of board reports by Ministers we looked at three case studies from different Departments where board findings or recommendations were not accepted by the relevant Ministers (**set out below**). This is a small sample, so caution is needed in generalising. But examining some concrete examples may shed some useful light on the debate.

- These complainants each used local news media to explain the impacts the original administrative decisions and subsequent proceedings had on their health and wellbeing. For these complainants it seems that publicity, rather than confidentiality, was seen as helpful (see chapter 8). The news coverage was generally sympathetic to the complainants.
- In each case, the complainant took action after the Minister refused to accept the board's report fully. Mr Barette erected prominent protest signs on his property that stayed in place for several years. Mr Huda instituted legal proceedings in the Royal Court against the Minister. And there was a protracted political campaign in relation to the Foreshore complaint. The complainants did not 'give up' of the Ministers' refusals.
- In each case, the Minister's negative response to the board's report was based partly on the perceived quality of the board's reasoning and analysis.
- But underlying this seems to be a deeper clash of sincerely held values – between the Minister and officials' understanding of what they must do in the public interest and the board's emphasis on individual justice.
- Although the Ministers responded negatively in rejecting some findings and recommendations in each case, it is nonetheless possible to identify positive outcomes. The Planning Department reviewed its compliance process and offered a qualified apology to Mr Barette. Mr Huda received a qualified apology for

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<sup>140</sup> For example, five Complaints Panel members attended PPC, 49<sup>th</sup> Meeting, 7 October 2019 ([link](#)) but for a 'part B' agenda item that is not disclosed.

acknowledged departure from correct procedures. And the Foreshore complaint seems to have been a catalyst for work within the Department to review policy.

### Case study: Planning enforcement in St Mary (R.111/2018)



Mr Barette was renovating his property in St Mary, a listed farmhouse. He pleaded guilty to offences under the Planning and Building (Jersey) Law 2002, and was fined £50,000 plus costs by the Royal Court in 2016, which held that ‘The works carried out in this case represent a grave breach of planning controls and have resulted in the loss of a significant amount of historic fabric and diminished the special interest of the Farm’.<sup>141</sup>

In November 2017 Mr Barette lodged a complaint with the Complaints Panel relating to planning enforcement that had led to his prosecution. A board heard the case in public in June 2018.<sup>142</sup> In August 2018, PPC presented the States Assembly with a board report upholding a complaint. It made several findings and recommendations, including that the Department issue a written apology.<sup>143</sup>

In October 2018, the Minister for the Environment responded (R.111Res./2018) arguing that there was ‘no evidence’ to support the board’s finding ‘that the floors and windows would have been condemned if viewed by Planning Officers’, ‘It is also erroneous for the board to assume that no compliance action would have followed’, and expressed disappointment that the board ‘did not interview the compliance officers concerned, as they have been unable to counter the allegations made against them. This is not in accordance with the principles of a fair hearing’. The Minister agreed to make a qualified apology and stated that the Department ‘has reviewed its compliance process and a more solutions-focused compliance function is now in operation’.

In protest, Mr Barette adorned the property with large notices criticising the Planning Department.<sup>144</sup>

### Case study: Referral of health professional to regulator (R.148/2018)



Mr Huda, an osteopath who also performed colonic irrigation, lodged a complaint relating to a decision to refer him to his professional body (the General Osteopathic Council, GOC), following concerns about the safety and well-being of a vulnerable adult patient under his treatment. A board heard the case in public in October 2018.<sup>145</sup> In December 2018, PPC presented the report to the States

<sup>141</sup> *Attorney General v Barette* [2016] JRC 177.

<sup>142</sup> ‘Homeowner lodges complaint of “unfair” treatment by Planning’ *Jersey Evening Post*, 8 June 2018.

<sup>143</sup> Reported in the news media: ‘Planning acted in “oppressive and improperly discriminatory way”’ *Bailiwick Express*, 23 August 2018.

<sup>144</sup> Thomas Innes, ‘Work begins on farmhouse after long planning dispute’ *Jersey Evening Post*, 18 January 2022.

<sup>145</sup> ‘Where is the respect?’ *Bailiwick Express*, 27 October 2018.

Assembly.<sup>146</sup> The board upheld the complaint, saying it was ‘very disappointed that the Department failed to deal effectively with the complaint made against Mr Huda and conducted a one-sided review of the case without giving him the right of reply’ and found that ‘Department departed from agreed policy when dealing with this particular case’. It noted that a letter of apology had been sent to Mr Huda. A series of recommendations for improving processes was set out. (The GOC subsequently decided to take no action).

The Minister responded in February 2019 (R.148 Res./2018), maintaining that (while acknowledging that Mr Huda had not been notified that the GOC referral had been made) it was appropriate to make a reference to the GOC. The report said, ‘The Minister does not agree that the Department failed to deal effectively with the complaint made against Mr. Huda’, concluding ‘As presently drafted, the Report could be understood as wrongly conflating the differing duties and purposes of the safeguarding investigation with that of a professional conduct or disciplinary investigation’.

Later in February, PPC issued a further report by the board (R.148 Res.Res./2018), which stated ‘that a Minister has once again sought to “spin” his response in a manner that seeks to disguise, and even justify, what was a critical failure by the Department to follow its own written procedures. It was that failure which rendered the actions of the Department unjust and contrary to natural justice’.

Mr Huda subsequently started legal proceedings in the Royal Court against the Minister for the tort of misfeasance in public office.<sup>147</sup>

### **Case study: Handing of foreshore encroachment claims (R.71/2018)**



Background: in 2015, the Crown gifted the foreshore (the land surrounding Jersey, lying between the high water mark of full spring tide and the lowest mark of tide) to the public of Jersey. Jersey Property Holdings (JPH, the Government of Jersey’s corporate landlord), within a Department, is responsible for the strategic management of publicly owned land. It is said that more than 400 homes are immediately adjacent to the coast.

Two owners of land at Grève d’Azette (Mr Luce and Mr Mallinson) complained about how JPH had handled disputes over encroachments on the publicly owned seawall.<sup>148</sup> JPH offered to allow the encroachments to remain for a financial consideration and the passing of contracts in the Royal Court. The landowners reluctantly agreed, regarding the terms as unfair and imposed from a position of power rather than being negotiated. They

<sup>146</sup> ‘Victory for osteopath maligned by Health Department’ *Bailiwick Express*, 5 December 2018.

<sup>147</sup> *Huda v Minister for Health and Social Services* [2021] JRC 007 and [2021]JRC 2019. See Stephen Blease, ‘Osteopath faced “sheer hell” to clear his name’ *Jersey Evening Post*, 27 August 2021.

<sup>148</sup> Fiona Potigny, ‘Coastal homeowner accuses States of £30k “extortion”’ *Bailiwick Express*, 26 July 2017.



complained to the Complaints Panel. A board held a hearing in April 2018. Their report was presented by PPC to the Assembly in June 2018, stating it was ‘strongly of the view’ that JPH should have shared the valuations it had obtained; and that JPH ‘exploited the vulnerable position of that the complainants found themselves in as owners urgently needing to sell their respective properties’. It was unfair that the JPH demanded a higher amount in compensation than its valuer had assessed. The board made recommendations on policy for fixing the boundary of the foreshore.

In August 2018, the Minister responded (R.71 Res./2018), rejecting most of the findings by the board, concluding ‘Although the Minister does not accept all of the conclusions of the Board, some of the points raised in respect of the policy on the foreshore will certainly be considered as part of a review’.

The board responded (R.71 Res.Res./2018), saying ‘the Minister appears to have misdirected himself on a couple of major points’ and reiterating ‘that it does not consider it to have been appropriate that JPH approached negotiations on an exclusively commercial basis,’ adding that the board hoped the complainant would receive compensation for any overpayment they made after the policy review was concluded.

States Members asked questions of the Minister about the board’s report and compensation policy.<sup>149</sup> In December 2019, Mr Tom Binet and Ms Rose Binet launched e-petitions and wrote to the Chief Minister and Chief Executive calling for ‘a “swift and positive” resolution to the longstanding and ongoing grievances of a large group of islanders’ whose complaints against government were upheld by an independent panel, but never acted on by Ministers or their departments’.<sup>150</sup>

In September 2020, the States Assembly debated a Foreshore policy for alleged encroachment payments,<sup>151</sup> and agreed (33 pour, 8 contre): ‘that upon a revised policy being agreed by the Assembly, the Minister for Infrastructure should re-consider Finding 8.15 of the States of Jersey Complaints Board’s report (R.71/2018) in respect of refunding the difference (if any) between the considerations paid under the two respective land transactions and the considerations that would have been paid had the new policy been in place at the time’.<sup>152</sup>

The Environment, Housing and Infrastructure Scrutiny Panel launched a review of the policy in November 2020. Reporting in January 2021, the Scrutiny Panel concluded that

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<sup>149</sup> For example, [WQ.16/2020](#), [WQ.102/2024](#).

<sup>150</sup> Fiona Potigny, ‘We’re appealing to their moral compass to do something’ *Bailiwick Express*, 9 January 2020 (‘The letter concludes with a warning: “We are in the process of compiling a collective, formal complaint against the State, for submission to the Complaints Board. Whilst, in itself, this may prove no more successful than any of the other ‘apparently successful’ complaints, it will, at least, expose the woeful inadequacy (indeed, wilfully negative) response of the State for its malpractice. “In addition, the possibility of collective legal action, in this regard, is also being investigated”).

<sup>151</sup> [Hansard](#), 25 September 2020.

<sup>152</sup> States Assembly [Minutes](#), 25 September 2020.

the policy was 'fundamentally flawed and lacking in essential detail'.<sup>153</sup> In relation to disputes, the Scrutiny Panel said:

KEY FINDING 20: There is currently no suitable complaints or appeals mechanism provided for in either the current or the revised policy to satisfactorily enable individuals appeal a decision made by the Minister in relation to foreshore encroachment compensation. The only option available to them is to make a case to the States of Jersey Complaints Board.

RECOMMENDATION 9: The Minister for Infrastructure should seek to incorporate a suitable and workable process for dealing with complaints relating to foreshore encroachment compensation payments and in addition a clear appeals and arbitration process for dealing with any such complaints. This should be incorporated into the policy before its adoption.

A new policy was adopted by the States Assembly in March 2021.

What of the complainants? During 2023 the Minister (by now Deputy Tom Binet) asked Deputy Sir Philip Bailhache to produce a report on the foreshore issue.<sup>154</sup> This recommended ex gratia payments to Mr Luce and Mr Mallinson.<sup>155</sup> The JEP reported that<sup>156</sup>

'Deputy Binet told the JEP he had then sought to implement the recommendation against the advice of a government officer, who said the repayments should not include interest. ... When you are appointed as a minister you are there to make decisions. You can listen to an officer's advice and recommendations but not follow it slavishly,' Deputy Binet explained. Deputy Binet also said he did not feel he was conflicted when he had made the decision – despite his previous comments on the matter before he was a politician – arguing that "something is either wrong or isn't". He added: "The complaints board ruled in their favour but nobody did anything," he said.'

After Deputy Binet's resignation as the Minister, a new Minister (Connétable Andy Jehan) authorised refunds to the complainants,<sup>157</sup> totalling £74,400.<sup>158</sup>

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<sup>153</sup> Environment, Housing and Infrastructure Scrutiny Panel, *Foreshore Encroachment Policy Review*, S.R. 1/2021. Rod McLoughlin, 'Foreshore: 'Three extra staff would be needed to tackle backlog of cases' *Jersey Evening Post*, 24 October 2021.

<sup>154</sup> In May 2024 the (new) Minister said he would release the Bailhache report, subject to advice from the Law Officers' Department: [WQ.172/2024](#).

<sup>155</sup> James Jeune, 'Jersey's foreshore dispute: Payouts to fined coastal homeowners now in limbo', *Jersey Evening Post*, 6 February 2024.

<sup>156</sup> James Jeune, 'Jersey's foreshore dispute: Payouts to fined coastal homeowners now in limbo', *Jersey Evening Post*, 6 February 2024.

<sup>157</sup> Ammar Ebrahim, 'Relief and anger as foreshore refund row settled' [BBC News](#), 14 March 2024.

<sup>158</sup> [WQ.102/2024](#).

Discussion points

In your view, what needs to happen to ensure cooperation from public bodies during a Complaint Panel (or in future Ombudsperson) examination of a complaint?

What practical steps should be taken to rebuild a culture of Ministers' acceptance of findings and recommendations?

# 12 Jersey Law Commission position statement

## What we said in October 2017

Following a process of research and public consultation, in our October 2017 report *Improving Administrative Redress in Jersey*, we recommended ‘The States of Jersey Complaints Panel should be replaced by a Jersey Public Services Ombudsperson’ (Recommendation 5.1).<sup>159</sup>

We also said: ‘During the consultation phase of this project, we received strongly expressed responses from the Complaints Panel and the States Assembly’s Privileges and Procedures Committee (PPC) arguing against our interim recommendation to abolish the Complaints Panel and replace it with an ombudsperson’ (para 5.32). We ‘therefore developed a series of alternative recommendations for reform of the Complaints Panel’ adding ‘Although these proposals would, in our assessment, improve the operation of the Complaints Panel we do not have sufficient confidence in them to recommend them as providing a long-term solution to the various problems with the Complaints Panel’ (para 5.36).

The following table sets out what we recommended and what (so far as we know) has happened to the proposals in the 80 months since we made them.

What we recommended in 2017	What has happened since then
<b>Recommendation 5.2.</b> The Greffier of the States should have a legal duty to provide a programme of training to members of the Complaints Panel.	The 1982 Law has not been amended. We do not know what training has been provided for Panel members since the recruitment of several new members in 2020. Training is mentioned in chapter 11 above.
<b>Recommendation 5.3</b> The States Assembly should invest resources in developing a website, other publicity material and a programme of activities to publicise the work of the Complaints Panel.	So far as we can see, little has been achieved by way of improving the public profile of the Complaints Panel. Discussed in chapter 5 above.
<b>Recommendation 5.4.</b> The scope of the Complaint Panel’s jurisdiction should be	The 1982 Law has not been amended. Since 2017, there have been disputes

<sup>159</sup> Jersey Law Commission, *Improving Administrative Redress in Jersey* (2017) p 89.

broadened to include a wider range of public bodies.

**Recommendation 5.5.** The grounds of review used by the Complaints Panel should be reformulated.

**Recommendation 5.6.** The Complaints Panel should not accept complaints where the aggrieved person has or had a right of appeal to a tribunal, a right of appeal to the Royal Court, or it would be reasonable for that person to challenge the lawfulness of the administrative decision by making an application for judicial review to the Royal Court.

**Recommendation 5.7.** All members of the Complaints Panel, not only the Chair and Deputy Chairs, should have power to attempt informal resolution of complaints.

**Recommendation 5.8.** The Chief Minister should prepare a report to the States Assembly reviewing responses to the Complaint Panel's findings and recommendations since 2011 and making proposals for the Government of Jersey's future working relationship with the Complaints Panel.

about the Complaint Panel's jurisdiction. This is discussed further in chapter 6 above.

The Complaints Panel disagreed with our proposals (see chapter 10 above) and no amendment has been made to the 1982 Law. This is discussed further in chapter 10 above.

The rationale was to avoid duplication and prolongation of grievances. There have continued to be cases where after going to the Complaints Panel individuals have resorted to legal action in the Royal Court.

No change has been made to the 1982 Law. This is noted again in chapter 9 above.

This was designed to provide a better sense of the collective view of the Council of Ministers of the problems with cooperation. No such report has been forthcoming. The issues are examined in chapter 11 above.

## **Our view in July 2024**

Our position remains as it was in October 2017. **Establishing the Jersey Public Services Ombudsperson is necessary given the scale and nature of the problems facing Jersey's public administration and services and the shortcomings (as we see them) in the current Complaints Panel system.**

If, however, the States Assembly opts to retain the Complaints Panel, it needs to be reformed in significant ways to ensure that it is fit for purpose, enjoys the confidence of the community, Ministers and officials, and that its recommendations are accepted. This report has highlighted several key choices that would have to be made in modernising the Panel.

## External input to the policy process needed if the Complaints Panel is retained

As we noted at the start of this report, at his quarterly meeting with the Corporate Services Panel on 7 June 2024, Chief Minister Deputy Farnham said<sup>160</sup>

we are engaging with the States Greffe and P.P.C. (Privileges and Procedures Committee) to see if we cannot enhance the complaints service, the State's Complaints Board, that we already have. [...]

While exploration of possible policy options within Government, the States Greffe, and PPC is a natural starting point in developing ideas to strengthen the Complaints Panel, this should not be the endpoint. **We would be concerned if the States Assembly were to be asked to consider law reform proposals or significant changes in practice for the Complaints Panel without a similar level of research, expert external analysis, and public consultation that has been devoted to developing policy for the Jersey Public Services Ombudsperson.**

The Government of Jersey will want be sensitive to the perceived and actual conflict of interest inherent in Ministers and senior officials reviewing and reforming an independent body that exists to consider complaints against Ministers and officials.

When policy has been developed for reform of other parts of the justice system, bespoke review groups, consisting of 'insiders' and 'outsiders', have been established. For example:

- The Royal Court Rules Review Group had membership of the Deputy Bailiff, the Chief Executive of Citizens Advice Bureau, President of the Law Society, a lawyer in the Law Officers' Department, a partner of a law firm, and the Master of the Royal Court.<sup>161</sup>
- The Access to Justice review set up in 2013 had membership of four elected States Members supported by an 'expert group' chaired by the Chief Minister's Department with a range of stakeholder representatives.<sup>162</sup>

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<sup>160</sup> See transcript ([link](#)); and Rod McLoughlin, 'Doubts over paid ombudsperson', *Jersey Evening Post*, 8 June 2024 p 9.

<sup>161</sup> Royal Court Rules Review Group, *Access to Justice* (2014).

<sup>162</sup> States of Jersey, *Access to Justice Review: Interim Report* (2014), R.107/2014.

**If the Council of Ministers decides to retain and reform the Complaints Panel, a good quality law reform process with a high level of external input should be followed.**

Discussion points

Is there a need for external input in developing a policy to retain and reform the Complaints Panel?

Which organisation(s) are best placed to contribute?

## 13 Continuing roles for States Members in determining complaints

As noted above, the Complaints Panel's membership was changed in 1996 from States Members to members of the public. We also saw that Guernsey's Complaints Panel continues include Deputies and elected parish officeholders. Nobody (so far as we are aware) has suggested that if the States of Jersey Complaints Panel is retained it should include States Members once again.

**For completeness, we should recognise that States Members continue to have formal dispute resolution roles.** This is a distinct issue from the Complaints Panel vs Ombudsperson debate, but it is relevant to highlight these issues.

**In our October 2017 report *Improving Administrative Redress in Jersey*, we explained that there are several Laws in Jersey where Ministers are expressly given powers to review or hear appeals relating to administrative grievances. We argued that all bar one of these arrangements were constitutionally unacceptable and should be replaced by a right of appeal to an independent and impartial body.**<sup>163</sup>

### Venues for civil marriages and civil partnerships

Under the Marriage and Civil Status (Approved Premises) (Jersey) Order 2002 and the Civil Partnership (Approved Premises) (Jersey) Order 2012, a property owner may apply to the Connétable of the relevant parish for permission to use a venue for solemnising civil marriages/partnerships. If the property owner is aggrieved by the refusal or revocation of permission, or by conditions attached to a grant of permission, 'may apply to the Minister for a review of that decision'. The Minister in question is the Minister for Home Affairs. The subject matter does not relate to what is in the public interest or broad questions of public policy so, we recommended, should be determined by an independent and impartial tribunal.

### Civil aviation: aerodrome licenses

Under the Civil Aviation (Jersey) Law 2008, the Director of Civil Aviation makes decisions relating to grant, revoke and renewal of aerodrome licenses. The term 'aerodrome' covers airports and helipads. Under Article 16, an aggrieved person may appeal to the Minister within 30 days of the Director giving reasons for his decision. The Minister in question is the Chief Minister. The Article creates a further right of appeal to the Royal Court. We make no recommendation for changing this redress scheme. The site and

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<sup>163</sup> Jersey Law Commission, *Improving Administrative Justice in Jersey* (2017) chapter 4.



operation of an aerodrome (for example, a helipad) is likely to raise the same sort of public interest and public policy issues as a planning decision. The possibility of an appeal to the Royal Court provides sufficient judicial control over the decision-making process to satisfy ECHR Article 6.

## **Decisions of the Agent of the Impôt relating to duties**

The Agent of the Impôt is an ancient administrative office. Under Article 68 of the Customs and Excise (Jersey) Law 1999, a person aggrieved by the Agent of the Impôt relating to liability to pay a duty, eligibility to relief or to receive a repayment of duty, or impositions or applications of conditions, limitations, restrictions, prohibitions or other requirements under the Law may within one month apply to the Minister 'to have the decision reviewed'. The Minister in question is the Minister for Treasury and Resources. Under Article 69, there is a right of appeal to the Royal Court against the Minister's decision. The subject matter does not relate to what is in the public interest or broad questions of public policy so disputes should be determined by an independent and impartial tribunal.

## **Children's special educational needs**

Under Article 31 of the Education (Jersey) Law 1999, parents have a right to request and assessment of their children's special educational needs (SEN). If a child is assessed to have SEN, the Minister must ensure that provision is made to meet the needs. There is a right 'to appeal against any part of the results of the assessment' to the Minister within 15 days after the parent is notified of the results of the assessment. Article 31(4) provides 'The Minister may by written direction delegate the power to receive and determine any appeal ... to the Chief Officer or to a panel of persons appointed by the Minister for the purpose, subject to the conditions, exceptions or qualifications that the Minister may specify in the direction'. The 1999 does not create a right of appeal to the Royal Court. During 2015, the States of Jersey Education and Home Affairs Scrutiny Panel conducted an inquiry into SEN.<sup>164</sup> Key finding 5.19 was that 'The legislation and policies relating to SEN in Jersey provide a suitable framework for the provision of a high quality service' but recommended that 'The Minister ... must improve lines of communication with parents of SEN children'. The Panel's report did not, however, deal specifically with any issues relating to appeals. The subject matter does not relate to what is in the public interest or broad questions of public policy so, we recommended, disputes should be determined by an independent and impartial tribunal.

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<sup>164</sup> States of Jersey Education and Home Affairs Scrutiny Panel, *Special Education Needs*, Presented to the States on 14 July 2015, S.R.3/2015.

## **Motor vehicle registration**

Under Article 8 of the Motor Vehicle Registration (Jersey) Law 1993, a person aggrieved by a refusal of an 'Inspector to issue or renew a trade licence may appeal to the Minister and the Minister shall, on any such appeal, give such directions in the matter as he or she thinks just, and the Inspector shall comply with such directions'. The subject matter does not relate to what is in the public interest or broad questions of public policy so disputes should be determined by an independent and impartial tribunal.

## **Appeals relating to prison discipline**

Following several years of debate, a new system of appeals against disciplinary decisions in prison was enacted. Under the the Prison (Jersey) Rules 2007, rule 97 a prisoner's appeal against a determination of the Governor goes to the Minister for Home Affairs. We said appeals should go to an independent and impartial tribunal rather than a politician.

**Since October 2017, we have not had any feedback or formal response from Ministers so we cannot say whether the Government of Jersey disagrees with our recommendations or agrees but does not wish to prioritise addressing the issue.**

## About the Topic Commissioner

Andrew Le Sueur is serving a second term as a member of the Jersey Law Commission. He is Professor of Constitutional Justice at the University of Essex since 2013, having previously held academic posts at UCL, The University of Birmingham, and Queen Mary University of London.

The son of a farmer, he was educated at Trinity, Les Quennevais, and Hautlieu schools before studying for a law degree and qualifying as a barrister.

In the UK, he has served as the legal adviser to the House of Lords Constitution Committee and as a specialist adviser to House of Commons and House of Lords select committees. He is a Fellow of the Royal Society of Arts, a past President of the UK Constitutional Law Association and for several years edited the leading academic journal *Public Law*. As a senior academic leader, at board level he was Executive Dean of the Faculty of Arts and Humanities at the University of Essex 2017-23.

In Jersey, he was the founding director of studies at the Institute of Law. While a practising barrister, he advised on a Jersey and Channel Islands matters. In 2006, he was engaged as a specialist adviser by the Home Affairs Scrutiny Panel for its inquiry into the role of centeniers in the Magistrate's Court. He is an elected member of the council of the Jersey Society in London.

This is the final page of the report.