
STATES OF JERSEY



STATES OF JERSEY COMPLAINTS BOARD: FINDINGS – COMPLAINT BY MS. M. LE CORNU AGAINST THE MINISTER FOR THE ENVIRONMENT REGARDING A DECISION OF THE ENVIRONMENT DEPARTMENT NOT TO ISSUE AN ABATEMENT NOTICE IN ACCORDANCE WITH THE STATUTORY NUISANCES (JERSEY) LAW 1999

**Presented to the States on 1st September 2025
by the Privileges and Procedures Committee**

STATES GREFFE

REPORT

Foreword

In accordance with Article 9(9) of the [Administrative Decisions \(Review\) \(Jersey\) Law 1982](#), the Privileges and Procedures Committee presents the findings of the Complaints Board constituted under the above Law to consider a complaint against the Minister for the Environment regarding a decision of the Environment Department not to issue an abatement notice in accordance with the Statutory Nuisances (Jersey) Law 1999.

Chair, Privileges and Procedures Committee

STATES OF JERSEY COMPLAINTS BOARD

31 July 2025

**Complaint by Ms. M. Le Cornu against the Minister for the Environment
regarding a decision of the Environment Department not to issue an abatement
notice in accordance with the Statutory Nuisances (Jersey) Law 1999.**

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

Present

Board members –

A. Hunter, Chair

G. Crill

S. Harvey

Complainant –

M. Le Cornu

V. Marshman

K. Amundsen

G. Baudains

R. Cairney

C. Green

States Greffe –

L.M. Hart, Deputy Greffier of the States

K.M. LARBALÉSTIER, Principal Secretariat Officer, Specialist Secretariat

L. Plumley, Senior Secretariat Officer, Specialist Secretariat

C. Tucker, Secretariat Officer, Specialist Secretariat

The Hearing was held in public at 10 a.m. on 31st July 2025, in the Le Capelain Room,
States Building.

1. Opening

- 1.1 The Chair opened the Hearing by introducing the Board and setting out its remit. He outlined the process which would be followed and clarified that the Board would only uphold a complaint if it felt that the decision which had given rise to the complaint was contrary to law, unjust, oppressive or improperly discriminatory, was based wholly or partly on a mistake of law or fact, could not have been made by a reasonable body of persons after proper consideration of all the facts, or was contrary to the generally accepted principles of natural justice (Article 9 of the Administrative Decisions (Review) (Jersey) Law 1982).
- 1.2 The Chair stated that the Hearing was not a trial, but an examination of the complaint. Those present would be entitled to ask questions and express their views with the aim of eliciting facts and clarifying any misunderstandings. It was noted that whilst the Minister for the Environment (the Minister) had decided not to attend or be represented at the Hearing, a written submission had been provided, the content of which would be shared, in order to ensure the proceedings were conducted in a fair and balanced manner. The Department had also provided a comprehensive written submission in response to the complaint, which had been considered by the Board, as summarised below in the section entitled 'Minister's case'. The Chair stressed that the Hearing was strictly limited to considering the complaint insofar as it related to the Infrastructure and Environment Department (the Department) and not individual Departmental officers.
- 1.3 It was noted that the original complaint submitted by Ms. Le Cornu had focused on the conduct of individual officers. Complaints against public servants fell outside the remit of the Complaints Panel so the complaint had been restructured to focus on the alleged failures of the Department in the context of the decision not to serve an abatement notice in this case. However, evidence which formed part of the original complaint had been considered in reference to the amended complaint.
- 1.4 It was noted that the Minister and the Department had decided not to attend the Hearing on the basis of feedback from officers in relation to their

experience of a recent public Hearing which had been convened to consider a separate complaint against the Department. A written response to the complaint which had been provided by the Minister had been circulated to all parties in advance of the Hearing.

2. Complainant's case

- 2.1 The Board noted that the complaint related to the Department's decision not to issue an abatement notice in respect of a statutory nuisance, in accordance with the Statutory Nuisances (Jersey) Law 1999 (the 1999 Law).
- 2.2 The Board noted that Ms. Le Cornu was accompanied by a large number of friends and colleagues who continued to support her, some of whom the Board had been notified had elected to speak at the Hearing on behalf of the complainant. The Board was advised that the complaint centred around the Department's handling of a statutory nuisance described as a 'resonance phenomenon with amplification' (RPA) at Ms. Le Cornu's home, La Rosiere Cottage, Drury Lane, St. Helier. Whilst rare, this was a recognised and documented phenomenon caused by interference between 2 electromechanical transformers. When trapped within a building, the interference caused a dynamic disturbance of resonating sound waves, which fed back amplified noise and vibration from electrical appliances in nearby households. It also caused electric shock and overwhelming low frequency pressure. Ms. Le Cornu stated that the effects could be felt by an average person (including those unable to hear low frequency noise (LFN)) and that the disturbance was variable in intensity, unpredictable, affected by atmospherics and worse in periods of cold weather when electricity consumption increased. Ms. Le Cornu alleged that the disturbance arose from interference between 2 nearby electrical substations operated by the Jersey Electricity Company (the JEC) located at equal distances from her property and that it constituted a statutory nuisance, as defined in the 1999 Law.
- 2.3 Ms. Le Cornu outlined the effect of the nuisance on her health and wellbeing, which had been severely impacted over the course of the previous 4 years. She explained that the noise and vibration, which was confined to her home, meant that she was frequently unable to remain in her home and had, on multiple

occasions, resorted to sleeping in a vehicle or shed outside to escape the disturbance. Her health had suffered dramatically and she advised that she was extremely unwell as a result. It was noted that Ms. Le Cornu had recently received a terminal medical diagnosis, with stress and sleep deprivation caused by the disturbance being cited as contributory factors.

- 2.4 Ms. Le Cornu explained that she had first contacted the Department on 29th September 2021, to advise of a disturbance causing noise and vibration at her home. An officer had visited on the same day and had verbally confirmed the presence of the disturbance. Following a number of telephone calls by Ms. Le Cornu to the Department, 2 officers had visited on 4 occasions in January, February and March 2022, and, according to Ms. Le Cornu, both had witnessed the disturbance and confirmed experiencing the effects of the disturbance, complaining of ear pain, headache, pressure, vibration and electric shocks. A request to monitor and/or measure the noise and vibration, had led to officers advising that this would add nothing to the investigation as the disturbance was evident and was believed to meet the threshold for nuisance. Ms. Le Cornu subsequently received written confirmation of the same in an email dated 4th July 2022, which stated ‘I am confident we have a body of evidence in this case which demonstrates the impact upon you’. This had been interpreted as confirmation that the threshold for impact had been met in respect of nuisance.
- 2.5 No further investigation was undertaken until Ms. Le Cornu’s General Practitioner intervened with a letter to the JEC asking them to investigate the substations. She explained that she had become aware that the substations could be the cause of the disturbance following a conversation with a relative regarding RPA. Ms. Le Cornu advised that in July 2022, she had been asked by the JEC to keep a diary for a period of one month, to record the nature of the disturbance to ascertain whether there was any correlation with the operation of the substations. She reported that the disturbance had ceased entirely on 15th July 2022, but was subsequently advised at a meeting with an officer and a representative of the JEC that the substations had actually been switched off on a different date. Ms. Le Cornu stated that she had been assured that data would be provided by the JEC regarding the dates that the substations

had been switched off, but this had not been forthcoming, leading her to question the veracity of the statements made.

- 2.6 Ms. Le Cornu had decided to commission subject experts, Hartigan Consulting Engineers (HCE) to undertake noise and vibration monitoring in late 2022. She advised that the JEC had refused to allow HCE to access the substations to measure levels of vibration, with the JEC's position being endorsed by the Department. The report by HCE, which had been paid for by Ms. Le Cornu and had cost in excess of £8,000, stated that the levels and frequency of noise detected at the property correlated with an RPA, with noise detected at frequencies related to electromechanical sources. With regard to vibration, frequencies of 40 to 50 Hertz were recorded within the property only, with the source likely being resonance from low frequency sound caused by an RPA. The report had concluded that there was significant evidence to state that electromechanical sources could be the cause of the noise and vibration.
- 2.7 The findings of the HCE report were shared with the Department in December 2023, together with 10 points of evidence indicating that the JEC substations were the cause. By this point, Ms. Le Cornu had lost faith in the Department, and another officer had become involved in the case. Ms. Le Cornu was extremely disappointed to be advised that the findings of the HCE report were not accepted by the Department and also that the threshold for a statutory nuisance was not considered to have been met. She was advised at a meeting in January 2024, by the newly assigned officer, that a fresh investigation was required to determine whether the statutory nuisance threshold had been met. Ms. Le Cornu alleged that she had been bullied during the meeting and she was extremely distressed to discover that the previous investigation, which had been conducted over a period of 2 and a half years, was effectively being dismissed.
- 2.8 The Department was offered the opportunity to discuss the report with HCE but this was not pursued and the Department also failed to address points raised by Ms. Le Cornu in an email, including the 10 points of evidence regarding the source of the disturbance. Ms. Le Cornu advised that she had contacted the Minister for the Environment about her case on multiple

occasions but had either not received a response or her requests for a meeting had been turned down.

- 2.9 On 6th February 2024, Ms. Le Cornu made a formal complaint to the Department about the behaviour of the newly assigned officer. She received a response on 1st May 2024, which concluded that the officers involved in the case had dealt with the matter appropriately and proportionately, in accordance with the 1999 Law and professional Codes of Conduct. Accordingly, the complaint had not been upheld. During this time, Ms. Le Cornu was disappointed to note that the officer she had complained about had remained actively involved in the case despite being under investigation following her complaint. Ms. Le Cornu had subsequently escalated her complaint to Stage 2 and then Stage 3 of the Government complaints process but remained dissatisfied with the outcome. She noted that the Department continued to dispute the existence of an RPA at the property, despite substantiation of the same by a JEC engineer. Ms. Le Cornu advised that the JEC, whilst accepting that an RPA was present, did not accept that the company's equipment was causing this.
- 2.10 Ms. Le Cornu stated that the Department's failure to issue an enforcement notice was unreasonable in the circumstances, and that all elements of the threshold for statutory nuisance had been met. She noted that there was evidence of impact, which had been confirmed both verbally and in writing by the Department. Ms. Le Cornu asserted that whilst she had ultimately become sensitive to the noise, this had not been the case at the outset, contrary to the Department's claims, and that the nuisance was universally audible and could be heard by an average person. Ms. Le Cornu advised that she had not previously been able to hear LFN, but had now become sensitised due to constant exposure. Notwithstanding this, she noted that LFN was perceptible to at least 50 per cent of the population, which in her view, definitely represented 'the average person' and that visitors to her home could hear it when it was amplified, due to the RPA being present. She stressed that evidence of an RPA occurring had been provided, along with evidence of the source.
- 2.11 Ms. Le Cornu advised that the only solution to the problem was the service of

an abatement notice requiring one of the substations to be switched off/relocated. She had owned and lived in her home for 53 years and the property had effectively been blighted by this issue, and she could not, in all good conscience, sell the property, due to the effects of the RPA.

- 2.12 The Board heard from Ms. C. Green in support of Ms. Le Cornu. Ms. Green expressed considerable disappointment at the Minister's decision not to attend or be represented at the Hearing. Had the Minister or a Departmental representative been present, she would have welcomed the opportunity to receive answers to questions regarding Departmental processes. Ms. Green also wished to ask the Minister how he would feel about leaving his bed during the winter months and sleeping in a van due to an unbearable disturbance that had been ongoing for over 3 years. Ms. Green highlighted the stress caused to Ms. Le Cornu as a result of mistreatment by a Department which administered legislation that was supposed to protect the public in such situations. She stated that Ms. Le Cornu's ordeal had been all consuming and exhausting, had resulted in the loss of her job as an art teacher (and her income) and had left her feeling trapped.
- 2.13 Ms. V. Marshman, a longstanding friend of Ms. Le Cornu, addressed the Board highlighting the integrity displayed by Ms. Le Cornu in the face of extremely challenging circumstances. Ms. Le Cornu had kept detailed records of correspondence, had diligently recorded her experiences in a diary, and had acted with professionalism at all times. Her treatment by the Department was described as 'deplorable' and Ms. Marshman stated that she had written to the Minister of her own volition, asking for a blind test to be carried out to ascertain the cause of the disturbance. She expressed the view that both the Department and the JEC had failed Ms. Le Cornu and that the situation could have been remedied at an early stage. Ms. Marshman also echoed Ms. Green's comments regarding the Minister's decision not to attend, which was considered to be disrespectful, discourteous and unfair to the complainant.
- 2.14 The Board heard from Mr. K. Amundsen, Ms. Le Cornu's friend and former colleague. He outlined the impact of the disturbance on Ms. Le Cornu's quality of life, noting that whilst he could not hear the noise at her house, he had experienced the vibrations to the extent that they were no longer able to meet

at the property. The issue had taken on a great degree of significance for Ms. Le Cornu and had become ‘all consuming’, affecting every aspect of her life. Mr. Amundsen also highlighted Ms. Le Cornu’s ‘appalling’ treatment by the Department, including in face-to-face meetings at which he had been present when contradictory statements had been made by officers, leading to a complete loss of trust.

- 2.15 The Reverend G. Baudains addressed the Board, explaining that she too had supported Ms. Le Cornu over the last 3 years. She described Ms. Le Cornu’s situation as ‘a living hell’, highlighting her resilience in the face of incessant disruption, including having to sleep in a van on some occasions. The Reverend Baudains stated that Ms. Le Cornu had been patient and thoughtful throughout and had adopted a considered approach to dealing with the Department. The impact of repeated disappointments when promises had not been fulfilled had been significant. The Reverend Baudains stated that Ms. Le Cornu’s fight for her home had now become ‘a fight for her life’ and she expressed admiration for her friend’s tenacity. She described Ms. Le Cornu as a ‘person of conscience’, who could not bring herself to sell her property to another individual given the known impact of the RPA issue. The Reverend Baudains highlighted Ms. Le Cornu’s positive nature and her continued faith in others despite her terrible treatment by a Government Department which had repeatedly failed her. She concluded by stating that the issue remained unresolved and that Ms. Le Cornu had been ‘victimised’ by the Department in her quest for justice.
- 2.16 The Board heard from Ms. R. Cairney, Ms. Le Cornu’s neighbour of 20 years, who highlighted the sheer pleasure and enjoyment that Ms. Le Cornu had previously derived from her home and garden until her life had been impacted by the disturbance. Ms. Cairney stated that Ms. Le Cornu had been reduced to sleeping in her van at Christmas to escape the noise and vibration.
- 2.17 In response to questions from the Board, Ms. Le Cornu further outlined the impact of the disturbance on her health and wellbeing, noting that she had experienced 21 consecutive nights of almost no sleep during the winter of 2022. Her health had been severely impacted, and she had been forced to give up a job that she loved. Alternative recourse would be both prohibitively

expensive and time consuming, and her life limiting diagnosis meant she had neither the time nor the means to progress other avenues, such as a judicial review.

- 2.18 Ms. Le Cornu confirmed that, whilst one of the substations had been installed in 2018/2019, she understood it had not been fully operational until sometime later, at which point she had started to notice unusual occurrences. At first, the effects were intermittent but had become more frequent and then permanent until the impact had become intolerable. She soon realised that there appeared to be a connection between the severity of the disturbance and consumer demand for electricity. Ms. Le Cornu believed that the impact of the vibrations was just as significant as the noise impact and she described how the former was experienced inside the property. She explained that she was suffering from extreme trauma related to the ongoing impact of the disturbance and advised that further monitoring would have a very detrimental impact on her health and wellbeing. Ms. Le Cornu stated that Departmental processes for identifying a statutory nuisance had never been fully explained to her; there had been various delays and inconsistent communication; and the Department did not appear to use a questionnaire to collect information about potential nuisances, unlike the UK Department for Environment, Food and Rural Affairs.
- 2.19 In closing, Ms. Le Cornu highlighted the impact of the Department's failure to issue an abatement notice, noting that she had suffered significant harm and had been failed by those who were supposed to protect the public in such instances. She added that her last chance for a peaceful death in her own home had been taken away from her due to the failure to properly address the matter.

3. Minister's case

- 3.1 As outlined above, the Board noted that the Minister and the Department had decided not to attend the Hearing and that a written submission had been provided by the Minister, which had been circulated to all parties in advance of the Hearing. For the benefit of those present, the Chair read from a letter dated 11th July 2025, from the Minister to the Greffier of the States, as follows

—
 “Dear Greffier

Administrative Decisions (Review) (Jersey) Law 1982

Complaint against the Minister for the Environment regarding the unreasonable failure by the Department to issue an abatement notice.

Your Ref: (4) 1386.2.1.2 (357)

Please find enclosed a report titled ‘Regulation Directorate – Final Comment to Complaint by Ms. Le Cornu’, dated 11th July 2025. This document has been prepared in response to the complaint submitted by Mrs. Michelle Le Cornu regarding the unreasonable failure by the Department to issue an abatement notice, concerning alleged low-frequency noise and vibration disturbances at her residence, which she attributes to nearby substations.

I would like to thank the Board for sending through their final questions prior to the Complaints Panel Hearing regarding Mrs. Le Cornu’s property La Rosiere. Due to concerns regarding the way in which the Panel was conducted at the previous hearing, neither myself nor my officers shall be attending this hearing. However, wishing to participate thoroughly, I have instructed my officers to produce responses to the outstanding queries to the best of their ability noting they are unable to respond regarding information held by the JEC.

From the outset, I wish to acknowledge the distress experienced by Mrs. Le Cornu and the seriousness with which her complaint has been treated. Officers have gone well beyond standard procedure –

conducting a great many visits by six different officers, engaging external expertise, and reviewing independent reports – to determine whether a statutory nuisance exists. Despite these efforts, no conclusive evidence has been found to support formal enforcement action under the Statutory Nuisances (Jersey) Law 1999.

The investigation did not identify a consistent or measurable source of disturbance. Furthermore, the legal test for statutory nuisance requires that the issue be one that would affect an average, reasonable persona – not solely

an individual with heightened sensitivity. This objective standard, while not dismissive of personal impact, is essential in determining whether formal action is justified.

It is also important to note that the complainant declined further investigative support offered by the Housing and Nuisance Team Manager. Since the conclusion of the Stage 2 and 3 complaint processes, there has been no further direct engagement from Mrs. Le Cornu. Officers remain open to reviewing any new evidence should it become available.

However, I must be unequivocal on one significant point: the decision not to issue an abatement notice is a statutory decision made under the law, and any challenge to that decision must be made through the courts via judicial review. This is not a matter for reconsideration by the Complaints Panel. The legal mechanism for contesting the lawfulness or reasonableness of such a decision lies solely with the Royal Court. Mrs. Le Cornu was advised of this route on 1st May 2024, and it remains the only appropriate and lawful avenue for redress.

As with many nuisance complaints, the underlying dispute in this case lies between the complainant and the Jersey Electricity Company (JEC). As discussed prior to this hearing with the Group Directorate of Regulation, the Directorate will not be engaging with the JEC on this matter. As far as I am aware the JEC is not subject of the Board's findings as a third party and the focus of this hearing would be to assess the actions of the Directorate, not that of the JEC. Should the Panel wish to consult with the JEC for 3rd party expertise, respectfully I would suggest they do so directly.

That said, I am fully aware of a significant limitation in the current statutory nuisance framework – namely, the absence of a civil law provision that would allow complainants to pursue action independently of departmental intervention when a statutory threshold is not met. This is a recognised shortcoming. However, addressing it requires legislative reform, which is subject to the broader pressures of law drafting prioritisation and finite resources available to government. While I support the principle of strengthening access to justice in such matters, the reality is that legislative

capacity is limited and must be allocated across a wide range of competing demands.

While the Directorate stands by its conclusion that no statutory nuisance has been established, we recognise the importance of continuous improvement. As such, we are refining our investigative procedures to ensure clarity of process and avoid creating unrealistic expectations. We are also enhancing our communication protocols, particularly around case closures, to ensure that complainants are fully informed of their rights and the rationale behind decisions.

Finally, I wish to reiterate my sympathy for the impact this situation has had on Mrs. Le Cornu. The absence of formal action should not be interpreted as a lack of concern, but rather a reflection of the legal thresholds that must be met. I trust that the enclosed report will assist the Panel in its review and provide a clear and balanced account of the actions taken.

Yours sincerely,

Deputy Steve Luce, Minister for the Environment

- 3.2 The Department had also submitted a bundle in response to the complaint, which the Board had considered and which is summarised in this part of the record. The Departmental submission noted that Ms. Le Cornu had first contacted the Department on 29th September 2021, following which an officer had visited the property to hand deliver a letter on the same day. A preliminary discussion around statutory nuisance was held, including ‘*explanations of the diary and process etcetera.*’ A total of 10 visits by 4 different officers had taken place between 12th January 2022 and 29th July 2022, (the number of visits was disputed by the Complainant) none of which could find evidence of the alleged phenomenon, with officers being unable to witness the experience alleged by the complainant. It was not accepted that the contents of the email of 4th July 2022, constituted confirmation that the threshold of impact had been met in respect of statutory nuisance, merely that the impact on the complainant had been established. Noise monitoring equipment had been installed between 28th October and 2nd November 2022, accounting for a further 2 visits where the phenomenon had not been

observed.

- 3.3 A meeting which was due to take place in December 2022, to discuss the results of the monitoring and offer to re-run the exercise as the results had been inconclusive, had been rescheduled to January 2023, and eventually declined by the complainant, pending the results of a recent survey. No further communication was received by the Department until December 2023, when the complainant requested a meeting, alleging to be in possession of information which conclusively proved that the phenomenon was occurring and requesting that an abatement notice be served. Officers were eventually sent a copy of the HCE report, and after scrutinising its findings, found that the evidence therein did not support the conclusions reached. With the complainant's permission, an independent opinion was sought from an external Environmental Health Officer of considerable experience. This officer concurred with the Department's assessment.
- 3.4 A meeting had been arranged for 10th January 2024, which was attended by 2 officers who had not previously visited the property. The complainant noted that the phenomenon was occurring at the time, albeit at a low level, but neither of the officers in attendance experienced or witnessed anything to suggest that the phenomenon was occurring during the hour they spent at the property. During this meeting, officers brought the matter to a close whilst maintaining that the situation could be reviewed if further evidence was provided and the phenomenon was observable.
- 3.5 Officers had no further communication with the complainant from this point on and were subject to complaints regarding their conduct. Once these complaints had been thoroughly investigated and exhausted, officers advised the JEC that the matter was considered closed pending the receipt of any new evidence to suggest otherwise. This was considered appropriate to ensure that the third party (the JEC) was made aware that it was no longer under investigation. As part of the investigation, the JEC arranged for substations to be turned off in July 2022. 'Blind testing' was undertaken, with only the JEC being privy to the plan or schedule. It was understood that the process of turning off/on the substations was one which could take a number of days.

- 3.6 After the blind test, the JEC confirmed the dates and times that the substations had been switched off, with the true shut off period being between 14th and 18th July 2022. The findings of the blind test were reviewed in a meeting and the complainant declined to provide copies of her notes for comparison and review. The complainant reported that the disturbance had only stopped for a period on the morning of 15th July 2022. This was noted during meetings to review the data and in an email dated 4th November 2022. In the opinion of the officers, the relatively short period of absence noted by the complainant was not sufficient to prove that the substations were the sole source of the disturbance.
- 3.7 With regard to the alleged phenomenon, it was acknowledged that whilst it could exist in theory, the available evidence did not suggest this to be the case in this instance and the Department had no conclusive evidence to suggest historic examples of the same phenomenon from substations. It was asserted that no conclusive evidence had been witnessed, observed or recorded by competent, qualified authorities, to suggest that the phenomenon was occurring, or that any statutory nuisance existed at the complainant's property. Having exhausted all avenues, the Department had been unable to detect or definitively ascertain any occurrence of the phenomenon or evidence of statutory nuisance. It was noted that offers to investigate the matter further had been declined. Ultimately, the Department had confirmed that it was of the opinion that the phenomenon of resonance with amplification was not occurring at the complainant's residence.
- 3.8 The complainant had been advised on 1st May 2024, of the option to apply for judicial review, which would afford her the opportunity to challenge the statutory decision made by a public body, including any interpretation of the definition of statutory nuisance.
- 3.9 The legal basis for the serving of an abatement notice under the 1999 Law was set out and the Board noted that this function was delegated by the Minister to Environmental Health Officers, who were trained in the investigation of statutory nuisances. It was further noted that Environmental Health Officers must hold at least a Level 6 BSc or Level 7 MSc degree, be chartered with a recognised institute and undertake continued professional development. In

order to serve an abatement notice, the Minister had to be satisfied of a number of factors –

- there must be an identifiable source for an alleged nuisance;
- the nuisance must be observable by qualified officers;
- it must be of a frequency, duration and character which could be considered a statutory level of nuisance;
- the nuisance must be to a degree that it would be considered unacceptable for a reasonable person to endure; and
- there must be an impact to an individual in conjunction with the above criteria.

It was acknowledged that if abatement notices were served incorrectly, this could lead to the Court awarding compensation to any party pursuant to an appeal of said notice as per Article 9(2) of the Statutory Nuisances (Jersey) Law 1999. As a result, it was advised that officers were held to a high standard of regulation via training and professional ethics as well as by the Courts.

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- 3.10 An abatement notice could only be served when the above criteria had been satisfied, and a statutory nuisance had been found to exist on the balance of probabilities. Generally speaking, this assessment would be made after 3 visits to witness an alleged nuisance, based on diary information to assess patterns of context of the alleged nuisance itself. In the present case, numerous officers had undertaken exhaustive assessment, beyond what would be considered recognised best practice, in an effort to help the complainant. It was emphasised that where officers were unable to witness, locate or identify an issue, there was accordingly no legal basis for an abatement notice to be served.
- 3.11 Turning to the ‘average reasonable person’ test, the Board noted that this was a well-established principle in statutory nuisance case law and broader legal principles as a recognised benchmark. In the context of nuisance, it was necessary to consider tolerance levels in the medium range, to ensure objectivity. The average person test was not based on an individual's responsiveness to a particular occurrence, so a person with a particularly sensitive auditory response would not be afforded a higher level of protection,

compared to a person with a ‘normal’ response. Trained officers assessed nuisance based on these grounds.

- 3.12 In addition, there were 2 elements to consider when serving a notice: the nuisance itself, and whether it was ‘prejudicial to health’ as per Article 1 of the 1999 Law. The term meant injurious, or likely to cause injury to health and determination in this respect was not based solely on complainants’ testimonies or medical evidence, but included the expertise of environmental health practitioners in evaluating the likelihood of injury to health. If a cause could not be conclusively established, an abatement notice could not reasonably be served. Whilst an abatement notice could be served on the balance of probabilities, the nuisance still had to be demonstrated to exist and proven beyond reasonable doubt to be occurring to a statutory level, from a specified source. It was noted that officers were held to a high standard in this respect by training, professional ethics and the Courts.
- 3.13 Although the Minister had ultimately concluded that a statutory nuisance had not been established in this instance, it was acknowledged that the following service improvement measures were required as a result of the case –

Refinement and adherence to procedures

The Directorate was further defining its standard operating procedures for investigations and would more closely adhere to this process going forward. This included more stringently aligning with the requirements of nuisance investigation and concluding cases as soon as a decision had been reached in order to better manage complainants’ expectations. It was recognised that the additional work conducted by officers in this case may have resulted in false hope for the complainant and a mismatch in expectations.

Improved and consistent formal correspondence from the Directorate

The Directorate would ensure that formal correspondence, particularly around cause information and case closure, was thorough, and communicated via formal letters as well as by electronic mail. Correspondence would also include advice regarding the correct means of challenging decisions (by way of judicial review), an explanation of the process and how to initiate this.

Legislative review and civil provisions

A significant legislative gap was noted whereby no modern civil provision existed for complainants to pursue, where a statutory nuisance did not exist (i.e. a common law nuisance). There was a case for a law review to be undertaken in respect of the 1999 Law, to make significant improvements and clarifications. The Directorate was keen to progress this work when strategic priorities allowed.

- 3.14 It was noted that the Department and the Minister were sympathetic to the Complainant and cognisant of the impact of the case on her health and wellbeing. Notwithstanding this, a thorough and extensive investigation had been undertaken, and it was not accepted that there had been an unreasonable failure to issue an abatement notice in this instance.

4. Closing remarks

The Chair thanked those present for attending and for their frank and open participation. He highlighted the limited scope of the Board's considerations, but also advised that it was within its gift to make recommendations where appropriate. The Chair indicated that a report of the Hearing would be prepared in due course, which would be circulated to both parties to verify the factual content. Ultimately, the report and findings would be presented to the States Assembly by the Privileges and Procedures Committee and the Minister for the Environment would have 12 weeks from the publication of that Report to respond in the States Assembly, in accordance with Standing Order 68AA of the Standing Orders of the States of Jersey.

5. Findings

- 5.1 The Board considered whether Ms. Le Cornu's complaint could be upheld on any of the grounds outlined in Article 9 of the Administrative Decisions (Review) (Jersey) Law 1982, as having been –
- (a) contrary to law;
 - (b) unjust, oppressive or improperly discriminatory, or was in accordance with a provision of any enactment or practice which is or

might be unjust, oppressive or improperly discriminatory;

(c) based wholly or partly on a mistake of law or fact;

(d) could not have been made by a reasonable body of persons after proper consideration of all the facts; or

(e) contrary to the generally accepted principles of natural justice.

5.2 The Board decided to uphold Ms. Le Cornu's complaint on the grounds of (a), (d) and (e) above.

5.3 In applying article 9(2)(a), the Board considers that the Department was misdirected in relation to its obligations under the 1999 Law, as follows -

(a) in the report which accompanies the 1999 Law, it is stated that the Law *"would provide alternative means by which the [Committee] could act and perhaps spare those affected by some nuisance a potentially prolonged and costly process of civil litigation"*.

The report further states that the Law places (under Article 4) *"a duty on the [Committee] to deal with statutory nuisances and to investigate any complaint of statutory nuisances made to it"*. The report concludes by stating that the Law would provide *"the public with an alternative to litigation in the Royal court"*.

(b) in her submission the complainant states that a Departmental officer informed her that in order to serve an abatement notice the criminal threshold of *"beyond reasonable doubt"* had to be met. This was not refuted by the Department in its written submission. Nuisance, be it statutory or private, does not involve a crime and so the normal test of the balance of probability is appropriate.

(c) had the Department been represented at the hearing this would have afforded an opportunity to examine the question of the thresholds for the service of an abatement notice. In the absence of Departmental representatives, the Board can only look to the written submissions and the evidence presented but even then this must be considered in the context of the 1999 Law. The Law was clearly enacted to provide an alternative to expensive private litigation and the only power introduced by the 1999 Law was the

ability to issue an abatement notice to end the disturbance. There is no power to order the payment of damages to individuals suffering nuisance (as there would be in civil litigation). The 1999 Law does not seek to redefine a nuisance. The purpose of the Law is to help individuals who might not otherwise have been able to bring an end to a disturbance. In applying the 1999 Law, the Board considers that the Department should have put the complainant at the forefront of its consideration of the discharge of its duties under the 1999 Law; those duties being to *“take such steps as are reasonably practical to investigate a complaint”*.

Article 5 of the 1999 Law states *“where the Minister is satisfied that a statutory nuisance exists...”* This is at the core of the present complaint. In essence the Department has maintained that there was no justification for issuing an abatement notice because it was not certain that a nuisance existed. The Board does not accept this argument and believes that the 1999 Law was enacted to support and protect the public. The question that should have been considered was *“if an abatement notice is served what on the balance of probabilities is the likelihood of an appeal against the notice being successful?”*. The Department did not require certainty that a nuisance had occurred, merely that on the balance of probabilities it had.

- 5.4 In applying Article 9(2)(d), the Board reasoned that the Department had not adequately investigated the source of the issue or sought expert advice in relation to measuring the resonance. This was particularly relevant given the extremely rare nature of the phenomenon and the likely requirement for a specialist opinion in this particular case. Whilst the JEC was not the subject of the complaint, and this body fell outside the jurisdiction of the Board, based on the evidence heard it appeared to the Board that the JEC might have played a more active role in assisting with the investigation of the source and identifying a solution.
- 5.5 In applying Article 9(2)(e), the Board reasoned that the Department had been dismissive of the complainant’s concerns and discounted the evidence presented. It appeared from the submitted evidence that the Department’s position in relation to the complaint in the context of the 1999 Law had altered during the life of the complaint and the reasons for this were not specifically

addressed in the Department's submission.

- 5.6. The Board was of the view that communication with the complainant appeared to have been inconsistent and a failure to adequately explain processes had led to expectations not having been met. The Panel was pleased to note from the Minister's submission that this had been recognised by the Department and that steps were being taken to improve communication and ensure consistency.

Recommendation: The formulation of a statutory nuisance questionnaire for completion in any investigation of a complaint under the 1999 Law, as used by local authorities in the UK to collect information about potential nuisances, would greatly assist with assessment and investigation. Furthermore, the publication of the assessment and investigation process, including making available a copy of the questionnaire both at the outset and the conclusion of any investigation would help to manage expectations of what could be achieved within the confines of the existing legislation.

- 5.7 The Board was concerned that the implementation of the 1999 Law was currently falling short of providing adequate protection to the public and this was having a hugely detrimental impact on the health and wellbeing of Islanders, as had been evident in this and other recent cases.

Recommendation: The Board recommended that the Statutory Nuisances (Jersey) Law 1999 should be reviewed and that a clear procedure for the investigation of any complaints made in accordance with the Law should be established and published.

- 5.8 Although a specific complaint had been made against a Departmental officer, the individual concerned had continued to be involved in the case and the Board agreed that this had been wholly inappropriate and was contrary to the generally accepted principles of natural justice.

Recommendation: The Board recommended that when a complaint was made about a particular officer's conduct, that officer should not play an active role in the case until the complaint was fully resolved, at which time some consideration should be given as to whether their renewed involvement was

appropriate.

- 5.9 The Minister and the Department had appeared to accept the impact of the noise and vibration on the complainant, but had then failed to investigate possible sources. The Board recognised that the Department's subsequent apparent disregard of the evidence provided by the complainant had understandably been a great source of frustration for her, especially given the lack of any persuasive justification provided for discounting earlier findings.
- 5.10 The Board considered that the Department could have taken the opportunity to thoroughly review and examine the independent report commissioned by the complainant and explore the conclusions with the author for completeness, to ensure that its final decision was made with due regard to all material considerations. Given the extremely rare nature of the phenomenon, the Board determined that a more considered and comprehensive approach was warranted. The assessment that did take place was, in the opinion of the Board, insufficient to reach the conclusions advanced by the Department. In particular, the benefit of positively engaging with the experts commissioned by the complainant outweighed the decision to disregard the expert report and would have facilitated a greater understanding of the issues and potential solutions. It was due to this failing that the Board upheld the complaint on the grounds that the decision not to seek an abatement notice could not have been made by a reasonable body of persons after proper consideration of all the facts; and that it was contrary to the generally accepted principles of natural justice.

Recommendation: The Board recommended that the Minister revisit the case, review all processes and procedures that informed the decision and seek external expert advice where appropriate.

Signed and dated by –

A. Hunter, Chair Dated:

G. Crill Dated:

S. Harvey Dated: