

Guidance notes for Appellants – Making an appeal to the Parochial Appeals Tribunal (PAT)

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This guide aims to answer the questions you may have about how to appeal any of the following decisions by one of the Island's Douzaines/Parishes or the Central Streams Committee.

1. you have had a Warning Notice stating that you have failed to cut a roadside hedge on your property.
2. you have had a Warning Notice stating that you have failed to clear up the debris created when your roadside hedge was cut.
3. you have been served with a Civil Penalty for failing to cut a roadside hedge on your property.
4. you have been served with a Civil Penalty for failing to clear up the debris created when your roadside hedge was cut?
5. you have had a Warning Notice stating that you have failed to clear a controlled stream on your property.
6. you been served with a Civil Penalty for failing to clear a controlled stream on your property.
7. you been served with a Notice by a States Department, acting as the Central Streams Committee, saying it has instructed a States employee or another contractor to go onto your property and carry out work to clear a stream and to recover the costs of the work from you.
8. your application for a Bornement has been refused.

This Guide represents the legislation as at 1st January 2018. The relevant legislation is on the Parochial Appeals Tribunal's website – www.gov.gg/pat. The legislation can also be found at www.guernseylegalresources.gg.

1. The Cutting of Hedges Ordinance, 1953 (as amended)
2. Loi relative aux Douits, 1936
3. L'Ordonnance ayant rapport à la Construction de Maisons, Salles Publiques et Bâtiments, et au Tracement de Routes et Chemins, 1931
4. The Parochial Administration Ordinance, 2013.

INTRODUCTION

The Parochial Appeals Tribunal (the Tribunal) is an independent appeals body established on 1st September 2015, under the Parochial Administration Ordinance, 2013 (the 2013 Ordinance). The Tribunal aims to provide an appeals process which is accessible, affordable and offers a fair and transparent determination of your appeal.

The Tribunal has its own Secretariat. The Tribunal's Secretary is also independent of the various Parochial Douzaines, Departments and Committees of the States of Guernsey.

The purpose of the appeals process is to allow an independent review of a decision:

- by a Parochial Douzaine to issue a formal Warning Notice or Civil Penalty Notice in relation to the cutting of hedges and the clearing up of any debris afterwards, and, the clearing of controlled streams.
- by a Parochial Douzaine to refuse your application for a Bornement.
- by a States Department, acting as the Central Streams Committee, saying it has instructed a States employee or another contractor to go onto your property and carry out work to clear a stream and that it will recover the costs of the work from you.

All appeals are determined on the basis of a "merits review" of the decision. A merits review involves a full reconsideration of the facts of the decision which is the subject of the appeal. The Tribunal will undertake a review of all relevant material and this may include a site visit, if appropriate.

POWERS OF THE TRIBUNAL

Under the legislation, the Tribunal has certain powers. It can:

- confirm or quash a Warning Notice or Civil Penalty Notice in whole or in part or to require the Parish to reconsider the matter in accordance with such directions as appear appropriate to the Tribunal.
- for Bornements, the Tribunal may confirm, quash or direct the Parish to reconsider its decision in accordance with directions from the Tribunal.
- when a States Department, acting as the Central Streams Committee, arranges to clear a stream and has recovered the costs of the work from you then the Tribunal may direct the payment of compensation if the Tribunal believes that that the payment of some compensation to the appellant is appropriate and proportionate in the circumstances t

THE PAROCHIAL APPEALS TRIBUNAL

Who are the Parochial Appeals Tribunal?

The Parochial Appeals Tribunal (the Tribunal) is made up of a President and Vice President, and up to 15 other members who are independent members appointed by the Royal Court.

The President and Vice President must either be Advocates or have held judicial office in Guernsey. The other members must be, or have been, a Parochial Constable or Douzenier.

The current members are:

Advocate P Harwood, President
Advocate P Atkinson, Vice-President

Mr Richard Best

Mr Frank Brouard

Mr Peter Burtenshaw

Advocate Russell Clark

Advocate Mark Dunster

Mrs Christine Goodlass

Mr David Gorvel

Mr Godfray Guilbert

Mr David Hugo

Mr Timothy Langlois

Mr David Ozanne

Mr Andrew Sauvarin

Mr Graham Smale

For each appeal a panel of three individuals will be convened. They will consider the appeal at a public hearing which will involve you (as the appellant) and the respondent (typically the Parish).

CATEGORIES OF APPEALS TO THE PAROCHIAL APPEALS TRIBUNAL

What parochial decisions can be appealed?

The following parochial decisions can be appealed to the Tribunal:

- The issuing of a Warning Notice or a Civil Penalty Notice for failing to cut a roadside hedge.
- The issuing of a Warning Notice or a Civil Penalty Notice for failing to clear up the debris created when your roadside hedge was cut.
- The issuing of a Warning Notice for failing to clear a controlled stream on your property.
- The issuing of a Civil Penalty Notice for failing to clear a controlled stream on your property.
- The issuing of a Notice by a States Department, acting as the Central Streams Committee, saying it has instructed a States employee or another contractor to go onto your property and carry out work to clear a stream and that it will recover the costs of the work from you.
- The refusal to grant an application for a Bornement.

MAKING AN APPEAL

Who can appeal?

In general terms the person – usually the owner - named in the Warning Notice or Civil Penalty Notice can appeal the decision.

How long do I have to make an appeal?

The appeal periods are:

- **Warning Notices for failure to cut a roadside hedge, clear up the resultant debris from the public highway, or clear a watercourse - 7 days** commencing with the date of any Warning Notice.
- **Civil Penalties for failure to cut a roadside hedge, clear up the resultant debris from the public highway, or clear a watercourse - 14 days** commencing with the date of any Civil Penalty issued.
- **Notices advising intention to carry out work on an uncleared watercourse - 7 days** commencing with the date of issue.
- **Refusal of a bornement - 28 days** commencing with the date of the letter advising of the decision.

There are some instances when an appeal can be heard even if the appeal deadline is missed. In such circumstances contact the President of the Parochial Appeal Panel through the Tribunal's secretary on 01481 717000 or by emailing (pat@gov.gg).

How is an appeal made?

All appeals must be in writing using the appeals form which is available:

- From the various Parochial Douzaine Rooms and Constables' Offices
- From the States website (www.gov.gg/pat)
- From Sir Charles Frossard House
- On request by telephoning (01481 717000) or emailing the Tribunal's Secretary (pat@gov.gg).

In completing the appeal form you should clearly explain the reasons why you are appealing the decision, the date of the decision letter that you are appealing and include any documents and evidence in support of your application.

What is meant by “grounds of appeal relied on” in the appeal?

The grounds of appeal set out in the Parochial Administration Ordinance, 2013 for appealing a decision are:

- (a) the decision was ultra vires or there was some other error of law
- (b) the decision was unreasonable
- (c) the decision was made in bad faith
- (d) there was a lack of proportionality or
- (e) there was a material error as to the facts or procedure.

When preparing your grounds of appeal, you should set out in appropriate detail which of the above reasons are why you do not agree with the Parish’s decision.

What other information can I include with my appeal?

You may include any other information you wish to support your appeal. This may include dated photographs, letters from the Parish, copies of the warning notice etc.

All photographs must be clearly labelled – preferably indicating where they were taken and which direction they were taken in. This is to assist the Tribunal members (who may be unfamiliar with your property) to understand what the photographs are showing and how they relate to the site. A labelled map of the area may also assist.

If your appeal is against a decision to refuse an application for a Bornement, you should also include a copy of the Development & Planning Authority’s decision letter granting planning and/or the Building Control permission to carry out the work.

How many copies must I provide?

One copy will be sufficient. Please keep to A4 format if possible. The Secretary will scan your submission and electronic copies will be circulated where possible.

Where must the appeal form be sent?

The appeal form and supporting papers must be sent to the Secretary of the Parochial Appeals Tribunal at Sir Charles Frossard House and must arrive with the administration fee before the appeal period ends.

How much does it cost to appeal?

There is an administrative charge of £25 for any individual appeal made to the Parochial Appeals Tribunal. Cheques should be made payable to the States of Guernsey.

What happens if the fee isn't paid?

The Tribunal is not required to take any further action in relation to the appeal until the whole amount of the fee has been paid.

If I appeal against a Civil Penalty Notice, do I have to pay it before the appeal is heard?

By lodging an appeal against a Civil Penalty Order, any daily continuing penalty of £5 is stopped from the date your appeal is received by the President.

If I pay the Civil Penalty and later win my appeal, do I get my money back?

Yes. If the penalty, or part of the penalty, has been paid, the Parish should automatically refund the payment.

What happens when an appeal is received by the Tribunal?

The Secretary will contact you to acknowledge receipt of your appeal. If you are being represented by a third party this confirmation will also be sent to them.

How much choice do I have about the date for my appeal to be heard?

The procedure for setting the date rests with the Tribunal. The Tribunal will take note of dates when you or the Parochial officials are unable to attend.

As a general rule, once a date for an appeal hearing has been set it will only be changed in exceptional circumstances. And the Tribunal may require evidence from you if you wish to request a change of hearing date.

How does the Parish respond to the appeal?

The Secretary will forward a copy of your appeal submission to the Parish that issued the Notice or decision that is subject of the appeal. The Parish will be asked to prepare a written response for the Tribunal. The Secretary will send a copy of the response to you.

The Parish's response is generally prepared within two to three weeks of the appeal being registered. The written response will probably include copies of their inspection notes, copies of any letters or relevant contact that they have had with you, any photographs they have taken and the extract of the minutes of any Douzaine Meetings where the matter may have been discussed.

How long does the appeal process take?

It is difficult to give an exact timescale. However the Tribunal endeavours to hear appeals within 1-2 months of the appeal being submitted. It will depend, in part, on the availability of the participants and how quickly information is provided.

How can I find out more about the appeal process?

All Tribunal hearings are held in public and you are welcome to attend any of them to gain an insight into how the Parish and other appellants present their cases, the type of questions that may be asked and the role witnesses can play.

The Secretary to the Parochial Appeals Tribunal is also available to discuss any questions that you might have.

How can I find out about forthcoming Tribunal hearings?

Tribunal hearings are advertised at least seven days ahead of the date of the hearing. Hearing notices are put up in the foyer of the Royal Court and on the Tribunal's website (www.gov.gg/pat).

THE APPEAL HEARING

Who will determine the appeal?

The appeal will be heard by either the President or Vice President and two other members of the Tribunal sitting as a Panel. As the Tribunal members are either serving or former Douzeniers and Constables, they will not be selected to hear appeals where the decision was made by the Parish on which they serve or have served. In addition, a Tribunal member will not be appointed if there is a perceived conflict of interest. A member may feel there is a conflict of interest if they are a personal friend or related to you, have some other close connection with you or the property which is the subject of the appeal or have previously acted in a professional capacity for you. If you are aware of such a potential conflict of interest please inform the Secretary to the Parochial Appeals Panel at the earliest opportunity.

What happens if I know one of the members appointed to hear my appeal?

Once the Panel has been selected, you and the Parish will be notified in writing. Both you and the Parish can raise an objection to any of the people sitting on the Panel. Any objection must be made as soon as possible and give the reasons why it is considered that the member should not sit. The Panel President will ask the member concerned to respond to the grounds for the objection and will then decide whether or not a replacement member should be appointed to avoid any perception of bias or conflict of interest. The Panel President will write to you, the Parish and the member concerned giving his decision and reasons and, if a different member has been appointed, that member's name.

What papers will the Panel Members have when considering an appeal?

In all cases, an appeal bundle will be prepared by the Secretary. The bundle will include your appeal submission, the Parish's written response to your appeal, and any other material the Panel members may have requested. The bundle is sent to the Panel members, you and the Parish approximately one to two three weeks before the public hearing.

How will the appeal be determined?

The appeal will be determined by the Panel sitting in public and hearing evidence from the Parish and you.

Do I need to use an Advocate or can I represent myself?

The appeals procedure has been designed to enable appellants to present their own case. So you are not required or expected to be represented by an Advocate. You can, of course, also ask a friend or family member to assist you but you should contact the Secretary in advance to say who you wish to sit with you.

Do I have to attend the appeal?

Yes, as if you are not present, the Panel will only have the documents that you have sent in. It is likely that the Panel will have questions for you and it is also your opportunity to hear anything the Parish may say when answering questions from the Panel.

I can't attend the appeal, can somebody else represent me?

Yes, but you should contact the Secretary in advance to say who will be representing you.

Who will represent the Parish?

In general the Parish's case is presented by the Constable or Douzenier who was involved in the inspections which have resulted in the decision to issue a Warning Notice or Civil Penalty Notice.

How will the Panel gather its evidence?

The appeal bundle will be key to the Panel's evidence gathering. The Panel members will read the appeal bundle thoroughly before the hearing and prepare a number of questions they have identified as needing to be answered for them to understand the facts. They will also ask additional questions as they hear the evidence. This will be an opportunity for the Parish to explain its reasons and for you to ask questions of the Parish and vice versa.

What will be the format for the Hearing?

This may vary a little from case to case depending on the number and complexity of the issues involved. However, most hearings will follow a broadly similar approach. The Chair of the Panel will manage the order in which matters are dealt with and what evidence is heard.

Are the hearings similar to Court proceedings?

The hearing process is less formal than a court setting and the Panel will ensure that appellants are made as comfortable as possible. And, in general, those giving evidence do not take any oath before giving their evidence. However the approach is formal in that the parties are not referred to by first names and any requests are made through the Chair.

The hearings are conducted in accordance with the rules of evidence which would apply in any court. This means that anything said or done before the Panel which, if said or done before the Royal Court, would be regarded as a contempt of court, is an offence under the legislation. Similarly, any person who obstructs or stops the Panel or a Panel member from deciding an appeal is also guilty of an offence.

Will the Panel visit the appeal site?

It is likely that the Panel will make a site visit as part of the appeal process. This will be arranged with you before the hearing.

What is the purpose of the site visit?

The site visit is to assist the Panel members in understanding the issues raised during the appeal in situ.

When is the site visit made?

Typically the site visits are held immediately after the public hearing has finished.

Who can attend the site visit?

You (and anybody who represented or assisted you at the hearing), the Parochial officials attending the hearing and the Panel members may attend the site visit. The media and any third parties (e.g. neighbours) who may have attended the public hearing cannot attend the site visit.

What happens at the site visit?

The site visit is an opportunity for the Members to understand points raised during the hearing. As a general rule, no additional evidence will be taken during the site visit. Members may ask you or the Parochial officials to clarify certain aspects of the evidence during the visit.

How long does the site visit take?

The site visits are generally fairly short and should generally last no more than 30 minutes.

THE APPEAL DECISION

How is the decision whether or not to allow an appeal made?

After the public hearing and any site visit, the Panel members will meet in private to confer and reach a decision on whether or not to allow (support) your appeal.

In addition, if the Panel considers that a point of law has arisen in the course of considering an appeal, it has a power to refer that point to the Royal Court before deciding on your appeal.

What decisions can the Panel make?

The Panel may:

- Confirm the appealed decision - i.e. they will not support your appeal. In such cases you will be liable for the full amount of any civil penalties, i.e. the £50 initial penalty and the ongoing daily penalties of £5 which may have been imposed prior to you submitting your appeal to the Tribunal President.

- Quash the appeal decision, in whole or in part, and remit the matter to the Parish with such directions as appear appropriate to the Panel – If the Panel decides that the Warning Notice should not have been issued at all or some part of the Warning Notice was incorrect or unlawful; where the Panel quashes a Warning Notice in part, it may re-issue the Notice with such amendments as it believes appropriate. If the Panel decides that a Civil Penalty Notice should be quashed you will no longer be liable for the amount of the penalty; where a Civil Penalty Notice is quashed in part, the Panel may direct that the amount of the penalty should be reduced; e.g. the Panel may decide that the £50 initial penalty is payable but the ongoing daily £5 penalties should be waived in total or in part.

- Require the Parish to reconsider the matter in accordance with such directions as appear appropriate to the Panel – The Panel may decide that the Parish should revisit and review their decision in light of evidence that has been heard during the appeal hearing or from their review of the appeal papers. In such circumstances, the Parish will reconsider its original decision in light of the Panel’s directions and, if it considers appropriate, the Parish may issue a new Warning Notice or Civil Penalty Notice or issue a revised decision in respect of an application for a Bornement.

- Direct the payment of compensation – This will only apply where an appeal against a Notice issued under s.9 of the Loi relative aux Douits Law, 1936, has been allowed and the work has been undertaken, and the Panel believes that that the payment of some compensation to the appellant is appropriate and proportionate in the circumstances.

How is the Panel's decision issued?

All appeal decisions are written decisions and include the Panel's reasons. The Decision Notice is generally issued within two to three weeks of the hearing and will be sent to you and the Parish. If the issue of the Decision Notice is delayed for any reason the Secretary will advise you and the Parish and give a revised time scale.

Is the decision made public?

Yes. All Decision Notices are made public. The Decision Notices are displayed in the Royal Court and are published on the States website (www.gov.gg/pat).

FURTHER APPEALS

Can decisions of the Panel be appealed?

Any party (i.e. the appellant or the Parish) who is dissatisfied with the Panel's judgment can appeal to the Royal Court. The only grounds for the appeal is that the decision was 'erroneous in law.

The time limit for making such an appeal is twenty one days from the date of issue of the Panel's written decision.

CONTACTS FOR FURTHER INFORMATION

For further information please contact:

The Secretary
Parochial Appeals Tribunal
Sir Charles Frossard House
La Charroterie
St. Peter Port
GUERNSEY GY1 1FH

Telephone: 01481 717000 **Email:** pat@gov.gg

APPENDIX 1

Parochial Appeals Tribunal Rules of Procedure

A. Procedure in relation to making an appeal

Schedule 1, paragraph 6(1) of the Parochial Administration Ordinance gives the Parochial Appeals Tribunal (the Tribunal) the discretion to make its own rules of procedure when hearing an appeal.

1. An appeal can be from person or body served with:

- a refusal of the competent authority to permit the erection or re-erection of a building under Article 36 or 37 of L'Ordonnance ayant rapport à la Construction de Maisons, Salles Publiques et Bâtiments, et au Tracement de Routes et Chemins, 1931;
- a warning notice under section 1A(1) of the Cutting of Hedges Ordinance, 1953;
- a civil penalty under section 1A(4) of the Cutting of Hedges Ordinance, 1953;
- a warning notice under section 8 of the Loi relative aux Douits, 1936;
- a civil penalty under section 8 of the Loi relative aux Douits, 1936;
- a notice under section 9 of the Loi relative aux Douits, 1936; and
- a demand for payment for work executed under section 9 of the Loi relative aux Douits, 1936.

2. The appeal periods are:

Refusal of a bornement - 28 days commencing with the date of the letter advising of the decision in respect of an application for a bornement made under Article 36 or 37 of L'Ordonnance ayant rapport à la Construction de Maisons, Salles Publiques et Bâtiments, et au Tracement de Routes et Chemins, 1931;

Warning Notices for failure to cut a roadside hedge or clear a watercourse - 7 days commencing with the date of any Warning Notices issued under section 1A(1) of the Cutting of Hedges Ordinance, 1953 and section 8 of the Loi relative aux Douits, 1936;

Civil Penalties for failure to cut a roadside hedge or clear a watercourse - 14 days commencing with the date of any Civil penalty issued under section 1A(4) of the Cutting of Hedges Ordinance, 1953 and section 8 of the Loi relative aux Douits, 1936;

Notices advising of intention to carry out work on an uncleared watercourse - 7 days commencing with the date of any notice issued under section 9 of the Loi relative aux Douits, 1936.

3. Appeals shall be made by service of a notice of appeal in the attached form on the President of the Tribunal ("the president") at the following address: President, Parochial Appeals Tribunal, Sir Charles Frossard House, La Charroterie, St. Peter Port, Guernsey, GY5 7SD.

B. Appeal Fees

4. An appeal fee of £25 must be paid when the notice of appeal is submitted. Cheques should be made payable to the "States of Guernsey".
5. The president shall not accept an appeal as being validly made until the completed notice of appeal and fee have been received. Both must be received within the appeal period set out at paragraph 2 above.

C. Refusal by Tribunal to hear appeals

6. The president may decline to determine an appeal –
 - (a) if he considers that the notice of appeal has not, in any respect, been duly made and served, or
 - (b) if the appeal appears to him to be frivolous or vexatious,

and he shall notify the parties in writing of such a decision as soon as practicable thereafter; provided that, where he considers that the notice of appeal has not been duly made, he shall invite the appellant to rectify any error in that notice and to resubmit it, if the appellant wishes to pursue the appeal.

D. Procedure by the Tribunal on receipt of an appeal

7. On receipt of an appeal, the president shall review the notice of appeal and, if satisfied that the appeal has been properly made, shall send a copy of the notice of appeal to the body or person that issued the decision ("the respondent").
8. The president shall request the respondent to prepare a written response to the appeal and include the date by which the written response must be submitted, which shall be at least 28 days from the date of the request.
9. On receipt of the written response from the respondent, the president shall send a copy to the appellant. If no such response is received within the time specified, the president may, at his discretion, treat the respondent as having conceded the appeal, or may take such other action as he thinks appropriate in all the circumstances of the case.

10. The president shall then set a date for the appeal to be heard and advise the parties of the date in writing. In making these arrangements, he shall have regard to the availability of the parties.
11. If the president considers that he has a direct or indirect pecuniary or other personal interest in the decision, or if he is unavailable, then subparagraphs (3) and (4) of paragraph 3 of Schedule 1 to the Parochial Administration Ordinance, 2013 (a copy of which Schedule is attached to these Rules) apply to the performance of the functions at paragraphs 5 to 9 above as they apply to his functions under that Ordinance.

E. Procedure in relation to the determination of an appeal by the Tribunal

12. In addition to (and to be construed consistently with) the provisions of Schedule 1 to the Parochial Administration Ordinance, 2013:
 - (a) the Tribunal may permit any interested party to appear at an appeal hearing,
 - (b) the Tribunal may admit any evidence given for the purposes of the determination of the appeal notwithstanding any rule of law relating to hearsay or otherwise as to the admissibility of evidence,
 - (c) a party may be represented at a hearing by any person, whether or not legally qualified, except that if in a particular case, the Tribunal is satisfied that there are good and sufficient reasons for doing so, it may refuse to permit a particular person, other than one who is legally qualified, to represent the party,
 - (d) the Tribunal shall afford the parties a reasonable opportunity of replying to representations made by another party, either by appearing and being heard in person or (if the original representations were made in writing) by written representations,
 - (e) the Tribunal shall have regard to all representations and replies submitted to it by the parties,
 - (f) the Tribunal may at any time require any party to furnish further particulars in writing within such time as it may direct with regard to any question referred to it and shall afford any other party a reasonable opportunity of replying in writing,
 - (g) the Tribunal may call for such documents and examine such persons on oath, affirmation or otherwise as appear likely to afford evidence which is relevant and material to any question to be determined by the Tribunal,
 - (h) the Tribunal may adjourn any hearing from time to time as it thinks fit,

- (i) if it is proved to the satisfaction of the Tribunal that the parties have been notified of the place, date and time of a hearing and a party fails to appear at the hearing, the Tribunal may proceed to determine any matter in dispute in the absence of that party, and
- (j) the Tribunal may make such orders as to costs (including security for costs) as it thinks fit in all the circumstances of the case.

F. Rules of Procedure

The President of the Parochial Appeals Tribunal has reviewed and approved the rules of procedure.