

STATES OF JERSEY



HOUSING: PREVENTION OF DISCRIMINATION BY LANDLORDS AGAINST TENANTS WITH CHILDREN

Lodged au Greffe on 9th February 2018
by Deputy M. Tadier of St. Brelade

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

to request the Minister for Housing, in consultation with the Minister for Home Affairs, to bring forward for approval the necessary legislation to prevent discrimination against prospective tenants who are domiciled with, and have legal custody of, a child under the age of 18 years.

DEPUTY M. TADIER OF ST. BRELADE

REPORT

“A few years ago my husband and I returned to Jersey, pregnant, and searching for a home ready to birth my first baby. It was so depressing how many landlords saw my belly and said we wouldn’t be allowed to rent ‘because of the noise’ of a new baby. So where exactly are new families supposed to live? And if that’s not enough, they put children in the same sentence as pets in adverts! Seriously? Is my baby in the same category as a dog? When I’ve won the lottery and own property (ha!), my advert to rent will be ‘families only’.”

Kat de la Mare, young Jersey mum.

Last week the States Assembly took a stand, by an overwhelming majority, against discrimination. This was an issue that united Members from across the usual political divide, and it is something about which it should be rightly proud.

However, there exists a form of discrimination which affects an even larger group: it relates to the inability of families with (young) children to have equal access to housing.

In its report published on 3rd July 2017, the Independent Jersey Care Inquiry stated –

“2.39 Restrictive practices by landlords appear to have been a factor in the lack of accommodation for families. Even as late as 1988, some landlords on the island adopted a “no kids” rule for let premises, as reported by the JEP in February of that year. Thus, the already small pool of housing grew even more diminished.”

Thirty years later this is still the case; and this is despite the States having passed anti-discrimination legislation protecting the *age* characteristic.

As we know, there is a carve-out for *premises* in the [Discrimination \(Jersey\) Law 2013](#). Schedule 2 (Part 4), paragraph 41 states –

“41 Age: premises

An act of discrimination is not prohibited by Article 23 or Article 24 in relation to the protected characteristic of age.”

The intention of this carve-out was presumably, amongst other things, to maintain the ability of categories of housing (such as over-45s, over-55s, sheltered accommodation, etc.) to be maintained. This in itself is not uncontroversial; however, it is accepted as a general basis of discrimination legislation that exceptions may be made where they are *a proportionate way of achieving a legitimate aim*.

It is, I believe, the case that this carve-out is too wide, and I took the opportunity to put my concerns on record during the debate on the legislation on 24th May 2016. The relevant extract from my speech is attached in **Appendix 1**.

The ability for owners of residential premises to discriminate against children and, therefore, families with children was never, I believe, the main intention of Article 41 of the Law. Rather, it is an unintended negative consequence of the Article.

Some will question whether it is right to compel a landlord not to discriminate against children. From my conversations with landlords, most do not have a problem with families. When reasons are given for not wanting children, they normally fall into 3 categories: (i) the property is not suitable for children; (ii) children are noisy; (iii) children cause damage.

The legitimacy of these reasons are questionable and need to be tempered by the understanding that whilst the landlord might see their property primarily as an asset, all housing must be seen, objectively, as a social commodity, access to which must be safeguarded by government.

The United Nations' Convention on Human Rights notes that –

“The right to adequate housing contains entitlements. These entitlements include:

- *Security of tenure;*
- *Housing, land and property restitution;*
- ***Equal and non-discriminatory access to adequate housing;***
- *Participation in housing-related decision-making at the national and community levels.”*

Ref. ‘The Right to Adequate Housing’, Fact Sheet No. 21, Rev. 1.
http://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf

As such, it can be argued that along with property rights comes social responsibility. Just as one has the right and freedom to run a bakery, one does not have the right to refuse business to people based on race, gender or sexuality. So too should the landlord not have a right to discriminate against a tenant just because they have children.

To take the 3 objections in reverse order, the following should be considered:

Children cause damage. First of all, reasonable wear and tear are accepted as a part of renting a property. There is always an element of compromise when renting something out, and real estate is something of a unique case in that one would not expect to be able to rent a car out, year after year, without depreciation taking place. Clearly, property is different. It is market demand and scarcity of land which keeps the price of property constant or on the increase, but any landlord operating a sensible model should factor in wear and tear and set aside funds for maintenance.

Of course, the point remains, that anyone can cause damage to a property, not just children. This is usually why security deposits are taken and why they are now held independently by *My Deposits*.

Children are noisy. Again, the problem of noisy neighbours is not restricted to those with children. Clearly, a house is also a home, and communities live on the principle of give and take. It will be interesting to see what figures are available from the authorities in relation to complaints of noisy neighbours. In my experience, they normally relate to rowdy (adult) parties, domestic disputes and structural inadequacy where day-to-day living causes sonic disturbances.

Property not suitable for children. This is perhaps the only reason given which might hold some credibility. Even then, one needs to ask the question *why* the property not suitable for children. It may well be that it is something that can be easily rectified, but if there are legitimate reasons, then there should be scope for the Minister to provide an exemption for properties which are unsuitable for children and which cannot easily be made suitable. However, this should be the exception rather than the rule.

Financial and manpower implications

There are no additional financial or manpower implications for the States arising from this proposition.

APPENDIX 1

“What concerns me in particular is “premises” in that it is a very broad term and Members will know that I have got, historically, a strong interest in housing issues; and something that I have brought to the fore is the fact that we can discriminate and often discrimination does take place, not simply in terms of pets, et cetera, but there is often a clause put into adverts when properties are advertised through agencies that no children should be accepted. That is a form of age discrimination. I believe it is completely unacceptable anyway especially when we have a scenario where we have a housing shortage and for something like premises to be put in there, which is such a broad term and not even to be subjected to the catch-all which could be justified, is completely unacceptable and it closes the door on the Minister for Housing for bringing forward any possibility of legislation or compulsion to take away that requirement for those advertising properties.”

Deputy M. Tadier of St. Brelade, [Hansard, 24th May 2016](#), debate on ‘Draft Discrimination (Age) (Jersey) Regulations 201-’ ([P.37/2016](#)).



ST HELIER

- Spacious 1½ bedroom first floor flat
- Views over Howard Davis Park
- Newly renovated (new kitchen, bathroom, carpets)
- Includes single garage (no other parking)
- Qualified (Entitled and Licensed)
- Non smokers. No children. No pets

£1,200 PCM

The above advert was from taken from the local paper in 2016. I shared it on Facebook on 27th January 2016 with the text:

Anyone fancy a bargain? Only £800 a room. It's even got 1/2 a bedroom, so you can sleep, presumably, your head or legs in the corridor.

No smokers, pets or children. So, who is the 'half bedroom' for? Presumably Adult humans are allowed so long as they don't breathe: it may cause condensation.

If you are working 40 hours a week on minimum wage (£6.97 after April) you won't even earn enough a month, after social security (£1135) to pay your rent.

Yet, this Neo-Conservative government refuses both to implement a living wage or rent controls. What hope is there for working people today?

Please share if you think something needs to change.

It is not radical to ask to be paid enough to live without State subsidies.

The post has attracted over 1,400 reactions, 716 shares and 139 comments to date (all organic).

Below are a selection of the comments left:

- When I was looking to move I remember seeing an ad for a house that said it was in a 'great school catchment' but didn't allow children.
- This is why I didn't return to Jersey when my fiancée and I found out we were pregnant – it's just not financially viable for me to move back where my family and friends are. I now live in a three bedroom house in Cornwall with a massive front and back garden and my rent is just over half of this place – oh and it has a double garage!
- Not much hope for our children/grandchildren.

- Who wants to pay £1,200 to live alone with no dog and not be able to smoke away the loneliness?!
- People sadly move away because of this!!!!
- A few years ago my husband and I returned to Jersey, pregnant, and searching for a home ready to birth my first baby. It was so depressing how many landlords saw my belly and said we wouldn't be allowed to rent 'because of the noise' of a new baby. So where exactly are new families supposed to live? And if that's not enough, they put children in the same sentence as pets in adverts! Seriously? Is my baby in the same category as a dog? When I've won the lottery and own property (ha!), my advert to rent will be 'families only'.
- Shocking!!! Something seriously needs doing now!!! 🤔

The following is an excerpt from a speech given by Senator I.J. Gorst on 16th January 2015 at the Brighter Futures Conference on the 1001 Critical Days agenda. The full speech can be found by following the link below:

<https://www.gov.je/News/Speeches/ChiefMinisters/Pages/1001DaysSpeech.aspx>

**Excerpt from the Chief Minister (Senator I.J. Gorst's) speech to
Brighter Futures Conference:**

“1001 Critical Days agenda

In the recent election I made a commitment to support the 1001 Critical Days agenda. I did so because those days of life – from conception to aged two – are vitally important. The ways in which we care for, and treat children during this period shapes their lives, ultimately helps shape our whole community.

The love and care that babies and very young children receive – plus the quality of their home learning environment – directly supports their brain and language development and their ability to learn. It fosters emotional wellbeing, and helps them to develop the capacity to form and maintain positive relationships with others.

A lack of nurturing or stimulation, or neglect, during these first critical years can have life-long consequences; hindering the development of the psychological and neurological foundations that underpin our social and physical wellbeing, and our future educational and economic achievements.

Focus on early years

Investing in the very early years brings returns for the child, for the family and for our wider community; reducing the costs associated with responding to poor outcomes. Well-designed early years interventions can provide significant returns. So, as policy-makers, we must focus attention on these early years. It makes financial and social sense to do so.”