

# **STATES OF JERSEY**



## **STATES OF JERSEY COMPLAINTS BOARD: FINDINGS – COMPLAINT AGAINST A DECISION OF THE MINISTER FOR EDUCATION, SPORT AND CULTURE RELATING TO A NURSERY SCHOOL PLACE**

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**Presented to the States on 21st September 2007  
by the Privileges and Procedures Committee**

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**STATES GREFFE**

## **REPORT**

### **Foreword**

The Privileges and Procedures Committee, in accordance with Article 9(9) of the Administrative Decisions (Review) (Jersey) Law 1982, as amended, is required to present to the States a copy of this report from the States of Jersey Complaints Board. It was convened to review a complaint by Ms. M. McCartney against a decision of the Minister for Education, Sport and Culture not to offer a nursery place for her child at St. Martin's Primary School (or elsewhere).

**Findings of the Complaints Board constituted under the Administrative Decisions (Review) (Jersey) Law 1982 to consider a complaint by Ms. M. McCartney against the Minister for Education, Sport and Culture regarding his decision not to offer a nursery place for her child at St. Martin's Primary School (or elsewhere)**

**1. The Complaints Board was composed as follows –**

Mrs. C. Canavan, Chairman  
Mr. T. Perchard  
Miss C. Vibert

The parties were heard in public at St. Martin's Public Hall on 29th August 2007.

The complainant, who was present, was represented by Deputy F.J. Hill.

The Minister for Education, Sport and Culture was represented by Deputy J.B. Fox, Assistant Minister for Education, Sport and Culture and Messrs. T.W. McKeon, Director of Education, Sport and Culture and J. Westwater, Head of Planning and Projects, together with Mrs. D. Hooper, the former Headteacher of St. Martin's Primary School.

**2. Hearing**

**2.1 Summary of the complainant's case**

- 2.1.1 Deputy Hill outlined the circumstances in which, in November 2005, Ms. McCartney – a long-standing resident of the Parish of St. Martin – had submitted an application form for a place in a nursery class at a primary school for her daughter (date of birth 9th June 2004) and sent it to the Headteacher of St. Martin's School. For ease of reference we shall refer to this as "the first form." The first form did not indicate what criteria would be taken into account in the selection process. It was contended that the first form should have been clearer and more detailed, so as to provide Ms. McCartney from the outset with details of the level of information that would be necessary to comply with one or more of the criteria considered in the allocation process. Additionally, the first form stated that the form "was to be completed and given to the headteacher of the school when applying for a place, who will discuss your application with you." Ms. McCartney was concerned that there had been no approach from the school or even an acknowledgement of the receipt of the first form. Had there been a discussion with the Headteacher then the issue could have been raised and resolved at the outset.
- 2.1.2 The following year, Ms. McCartney received a letter dated 10th November 2006 from the Headteacher of St. Martin's School, seeking confirmation that a place in the school's nursery was still required, together with a further application form which requested further information. We shall refer to this as "the second form." Ms. McCartney's recollection of the second form, which she completed and returned to the school, was that it also did not contain the criteria used to allocate places.
- 2.1.3 In February 2007, Ms. McCartney was informed that her daughter had not been allocated a place at a States nursery (either at St. Martin or elsewhere) as there was insufficient capacity to satisfy the demand for places. Ms. McCartney subsequently appealed to the Education, Sport and Culture Appeals Panel and was advised, by letter dated 12th June 2007, that the Panel had not found in her favour and that her request to have her daughter allocated a place either in St. Martin's Nursery or her alternative choices of Grouville, St. Saviour or Springfield Schools had been denied.
- 2.1.4 Meanwhile, Deputy Hill – acting on Ms. McCartney's behalf – had made enquiries of the Head of Planning and Projects regarding the criteria which were used by Education, Sport and Culture in determining applications for States nursery places, as well as requesting data relating to the School's capacity, the process of allocation, the priority afforded to children who had been granted places and

whether those children's names had been submitted prior to that of Ms. McCartney's daughter. This information was provided on 23rd April 2007. Deputy Hill wrote, on 14th May 2007, to the Director of Education, Sport and Culture on Ms. McCartney's behalf indicating his belief that her financial circumstances were such as to place her in the "low income" group: one of the criteria to which it was stated that "particular consideration will be given" as part of the selection process. The Appeal was heard on 8th June 2007. Deputy Hill expressed concern that the Appeal had not been truly 'independent' and that the whole process had been a considerable ordeal for Ms. McCartney, who had suffered stress as a result. It was contended that had the first and second forms indicated that the family's financial position might have a bearing on the allocation process, Ms. McCartney would have provided that information with the result that it was likely that a place would have been allocated, thus avoiding the need for an Appeal. It was further contended that Ms. McCartney's daughter lived in catchment area for the school and therefore should have been granted a place in the nursery school ahead of those children who live outside the catchment area.

2.1.5 The Board noted that Ms. McCartney considered that the first and second forms were "defective" or at least misleading and that selection process was not in keeping with good practice, there being no transparency or consistency, with decisions being based on criteria of which the applicant had not been made aware at the time of her original application.

## 2.2 Summary of the Minister's case

2.2.1 Deputy Fox confirmed that following the introduction of Ministerial government, powers were delegated to the Assistant Minister for Education, Sport and Culture such that he could act on the Minister's behalf in certain matters. Everything done by Education, Sport and Culture was done with the prime aim of being for the benefit of the child. It was stated that application forms for admission to a States Nursery could be obtained from any States primary school with a nursery class and submitted to a school at any time.

2.2.2 It was recalled that Ms. McCartney had submitted on 1st December 2005 [the submission by the complainant indicated this as being in November 2005] the first form applying for a nursery place for her daughter at St. Martin's Primary School. The completed first form made no reference to any educational needs of the child or to any social needs of the child or the family. After seeking clarification of the whole process, the Board was advised that the first form was intended solely as a means for a parent to notify their interest in a nursery place for their child in due course. Deputy Fox accepted that at the time of the issuing of the first form, applicants were not provided with details of the criteria. However, by May 2006, what we have referred to as "the second form" had been revised and it comprised 4 pages, the first merely requesting details of the child and the school and giving brief instructions, the second and third pages requesting more detailed information and the fourth page setting out the criteria to be taken into account when allocating places. It was emphasised that the catchment area for a school was not one of the criteria used because not all primary schools have nurseries attached to them. The Director of Education, Sport and Culture commented that it was accepted that the wording on the first and second forms regarding the discussion to be held with the Headteacher was somewhat misleading and indicated that the content of the forms would be reviewed. We shall refer to this later. Mrs. Hooper indicated that some parents making application for a nursery place visited the school, during which visit discussion of the application would take place but that it was not standard practice to contact all parents and call them in for a discussion.

2.2.3 In November 2006, Ms. McCartney had been asked by the Headteacher of St. Martin's Primary School to confirm that she still wanted a nursery place and the second form was completed and submitted. Deputy Fox pointed out that the second completed form also made no reference to any educational needs of the child or to any social needs of the child or the family. We shall return to this point.

2.2.4 In February 2007, following a meeting between the Head of Planning and Projects and the Headteacher of St. Martin's School at which allocations were provisionally agreed, all nursery allocations were made according to the under-mentioned criteria ("Policy for Nursery Classes in Provided Primary Schools": first published in May 2003, updated in June 2005) –

Section 2.3.3 states: “Particular consideration will be given to the following:

- Children with social/educational needs;
- Children from families with particular needs (e.g. low income families, siblings with special needs, parental illness);
- Children suspected of being at risk;
- Children with siblings in the school;
- There must be approximately equal numbers of boys and girls in the class;
- Children must come from a cross-section of backgrounds so that no particular social group dominates;
- A balance must be maintained so that the social and educational demands of the group are not overwhelming;
- Up to 20 per cent of children may be taken from out of the catchment;
- Date of application.”

- 2.2.5 It was explained that Ms. McCartney’s daughter was not allocated a place because she did not fulfil the criteria needed to secure a place: there were no circumstances that indicated an educational or social need and the date of application was later than all those with similar circumstances who were allocated places. The procedures followed in determining allocations on the basis of the information provided on the second form were outlined to the Board. It was explained that demand for nursery places in 2007 had been exceptionally high and that the names of a number of children still remain on a “high priority waiting list”, with an additional 50 children being on a “non-high priority” waiting list for any places which might become available. Deputy Fox indicated that there were insufficient nursery places at States primary schools Island-wide: 16 schools presently had nursery provision, with a further 6 school awaiting the necessary building work to provide them with these much-needed facilities. The Board noted with concern that even in the event that all States primary schools had nurseries associated with them, there would still be a shortfall in capacity to meet in full the demand for nursery places.
- 2.2.6 Following the allocation process, Ms. McCartney was informed on 15th February 2007 that her daughter had not been allocated a nursery place. Ms. McCartney confirmed to the Board that it was by that letter dated 14th February 2007, that she had been informed of the criteria taken into account in determining allocations, at which point she had asked for her child’s name to be added to the waiting list for placement. This she did.
- 2.2.7 There was no dispute as to what happened after Ms. McCartney received the notice of refusal.
- 2.2.8 Deputy Fox submitted that the appeal hearing on 8th June 2007 had been held in accordance with the Department’s appeals procedures, with the details of the case being summarised and agreed before the appeal was heard. Following a question from Deputy Hill about the meaning of “low income status”, the Director of Education, Sport and Culture explained that low income status was awarded to parents who did not earn enough to breach the tax threshold. The appeal panel had deliberated after the appellant and Deputy Hill had left the room and had decided to deny the appeal: a letter dated 8th June 2007 [with the same wording as the letter dated 12th June 2007 referred to in the complainant’s submission above] was sent to Ms. McCartney informing her of the decision. The Director confirmed to the Board that the appeal hearing had indeed been conducted fully in accordance with the Department’s appeals procedure, which was consistent with the provisions of the Education (Jersey) Law 1999. Deputy Fox emphasised that Mr. Westwater had only taken part in the appeal process as a provider of information. He was not part of the decision making process.
- 2.2.9 Further data had been provided to Deputy Hill on 18th June 2007, with full answers given to all the questions raised. It appeared to the Minister that the main thrust of Ms. McCartney’s appeal was that she and her partner were in debt and could not afford the nursery fees necessary for her daughter to attend private nursery. However, the couple did not claim to have a low income. Whilst the Department would consider a family with low income (i.e. those families not earning enough to pay any income tax) to have a social need, it was the view of the Department that Ms. McCartney and her partner were not in that category.

### 3. The Board's findings

- 3.1 The Board accepted that Ms. McCartney's application for a nursery placement for her child had been dealt with in accordance with established Education, Sport and Culture procedures.
- 3.2 However, the Board notes that certain aspects of the mechanics of the process were less than satisfactory and makes a number of recommendations.
- 3.3 A simple explanatory booklet should be produced to accompany the application form, as this would enable step-by-step guidance to be given regarding the completion of the form, the criteria ultimately to be taken into account and associated activities (e.g. arranging to visit the school, etc.). In particular, the booklet should emphasise that the completion of the first form was only an initial step and that whilst there would be no further contact with the applicant until November of the year preceding the desired date of entry, the school would then send out a further more detailed application form setting out the criteria upon which allocation would be based and requesting appropriate information. The Board was pleased to note that, in any event, the Education, Sport and Culture proposed to review the application form/s used and suggests that it might clarify matters if the first and second forms have different names. It is clear to see how confusion might arise if there are 2 "application" forms.
- 3.4 It is of vital importance that applicants should be aware from the outset of the criteria against which their application is to be assessed. The Board notes that Education, Sport and Culture has taken steps to ensure that such necessary information is always provided to applicants at an early stage.
- 3.5 The Board accepts that the level of **debt** (as opposed to the "low income") of an applicant or his or her family should not be a factor taken into consideration by Education, Sport and Culture in assessing priority.
- 3.6 The Board recognises that, irrespective of any decision at which it might arrive regarding Ms. McCartney's application, there is an insufficiency of places available at nurseries associated with States primary schools. Deputy Hill contended that one more attendee at the nursery would not make any difference to the school but the Board considered, regardless of the outcome of this hearing, that this would then be unfair to those other applicants on the current waiting list.
- 3.7 Having looked at the general process with regard to the allocation process, it is important to consider the process of this specific application. The Board noted that the second form appeared to be incomplete in that the Board was only provided with copies of the first and second pages. Mr. Westwater was asked to check the original copy to see whether or not the third and fourth pages had been submitted and to advise the Board accordingly. He reported back that the second form submitted did not have the third and fourth pages attached and it therefore follows that Ms. McCartney had never been advised of the criteria to be considered. It is difficult to understand how the application could have been properly considered when the second form was incomplete.
- 3.8 The Board concludes that as there is such a shortage of nursery places available there has to be a set of criteria against which all applications are measured in order to ensure that there is continuity in the process. The Board considers that the decision of the Minister for Education, Sport and Culture not to allocate a nursery place for Ms. McCartney's child was not contrary to law; it was not unjust, oppressive or improperly discriminatory; it was not based wholly or partly on a mistake of law or fact; and it was not contrary to the generally accepted principles of natural justice. However, in the light of the content of the previous paragraph it could be said that the decision was not made after proper consideration of all the facts. The Board accepts, as already stated, that a finding in favour of Ms. McCartney cannot miraculously conjure up a nursery place for her daughter but in the light of the flaw in the process of this application, the Board would request the Department to consider moving Ms. McCartney's application from the non-priority waiting list to the high priority waiting list.

Signed and dated by:

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Mrs. C. Canavan, Chairman

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Mr. T. Perchard

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Miss C. Vibert