
STATES OF JERSEY



STATES OF JERSEY COMPLAINTS BOARD: FINDINGS – COMPLAINT AGAINST A DECISION OF THE MINISTER FOR HOUSING REGARDING A REFUSAL TO GRANT HOUSING QUALIFICATIONS

**Presented to the States on 10th November 2009
by the Privileges and Procedures Committee**

STATES GREFFE

REPORT

Foreword

In accordance with Article 9(9) of the Administrative Decisions (Review) (Jersey) Law 1982 as amended, 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 Housing regarding the refusal to grant Housing qualifications under Regulation 1(1)(g) of the Housing (General Provisions) (Jersey) Regulations 1970.

Connétable J. Gallichan of St. Mary,
Chairman, Privileges and Procedures Committee.

STATES OF JERSEY COMPLAINTS BOARD

27th October 2009

Findings of the Complaints Board constituted under the Administrative Decisions (Review) (Jersey) Law 1982 to consider a complaint by Mrs X (represented by Deputies S. Pitman and J.A. Martin) against the Minister for Housing regarding the refusal to grant Housing qualifications under Regulation 1(1)(g) of the Housing (General Provisions) (Jersey) Regulations 1970

1. Present –

Board Members

Mrs. C. Canavan, Chairman
Mr. T.S. Perchard
Mr. F. Dearie

Complainant

Mrs. X
Deputy S. Pitman of St. Helier
Deputy J.A. Martin of St. Helier

On behalf of the Minister

Senator T.J. Le Main, Minister for Housing
Mr P. Bradbury, Director, Population Office
Mrs. T. Worboys, Housing Control Manager

States Greffe

Mrs. L. Hart, Assistant Greffier of the States

The hearing was held in public at 9.30 a.m. on 27th October 2009 in the Blampied Room, States Building.

2. Summary of the dispute

- 2.1 The Board was convened to hear a complaint by Mrs. X against a decision of the Minister for Housing to refuse her application for residential qualifications to be granted under Regulation 1(1)(g) of the Housing (General Provisions) (Jersey) Regulations 1970 (hereafter referred to as ‘the Regulations’).

3. Summary of the Complainant’s case

- 3.1 The Board had received a brief summary of the Complainant’s case before the hearing and had taken note of the submissions made on her behalf.
- 3.2 Deputy S. Pitman commenced by asking whether it would be possible to protect the identity of the complainant and it was agreed that the names and addresses of the individuals concerned would not be included in the text of the Board’s findings.
- 3.3 Deputy Pitman advised that she and Deputy J.A. Martin were supporting Mrs X’s application for consent on Human Rights grounds. Mrs. X had not felt safe remaining in Thailand after her marriage had broken down, particularly after her estranged

husband had taken her children away from her for a time and had allegedly been physically abusive on one occasion. She had decided to return to Jersey as Mr. X had made it clear that he had no intention of moving back to Jersey and she had felt that the Island offered a safe environment in which to raise her two young Jersey born sons.

- 3.4 Deputy Pitman argued that due to ‘government interference’ Mrs. X was being restricted from full enjoyment of a family life in Jersey. Housing Regulations limited the accommodation she could rent and she was currently living in a one bedroom flat and sleeping on the couch, in order that her sons could share the bedroom. Deputy Pitman asserted that this impinged upon the quality of family life for Mrs. X and her sons and they had lived a very unsettled existence since returning to Jersey, as a consequence of having to move so frequently.
- 3.5 Deputy Martin cited that the main reason given by the Housing Department for refusal of Mrs. X’s application had been the ‘current housing situation’. Deputy Martin questioned why this was a factor, given that any shortage of accommodation was a result of States policies and could not be attributed to Mrs. X. Deputy Martin emphasised that Mrs. X had lived in Jersey for over 5 years before she had moved back to Thailand with her husband, at his behest. She contended that had she remained in Jersey and the marriage failed, it was likely that Mrs. X’s application would have been regarded more favourably. Deputy Martin advised that the family had moved several times since they had returned to Jersey and Mrs. X sought qualifications, not for any financial gain, but in order to secure a settled future for her sons in a more permanent home.
- 3.6 Deputy Pitman emphasised that Mrs. X had not wanted to return to Thailand in September 2004, but had followed her husband. Deputy Pitman refuted the notion that the application was based on financial hardship and argued that there was no evidence to support this view.
- 3.7 Deputy Martin considered that one of the reasons cited within the Minister’s submission outlining the grounds for refusal, namely that granting qualifications to Mrs. X would exacerbate the imbalance between supply and demand in the Island’s housing market, was not a sustainable argument and not pertinent to Mrs. X’s case.
- 3.8 The Chairman questioned what advice Mrs. X had received regarding the Human Rights issues which had been raised and the meeting was advised that Mrs. X currently received legal aid support in relation to her attempts to secure maintenance payments from her estranged husband, but would consider pursuing an appeal under Article 8 of the Human Rights (Jersey) Law 2000 if legal aid could be secured. Deputy Martin considered that Mrs. X’s two Jersey born children were being denied the right to a family home and she reiterated that moving accommodation so frequently had disturbed their family life. She anticipated that Mrs. X and her family would be able to find a more suitable and permanent dwelling in the private rental sector. Deputy Martin disputed that there was a limited supply of such accommodation in the unqualified quarter.
- 3.9 The Chairman questioned the reasons why the family had moved so many times since their return to Jersey and was assured that this was not a consequence of financial pressures. As a tenant in the unqualified sector, there was very little security of tenure, no lease agreements and limited rights. Mrs. X had been at the mercy of her landlords and, in some cases, had been asked to move on because other tenants had complained about the presence of the children, notwithstanding the fact that the boys were well behaved. Deputy Pitman concluded that Mrs. X and her sons were entitled under the Human Rights (Jersey) Law 2000, to respect for private and family life and their home, without interference by a public authority and she opined that they were being denied all three in their present housing situation.

4. Summary of the Minister's case

- 4.1 The Director, Population Office outlined the key aspects of the Minister's case. He emphasised that under the Housing (Jersey) Law 1949, the Minister's objective was to 'prevent any further aggravation of the housing shortage' and the Minister was therefore responsible for the regulation of the Housing market. Regulations enacted under the aforementioned Law set out the classes of persons to whom the Minister could grant consent, subject to certain criteria being met. When granting consent under Regulation 1(1)(g) the Minister had to balance the hardship (other than financial hardship) caused to the applicant by refusal, against the impact on the accommodation available within the community should the application be granted. The Population Office had a long established Marriage Breakdown Policy which stated that consent would normally be granted to an unqualified spouse or partner with parental responsibility of any children from the marriage, providing the applicant had been married to or living with the qualified spouse or partner in the Island for at least the previous five years and had been continuously resident in Jersey for at least the previous ten years.
- 4.2 The Director, Population Office highlighted that whilst Mrs. X had parental responsibility for her two sons, she did not satisfy the criteria for length of cohabitation or continuous residency in the Island and therefore did not fit under the Marriage Breakdown Policy. The application had been refused at officer level, referred to the then Assistant Minister and then the Minister – both of whom had maintained the refusal. The Meeting was advised that an indication of the housing shortage was provided by the States Rental Waiting List, which had been growing steadily over the last few months as a result of the economic downturn and there was a dearth of suitable first time buyer/affordable homes. As a result there were many people in the Island in the same situation as Mrs. X and, although no two applicants circumstances were identical, the Minister had an obligation to administer the Regulations in a consistent manner. It was not considered unreasonable to expect someone to complete 10 years residency before being granted residential qualifications in their own right.
- 4.3 The Housing Control Manager advised the Meeting that she had 15 years experience in determining hardship applications and it was tempting to believe that exercising leniency in one instance would not have an impact, but with several applications being received by the Department on a weekly basis, it was important to adhere to the policy and avoid setting precedents. Discretion was used within defined limits. The Department had every sympathy for Mrs. X but acknowledged that there were thousands of people living in similar situations within the lodging house sector and granting Mrs. X a consent under Regulation 1(1)(g) would set a huge precedent and result in many others claiming a right to qualify and the imbalance between supply and demand worsening.
- 4.4 The Housing Control Manager stated that the Department had discounted Mrs. X's previous period of residency from November 1998 to September 2004, and considered that her current period of continuous residency commenced on 21st January 2008. Absences from the Island were problematic, but in this case Mrs. X had left the Island for over three years – more than half the period of residency she had previously completed.
- 4.5 The Housing Control Manager advised that the fact that Mrs. X's sons were Jersey born had not been a consideration when adjudicating her application. The Meeting was advised that over a thousand lodging houses were registered to take children, over 90 per cent were currently occupied by families and it was safe to assume that the majority of children would be Jersey born. There was no automatic right to be granted residential qualifications if one was born in the Island. It was noted that the Jersey

born children of residentially qualified parents were still required to complete a minimum of 10 years residency in Jersey before being granted residential qualifications in their own right.

- 4.6 The Minister for Housing maintained that he would normally only deviate from the policy criteria for hardship cases when there were exceptional circumstances, such as medical or social problems in relation to the parents or children. Consent under Regulation 1(1)(g) had never been given the grounds of financial hardship or the poor standard of accommodation occupied. Every case was considered equally in line with the same criteria and the Minister believed that Mrs. X's application was based on financial hardship only. There was evidence that Mrs. X's sons' childcare costs had been funded by Centre Point and she had made a request to Social Security for financial assistance. The Minister argued that there had been no firm evidence to support the allegations made against Mrs. X's estranged husband and he advised that he had received an e-mail from Mr. X complaining about his lack of rights as a father. The Minister questioned why Mrs. X had returned to Jersey, where she had no family support and limited employment prospects. The Minister reiterated that a departure from policy guidelines would create a serious precedent. The same criteria had to be applied fairly to all Housing Law decisions and he considered that those criteria were Human Rights compliant. It had been Mrs X's decision to return to the Island and the Minister was certain that her application was financially motivated.
- 4.7 Deputy Martin refuted the Minister's claim that Mrs. X's application was financially motivated and emphasised that if granted a 'g' consent, the only benefit which Mrs. X would gain would be the ability to rent within the qualified sector – at full rent. Under the new Income Support system Mrs. X was unable to claim any form of financial assistance, including rent abatement, as she had not lived in the Island on a continuous basis for the last 5 years.
- 4.8 Deputy Martin expressed surprise that the Housing Department had not provided full statistical information regarding the actual number of hardship cases considered each year and the amount granted.
- 4.9 The Minister for Housing advised that the Income Support 'Five Year Rule' would not be an issue if a 'g' consent was granted as Mrs. X would be able to apply for Social Housing at a subsidised rental rate.
- 4.10 Deputy Martin rejected this suggestion and argued that Mrs X would have to pay the fair market rent and therefore would not make any financial gain.
- 4.11 The Minister for Housing maintained that Mrs. X would be able to apply for Social Housing and would be charged an affordable rent based on a percentage of her income.
- 4.12 Deputy Martin disputed this and reminded the Minister that the rent abatement scheme had ceased and been replaced by the new Income Support Scheme which required a 5 year residency. Therefore Mrs. X would receive no financial assistance towards her rent. Deputy Martin underlined the fact that there was a disconnect between the current Housing and Income Support Laws in this regard.
- 4.13 The Housing Control Manager reminded the meeting that the issue was whether Mrs. X qualified under the hardship criteria. She asserted that the application was financial motivated and predicated on the fact that Mrs. X could not afford suitable family accommodation at present.
- 4.14 Deputy Pitman emphasised that Mrs. X would need to complete 5 years continuous residency before she was entitled to Income Support. She responded to the Minister's claims that no evidence had been given to substantiate the allegations of violence, by

reminding the Meeting that police reports would verify that the incidents had occurred and there was also an affidavit from the Warmly Happy Family Enhancing Association. Mrs. X had made only one application to Social Security to assist with childcare costs and this request had been refused. Deputy Pitman advised that following the incidents in Thailand, Mrs. X simply wanted to create a better life for her children and that is why she had returned to Jersey.

- 4.15 Deputy Martin maintained that Mrs. X would receive no financial gain should consent be granted, but she would be able to rent a better standard of family accommodation, which would be more permanent and affordable.
- 4.16 The Director, Population Office restated that financial matters should not be a focus, even if more affordable properties were available in the qualified sector. There were around 8,500 people living in the unqualified sector and 1000 registered lodging houses providing family accommodation. It would not be fair on the other people living in the Island in similar circumstances if Mrs. X was granted consent under Regulation 1(1)(g) without meeting the marital breakdown policy criteria or providing sufficient grounds for hardship.
- 4.17 Deputy Martin again requested that a full list of recent hardship applications be provided and the Director, Population Office advised that on average there were 40 such applications a year, but agreed to provide further details to the Board.
- 4.18 Mrs. X, addressing the Meeting, refuted her husband's claims. She advised that she had been very happy in Jersey and had not wanted to leave, but had returned to Thailand with her husband. Things had not worked out between them and she had been unhappy. Although she did not have any family in the Island, she had many Jersey and Thai friends. Following the incidents in Thailand she had decided to bring her children back to Jersey so they could have a safe, happy family life together. She had not been aware of the housing difficulties she would face, and didn't understand why she could not come back to Jersey. The Minister for Housing replied that no one wished to prevent her living in Jersey – she simply could not be granted housing qualifications before completing the minimum residency period.

5. The Board's findings

- 5.1 The Board acknowledged that the Minister for Housing and his Department had acted in accordance with the current policies in relation to granting consent under Regulation 1(1)(g) of the Housing (General Provisions) (Jersey) Regulations 1970 on the grounds of hardship. It was recognised that exceptions to policy were extremely rare and usually based on an applicant's medical or social circumstances.
- 5.2 With regard to the specific allegation that the refusal breached the Human Rights (Jersey) Law 2000, the Board considered that this was a matter for the Courts to decide and that the threat of the Human Rights claim (successful or otherwise) was no reason to overturn the refusal.
- 5.3 The Board could only recommend that the Minister reviewed a decision if it considered that there had been a flaw in the decision making process. The Board, whilst having every sympathy for Mrs. X's situation and a high regard for her efforts to provide a stable home for her young sons, accepted that in making the decision to refuse her application, due process had been followed. The Board, having carefully reviewed the decision made by the Minister and his Department, found it to be entirely in accordance with the policies which applied to the application. Accordingly the Board had no option but to reject the Complainant's contention that the decision made by the Minister could be criticised on any of the following grounds –

- (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.

5.4 The Board expressed some concern that there appeared to be some uncertainty regarding the rights and entitlements conferred by the granting of a 'g' consent under the former benefit systems, and those available under the new Income Support system. Subsequent to the hearing, the Board sought confirmation from the Social Security Department with regard to the situation. The Policy Director, Social Security, confirmed that, should a person with less than 5 years continuous residency be granted Housing consent by the Minister for Housing on hardship grounds, the Minister for Social Security would consider exercising his discretion to ensure that, whilst the person concerned would not qualify for Income Support under that law, they could be given weekly support that was equivalent to their income support entitlement to assist with rental costs. The Board also received updated figures from the Housing Department outlining the number of hardship cases for 2008/2009 and it was agreed that these should be attached as an Appendix to the findings.

Signed and dated by:
Mrs C. Canavan, Chairman

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Mr. T.S. Perchard

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Mr. F. Dearie

POPULATION OFFICE
Jubilee Wharf 24 Esplanade St Helier Jersey JE4 0UT



MEMORANDUM

TO: Paul Bradbury
FROM: Tina Worboys
DATE: 27 October 2009
RE: **Administrative Decisions (Review) (Jersey) Law 1982**
Figures to support decision in respect of Mrs X

75 applications have been considered by the Population Office under Regulation 1(1) (g) of the Housing Regulations to date in 2009.

93 such applications were considered by the Population Office during 2008.

These figures do not include:-

- Individuals who make telephone or e-mail enquiries where their circumstances are such that an application for early residential qualifications would be futile, e.g. very low residence, no medical, no children;
- Individuals who fulfil the criteria (a)-(c) of the established Marriage Breakdown Policy, as in these instances, consent under Regulation 1(1) (g) of the Housing Regulations is automatically granted.

Of the 75 applications considered to date in 2009, they can be roughly broken down into the following categories:-

	APPROVED	REFUSED
Relationship breakdown	10	11
Residence/ break in residence	19	11
Medical with residence	7	10
Death of qualified spouse	4	0
Pending decisions (3)		

It can therefore be seen that 28% of all applications considered under Regulation 1(1) (g) of the Housing Regulations to date in 2009 have been due to a relationship/marriage breakdown, and of that 28% or 21 applications, 50% have been refused.

There are **821** bed spaces within registered Lodging Houses registered to accommodate a child/ children under the age of 18 years - these will be a mix of primarily one and two bedroom flats.

There are **262** bed spaces within registered Lodging Houses registered to accommodate a child under the age of 5 years - these will be studio flats.

The Lodging House Inspector confirms from his personal experience of inspecting Lodging Houses that the majority of units registered to accommodate a child, or children, do indeed

do so, and it is fairly safe to assume that the vast majority of these children will be Jersey born.

These figures do not account for families and single parents living in the uncontrolled market in staff accommodation, private lodgings etc, or single parents with one child who can occupy a double room in a Lodging House and share the bed with the child - an unfortunately common situation.