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# STATES OF JERSEY



## STATES OF JERSEY COMPLAINTS BOARD: FINDINGS – COMPLAINT BY MR. R. AHMAD AGAINST THE DEPUTY CHIEF MINISTER REGARDING AN APPLICATION FOR RESIDENTIAL AND EMPLOYMENT STATUS

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Presented to the States on 31st August 2021  
by the Privileges and Procedures Committee

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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 Deputy Chief Minister regarding an application for residential and employment status under Regulation 4(2)(a) of the Control of Housing and Work (Residential and Employment Status) (Jersey) Regulations 2013.

**Deputy C.S. Alves of St. Helier**  
Chair, Privileges and Procedures Committee

**STATES OF JERSEY COMPLAINTS BOARD**

**28 July 2021**

**Complaint by Mr. R. Ahmad against the Deputy Chief Minister regarding an application for residential and employment status under Regulation 4(2)(a) of the Control of Housing and Work (Residential and Employment Status) (Jersey) Regulations 2013.**

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

**Present**

**Board members –**

G. Crill. (Chair)  
S. Cuming.  
T. Chatterley.

**Complainant –**

R. Ahmad.

**Representing the Deputy Chief Minister –**

T. Worboys, Team Manager, Customer and Local Services Department.  
N. Stocks, Senior Policy Officer, Immigration and Migration Policy, Strategic Policy, Planning and Performance Department.

**States Greffe –**

L.M. Hart, Deputy Greffier of the States  
K.M. LARBALÉSTIER, Specialist Secretariat Officer

The Hearing was held in public at 10.00 a.m. on 28 July 2021, in the Blampied Room, States Building.

## **1. Opening**

- 1.1 The Chair opened the meeting by introducing members of the Board and outlining the process which would be followed. The role of the Board in the context of the Administrative Decisions (Review) (Jersey) Law 1982 was explained and the Chair advised that, whilst the findings of the Board were not binding, recommendations could be made to relevant Ministers. It was explained that the findings would be circulated to all parties prior to publication and that, ultimately, the report in its entirety would be presented to the States by the Privileges and Procedures Committee. The opportunity existed to anonymise the report if the appellant felt this was desirable. Mr. Ahmad advised that this would not be necessary.

## **2. Summary of the Complainant's case**

- 2.1 Mr. Ahmad advised that he had relocated to Jersey from Scotland with his wife and family in 2015, to take up licensed employment with EY. On 27th August 2018, he had taken a period of unpaid leave from work to travel to Pakistan to care for his mother, who had suffered a stroke. He had returned to the Island on 1st February 2019. Whilst he had been unable to continue renting a property in the Island during this period of absence (due to the fact that he was not earning) his employer had kept his position open and the some of his mail had been redirected to the offices of EY during his absence. Mr. Ahmad had also made arrangements for his child to access the 'Other than at School programme', which was administered by the Children, Young People, Education and Skills (CYPES) Department and which allowed children to be home-schooled. Reference was made to a letter from Mr. J. Radcliffe, Director of Inclusion and Early Intervention, CYPES, which had been included within the documentation submitted by Mr. Ahmad and which confirmed acceptance of the home-schooling arrangement. This letter was dated 9th September 2019, and referenced a meeting held on 14th August 2019, which was some time after the family had left the Island. It was not clear whether this was an error and Mr. Ahmad was unable to provide any clarity. In addition to making arrangements for his daughter's continued education, Mr. Ahmad stated that he had contacted the Customer and Local Services (CLS) Department to advise of his intention to leave the Island for a period and had been advised to complete an 'on-line' form confirming this. He noted that whilst he had provided the date of 29th July 2018, as his departure date on the form he had, in fact, left the Island on 27th August 2018. He explained that this period of time had been very stressful for him due to his mother's health problems and that the date of travel had changed after he had completed the form. He had not sought to rectify this as his thoughts were primarily on travelling to Pakistan to be with his mother. Mr. Ahmad had received an automated response confirming receipt of the form. He advised that he had been unaware of any risk in terms of interrupting his period of residency but, in the circumstances, would have travelled to Pakistan in any case as his focus was entirely on assisting with his mother's care for a period. He stated that medical advice received at the time had indicated that the first 6 months was a crucial period for stroke patients in terms of recovery. When Mr. Ahmad returned to Jersey his brother had travelled from Scotland to take care of their mother. Unfortunately, she passed away some time later.

- 2.2 Mr. Ahmad stated that he had contacted CLS in October 2020, with a view to establishing Entitled for Work status but had been advised that, due to the break in his ordinary residence, the Department considered his period of ordinary residence to have commenced in February 2019, when he had returned to the Island from Pakistan. As such, he was advised that he did not qualify for the Entitled for Work status as he had not completed the last 5 years continuous ordinary residency in Jersey, a decision which he considered to be unreasonable.
- 2.3 Mr. Ahmad informed the Board that he had decided to appeal against the decision and that this appeal had initially been considered by Mrs. T. Worboys, Team Manager, CLS, who had maintained the decision of Departmental officers. Mr. Ahmad had subsequently appealed to the Housing and Work Advisory Group (HAWAG), of which the Deputy Chief Minister, Senator L.J. Farnham, was the Chair. The Group comprised 3 other States Members. That Group had also maintained the Department's decision.
- 2.4 It was important to Mr. Ahmad to establish his Entitled for Work status so that he could access a wider range of employment opportunities and possibly establish his own business in the Island. He advised that his second child had been born in the Island and that he was a naturalised British citizen.
- 2.5 Mr. Ahmad referenced the policy guidance associated with the Control of Housing and Work (Jersey) Law 2012, in respect of determining residential and employment status and, in particular, absence from the Island. He noted paragraph 59, which related to certain absences of longer than 6 weeks in any calendar year and for up to one year, for persons with Entitled for Work Only status who had at least 5 years continuous residence. He also highlighted paragraph 60, which dealt with persons who had gained Entitled Status or Entitled for Work Status and who were clinically required to remain outside the Island in order to receive medical treatment; with any such absence from the Island being viewed as continuous ordinary residence in Jersey. Mr. Ahmad pointed out that the policy guidance stated that this provision may also apply to Licenced and Registered persons, provided that they had been ordinarily resident for at least one year prior to the circumstances arising. Paragraph 65 related to travel away from the Island to care for a parent or child, which 'may' be treated as ordinary residence, subject to the provision of sufficient evidence. This policy 'may' be applied to persons with Entitled for Work status and Entitled status and 'may' cover absences of over 6 months. However, the guidance also stated that if it was considered that the person no longer had a settled purpose in the Island, any absence in these circumstances would be seen as a break in ordinary residence. He asked the Board to review the policy guidance together and consider whether there was any room for discretion and he argued that the circumstances set out could equally apply to a Licenced or Registered individual.

### **3. Summary of the Deputy Chief Minister's case**

- 3.1 The Board noted a timeline of the case commencing on 15th October 2020, when Mr. Ahmad had contacted CLS requesting an Entitled for Work registration card, based on his continuous ordinary residence in Jersey from October 2015 to the date of his application. He had highlighted 'a small gap' in his residency when he was away from the Island looking after his mother. The Department had subsequently advised that if Mr. Ahmad remained in Licensed employment the

Department would not change his residential and employment status. Mr. Ahmad had confirmed that he was in Licensed employment but wished to set-up his own business and needed to demonstrate the last 5 years continuous ordinary residence in Jersey to gain Entitled for Work status. Mr. Ahmad had been advised shortly thereafter that his period of absence from the Island was considered to represent a break in his ordinary residence in Jersey and, as a consequence, he could not be granted Entitled for Work status. Mr. Ahmad had ultimately requested a review of the decision and this had resulted in 2 specialist officers considering the case and concluding that the decision was in accordance with the legislation and the policy guidance. The Department had made Mr. Ahmad aware of his right to appeal to the Deputy Chief Minister via HAWAG and he had decided to proceed in this manner. It was confirmed that whilst appellants had a right to address members of HAWAG, this was not encouraged due to the emotive nature of cases. Mr. Ahmad advised that he had not been made aware of the right to appear before HAWAG in person. The Board noted that whilst the appeal was considered by all members of HAWAG the final decision was made by the Deputy Chief Minister. The Board was surprised that the Deputy Chief Minister was part of the HAWAG and was not detached from the Group. It was recalled that the Minister for the Environment did not participate in determining planning applications so that he could remain impartial when considering the recommendations arising from third party appeals. Mrs. Worboys advised that it was intended to move to a similar structure when the existing legislation was revised. She added that it was not unknown for the Deputy Chief Minister to arrive at a different conclusion to that of the other members of HAWAG.

- 3.2 Documentation in connexion with the case, together with a background report prepared by the Department, had been distributed to HAWAG on 8th January 2021. It was noted that the Deputy Chief Minister, supported by Ministerial colleagues, had maintained the Department decision to refuse permission to grant Entitled for Work status. The point had been made that the policy provision relating to caring for another person outside the Island purposely excluded persons with Licensed status and that Mr. Ahmad had completed 2 years and 10 months continuous ordinary residence in Jersey before leaving with his family to care for a sick relative. The Deputy Chief Minister and his political colleagues had shared the view that the applicant had not demonstrated that he had maintained a settled purpose in Jersey throughout the period.

- 3.3 Turning to the Control of Housing and Work (Jersey) Law 2012, Mrs. Worboys advised that the purpose of the Law was to –

*‘enable Jersey to preserve and maximise the benefits of its resources. To further those aims, the Law aims to control the overall population density of Jersey and the availability of work and housing for people with strong connections or associations with Jersey and, more generally, in such a way that is in the best interests of the community.’*

- 3.4 With regard to the Control of Housing and Work (Residential and Employment Status) (Jersey) Regulations 2013, there were no discretionary provisions within the Regulations in respect of the granting of Entitled for Work Status. The criteria had to be satisfied or the status could not be confirmed. Article 4 of the legislation set out the conditions for Entitled for Work Only status and loss of status. Paragraph 2 of the Regulations set out the conditions which had to be satisfied in

terms of Entitled for Work Status and these required a continuous period of ordinary residence in Jersey for 5 years or more immediately before a person could make an application for a registration card. Alternatively, the person must be the spouse or civil partner of a person with Entitled, Licensed or Entitled for Work Only Status.

The legislation required ordinary residence of specific durations for the conditions of particular residential and employment statuses to be met. It was, nevertheless, recognised in the legislation that absences from the Island could occur. There were times when a person was not physically present in the Island but this did not automatically mean that the person was no longer ordinarily resident. The Law required the provision of guidance, which had first been published in 2016 and subsequently updated in 2018 and 2019, and which set out how temporary absences were dealt with. Mrs. Worboys stated that she had initially expressed reservations about the production of policy guidance due to the number of variations and the difficulty in addressing each one. 3 general questions were considered in the context of absence from the Island – how long the period of absence was, the reason for the absence and the individual’s residential and employment status when the period of absence began. Underlying these questions was a consideration of what effect the absence had on a person’s settled purpose. Unless specific provision was made there was no guarantee that an absence of longer than 6 weeks during a calendar year would be seen as anything other than a break in ordinary residence.

- 3.5 With reference to the policy guidance and, in particular, paragraph 65, which related to caring for another person outside of the Island, it was noted that this ‘may’ be treated as ordinary residence in Jersey, subject to the provision of sufficient evidence and ‘may’ be applied to persons with Entitled for Work Only and Entitled status and ‘may’ cover absences of no longer than 6 months. However, if it was considered that the person no longer had a settled purpose in the Island any absence in these circumstances would be seen as a break in ordinary residence. The policy provision purposely excluded those individuals with Registered and Licensed status due to the necessity to impose controls that limited population in a small Island with finite resources. Such controls had to be proportionate and take account of human rights legislation. The legislation and policy guidance allowed for greater flexibility in relation to absences for individuals with Entitled status as these individuals had greater access to housing and work.
- 3.6 With regard to ordinary residency, the principal determining factor was one of demonstrating a settled purpose in the Island and whether there was a habitual or continued nature to that purpose. There was no definitive list of settled purposes against which ordinary residence could be judged and it was acknowledged that there may be one or more reasons why a person was in the Island. The ordinary residence test did not require judgement of the merits or otherwise of the reason why a person was in the Island but required an assessment of whether such a reason existed. Determining a habitual or continual aspect of a person’s settled purpose required consideration of how that person ordered and managed their life and affairs. For example, accommodation arrangements, management of income and possessions, the context in which they lived and links which the person had or maintained to another jurisdiction. In response to a question from the Chair, Mrs. Worboys confirmed that the Department did not make enquiries as to the

extent to which an applicant had established/re-established a connexion elsewhere as the burden of proof was on the applicant.

- 3.7 Mr. Ahmad had relinquished his accommodation and left the Island with his family and his child had been home schooled in Pakistan during the period. Whilst his job at EY had been kept open, he was not present in the Island to fulfil the role. It was noted that the on line form completed by Mr. Ahmad (which had not been revised since he had completed it) included a number of ‘flags’ which provided important information on the impact on residential and employment status of leaving the Island, together with a link to the policy guidance, and the opportunity also existed to seek further information from the Department.
- 3.8 Mrs. Worboys concluded by advising that Mr. Ahmad had been made aware that if he relinquished his Licensed employment status he would no longer be able to remain in his current Qualified accommodation.

#### **4. Findings**

- 4.1 The Board accepts that the purpose of the Control of Housing and Work (Jersey) Law 2012 (the Law) is to enable Jersey to preserve and maximise the benefits of its resources, and in doing so, control the overall population density of Jersey and the availability of work and housing for people with strong connections or associations with the Island , and more generally, in such a way that is in the best interests of the community. The Board finds nothing essentially unjust, oppressive or improperly discriminatory in the Law or in its expressed purpose. The subordinate 2013 Regulations set out the conditions to be satisfied if a person is to have Entitled for Work Only status, which include, inter alia, that the person has had a continuous period of ordinary residence in Jersey for 5 years or more. Again, the Board has no issue with that condition.
- 4.2 The Deputy Chief Minister’s representatives sought to persuade the Board that the Regulations did not allow him to exercise any discretion in determining whether or not the conditions to establish Entitlement to Work Only status had been satisfied, and indeed it is the case that a minimum continuous period of ordinary residence for 5 years or more is an absolute prerequisite for establishing such status. What is however absolutely clear from the Policy Guidelines is that the Deputy Chief Minister has very extensive discretion in how he assesses whether or not there has been a continuous period of ordinary residence in any particular case, and it is in the exercise of that discretion that problems might arise.
- 4.3 In its submission, the Department referred to the Policy Guidance (most recently updated in May 2019), and in particular to Paragraph 65 thereof in relation to ‘Caring for another person outside the Island’, which of course was the reason for Mr. Ahmad’s absence from Jersey. That Paragraph states as follows:

*“Where a person is obliged to travel away from the Island to care for either their parent or their child, the time spent away from the Island May be treated as ordinary residence in Jersey, subject to the provision of sufficient evidence. This may be applied to persons of Entitled for Work Only and Entitled status and May cover absences of no longer than 6 months. However, if it is seen that the person*



*in fact no longer has a settled purpose in the Island, any absence in these circumstances will be seen as a break in ordinary residence.”*

It is clear therefore that the Minister has considerable discretion, first in deciding whether the absence while caring for a parent or child may be treated as ordinary residence in Jersey, and second, in deciding whether or not the person continues to have a settled purpose in the Island.

- 4.4 According to the Minister’s submission, *“the discretionary policy provision purposely excludes persons with Registered and Licensed status.”* The Board does not accept that. While Paragraph 65 indeed states that the provision *“may be applied to persons of Entitled for Work Only and Entitled status”*, it does not expressly prohibit the application of the same discretion to Licensed persons. The Minister also maintains that the legislation, and the policy guidance which sits alongside it, allows greater flexibility in relation to absences for persons with Entitled status than for those with Licensed or Registered status. If that is indeed the case, then the Board regards such a policy as unreasonably discriminatory. The need for a person to be absent from the Island to care for a family member will be the same whatever the status of the person, and it is that need that should form the basis of assessment as to whether ordinary residence has been maintained. That is not to say that more flexibility might not be afforded those of Entitled for Work or Entitled status when considering whether the settled purpose has been broken, but that is a different issue, with each case being looked at on its own merits.
- 4.5 In this case, as in all cases, the onus is on the claimant to show that his or her settled purpose has not changed. In the view of the Board, Mr. Ahmad did just that: he ensured that his employment remained open for him for the fixed period, and he arranged home schooling with the Jersey education authorities for his daughter. He also made arrangements for mail to be forwarded to his employer’s office in Jersey. In ideal circumstances, Mr. Ahmad would have retained his rented domestic accommodation in Jersey, but that was not financially feasible for him. Nevertheless, the Board considers that Mr. Ahmad had produced prima facie evidence of his settled purpose of continuing to live in Jersey.
- 4.6 The Department has stated in its submission that *“if it can be said that a person has a settled purpose in the Island and that it is habitual in nature, it is likely that they can be said to ordinarily resident. For the purpose of administering the Law, a person can only be ordinarily resident in one place at any one time”*.

In the view of the Board, Mr. Ahmad had made a prima facie case that his settled purpose was unbroken. By their own admission, the Department did nothing to show that ordinary residence in some other place had been established by Mr. Ahmad, nor was the Department able to say what more he could have done to persuade them of the maintenance of his settled purpose. In the view of the Board, Mr. Ahmad had sufficiently discharged his obligation to show that his settled purpose remained unchanged, in the absence of any counter argument from the Department.

- 4.7 The Board therefore finds that the policy which applies a harsher criteria in respect of caring for family members outside the Island to persons without Entitled for Work or Entitled status is discriminatory and unsustainable, and

identical policies should be applied across all categories of residential and employment status.

- 4.8 The Board further finds that the Minister was unreasonable in determining that Mr. Ahmad's settled purpose to remain in Jersey had been broken in the face of the prima facie case he had put forward and in the complete absence of any evidence in rebuttal.
- 4.9 The Board finds that the appeals process as applied in this case was fundamentally flawed in its application, and more importantly, appears fundamentally flawed in principle. Any appeal process worthy of the name requires a review by an independent person not involved in the original decision being appealed against, and the opportunity for the appellant to put directly to the independent person his or her reasons for challenging the original decision. The process should of course be as transparent as possible.

Although it is called an 'Appeals Process' in the document issued by the Population Office dated 9th September 2013, the Board does not consider it to be anything of the sort. Indeed, this document states that the aggrieved applicant should set out his case in writing, "and the Minister *may* be prepared to reconsider a decision". That is not a satisfactory appeals process.

What makes matters worse, is the fact that the 'Appeals Process' document states that "*in reconsidering, the Minister will normally seek the views of the Housing and Work Advisory Group which includes:*

*The Minister for Economic Development*  
*The Minister for Housing Minister (sic)*  
*The Minister for Social Security*

*or any Assistant Minister of the above. The Minister will either maintain or amend his decision".*

What makes the process unsustainable as an appeals process is that in fact the Deputy Chief Minister has delegated responsibility for the Law, but he is also the Minister for Economic Development, Tourism, Sport and Culture. Consequently, the process requires him to reconsider his own decision after having taken the views of himself (as part of HAWAG). Additionally, in this particular case, despite the "Appeals Process" document clearly stating that "*the applicant may also request a meeting with the Minister to discuss the application in person*", Mr. Ahmad was not afforded this opportunity. As a result, only Departmental officers put the matter before the Deputy Chief Minister, and while they may have put forward Mr. Ahmad's position, this was clearly not a process which could possibly be described as a fair and transparent appeals route.

The Board therefore recommends that the appeals process under the Law is modified to mirror the system used in Planning appeals, where three States members who have had no involvement in the original decision should first review the decision and submit their guidance to the Deputy Chief Minister who, likewise, will have had no direct involvement in the original decision. The appellant should have the opportunity to address the Deputy Chief Minister, who will then make his or her adjudication. The Board considers that the appellant's

right to put forward his own case is fundamental to any appeals process and should apply as a matter of course.

- 4.10 The Board wishes to record its concern that the provisions of Paragraph 65 of the Policy Guidelines (headed ‘Caring for another person outside the Island’) are unreasonably restrictive, in that they refer only to caring for a parent or child. They make no reference, for example, to a spouse or partner or any other person who may be in essential need of care. The Board recommends that consideration be given to the removal of any reference to a particular relationship with the person cared for, leaving it to the applicant to make the case that his or her absence as carer was essential.
- 4.11 The Board upholds Mr. Ahmad’s complaint in accordance with the Articles 9(2)(b) and (e) of the Administrative Decisions (Review) (Jersey) Law 1982, in that it believes that the decision made by the Deputy Chief Minister –
  - (b) was 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;
  - (e) was contrary to the generally accepted principles of natural justice.
- 4.12 The Board requests that the decision to maintain refusal not to grant Mr. Ahmad Entitled for Work status be reviewed and that Mr. Ahmad be given the opportunity of presenting his case in person to the Deputy Chief Minister. The Board further requests that the Deputy Chief Minister provide a formal response to this Report within 2 months of its publication, advising of any action and/or decisions taken as a consequence of these findings.

Signed and dated by –

G. Crill, Chair ..... Dated: .....

T. Chatterley ..... Dated: .....

S. Cuming ..... Dated: .....