MRS. C.A. GLAZEBROOK: 'G' CATEGORY HOUSING CONSENT (P.56/2000): REPORT

Presented to the States on 2nd May 2000
by the Housing Committee

STATES OF JERSEY

STATES GREFFE

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REPORT

Introduction

1. The report which accompanies P.56/2000 begins with a reference to the system of Boards of Administrative Appeal. It refers to the fact that the Housing Committee has declined to follow the recommendations of a Board of Appeal, reviews in outline the hearing and decision of the Board and then records the Committee's refusal to accept those views. There is a passing reference to the subsequent decision of the Royal Court which upheld the Committee's decision and criticised the Board's report. P.56/2000 then closes by asking members to judge for themselves -

> "……. whether the Committee should have followed the recommendations of the Board of Administrative Appeal and granted consent in this particular case."

The Board of Appeal Decision

2. The Committee gave full consideration to the findings of the Board and sought further clarification from a medical professional before arriving at its final conclusion. The reasons for the Committee not following the Board's recommendation are set out in the Committee's formal response to members of the Board.

3. The Committee is very live to the important functions discharged by Boards of Administrative Appeal. Rejecting the findings of such a Board is not a decision taken lightly by any Committee of the States and was certainly not taken lightly by the Housing Committee. For that reason alone the Committee thinks it important to relate the functions and finding of the Board of Appeal to the decision which the Committee itself had to make.

4. The Committee was being asked to give its consent in principle under Regulation 1(1)(g) (the "hardship" qualification). To give a consent under (g) the Committee must be satisfied that the hardship which would be caused to the applicant or persons ordinarily resident in the Island if consent were not to be granted *outweighs* the fact that he or she does not have residential qualifications. In other words, the Committee must carry out a balancing test, and what goes into the other side of the balance is the existing pressures upon the housing stock and the extent to which granting a consent not only adds to the number of those with qualifications, but will also establish a precedent for other applicants, which will create even more pressure upon the housing stock.

5. The Committee and its officers, who deal habitually with such applications, have a vast fund of personal knowledge of the nature and volume of such applications and of the existing pressures on the housing stock, which enable them to carry out this balancing task, difficult though it is. The members of a Board of Administrative Appeal will not have the same body of first-hand personal knowledge of the housing situation and of hardship applications. No matter how conscientiously they approach their task, it must always be very difficult for them to decide whether what is essentially a balancing exercise has been correctly carried out.

6. The decision of the Board of Appeal suggests that in fact the Board, perhaps inevitably, concentrated upon the hardship to the applicant and gave no more than a passing recognition to the need for that hardship to outweigh other factors. Paragraph 5.1 of the Board's findings shows that while the Board did no more than "(take) note" of the tests of balance applied in each case by the Housing Committee, nevertheless it considered that its own duty was to decide on the facts of "this particular case" whether the decision was unreasonable and would subject the applicant to excessive hardship.

7. The Committee's submission to the Board is attached as Appendix 1, the Board's decision as Appendix 2 and the formal response to the decision of the Board is attached as Appendix 3.

The Royal Court Hearing

8. The report which accompanies P.56/2000 suggests that judicial review, given the facts, was not an "entirely" satisfactory course. The Committee considers it important that members should know that in the course of the judicial review proceedings the Royal Court heard extensive evidence, not only from the Committee's officers, but also from Mrs. Glazebrook herself and from Dr. Coverley, the doctor whose opinion is referred to and relied upon in the judgment of the Board of Administrative Appeal. The evidence given before the Royal Court duplicated in some respects the evidence given before the Board of Appeal, but in the Royal Court it was tested in cross-examination. It was there found to be in some respects significantly inaccurate. That being so, it is perhaps disappointing that P.56/2000 continues to rely on a decision of the Board taken in part on a doubtful factual basis.

9. In this context the Committee considers two points particularly relevant. The first is that the Board was told, and based its judgment in part upon, the fact that "there are no other close relatives living in the United Kingdom", whereas when giving evidence before the Royal Court Mrs. Glazebrook told the Court that she had a sister and an uncle and aunt not far from a property which she owns in England.

10. The second is that the medical evidence which was adduced before the Royal Court made it clear that the disturbed behaviour of Mrs. Glazebrook's son was caused, not because of her housing difficulties in Jersey, but because he had lost contact with his father who was resident in the United Kingdom.

11. It appears to the Committee that what may lie behind the remark in P.56/2000 that judicial review was not an entirely satisfactory course is that the judicial review test which was relevant in the present case is whether the decision is irrational or unreasonable. It appears to the Committee that such a test gives the applicant every safeguard, because if the Committee's decision had been irrational or unreasonable, the Court would have quashed it.

12. The Court did hear, and test, all submissions that had been made by and on behalf of Mrs. Glazebrook, not only to the Committee but also to the Board of Administrative Appeal, and came to the conclusion -

> "Even accepting that not all decisions under Regulation 1(1)(g) have been wholly consistent, nevertheless, as was stressed to us by Mr. Le Ruez and Mr. Connew, each case has to be decided on its merits. We cannot find that there was a degree of irrationality or unreasonableness that would cause us to interfere."

The full findings of the Royal Court are attached as Appendix 4.

The current housing situation

13. One of the hardest tasks facing any Housing Committee is deciding whether or not an application for consent under Regulation 1(1)(g) (the hardship provision) should be granted. In virtually every case, there is some form or degree of hardship, and whilst the Committee would wish to accede to many more applications than it does, the impact of adding to the number of families seeking controlled accommodation cannot be ignored. The removal, in 1980, of the ability to qualify by length of residence alone has been the cause of an ever-increasing number of hardship applications. Although having no prospect of ever qualifying (until the introduction of the twenty-year residence rule in 1995) a considerable number of families have made Jersey their home since the early 1980s and find themselves, due to various circumstances, living in far from satisfactory conditions.

14. The housing situation has not improved since the Committee's submissions to the Board of Appeal which heard Mrs. Glazebrook's case in early 1999. Since that time, as States members will be aware from details already published, the States rental waiting list has continued to increase. The shortage of first-time buyer houses has also become more severe, and the overall desperate need for housing was highlighted when the States Assembly, in November 1999, approved the rezoning of a number of sites for first-time buyer and social rented housing. In addition, the latest 'Planning for Homes' document currently being compiled jointly by the Planning and Environment Committee, the Housing Committee, the Finance and Economics Committee and the Policy and Resources Committee will indicate a continuing shortfall of completed dwellings to meet housing need over the next five years.

15. The Island's housing situation is very relevant whenever the Housing Committee is considering discretionary consents under the Regulations as, quite clearly, the more people eligible for the regulated housing stock, the greater the pressure on existing accommodation and resources, adding fuel to already increasing prices across the entire housing sector.

16. The current housing situation is by no means the only factor in the minds of Housing Committee members when considering individual applications, but does provide a background which constrains to some extent the Committee's ability to accede to all cases of hardship. The Committee does not treat these applications lightly, each and every individual application is considered at some considerable depth on its own merits.

Consistency

17. The Committee accepts that where exercising discretionary powers it must act consistently. The very diverse nature of applications under Regulation 1(1)(g) makes direct comparison between cases difficult. It can be argued that no two cases are precisely identical, therefore, no precedent can be set; or indeed that many cases are similar and should all be treated in the same manner. By virtue of the sheer volume of such cases over the years (over 300 in the last

three years) there are bound to be a small number of cases where, when considered in isolation, there appears to be an inconsistency when comparing the generality of decisions made.

Housing Committees are made up of human beings who, when considering these hardship applications, have to make a collective judgement on the individual circumstances at that time. These circumstances will frequently be very distressing for the applicant, and can be so for the individual members of the Committee, particularly when an applicant meets them face to face.

The qualifying period

18. The Housing Regulations give a considerable advantage in qualifying to persons born in the Island as well as to those, such as Mrs. Glazebrook, who have a parent with residential qualifications. These persons only require an aggregate ten years' residence to qualify, whereas those with no connection must complete twenty years continuous residence.

Conclusion

19. This particular case has been considered in full by four differently constituted Committees on a number of separate occasions. On every occasion, the Committee has been in possession of all the submissions made and on every occasion has arrived at the same conclusion.

20. The Committee's final consideration of Mrs. Glazebrook's case was made following representations made to it by Senators Le Maistre and Horsfall. The Committee took into account those representations, together with all the submissions previously made in this case, and in addition noted that Mrs. Glazebrook was now residing in her own house in the United Kingdom. The Committee concluded that any hardship that exists is not sufficient to outweigh the fact that Mrs. Glazebrook does not have qualifications and thus to justify the granting of consent in advance of Mrs. Glazebrook achieving the required aggregate ten years' residence of which, to date, she has achieved four years and eleven months.

APPENDIX 1

Miss M. Newcombe
Deputy Greffier of the States
States Greffe
Morier House
St. Helier
Jersey
JE1 1DD

Our Ref: HLM28179/PC/JAC

19 February 1999

Dear Miss Newcombe

Board of Administrative Appeal
Mrs. C A Glazebrook, Catel Cottage, La Rue de Catel, Trinity

I refer to your letter dated 20 January 1998 (should be 1999) under the above heading with regard to a Statement of Complaint made on behalf of Mrs. Glazebrook requesting a Board of Administrative Appeal against the decision of the Housing Committee not to grant consent under Regulation 1(1)(g) of the Housing (General Provisions) (Jersey) Regulations, 1970, as amended.

Housing Law and Regulations

1. The Housing (Jersey) Law, 1949, as amended, has a long title which states:-

> "A law to provide for the constitution of a Committee of the States to administer matters relating to the housing of the population, to empower the States to acquire land by compulsory purchase for the purposes of housing and to control acquisition and sales and leases of land in order to prevent further aggravation of the housing shortage."

and subsequently extended to include:-

> "in order to ensure that sufficient land is available for the inhabitants of the Island."

2. Regulations enacted under this law set out the classes of persons to whom the Committee **shall** grant consent along with the categories of persons to whom the Committee **may** grant consent subject to certain criteria being met, eg Regulation 1(1)(j) (Essential Employees), Regulation 1(1)(k) (Wealthy Immigrants) and Regulation 1(1)(g) (Hardship).

3. The only Regulation under which the Committee is able to consider the request from Mrs. Glazebrook is Regulation 1(1)(g), which states:-

> "The Committee is satisfied that the hardship (other than financial hardship) which would be caused to the purchaser, transferee or lessee, or to persons ordinarily resident in the Island, if consent were not to be granted outweighs the fact that he does not fall within any sub-paragraph of this paragraph."

4. The balance which the Committee is required to make when considering a 1(1)(g) application is, therefore, between the hardship caused by refusal on the one hand, and the fact that the granting of the consent will lessen the accommodation available for those who the States thought should have first claim upon it.

5. The definition of hardship itself inevitably causes problems as the very existence of the Housing Law and Regulations themselves can be said to be causing hardship to a number of people lawfully resident and working in the Island. The judgement the Housing Committee is required to make is not simply whether there is hardship, as presumably there is hardship to a lesser or greater extent in any case where an application is refused, but whether that hard-ship outweighs the applicant's lack of qualifications.

Current Housing Situation

6. That there is a current and historic shortage of accommodation for persons with full residential qualifications can be in no doubt. As mentioned above, the very purpose of the Housing Law was to bring in controls to enable the Committee to prevent "an aggravation of the housing shortage" and, quite clearly, the numbers of persons entitled to

have access to the "controlled" market is determined by such person's ability to qualify under the terms set out in the Housing Law and Regulations.

7. A good indication of the housing shortage is the number of persons who are accepted on the States Rental Waiting List which is specifically designed to only accept those individuals or families who are considered to have a recognised housing need. The introduction of the Private Sector Rent Rebate Scheme for those who might presumably have required States Rental accommodation for financial reasons, has meant that the actual persons on the list are looking to the Housing Committee as their only possible source of suitable accommodation. The waiting list itself, at the end of 1996, contained 268 applicants, at the end of 1997 352 applicants and at the end of 1998 373.

8. It should be noted that the waiting list is not the only indicator of housing need as there is also a dearth of suitable first time buyer properties as is evidenced by the high prices in this sector of the market and difficulty in finding any suitable family accommodation for less than £200,000.

9. The latest residential land availability report jointly compiled by Planning and Environment Committee, Housing Committee, Finance and Economics Committee and the Policy and Resources Committee indicates that up to the year 2003 there is a **shortfall** in the number of dwellings required within this period of some 625 social rented dwellings and 350 first time buyer dwellings.

10. It is against this background of housing controls and the current housing situation that the Committee is required to adjudicate on cases requiring a discretionary consent.

Committee Procedures

11. Currently, at every single Committee meeting a number of 1(1)(g) applications are considered. Almost all involve young children, and include associated practical and medical problems caused by living in less than satisfactory accommodation both to children and parents alike. Unfortunately, many of these relate to single parents which, in itself, is a state that causes very real stresses and strains on the family.

12. The Committee is not isolated or immune from the reality of the difficulties faced by such people. Every other week, two members of the Committee, by rotation, sit as a Sub-Committee to meet with applicants who wish to appeal against the decision of the Committee. At these meetings, which are very informal, all the emotions and stresses are blatantly laid bare. On some occasions, members visit such families in their homes and are often distressed to view some of the conditions having to be tolerated by these families. In all cases, these meetings and visits are reported back to the full Housing Committee for further consideration.

13. The Committee wishes it were in a position to agree to nearly all of these hardship cases but bearing in mind the volume of such cases, does have to draw a difficult line between showing compassion for individual cases and taking into account the overall needs of the individuals and families with full local residential qualifications often themselves living in far from satisfactory housing conditions.

Mrs. Glazebrook's Submission

14. Mrs. Glazebrook's father is Jersey born and left the Island in 1960 to pursue a career with the Metropolitan Police. Whilst residing in the United Kingdom, Mr. Hill married Mrs. Glazebrook's mother and Mrs. Glazebrook was born in the UK in 1965. Due to the history of Mr. Hill's family in the Island, the family made regular visits to the Island and Mrs. Glazebrook knows the Island well, her godfather being Jersey born and many holidays being spent at her grandparents' farm in St. Martin.

15. At the age of nineteen, she first came to live in Jersey staying with relatives until she found suitable lodgings. Whilst in Jersey, she married Mr. Glazebrook who had no residential status and who was working in the Island at the time and, soon after their marriage, Mrs. Glazebrook left to reside in the UK following her husband's employment there. They lived at various addressed in the UK and, in 1990, their son Matthew was born.

16. Following Mr. Hill's retirement from the Police Force in late 1991, he and his wife returned to reside full time in Jersey.

17. In 1992, Mrs. Glazebrook's marriage started to develop problems which culminated in Mr. Glazebrook departing from the matrimonial home leaving Mrs. Glazebrook with the difficulty of looking after her son and dealing with a house and mortgage. Mrs. Glazebrook continued to reside in the UK and, in 1995 following the traumas of being a lone parent and difficult divorce court hearings, she decided that as her parents and relatives all lived in Jersey, it

would be logical to move to the Island to be with them and to seek their emotional support.

18 Mrs. Glazebrook and her son returned to the Island in July 1997, initially living with her parents and then occupying a property as the lodger of a local person. Following difficulties with that arrangement, she is currently residing back with her parents.

19. In November 1998, Mrs. Glazebrook approached the Housing Committee for consent under Regulation 1(1)(g) to enable her to house herself and her son in residential accommodation over which the Housing Committee has control. In summary, the application was based on the following grounds:-

(i) Not having her own accommodation was having detrimental effect on her son who was also suffering difficulties following his father's departure from the matrimonial home.

(ii) The distress that her and her son's presence was causing to her mother by living in her parents' house in the light of her mother suffering from multiple sclerosis.

(iii) The damage that would be further caused to her son were she to be required to move back to the UK due to her inability to find and afford suitable lodging-type accommodation which could accommodate her and her son in an area that would still enable her son's continuing attendance at St. Martin's school.

(iv) That she would, in any event, subsequently qualify automatically under Regulation 1(1)(h) after a further period of residence in the Island.

20. Regulation 1(1)(h) of the Housing Regulations states that the Committee shall grant consent where:-

> "The Committee is satisfied that the intending purchaser, transferee or lessee is a child of a person who falls under any sub-paragraph of this paragraph, is twenty years of age or over and for a total period of at least ten years commencing prior to his twentieth birthday has been ordinary resident in the Island."

22. Mrs. Glazebrook fulfils the requirements of that Regulation in that her father is fully residential qualified, she is over twenty years of age and, prior to that age, did commence a period of ordinary residence in the Island. The requirement she does not meet is that her total period of ordinary residence in the Island is not ten years. At the time of her first application such period only amounted to three years and ten months.

23. The Committee refused Mrs. Glazebrook's first approach, following which Senator Shenton accompanied by Mrs. Glazebrook and Mrs. Hill met with the Housing Sub-Committee. Subsequently, the full Housing Committee reconsidered all the factors submitted by and on behalf of Mrs. Glazebrook and, once again, decided that consent under Regulation 1(1)(g) could not be justified.

Reasons for the Committee Decision

24. As can be seen from the above, when considering such applications it is not simply a question of whether there is hardship but whether that hardship outweighs the applicant's lack of qualifications. A previously constituted Review Board included in its findings the following comments:-

> "The Board considers that an application for consent under Regulation 1(1)(g) is an extremely difficult matter of judgement for the Housing Committee. This Regulation applies to a person who does not qualify under any of the Regulations as such, but who would experience hardship (other than financial hardship) in the view of the Committee if consent were not granted. The Committee has to satisfy itself that the degree of hardship which the applicant would suffer is sufficient to outweigh the fact that he has no residential status in his own right. Hence, unlike some of the other Regulations, the applicant has no automatic right to a consent - it is granted solely at the discretion of the Committee which considers each case on its merits.
>
> The Board does not have to substitute its own opinion for that of the Housing Committee, it has to consider whether, in all the circumstances, the Housing Committee could reasonably have come to the decision it did and that it gave proper consideration to all the facts."

25. In applying this Regulation, the Committee is obliged to weigh up the hardship being experienced by the applicant in relation to that being experienced by other residents in housing terms. This also involves the Committee comparing the applicant's case with that of others in similar circumstances, given that if it were to grant consent to the applicant, it would be more or less bound to do likewise to all others in the Island in similar or worse conditions who do not have

residential status under the Housing Law. Whilst it is quite clear that the circumstances of no two applicants will be precisely identical, the Committee has a legal, let alone a moral, obligation to administer these Regulations consistently.

26. A letter from a former Attorney General to Senator Shenton, copied to the then Housing President, stated:-

> "Regulation 1(1)(g) confers a wide discretion upon the Housing Committee. The exercise of that discretion is, generally speaking, a matter for the Committee and the Royal Court has made it clear in a long line of cases that it will not substitute its own view for that of the Committee even if it disagrees with the Committee unless it could be said that the Committee has acted unreasonably.
>
> "Reasonableness" is at the core of the exercise of discretion. It would be unreasonable for a Committee to exercise discretionary powers inconsistently or capriciously. The discretion must be exercised within defined limits, even if the Committee is, to an extent, responsible for defining those limits."

27. The Housing Committee and the Department receive many hundreds of applications a year from persons who do not possess residential status and yet wish to be afforded them in order to have access to the wider housing market. It follows from the comments of the Attorney General quoted above that, to some extent, the Housing Committee defines it's own margins of discretion under this Regulation and successive Committees have felt that, whilst the housing demand and supply situation was in such great imbalance, it would be failing in its duty to those with residential qualifications to apply a very relaxed view to applicants under this Regulation. It must be re-emphasised that every additional discretionary consent granted means, in effect, one more unit of accommodation for ever lost from the housing stock or, alternatively, one additional person seeking such limited accommodation.

28. In connection with the factors in Mrs. Glazebrook's case, the Committee applies a general policy that, where the Regulations require a specified period of residence in the Island, unless there are specific extenuating circumstances, then that period should be served before consent is granted. For example, a person required to have been resident in the Island for a total of ten years who merely wished to buy six months early because a property they desired became available, would not be granted consent on the basis that the requirement to achieve a certain number of years was intended by the States when the Regulations were approved.

29. Turning to the more difficult substance of Mrs. Glazebrook's case, the Committee certainly did dwell, at some length, on the various issues raised in the submissions before it. Quite clearly, any single parent will find it difficult to find unqualified accommodation and would also be likely to find family difficulties in taking up residence en famille with either set of parents. When Mrs. Glazebrook decided to return to the Island, these factors must have been taken into account as she knew that she did not possess residential qualifications in her own right. The potential difficulties with regard to having to move within different areas in the Island and the affect it would have on her son and his attendance at school and the general difficulties of leading a life in lodging accommodation in her circumstances, must have been considered a risk worth taking when removing herself to Jersey.

30. The factor with regard to her mother's illness and the affect of her residence en famille with her father and mother was probably not a factor known to Mrs. Glazebrook at the time she decided to return. Nevertheless, the Housing Committee took into account each and every aspect of the submissions which, quite clearly, are very human in nature and understandably will have been distressing to the parties involved.

31. One assertion made at the Sub-Committee meeting was with regard to the house currently owned by Mr. and Mrs. Hill being empty and, therefore, intimating that its occupation by Mrs. Glazebrook would not be harming the housing stock. It must be born in mind that this property, by virtue of conditions imposed on consent granted to Mr. and Mrs. Hill can only be occupied by a person with local residential qualifications and, therefore, were Mrs. Glazebrook to be granted consent whether she occupied this property or another would, in overall housing terms, have exactly the same effect.

32. The Committee, having all the above factors in mind and weighing up its duties under the Housing Law and Regulations and despite having much sympathy with the difficulties the family are facing, felt that consent in this case could not be justified.

33. The Committee gave consideration to this case on the following dates:-

13 November 1998	First consideration of request for 1(1)(g) category consent.
27 November 1998	Senator Shenton met with the full Housing

	Committee and requested more time to consider his appeal.
15 December 1998	(New Housing Committee) At the President's request - decided to defer until the following day.
16 December 1998	Decision maintained. Senator Shenton invited to meet with Sub-Committee.
11 January 1999	Senator Shenton, Mrs. Glazebrook and Mrs. Hill met with the Sub-Committee.
18 January 1999	Final reconsideration by full Housing Committee following the Sub-Committee meeting.

Comments on Case Submitted for Administrative Appeal

34. In Deputy Hill's letter of 20 January 1999 seeking a Board of Administrative Appeal against the Committee's above decision, he refers to his daughter and grandson being made homeless as a result of actions by the Housing Department in connection with a property owned by himself and his wife in St. Martin.

35. That property concerned was purchased by Mr. and Mrs. Hill in late 1997 and was occupied by a locally qualified tenant who, in turn, took in Mrs. Glazebrook and her son as his lodgers. The Deputy was well aware of the circumstances and difficulties of such situation having been advised of such by the Department. However, the circumstances referred to in his letter were as a result of the then local tenant moving out and putting Mrs. Glazebrook in immediate illegal occupation of the property by virtue of the Occupancy Conditions relating to that property and the prospect that any further tenant the Deputy sought on condition that his daughter and grandson became their lodgers would potentially be in breach of the Housing Law.

36. The advice given by the Department as a result of clear guidance by the Crown Officers is that, if it is the intention of the landlord, in entering into an agreement to lease a property to a person with residential qualifications, to provide accommodation for a third party without residential qualifications, the landlord is considered to be in breach of Article 14(1)(d) of the Housing Law. That Article refers to an offence being committed if any person is party to a scheme or device for any transaction/arrangement that is, or is intended to be, in contravention of the law.

37. Throughout the practical difficulties being experienced by Mr. and Mrs. Hill and their daughter with regard to that property, the Department took explicit advice from the Solicitor General to ensure that the Deputy and/or his daughter was given correct legal advice. In Deputy Hill's penultimate paragraph, he claims that the Committee had not attached sufficient importance to letters of support by professionals and that neither did they seek clarification from them.

38. The Committee, on each and every occasion it considered Mrs. Glazebrook's case, had individually before them and circulated in advance of the meeting, all written submissions made by any party who was connected with this case. The Committee certainly did not ignore but took note of all factors and, as stated earlier, arrived at a balanced decision on the information available to it. It is not clear what further clarification Deputy Hill feels that the Committee should have sought as the submissions made were all very clear and understandable. As a matter of practice, where there are any ambiguities or uncertainties with regard to submissions made, the Department in the first instance and, if in further doubt, the Committee itself, will cause further enquiries to be made where appropriate.

39. The final letter of the Deputy's submission claims that lesser cases of hardship have been granted consent under Regulation 1(1)(g). The issue of the degree of hardship is impossible to define but, overall, the Committee has to take a balanced judgement in the light of its experience in the past and also has immediate reference to previous decisions made by it which it has before it at the time of considering cases such as this. Attached to this Report are two documents setting out just such previous cases. The details of each case are, by definition, somewhat abbreviated and should not be taken as the only literal submissions, but the generality of the cases indicates the nature of the applications sought.

40. The Deputy also cites as a reason for his request for the Board of Administrative Appeal for, "an opportunity for the professionals' recommendations to be given more consideration . .". I would reiterate what was quoted earlier in this Report that it is not for a Review Board or, indeed, a Royal Court, to substitute its opinion when considering such

cases but to assess the degree of reasonableness of the Committee in arriving at the decision that it did. If it is the Deputy's intention to expand on or amplify further the submissions already made to the Housing Committee, it would seem more appropriate that these be made to the Housing Committee in the first instance rather than for any proposed Review Board but that clearly is a matter for the Greffier to decide.

41. One final point worth mentioning is that in Senator Shenton's letter to the President of the Housing Committee regarding this Appeal Board Hearing, he states that,

> "One is often successful in pleading the case for families without any links with the Island but suffering hardship, as opposed to local families who are separated from their children or grandchildren which, in my opinion, can be an even greater hardship".

42. It should be noted that the Housing Committee's review of the Housing Law and Regulations Consultative Paper issued in June 1997 included the comment via the Committee under the section on Regulation 1(1)(h),

> "There have been some occasions where Jersey born persons have left the Island for professional reasons, brought up a family outside the Island, and subsequently returned to Jersey. Their children will never be able to qualify (other than by length of residence) even to be near such persons in older age apart from actually residing with the parent(s)."

43. Over the years, there have been a number of applications where the applicant is a member of a family with generations of Jersey born and qualified relations. Whilst successive Housing Committees have strongly supported the family as an institution in its overall policies, that factor alone has never persuaded the Committee to grant consent in discretionary cases. The States has recognised such family connections by allowing the only two categories of Regulations that identify with family connections, Regulation 1(1)(a) (Jersey born) and Regulation 1(1)(h)(child of qualified person), to only have to achieve ten years aggregate residence as opposed to a continuous residential period required by the other Regulations.

I trust the above sufficiently sets out both the background and procedures of the Housing Committee in relation to its consideration of not only this particular case but others where applications under Regulation 1(1)(g) are involved. I enclose herewith copies of all submissions made in support of Mrs. Glazebrook's application and should you require any further clarification or information I would, of course, be only too pleased to supply it.

Yours sincerely

P CONNEW
LAW & LOANS MANAGER

Enc.

PM/126.99

BOARD OF ADMINISTRATIVE APPEAL

21st April 1999

Complaint by Mrs. C.A. Glazebrook against a decision of the Housing Committee

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

1. Present -

Board Members
R.R. Jeune C.B.E., Chairman
G.C. Allo
Miss C. Vibert

Complainant
Senator R.J. Shenton, O.B.E., representing Mrs. C.A. Glazebrook
Deputy F.J. Hill, B.E.M. (the applicant's father)

Committee
Deputy S.M. Baudains, President, Housing Committee
E.H. Le Ruez, Chief Executive Officer, Housing Department
P. Connew, Law and Loans Manager, Housing Department

States Greffe
Peter Monamy, Committee Clerk
M. de la Haye, Assistant Greffier of the States

The Hearing was held in public in the New Committee Room (first floor), States Building, Royal Square, St. Helier. The Board requested a meeting with the complainant, Mrs. Glazebrook, and subsequently met her in the presence of the President of the Housing Committee and the Chief Executive Officer, Housing Department.

2. Summary of the dispute

The Hearing had been convened to consider a complaint by Mrs. Catherine Adele Glazebrook of Catel Cottage, La Rue du Catel, Trinity, JE3 5HA, against the decision of the Housing Committee not to grant her consent under Regulation 1(1)(g) of the Housing (General Provisions) (Jersey) Regulations 1970, as amended.

3. Summary of Complainant's case

3.1 The Board heard from Senator Shenton that Mrs. Glazebrook, who does not have full residential qualifications, had been living in the United Kingdom but was now divorced from her husband. She maintained her son, Matthew (aged nine), the child of her former marriage and they had both moved to the Island in July 1997 in order to receive support from Mrs. Glazebrook's family. Mrs. Glazebrook had initially lodged with her parents (Mr. and Mrs. F.J. Hill) at their house, Catel Cottage, Trinity, and then had occupied another house owned by Mr. and Mrs. Hill, Church End, St. Martin, as a lodger of their tenant (a person with residential qualifications).

3.2 In October 1998, the tenant had left Church End and Mrs. Glazebrook and her son were required to vacate the premises, having been advised by officers of the Housing Department that Mr. and Mrs. Hill, Mrs. Glazebrook and any tenant would be in contravention of the Housing (Jersey) Law 1949, as amended, in the event that Mrs. Glazebrook and her son were again to lodge in that property as a condition of a tenancy arrangement. At that point, Mrs. Glazebrook and her son moved back with Mr. and Mrs. Hill in their principal residence.

3.3 During his time in Jersey, Matthew has attended St. Martin's Primary School and, because of the concerns of his mother and his Headteacher regarding his emotional stability and behaviour, he was referred to Dr. C. Cloverley, Consultant Child and Adolescent Psychiatrist. Both School and Dr. Cloverley considered it essential that for

Matthew's continued emotional well-being and stability he should continue to receive support from his immediate family and remain at St. Martin's School where he was making progress. Consequently, Mrs. Glazebrook and her son required two-bedroom accommodation in the east of the Island. (The Board received a further letter, dated 16th April 1999, from Dr. Cloverley which reiterated that Matthew's central needs were now for security and consistency, suggesting that Jersey was an ideal environment for this in that it provided the support of the wider family and enabled him to continue with the progress he was making at school and with friends, and that for Matthew to have to leave the Island would have a direct detrimental emotional effect upon him).

3.4 Unfortunately, Mrs. Hill was diagnosed as suffering from Multiple Sclerosis (MS) and was advised by her Consultant Neurologist that it was essential for her to avoid stress and tension. Consequently, it became inevitable that, with mother and child living with the mother's parents, stress and tension within the home could not be avoided. Despite many enquiries, it had not proved possible for Mrs. Glazebrook to find suitable lodging accommodation.

3.5 Mrs. Glazebrook had, therefore, made application to the Housing Committee for consent to occupy property in her own right under Regulation 1(1)(g) of the Housing (General Provisions) (Jersey) Regulations 1970, as amended.

3.6 Senator Shenton contended that insufficient weight had been given by the Housing Committee to the hardship which its decision would cause. Here was a child of a well-established Jersey family who had returned to her parents in order to receive support at a most difficult time for her, whilst at the same time caring for her son who was experiencing emotional difficulties following the break-up of his parents' marriage which had resulted in his separation from his father (with whom he no longer had any contact). Not only had the Committee failed to take adequate account of the situation in respect of Mrs. Glazebrook's child's health problems, but it had also not taken sufficiently into consideration the mounting deleterious effect that the continued sharing of the family home would have on Mrs. Hill.

3.7 Senator Shenton suggested that the situation had not been improved by virtue of the fact that, believing to be acting on advice from an officer of the Housing Department (although this was disputed by Mr. Connew), an apparently acceptable solution had been identified. Mr. and Mrs. Hill, had acquired a second property (Church End, St. Martin) for occupation by Mrs. Glazebrook and her son as lodgers of a residentially qualified person, only for that possibility to be subsequently denied.

3.8 It was contended that the effect of Mrs. Glazebrook's occupation of Church End on the Island's current housing problems would be nil, as Mr. and Mrs. Hill did not wish to lease that property unless their situation, and that of their daughter and grandchild were to improve as a result.

3.9 Senator Shenton summarised the position as being that, whilst the difficulties faced by the Housing Committee were recognised and sympathised with, the granting of consent to Mrs. Glazebrook should not be withheld in view of the particularly difficult circumstances in which she, a single parent, as a child of a well-established Jersey family, found herself in, to which factors adequate importance had not been given by the Housing Committee.

4. Summary of Housing Committee's case

4.1 Mr. Connew emphasised the points which had been made in the Committee's written submission regarding the extreme difficulties faced on a regular basis by the Committee in considering a large number of individual cases involving 'hardship'. In particular, the Board's attention was drawn to the findings of a previously constituted Board concerning an unrelated case, whereby it had been considered that "an application for consent under Regulation 1(1)(g) is an extremely difficult matter of judgement for the Housing Committee. This Regulation applies to a person who does not qualify under any of the Regulations as such, but who would experience hardship (other than financial hardship) in the view of the Committee if consent were not granted. The Committee has to satisfy itself that the degree of hardship which the applicant would suffer is sufficient to outweigh the fact that he has no residential status in his own right. Hence, unlike some of the other regulations, the applicant has no automatic right to a consent - it is granted solely at the discretion of the Committee which considers each case on its merits." The decision of that previous Board had gone on to say that "The Board does not have to substitute its own opinion for that of the Housing Committee, it has to consider whether, in all the circumstances, the Housing Committee could reasonably have come to the decision it did and that it gave proper consideration to all the facts.".

4.2 Mr. Connew confirmed that, other than the letter dated 16th April 1999 from Dr. Cloverley, the Housing Committee had had available to it all the relevant information when it had arrived at its decision not to grant consent to Mrs. Glazebrook.

4.3 The Board was informed that the Housing Committee was aware from a copy of correspondence which had been made available to it relating to advice which had previously been given to Senator Shenton by a former Attorney General, that "Regulation 1(1)(g) confers a wide discretion upon the Housing Committee. The exercise of that discretion is, generally speaking, a matter for the Committee and the Royal Court has made it clear that in a long line of cases that it will not substitute its own view for that of the Committee even if it disagrees with the Committee unless it could be said that the Committee has acted unreasonably. 'Reasonableness' is at the core of the exercise of discretion. It would be unreasonable for a Committee to exercise discretionary powers inconsistently or capriciously. The discretion must be exercised within defined limits, even if the Committee is, to an extent, responsible for defining those limits.".

4.4 In connexion with Mrs. Glazebrook's case, the Board was also informed that the Committee had applied a general policy that, where the Regulations required a specified period of residence in the Island, unless there were specific extenuating circumstances, then that period should be served before consent was granted. It was recognised that Mrs. Glazebrook had accumulated just over four years' residency (on an aggregate basis).

4.5 Mr. Connew went on to confirm that the Committee had considered, at some length, the various issues which had been raised in the submissions which had been made in respect of Mrs. Glazebrook's application. It had been considered that, quite clearly, a single parent would find it difficult to find unqualified accommodation and would also be likely to find family difficulties in taking up residence en famille with either set of parents. However, the Committee believed that these factors must have been taken into consideration by Mrs. Glazebrook before she decided to move to the Island and, for its part, the Committee had taken into account each and every aspect of the submissions which had been made, including the circumstances of Mrs. Hill's illness. The system in place provided an opportunity for applicants to appeal directly to a Sub-Committee of the Housing Committee at which all the relevant factors could be discussed in detail.

4.6 Mr. Connew referred to a matter which had been raised by Senator Shenton in his correspondence with the President of the Housing Committee, relating to local families who, separated from their children or grandchildren, might suffer even greater hardship than families with no links to the Island. It was stated that, whilst successive Housing Committees had strongly supported the family as an institution in its overall policies, that factor alone had never persuaded the Committee to grant consent in discretionary cases.

4.7 With regard to the contention that the grant of consent to Mrs. Glazebrook to occupy Church End would have no impact on the Island's current housing problems, Mr. Le Ruez commented that the effect would be that another unit of accommodation would be effectively 'lost' to the general population.

4.8 Mr. Le Ruez also referred to the 'weighting' applied to factors associated with health aspects. Whereas the involvement of a child might well represent a significantly greater level of hardship, this was not unique to Mrs. Glazebrook's situation but applied to hundreds of other cases. In addition, it was suggested that whilst on the one hand the circumstances surrounding Mrs. Hill's unfortunate illness might be said to be a positive factor in Mrs. Glazebrook's favour, the presence of the support of a local family could be said to be a negative factor in the Housing Committee's thinking, insofar as other applicants without the benefit of local family connexions might be said to be relatively disadvantaged.

4.9 Mr. Le Ruez assured the meeting that the current standard of lodging accommodation in the Island was high - the majority now being self-contained - although it was acknowledged that such accommodation tended to be relatively expensive. However, this did represent a reasonable alternative to the current situation in Mrs. Glazebrook's case whereby living with her parents was not considered to be appropriate on the grounds of Mrs. Hill's ill health.

4.10. Deputy Baudains summarised that whereas the Housing Committee readily accepted that Mrs. Glazebrook faced difficulties associated with her current circumstances, such was the case for hundreds of other people in the Island. Mrs. Glazebrook was at least able to remain in Jersey and, sadly, there appeared to the Committee to be no extenuating circumstances over and above the situation which many others found themselves in which would justify its granting consent in her case.

5. The Board's findings

5.1 The Board recognises that the Housing Committee faced an unenviable task in considering a large number of applications from persons with individual circumstances, some representing cases of greater hardship than others, which prevented them from residing in the Island. Whereas the Board has taken note of the 'tests of balance' which were applied to each case by the Housing Committee, it now falls to the Board to decide on the facts of this particular case whether the Committee's decision was unreasonable and would subject the Complainant to an

excessive hardship.

5.2 The Board, having resolved to divorce itself from the earlier history of this matter, has based its decision only on the current facts as they affect Mrs. Glazebrook and the long-term well-being of her son. Having noted that the Chief Executive Officer of the Housing Department had accepted that a child might well represent a significantly greater level of hardship in any given case, the Board believes that this must apply to an even greater degree when a 'disruptive' emotionally and behaviourally disturbed child is involved - a factor which whilst possibly not unique to Mrs. Glazebrook's situation was unlikely to apply in "hundreds of other cases."

5.3 The Board has also noted from information provided by the Housing Department that it appears that many cases which involved medical circumstances have hitherto been granted consent by the Committee.

5.4 The Board considers that, in Mrs. Glazebrook's case, it would be more appropriate for her as a member of a Jersey family to be granted consent than it would be for a person without local connexions to be allowed to gain residential qualifications. In the present case Mrs. Glazebrook has no other relatives other than in Jersey to whom she could call upon for assistance. Mrs. Glazebrook finding herself in great difficulty was, in effect, 'coming home' to the support of her parents. A further factor in Mrs. Glazebrook's favour is that whilst, in normal circumstances, it would have been appropriate for her to live with her parents, Mrs. Hill's unfortunate illness rendered it detrimental to the well-being of the family as a whole when taken into consideration with Matthew's own emotional and behavioural difficulties.

5.5 Whilst the Board recognises that it could be said that Mrs. Glazebrook's occupation of lodging accommodation would enable her and her son to live in the Island in premises other than those of her parents, the Board has noted that Matthew Glazebrook would then be required to spend his formative years in such accommodation and it might not be possible to find appropriate accommodation so that Matthew could continue at his present school.

5.6 The Board, taking into account the family's Jersey background, the fact that there are no other close relatives living in the United Kingdom, and that Mrs. Glazebrook, now a single mother, is bringing up a child with emotional and behavioural difficulties in the Island where her parents, one of whom is potentially seriously ill, reside, believes that the Housing Committee has been unduly oppressive and unreasonable in its decision not to grant consent to Mrs. Glazebrook, and that an excessive hardship would result.

5.7 The Board, in conclusion and in line with Article 9 of the Administrative Decisions (Review) (Jersey) Law 1982, as amended, having found in favour of Mrs. Glazebrook, urges the Housing Committee to reconsider its decision and requests that the Committee undertakes such reconsideration within three months from the date of these findings.

Signed and dated by -

.....

R.R. Jeune, Esq., C.B.E., Chairman

.....

G.C. Allo, Esq.

.....

Miss C. Vibert

APPENDIX 3

R.R. Jeune Esq CBE
Chairman
Board of Administrative Appeal
States Greffe
Morier House
St Helier
Jersey
JE1 1DD

Our Ref: HLM28179/PC/JAC

18 June 1999

Dear Mr. Jeune

I refer to the hearing by a Board of Administrative Appeal, chaired by yourself, of a complaint against the decision of the Housing Committee not to grant consent to Mrs. C.A. Glazebrook under Regulation 1(1)(g) of the Housing General Provisions (Jersey) (Regulations) 1970, as amended.

I would confirm that at its meetings of the 17 May and 14 June 1999 the Housing Committee reconsidered its decision as requested in the Board's findings dated 7 May 1999. In the course of these deliberations the Committee reviewed previous decisions taken in respect of other applications made under Regulation 1(1)(g) and also sought and received further clarification from Dr. Coverley with regard to the behavioural difficulties being encountered by Mrs. Glazebrook's son.

Having taken a very long and careful look at both the findings of the Board and the submissions made by and on behalf of Mrs. Glazebrook, I would advise you that the Housing Committee can still see no compelling justification for altering its decision in this case and does not accept the Board's finding that, in arriving at the decision to reject Mrs. Glazebrook's application, it had been unduly oppressive and unreasonable and that excessive hardship would result.

The Committee noted that in paragraph 5.1 of the Board's findings, the Board had taken a note of the "tests of balance" which the Committee has to require of each case under its consideration and noted that the Board then went on to "decide on the facts of this particular case whether the Committee's decision was unreasonable and would subject the complainant to an excessive hardship".

The Committee is of the view that the Appeal Board has not given sufficient weight to the many other submissions that are made to the Committee in a variety of circumstances by other persons seeking consent under this Regulation. The Committee, in the course of its daily business, is regularly faced with families and individuals experiencing all types of physical and emotional trauma caused by their inability to have access to the controlled housing market by virtue of not possessing residential qualifications, often worsened by personal circumstances such as marriage or relationship break-ups. The Committee does recognise the difficulty a body such as the Board would have in fully appreciating the extent of the difficulties faced by a large number of other residents in the Island, when all the problems of one particular family are placed before them.

The Committee noted in paragraph 5.2 that the Board reiterated the comments of the Chief Executive Officer of the Housing Department "that a child might well represent a significantly greater level of hardship in any given case". Unfortunately, children of various ages form part of the majority of applications to the Committee under this Regulation. The Committee does not dispute that any disruptive or emotional and behavioural disturbance in such children is cause for greater consideration, but the Committee is aware in its dealings with so many relationship breakdowns where there are children that, in almost every case, there is a degree of emotional disruption to the children involved. The Committee noted the Board's comments that this was "unlikely to happen in hundreds of other cases" but, regretfully, in the Committee's view, it does.

The Committee fully accepts the Board's comments in paragraph 5.3 with regard to consents under this Regulation which, in the past, have been granted where medical circumstances have been submitted as part of the considerations. Once again, in the majority of submissions to the Committee, there is an element of support or comment from professionals in the medical area. Although not professing to be in any way medical experts, the Committee nonetheless has to take into account the submissions and apply the tests of balance as it does with all other relevant submissions. The Committee would not like it thought that merely the presentation of medical evidence to support difficulties being faced by many applicants has historically caused it to grant consent but, rather that submissions of this nature do add to the weight of any case submitted.

The Committee noted the Board's comments in paragraph 5.4 of its findings with regard to the appropriateness of a member of a Jersey family being granted consent as opposed to a person without local connection. The Housing Regulations already

take this into account by virtue of the fact that persons with local family connections are required to achieve an aggregate period of ten years before fulfilling the requirements of the Regulations, whereas persons with no local connections have to achieve a **continuous** period of residence, currently twenty years. The Committee does not dispute that, in this case, Mrs. Glazebrook made the decision to remove herself and her son to Jersey in order to receive the support of her parents. The Committee is of the view that in arriving at this decision, both Mrs. Glazebrook and her parents would have taken account of the current restrictions caused by the Housing Law and Regulations and, although fully understanding that Mrs. Hill's unfortunate illness has made living en famille in Mr. and Mrs. Hill's current property more difficult, it must be remembered that Mrs. Glazebrook's actual period of ordinary residence in the Island is relatively short.

In noting Mrs. Glazebrook's submissions referred to in paragraph 5.5 with regard to the location of her residence and the attendance of her son at his present school, the Committee accepts that it might not be as convenient as would be liked but does not accept that it would be impossible to find some form of accommodation that would allow her son to continue at his present school.

The Committee has taken full account of the family's Jersey background, as does the Law itself which discriminates in favour of those who are children of persons with residential qualifications. Whilst Mrs. Glazebrook is a single mother bringing up a child with some emotional and behavioural difficulties, she is no different to many other single parents without residential qualifications living in the Island. In Mrs. Glazebrook's case, unlike those with no family connection, if she remains on the Island she will qualify in less than six years time.

I would like to assure the Board that the Committee has not taken this decision lightly. The Committee does welcome outside scrutiny of its procedures and deliberations but, with all due respect to the very careful considerations the Board has made, the Committee is of the view that, in this case, the experience gained in considering submissions made by and on behalf of other applicants in all sorts of trying and difficult circumstances, enables the Committee to maintain its view that its decision in this case, although admittedly being very hard, is the right one.

Yours sincerely

DEPUTY SHIRLEY BAUDAINS
PRESIDENT, HOUSING COMMITTEE

cc: Jurat Allo
Miss C. Vibert
Mrs. C. Glazebrook

APPENDIX 4

Judgment No: 2000/018

ROYAL COURT

(Samedi Division)

31 January 2000

(Decision: 17 December 1999)

Before: Sir Peter Crill, KBE

and Jurats Potter and Le Brocq

Between Mrs. Catherine Adèle Glazebrook, née Hill Appellant

and The Housing Committee of the States of Jersey Respondent

Application for Judicial Review of Housing Committee decision under Regulation 1(1)(g) of the Housing (General Provisions) (Jersey) Regulations, 1970

Advocate G S Robinson for appellant

Crown Advocate A J Belhomme for respondent

JUDGMENT

THE COMMISSIONER: Mrs. Catherine Adèle Glazebrook, the appellant, was born in England in 1968. Through her parents she is able to qualify as a person entitled to occupy controlled property under Regulation 1(1)(h) of the Housing (General Provisions) (Jersey) Regulations, 1970. She came to Jersey when she was nineteen and married an Englishman in 1986 and returned to England with him in 1987. A son, Matthew, was born in 1990. As a result of the husband's infidelity, the marriage broke up and, following the decree absolute she returned to Jersey, partly to be near her parents (her mother suffers from incipient multiple sclerosis) and partly because she needed comforting by her family. Shortly before her return her parents had bought a house, Church End, where it was hoped she and Matthew could live as lodgers whilst she completed her years before obtaining housing qualifications. Unfortunately she fell foul, inadvertently, of the Housing Law and had to move into her parents' three bedroom house with Matthew in 1998. In the meantime Matthew had started school at St. Martin's Primary School in September 1997. In January 1998 he had been referred to Dr. Coverly, a child psychiatrist by his head teacher. Because of the stress on her mother having an eight year old rumbustious child in the house, the applicant applied to the Housing Committee (of the day) to grant her housing qualifications under Regulation 1(1)(g) of the Regulations on the grounds of hardship. At that time her former husband was not making any contribution towards the maintenance of Matthew nor was he keeping regularly in touch with the boy which distressed him although he had begun to form a good relationship with his grandfather.

THE PROCEEDINGS

To support her application the appellant wrote to the Housing Officer, Mr. E Le Ruez, on 4 November 1998. In her letter she set out her case in rather more detail than we have thought it necessary to do but in it she made two interesting statements. First that she had promised Matthew that they would not return to England and second that her family, relatives and friends all lived in Jersey. As to the first she has had to change her mind, following the final rejection of her application by the then Committee in June 1999. We shall return to the procedure in a moment. In July the appellant sought to appeal against the decision. At the beginning of the hearing we ruled that, as there was no transaction in respect of a specific property, nor a prospective transferor or transferee, she could not appeal, but we decided to continue by way of a judicial review in the light of the decision Reynolds v Housing Committee, (30th October, 1995) Jersey Unreported; (1995) JLR N.I.

Fearing that she might lose what was then an appeal before the court she made tentative arrangements to enrol Matthew into the school he had been attending before they returned to Jersey, although there was some suggestion that he had been bullied there. Accordingly we heard an application to hear the matter before Christmas so that, if she were unsuccessful she would be in time to enrol Matthew. As regards her claim about her family and friends all living in Jersey it turned out during the

hearing that, in fact, she has a sister and an uncle and aunt not all that far from a small house which she received as part of the divorce settlement. The equity in the house is about £11,000 and, when we heard the case, it was empty. Nevertheless, she said in evidence that none of her three relatives in England were such as she felt able to approach them for non-financial help.

The Housing Committee rejected her application. Following what seems to us a rather strange procedure a sub-committee of the same committee that had refused her application looked at it again. We were not entirely convinced by Mr. Le Ruez's assurance that the sub-committee had to look at any new facts. A senior States Member then intervened and eventually after some delay (the committee had changed by this time) that member met the sub-committee (the President and one other) on18 February 1999. The appellant and her mother were present as was the States Member. The sub-committee agreed that the case would be looked at again and, according to a note prepared by the Law and Loans Manager, Mr. P Connew, in doing so it would look at it "completely afresh". On 18 January the Committee re-examined the application but maintained its decision. The matter then went to a Board set up under the provisions of the Administrative Decisions (Review) (Jersey) Law, 1982 as amended. The Board heard the reference to it and, on 7 May directed the Committee to reconsider the applicant's request.

On 17 May the Committee received a report from Mr. Connew and before reaching a decision instructed him to "conduct research into comparable cases". The relevant paragraph of the minutes is as follows:

> ***"After considerable discussion and in order to assist the Committee in coming to a decision, the Law and Loans Manager was requested to conduct research on comparable cases specifically relating to consents given on the grounds of hardship to children of people who had been born in the Island compared with children of people who had acquired qualifications having completed a period of residence in the Island. The Chief Executive Officer was requested to seek clarification concerning the medical condition of Mrs. Glazebrook's son."***

Mr. Connew wrote to Dr. Coverly who, on 1 June 1999, replied as follows:

> ***"Dear Mr. Connew,***
>
> ***re: Catherine and Matthew Glazebrook***
>
> ***Thank you for your letter dated 18th May asking for further information regarding the above.***
>
> ***You ask if the difficulties being experienced by Matthew would generally be suffered by children where there has been a broken marriage and loss of contact with one or other parent. As with all children these are very difficult circumstances and can often lead to distress and not infrequently behavioural and emotional problems. Having said this, I feel Matthew's situation is different to that in which many children find themselves, and this is likely to cause an increase in suffering. This is related to (a) the fact that Matthew idolised his father and (b) that his father although assuming brief contact with Matthew around the end of last year, has now cut off all contact again to the point that he has moved and has not left a forwarding address or telephone number. Taking both these facts into account, it is not surprising that Matthew is feeling traumatised. For some children, although they may continue to have feelings for the parent with whom they are not residing, they do not have as intense a feeling as Matthew for his father. Again, the majority of children even though they may not often see their parents still have some contact via telephone or letter and the opportunity to contact that parent when they wish. Although Matthew's situation is in no way unique I feel his feelings of rejection are greater than many children living in families where the parents separate.***
>
> ***Again, often a child and their parent in these situations are supported by their extended families who take on many of the roles that a partner would have done if the family was complete. I understand that at the moment there is no one who could act in this capacity for Matthew and his mother on the mainland.***
>
> ***In considering whether Matthew's problems have worsened since his arrival in the Island, I feel there has been a deterioration. When Matthew first came, he was at least aware of where his father was, although he did not have contact. We did try to contact his father to initiate at least some communication with Matthew which I understand was the end of last year and Matthew in fact did meet with his father for a short period of time which led to them spending a weekend together. If this had continued, it would have been very positive but unfortunately there was little communication following the visit and subsequent to this his father has moved not leaving Matthew with a forwarding address or telephone number. This has had a devastating effect on a boy who was optimistic that he again would have time with his father.***
>
> ***I hope the above has been helpful and please do not hesitate to contact me if you wish me to clarify any further issues.***

Yours sincerely

Dr. Carolyn Coverly

Consultant Child & Adolescent Psychiatrist

The Committee met on14 June and maintained its decision. The relevant minute of that meeting is as follows:

"3. The Committee, with reference to its Act No. 8 of 17th May 1999, gave further consideration to the recent findings of the Board of Administrative Appeal, which had met on 21st April 1999, in order to hear the case of Mrs. Catherine Glazebrook (née Hill) in connexion with her application of appeal for consent to occupy property in the Island under Regulation 1(1)(g) of the Housing Regulations.

The Committee received an oral report from the Law and Loans Manager and considered correspondence in connection with the case and was reminded that the Board had urged the Committee to reconsider its decision within three months of the date of the hearing.

The Committee noted a list of other similar cases that had been considered by the Committee, as constituted at the time, under Regulation 1(1)(g) of the Housing Regulations, and was able to draw comparisons of the hardship experienced in those cases as compared to the circumstances of Mrs. Glazebrook. The Committee formed the view that the medical evidence produced in the case of Mrs. Glazebrook was not as convincing as it might have been as it did not necessarily indicate that this was resultant from its decision not to grant consent on the grounds of hardship but rather that this was symptomatic of families experiencing the effects of divorce. Furthermore, Mrs. Glazebrook's case was no different to many others that had been placed before it in the past for which consent had been declined, however, she had the benefit and support of an extended family, which was resident in the Island.

The Committee, having agreed that while it had great sympathy for Mrs. Glazebrook's circumstances, as it had, indeed, for many of the applications brought before it under Regulation 1(1)(g) of the Housing Regulations, formed the opinion that Mrs. Glazebrook's case was not any worse than many other comparative cases which had been rejected in the past as there was no compelling evidence that excessive hardship would result from its decision. Furthermore, the Committee expressed the following views -

(a) that the Board had not made sufficient comparisons to the numerous other submissions under Regulation 1 (1)(g), many of which presented situations of emotional and physical trauma exacerbated by their individual difficulties to have access to the controlled housing market and their personal circumstances such as marriage/relationship breakdowns;

(b) that the Board would have had limited appreciation for the extent of such cases noted above when considering the case of one family in isolation;

(c) that while it was not disputed that children were made to suffer emotional and behavioural disturbance during relationship breakdowns, this was a common issue that arose in hundreds of other cases that were considered by the Committee under this Regulation, and was, therefore, not unique to Mrs. Glazebrook's case;

(d) that the Housing Regulations already accounted for qualified and non-qualified persons in terms of the required period of residency to be achieved prior to obtaining full residential status, and that Mrs. Glazebrook had made her own decision to come to Jersey with her son in order to receive the support of her parents, assumably, in the light of the current restrictions under the Housing Law and Regulations. Mr. Glazebrook's actual period of residency, notwithstanding her mother's unfortunate illness, was in fact very limited;

(e) that while the location of Mrs. Glazebrook's present accommodation was not as convenient for her son's attendance at his present school, it would not be impossible to find some other form of accommodation that would allow her son to continue at this school;

(f) that as the Law itself discriminates in favour of those persons possessing residential qualifications, as a single mother, Mrs. Glazebrook's case was no different to many other single parents without residential qualifications living in the Island, but unlike those with no family connexion, she would qualify in less than

six years time.

The Committee, with the foregoing in mind, decided to maintain its former decision to decline Mrs. Glazebrook consent under Regulation 1(1)(g) of the Housing Regulations, and to advise the Board of Administrative Appeal of its decision, and detailed reasons for it, accordingly.

The President and Senator W Kinnard arranged to meet Officers of the Department in order to take the necessary action and to draft a press release."

It is from that decision that the appellant seeks a judicial review.

The Committee was aware that the matter was sensitive because the appellant's father is a Deputy. There is no evidence that that fact influenced the Committee in arriving at its decision other than to make sure that, to the best of its ability, it reached an objective and unbiased decision.

On 18 June 1999 the President of the Committee wrote to the Chairman of the Board as follows:

"Dear Mr. Jeune

I refer to the hearing by a Board of Administrative Appeal, chaired by yourself, of a complaint against the decision of the Housing Committee not to grant consent to Mr. C.A. Glazebrook under Regulation 1(1)(g) of the Housing General Provisions (Jersey) (Regulations) 1970, as amended.

I would confirm that at its meetings of the 17 May and 14 June 1999 the Housing Committee reconsidered its decision as requested in the Board's findings dated 7 May 1999. In the course of these deliberations the Committee reviewed previous decisions taken in respect of other applications made under Regulation 1(1)(g) and also sought and received further clarification from Dr. Coverley with regard to the behavioural difficulties being encountered by Mrs. Glazebrook's son.

Having taken a very long and careful look at both the findings of the Board and the submissions made by and on behalf of Mrs. Glazebrook, I would advise you that the Housing Committee can still see no compelling justification for altering its decision in this case and does not accept the Board's finding that, in arriving at the decision to reject Mrs. Glazebrook's application, it had been unduly oppressive and unreasonable and that excessive hardship would result.

The Committee noted that in paragraph 5.1 of the Board's findings, the Board had taken a note of the "tests of balance" which the Committee has to require of each case under its consideration and noted that the Board then went on to "decide on the facts of this particular case whether the Committee's decision was unreasonable and would subject the complainant to an excessive hardship".

The Committee is of the view that the Appeal Board has not given sufficient weight to the many other submissions that are made to the Committee in a variety of circumstances by other persons seeking consent under this Regulation. The Committee, in the course of its daily business, is regularly faced with families and individuals experiencing all types of physical and emotional trauma caused by their inability to have access to the controlled housing market by virtue of not possessing residential qualifications, often worsened by personal circumstances such as marriage or relationship break-ups. The Committee does recognise the difficulty a body such as the Board would have in fully appreciating the extent of the difficulties faced by a large number of other residents in the Island, when all the problems of one particular family are placed before them.

The Committee noted in paragraph 5.2 that the Board reiterated the comments of the Chief Executive Officer of the Housing Department "that a child might well represent a significantly greater level of hardship in any given case". Unfortunately, children of various ages form part of the majority of applications to the Committee under this Regulation. The Committee does not dispute that any disruptive or emotional and behavioural disturbance in such children is cause for greater consideration, but the Committee is aware in its dealings with so many relationship breakdowns where there are children that, in almost every case, there is a degree of emotional disruption to the children involved. The Committee noted the Board's comments that this was "unlikely to happen in hundreds of other cases" but, regretfully, in the Committee's view, it does.

The Committee fully accepts the Board's comments in paragraph 5.3 with regard to consents under this Regulation which, in the past, have been granted where medical circumstances have been submitted as part of the considerations. Once again, in the majority of submissions to the Committee, there is an element of support

or comment from professionals in the medical area. Although not professing to be in any way medical experts, the Committee nonetheless has to take into account the submissions and apply the tests of balance as it does with all other relevant submissions. The Committee would not like it thought that merely the presentation of medical evidence to support difficulties being faced by many applicants has historically caused it to grant consent but, rather that submissions of this nature do add to the weight of any case submitted.

The Committee noted the Board's comments in paragraph 5.4 of its findings with regard to the appropriateness of a member of a Jersey family being granted consent as opposed to a person without local connection. The Housing Regulations already take this into account by virtue of the fact that persons with local family connections are required to achieve an aggregate period of ten years before fulfilling the requirements of the Regulations, whereas persons with no local connections have to achieve a continuous period of residence, currently twenty years. The Committee does not dispute that, in this case, Mrs. Glazebrook made the decision to remove herself and her son to Jersey in order to receive the support of her parents. The Committee is of the view that in arriving at this decision, both Mrs. Glazebrook and her parents would have taken count of the current restrictions caused by the Housing Law and Regulations and, although fully understanding that Mrs. Hill's unfortunate illness has made living en famille in Mr. and Mrs. Hill's current property more difficult, it must be remembered that Mrs. Glazebrook's actual period of ordinary residence in the Island is relatively short.

In noting Mrs. Glazebrook's submissions referred to in paragraph 5.5 with regard to the location of her residence and the attendance of her son at his present school, the Committee accepts that it might not be as convenient as would be liked but does not accept that it would be impossible to find some form of accommodation that would allow her son to continue at his present school.

The Committee has taken full account of the family's Jersey background, as does the Law itself which discriminates in favour of those who are children of persons with residential qualifications. Whilst Mrs. Glazebrook is a single mother bringing up a child with some emotional and behavioural difficulties, she is no different to many other single parents without residential qualifications living in the Island. In Mrs. Glazebrook's case, unlike those with no family connection, if she remains on the Island she will qualify in less than six years time.

I would like to assure the Board that the Committee has not taken this decision lightly. The Committee does welcome outside scrutiny of its procedures and deliberations but, with all due respect to the very careful considerations the Board has made, the Committee is of the view that, in this case, the experience gained in considering submissions made by and on behalf of other applicants in all sorts of trying and difficult circumstances, enables the Committee to maintain its view that its decision in this case, although admittedly being very hard, is the right one.

Yours sincerely

DEPUTY SHIRLEY BAUDAINS

PRESIDENT, HOUSING COMMITTEE

cc: Jurat Allo
Miss C Vibert
Mrs. C Glazebrook"

The Committee has been criticised for not heeding the opinion of the Review Board. We should look at three matters in that report. First, however, we must look at the Administrative Decisions (Review) (Jersey) Law, 1982 as amended. Article 9 (2) sets out those matters which entitle the Board to request the Committee to reconsider the matter. The sub-article is as follows:

"(2) Where a Board after making enquiry as aforesaid is of opinion that the decision, act or omission which was the subject matter of the complaint -

(a) was contrary to law; or

(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; or

(c) was based wholly or partly on a mistake of law or fact; or

(d) could not have been made by a reasonable body of persons after proper consideration of all the facts; or

(e) was contrary to the generally accepted principles of natural justice;

the Board, in reporting its findings thereon to the Committee, Department or person concerned, shall request that Committee, Department or person to reconsider the matter."

It is interesting to note that the Board after it had been rebuffed by the Committee did not avail itself of the provisions of Article 9(4) which allows the Board to refer the matter to the States.

We now look at the three matters in the Board's report we have mentioned.

1. In paragraph 5.3 the Board says that it would be more appropriate for the applicant as a member of a Jersey family to be granted consent than it would be for a person without local connections to be allowed to gain residential qualifications. That is a most unfortunate observation and quite outside the Board's duties.

2. The Board erred in supposing that the applicant had no relatives other than in Jersey. It may have been misled. It did say that the applicant had no other relatives other than those in Jersey to whom she could call upon for assistance, which is what eventually the applicant told us. Its conclusions had no such qualification.

3. Its decision was that the Committee had been unduly oppressive and unreasonable in its decision not to grant consent and that an excessive hardship would result. Having regard to the terms of Article 9 (2) of the Law under which it was acting the word "unduly" seems redundant. It did not find that the Committee had been "unjust". Presumably it decided in using the word "unreasonable" that the decision was as Article 9 (2)(d) says (the act or omission) "could not have been made by a reasonable body of persons after proper consideration of all the facts." Furthermore it is a pity that the Board introduced the adjective "excessive" qualifying the noun "hardship". As will be seen in a moment it does not appear in the Housing Regulations and led to counsel for the appellant submitting that when the Committee itself repeated the adjective it erred in law. We disagree.

THE PLEADINGS AND ARGUMENTS

There were six grounds of what was then thought to be an appeal. They were -

1. The respondent failed to take into account and give sufficient weight to the advice of Dr. Coverley, child psychiatrist, regarding the appellant's son and the adverse effect which a return to England would have on him.

2. The respondent failed to take into account and give sufficient weight to the advice of Howard Gibson FRCP, consultant physician and neurologist, regarding the state of health of the appellant's mother, which made it clear that the appellant and her son could not continue to reside *"en famille"*, because of the deleterious effect that would have on her mother's health.

3. The respondent failed to take into account the appellant's aggregate ordinary residence of 4½ years, and failed to consider that this would be an appropriate case to shorten the time limit specified in sub-paragraph 1(1)(h) of the Regulations.

4. The respondent failed to take into account that the appellant does not have the means or the income to rent unqualified accommodation.

5. The respondent has been inconsistent in its approach in the light of consents it has given to other applicants under sub-paragraph 1(1)(g) of the Regulations.

6. The respondent has failed to give due weight to the findings of the Board of Administrative Appeal dated 7th May 1999.

The Committee cited Regulation 1(1) (g) which is as follows:

"(g) the Committee is satisfied that the hardship (other than financial hardship) which would be caused to the purchaser, transferee or lessee or to persons ordinarily resident in the Island if consent were not to be granted outweighs the fact that he does not fall within (any sub-paragraph of this paragraph];"

It then set out in paragraph 2.4 of its pleading the nub of the matter. That paragraph reads:

"2.4 When considering an application for consent pursuant to Regulation 1(1)(g) of the 1970 Regulations the Respondent is therefore required to balance the hardship which may be caused to the purchaser, transferee or lessee or to persons ordinarily resident in the Island if the application is refused against the fact that the applicant does not otherwise fall within any of the remaining sub-paragraphs of Regulation 1(1) and will not therefore otherwise stand to qualify for consent pursuant to the 1949 Law and 1970 Regulations.

Implicit in the exercise of discretion by the Respondent in this regard is an understanding that granting consent will automatically lessen the amount of accommodation available for those persons who would otherwise qualify pursuant to the 1970 Regulations."

It then set out the present grim housing position of people wishing to be housed by the States. It has risen from 268 in 1996 to 422 at the time of the hearing. At the time of the appellant's letter to the Housing Officer in November it stood at 352. At paragraph 4.3 the Committee set out the difficulties it faced.

"4.3 Bearing in mind the volume of applications for consent pursuant to Regulation 1(1)(g) of the 1970 Regulations the Respondent has to draw a difficult line between showing compassion in appropriate individual cases and taking into account the overall needs of individuals and families who otherwise qualify pursuant to the 1949 Law and the 1970 Regulations who may themselves often be living in far from satisfactory housing conditions."

Very little was added by way of oral evidence to the medical reports that were before the Committee. The evidence of Mr. Le Ruez was helpful. He accepted that, although the Committee tried to be consistent there had been cases of apparent inconsistency. The Committee would have had the table of statistics before it. About 35 to 40% of 1(1)(g) applications were refused. Each consent under that Regulation added to the hardship of those already qualified and who had been waiting for a long time. Access to the qualified, and in his opinion, privileged, list meant that there was one less unit available for people who were in quite unsuitable accommodation. He said that it was unacceptable to have to pay more than one half of one's income in rent. It was difficult to find accommodation in the non-qualified sector but not impossible. On the other hand the appellant testified that she had tried without success to find something within her means. Unfortunately financial hardship is not a ground justifying consent under Regulation 1(1)(g).

THE LAW

The question of the scope of judicial review was reviewed extensively by the Court of Appeal in Planning and Environment Committee v Lesquende Limited (1998) JLR 1. It approved the grounds that had been adopted in a line of cases by this Court and encapsulated in the words covering the grounds to support a judicial review "illegality, irrationality and procedural impropriety". Since we have ruled on the first and the appellant does not allege the third, we are only concerned with the second.

Whilst the Court of Appeal in Lesquende used the term "irrationality" the decided cases in Jersey have kept to the term "unreasonable". That is that the decision was such that no reasonable body could have come to. In the CCSU case at page 951 Lord Diplock defined it more dramatically. He said ***"… it applies to a decision so outrageous in its defiance of logic that no sensible person who had applied his mind to the question to be decided could have arrived at it."*** Both counsel cited Rukat v Rukat (1975) 1 All ER 344 where it was laid down that "hardship" is not a term of art and that the courts should construe it in a common sense way, and the meaning put upon the word should be such as would meet with the approval of ordinary sensible people.

CONCLUSION

Even accepting that not all the decisions under Regulation 1(1) (g) have been wholly consistent, nevertheless as was stressed to us by Mr. Le Ruez and Mr. Connew, each case has to be decided on its merits. We cannot find that there was that degree of irrationality or unreasonableness that would require us to interfere. The application must be dismissed. There will be no order as to costs.

Authorities

Housing (General Provisions) (Jersey) Regulations 1970.

Reynolds -v- Housing Committee (30th October, 1995) Jersey Unreported; (1995) JLR N.1.

Administrative Decisions (Review) (Jersey) Law 1982, as amended: Article 9(2).

Planning & Environment Committee -v- Lesquende, Ltd. (1998) JLR 1 CofA.

Council of Civil Service Unions -v- Minister for Civil Service (1985) AC 374; (1984) 1 WLR 1174; (1984) 3 All ER 935; (1985) ICR 14; (1984) 1 Sol.Jo. 837; (1985) IRLR 28.

Rukat -v- Rukat (1975) 1 All ER 344.