

**ADMINISTRATIVE APPEALS: REPORT OF THE BOARD RELATING TO THE COMPLAINT OF MR. MALAY  
BASAK AGAINST A DECISION OF THE EDUCATION COMMITTEE**

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**Presented to the States on 9th April 2002  
by the Special Committee to Consider the Relationship between Committees and the States**

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**STATES OF JERSEY**

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**ADMINISTRATIVE APPEALS: REPORT OF THE BOARD RELATING TO THE COMPLAINT OF MR. MALAY BASAK AGAINST A DECISION OF THE EDUCATION COMMITTEE**

The Special Committee to Consider the Relationship between Committees and the States has received a report, submitted under Article 9(4) of the Administrative Decisions (Review) (Jersey) Law 1982, as amended, from the Board of Administrative Appeal appointed to review a complaint by Mr. Malay Basak (represented by Senator Wendy Kinnard) against a decision of the Education Committee that he was ineligible for a further education grant towards the cost of the university education of his son Anirban Basak.

The Board has reported that the Education Committee has not implemented the recommendations in the Board's findings and, accordingly the Special Committee, in accordance with Article 9(4) of the Administrative Decisions (Review) (Jersey) Law 1982, as amended, refers the matter to the States.

The Special Committee is currently considering the broader issues about the operation of the administrative appeals system referred to in the Board's report and intends to bring forward proposals to address some of the concerns mentioned in the near future.

## BOARD OF ADMINISTRATIVE APPEAL

### Complaint of Mr. Malay Basak (represented by Senator Wendy Kinnard) against a decision of the Education Committee

1. A Board of Administrative Appeal met on 17th January 2002 to consider a complaint by Mr. Malay Basak (represented by Senator Wendy Kinnard) against a decision of the Education Committee that he was ineligible for a further education grant towards the cost of the university education of his son Anirban Basak.
2. The Board requested the Education Committee to reconsider the case and to grant the application. A copy of the Board's findings is **attached** at Appendix A. In upholding the complaint the Board found that the Complainant had been dealt with in such an unsatisfactory manner that his treatment had been unacceptable and unjust.
3. The Education Committee considered the findings on 6th February 2002 and the President of the Education informed the Board of the outcome of its reconsideration in a letter dated 7th February 2001 (*sic*). A copy of the President's letter is **attached** at Appendix B.
4. The Board was not able to meet until 15th March 2002 to consider the Committee's response but, having done so, is not satisfied that the Committee has given adequate consideration to its findings and has therefore decided to present this report to the Special Committee to Consider the Relationship between Committees and the States in accordance with the provisions of Article 9(4) of the Administrative Decisions (Review) (Jersey) Law 1982, as amended, which is in the following terms -

*Where a Board, having requested reconsideration by the Committee, Department or person concerned, is of the opinion that the findings of the Board have been insufficiently considered or implemented, it may present a report of the matter to the Special Committee to Consider the Relationship between Committees and the States (hereinafter referred to as "the Special Committee") which shall refer the matter to the States.*

5. The Board has noted from the President's letter that the Committee, *inter alia*, accepted that the correspondence sent to Mr. Basak was confusing and open to misinterpretation, acknowledged that outdated guidelines remained in circulation, and recognised that *'the administrative arrangement for processing the application were inefficient and thereby unacceptable'*. Despite these admissions the Committee did not accept that the decision was unjust and therefore decided not to grant the application.
6. The Board is extremely disappointed with the Committee's decision. The Committee has not shown that the Board's findings are flawed but has simply chosen to ignore its recommendation. In addition it would appear the President has misrepresented part of the Board's findings by stating in his letter that *'the Board recognised (cf 5.14 of report) that Mr. Basak may never have technically qualified for an award'*. The relevant extract of 5.14 (underlining added for convenience) actually reads as follows -

*'The Board accepts that, according to the rules on residency that the Committee claims were in place at the relevant times, he may never have technically qualified for an award'.*

The words that have been underlined are significant. The findings show that the rules on residency were not clearly in place or, if they were, the Complainant was not adequately informed. The Board concurs with the view expressed in a Jersey Evening Post editorial on this case that *'if Education are not fully conversant with the rules governing the provision of grants for further education, who is?'* The findings do not support the view expressed by the President in his letter that *'at every stage in the process, Mr. Basak was advised that his son was **not** eligible for an award'*.

7. Although the administrative appeals system exists to enable persons aggrieved by actions of Committees and Departments to obtain a remedy, the Education Committee has decided to do nothing to rectify the injustice suffered by Mr. Basak despite its admission that the method of processing his application was *'unacceptable'*. The Board is of the view that it is wrong for States' Committees and Departments to treat members of the public in a manner which is unacceptable and then believe that they can simply take no remedial action. Even if the Committee believed that it was inappropriate to grant the application in full it should possibly have made some form of *ex gratia* payment to Mr. Basak to cover at least part of the cost of his son's university education. In requesting the Committee to reconsider its decision and grant the application the Board was expressing the view that Mr. Basak had been so unfairly and unjustly treated that some form of 'compensation' was required.
8. The Board has noted that since the Committee's decision was made public there has been comment in the local media on this case and, more generally, on the function of the administrative appeals system. Having considered the

Education Committee's response the Board shares the view expressed by the Chairman of the Administrative Appeals Panel and others that the public will lose confidence in the system if Committees continually choose to ignore the findings of Boards. This would be extremely unfortunate. The present system of review by a Board drawn from a panel of independent persons appointed by the States who give their time freely was established by the States in order to provide the necessary checks and balances to the considerable powers available to States Committees and Departments. There would seem to be grave concerns for the States where Committees choose to ignore the findings especially when they are adverse. The Board is of the view that the Special Committee should give careful consideration to this issue and take the necessary action to remedy it

9. The Board has decided to present this report to the Special Committee, for onward transmission to the States, as it believes that all members of the States should be fully aware of the circumstances surrounding this complaint. The presentation of the report to the States will also enable members of the States to assess whether it would be appropriate for further action to be taken on behalf of the Complainant.

Mrs. C.E. Canavan, Chairman  
Mr. D.J. Watkins  
Mr. T.S. Perchard

## BOARD OF ADMINISTRATIVE APPEAL

17th January 2002

**Complaint by Mr. Malay Basak (represented by Senator Wendy Kinnard) against a decision of the Education Committee****Hearing constituted under the Administrative Decisions (Review) (Jersey) Law 1982, as amended****1. Present -**

## Board Members

Mrs. C.E. Canavan, Chairman  
 Mr. D.J. Watkins  
 Mr. T.S. Perchard

## Complainant

Senator W. Kinnard

## Education Committee

Deputy J.J. Huet  
 Mr. D. Greenwood, Assistant Director of Education  
 Mrs. M.O. Davies, Service Development Manager

## States Greffe

Mr. M.N. de la Haye, Deputy Greffier of the States

The Hearing was held in public in the Halkett Room, Morier House, St. Helier.

**2. Summary of the dispute**

The Board was convened to hear a complaint of Mr. Malay Basak (represented by Senator W. Kinnard) concerning the decision of the Education Committee that he was ineligible for a further education grant for his son, Anirban Basak's university course.

**3. Summary of the complainant's case**

3.1 Senator Kinnard, on behalf of the Complainant, (who was not present at the hearing) explained that Mr. Malay Basak had initially approached her for assistance in September 2001 after finally receiving confirmation from the Education Department that he was not eligible for a grant for his son's university education. After months of waiting for a definitive answer the Complainant could no longer afford the services of a lawyer and contacted her to ask whether she would consider putting the case forward to a Board of Administrative Appeal. Although she might normally have pursued the matter through further correspondence with the Department there was a certain urgency in the matter as Anirban Basak's course was about to start and he required a review of the decision as quickly as possible.

3.2 Senator Kinnard explained that, in her opinion, there were five possible causes for complaint. Firstly, although the original application for a grant was dated 27th March 2000, the original decision of the Education Committee did not appear to accord with the regulations in force at that time. The rules in force at that time had been set out in a letter to the Complainant from the Student Finance Manager dated 18th April 2000 and were as follows -

- *Applicants (and/or parents, guardians) must be residentially qualified (categories A-H, J & I(1)K*

*or*

- *Applicants (and/or parents, guardians) must have been ordinarily resident in Jersey for five years immediately before 1st September of the first year of the course*
- and*
- *they must be ordinarily resident in Jersey on the 30th June prior to the commencement of the course (or would have met these requirements had their parents not been temporarily employed outside Jersey)."*

In addition, the Student Finance information booklet for parents, guardians and students, which had been obtained by the Complainant, stated that:

- *Students or their parents/guardians must have been ordinarily in Jersey for five years immediately before 1st September of the first year of the course*
- and*
- Students or their parents/guardians must be ordinarily resident in Jersey on 30th June prior to the commencement of the course (or would have met these requirements had their parents not been temporarily employed outside Jersey).*
- or*
- *Dependent children of parents on a 'J' category license providing that the 'J' category has not expired on 1st September of the first year of the course.*

- 3.3 Senator Kinnard pointed out to the Board that, in both cases, the word 'or' treated certain residential statuses, including 1(1)(j) category status as separate and distinct from other criteria required for eligibility. The bullet points demarcating the paragraphs in both the student finance booklet and the Student Finance Manager's letter reinforced this interpretation. Mr. Basak was residentially qualified under Regulation 1(1)(j) of the housing regulations and was ordinarily resident in Jersey on the 30th June prior to the commencement of his son's course. Mr. Basak's initial '(j)' category consent had been extended and he remained in Jersey up to the end of the December 2001.
- 3.4 Senator Kinnard's second ground for complaint concerned delays in responding to correspondence that, in her opinion, had had the effect of wrongly applying the provisions of the Education (Discretionary Grants) (Jersey) Order 2001 retrospectively in this case. She pointed out to the Board that, in a letter from the Complainant's lawyer, Mr. G.A. Pollano, to the President of the Education Committee dated 21st March 2001, there was a handwritten departmental note that read, "Are we doing a reply to this letter?" No substantive reply was received for five months by which time new rules had apparently been agreed by the Education Committee but as yet had not been formally laid before the States. Nonetheless these new provisions were applied to this application in late August although they were not in the public domain until 11th September 2001 when the Order was laid before the States.
- 3.5 The third ground for complaint concerned the fact that, in Senator Kinnard's opinion, Mr. Basak had been treated unfairly in relation to other comparable applicants for student grants. She drew attention to the case of a colleague of the Complainant who, in apparently similar circumstances, was deemed eligible. Although she had requested details of similar cases, particularly those studied by the Grants Appeal Sub-Committee, this information had not been forwarded to her.
- 3.6 Senator Kinnard explained that the fourth part of her complaint was that there had been a complete lack of transparency concerning the manner in which decisions had been taken in this case. Although she had written to the President of the Education Committee in an attempt to elicit precise information concerning the dates when decisions had been taken these questions had not been answered to her satisfaction and his response therefore failed to provide the necessary reassurance of adequate independence in the decision making process. In addition Senator Kinnard claimed that there had also been a lack of transparency in correspondence from the Education Department which had had the effect of making Mr. Basak jump through imaginary hoops in an effort to try to fulfil criteria which were not clear to anyone, only to find that, as soon as he had complied with any particular request, the relevant rules had changed. Senator Kinnard drew attention to the fact that that grants were discretionary and it was therefore vital that the bounds of such discretion were transparent.
- 3.7 The fifth ground for complaint related to the reference to 'reasons' for the extension to the Complainant's '(j)' category being referred to in the correspondence. Senator Kinnard drew the Board's attention to correspondence where it appeared that the 'reasons' for the extension of the '(j)' category consent were a factor in the decision, even though there was no mention of 'reasons' in any previous correspondence or in the published literature of the

Education Department relating to '(j)' category eligibility. Senator Kinnard pointed out that there was nothing unusual in an extension being granted after an initial period if the relevant authorities (Immigration and Nationality and Housing Departments) gave consent. Senator Kinnard did nevertheless ask the Board to note that reference to the Complainant's '(j)' category status in correspondence from the Education Department dated 22nd January 2001 only served to confirm the relevance of the residential category as a criterion current at the time.

3.8 Senator Kinnard concluded by stating that Mr. Basak made the application for grant aid, and submitted all further information requested of him in good faith but believed that he had received mixed messages and was wrongly advised by the Department and Committee as to the criteria that correctly applied to him. He believed throughout that he had been eligible on the basis of his '(j)' category status, a fact he first learned through the letter he received from the Student Finance Manager dated 18th April 2000 and which was subsequently confirmed through correspondence received from another officer of the Education Department dated 19th May 2000. Further letters 24th May 2000, 2nd January 2001 and 22nd January 2001 had confirmed his belief that his '(j)' category status was the key to his eligibility for an award. Senator Kinnard contended that, when added to the unfair and discourteous treatment he had received, compounded by delays in answering correspondence and a lack of transparency with regard to the criteria by which his application was to be judged, Mr. Basak had been unjustly treated and she invited the Board to find in his favour and request the Education Committee to reconsider its decision. In addition Senator Kinnard suggested that the Committee should be requested to backdate the payment of a grant to reimburse Mr. Basak for the amounts he had paid towards his son's further education since September 2001.

#### **4. Summary of the Education Committee's case**

4.1 The Board had received a full written summary of the Committee's case and the written submissions were amplified by the Committee's representatives. Mr. David Greenwood, Assistant Director of Education, set out the history of the Complainant's application for a grant. He pointed out that the first application for an award had been received in March 2000 for university entry in September 2001. Mr. Greenwood explained that this was known as a 'deferred application' and, although not common, was usually done when students were taking a 'gap' year and wished to obtain the comfort of knowing that financial support would be forthcoming in due course. In this case the Complainant had applied a year early as he knew that he did not meet the 3 year residency requirement and wished to defer entry to complete that period. Mr. Greenwood explained that it was, however, important to realise that the rules that applied to any particular application were those that were in force on the date the course started and not those that were in force at the time of application. Applications received for future years were not processed until the Committee had clarified the rules that would be in force for the relevant year of entry of the student into higher education. No definite decision could be given until the year of entry.

4.2 Mr. Greenwood explained that within one month of the application being received from Mr. Basak the Education Committee decided to revise the rules on eligibility for grants because of the termination of the reciprocal agreement with the United Kingdom. Under the reciprocal agreement a period of residency in the United Kingdom had counted towards the residency requirement when a person moved to Jersey and vice versa. When the United Kingdom stopped giving student grants there was a risk that a person who had been resident in the United Kingdom for three years could come to Jersey and qualify for a grant which would not have been available in the United Kingdom and for this reason the agreement was ended. In considering revised residency requirements the Education Committee took the view that a period of five years residency for all applicants was reasonable. Although Article 51 of the Education (Jersey) Law 1999 (which came into force on 1st March 2000) allowed the Committee to make provision for the regulation of student awards by Order the process of drafting an Order was not a simple matter and required complex discussions between the Education Department, the Law Officers' Department, the Law Draftsman's Office and the Education Committee. The process was complicated by the fact that no Order had previously been in existence and it was therefore necessary to consolidate many Committee Acts and policy decisions into a new Order. The process was only completed when the Education Committee made the Education (Discretionary Grants) (Jersey) Order 2001 on 15th August 2001. The Order came into force on 1st September 2001 and was deemed to apply to all grant applications for Jersey students entering university in Autumn 2001.

4.3 Mr. Greenwood drew the Board's attention to the letter to Mr. Basak dated 18th April 2000 from the Student Finance Manager. In that letter it was stated that applicants needed five years residency although Mr. Greenwood accepted that the letter was confusing as the word '*or*' in the summary of the residency requirements (as quoted in paragraph 3.2 above) should have read '*and*' and it could therefore have appeared that applicants had to have either a '(j)' category *or* complete 5 years' residency. A similar error had been made in the printed booklet although, once the Education Committee had realised this, steps had been taken to amend the booklet.

4.4 With reference to the circumstances of the Complainant's case, Mr. Greenwood explained that, after the initial exchange of correspondence in April and May 2000, nothing further had been heard from him until December 2000

when he had submitted a fresh application. In subsequent correspondence Mr. Basak constantly referred back to his '(j)' category status and the 3 year residency rule although, in the Committee's submission, it had been made clear to him that the Education Committee had fixed a 5 year residency period for all applicants and he did not qualify for a grant.

4.5 The Complainant appealed to the Education Committee Grants Appeals Sub-Committee on 22nd February 2001. In the absence of Deputy J.J. Huet the Sub-Committee was chaired by Senator P.A. Bailhache. Mr. Greenwood explained that the Sub-Committee had accepted that the rules had changed but upheld the decision to refuse an award as it could see no reason to treat Mr. Basak any differently from other applicants.

4.6 On 21st March 2001 Mr. G.A. Pollano of Mourant du Feu & Jeune wrote to the President of the Education Committee to request reconsideration of the case. Mr. Greenwood explained that an appeal to the Sub-Committee was usually the last step that applicants could take but, in this case, the President replied on 24th April 2001 stating that he would be prepared to review the case after the necessary Order under Article 51 of the Education (Jersey) Law 1999 had been made. Mr. Greenwood reiterated that, because of the complexity of the drafting of that Order, it was a further 4 months before it was made and he sent a substantive reply to Mr. Basak on 30th August 2001 when it was confirmed that he was not eligible for an award.

4.7 Mrs Davies referred to the case of the colleague of the Complainant that had been mentioned by Senator Kinnard and explained that the applicant concerned had received a grant in 1994 when the reciprocal agreement with the United Kingdom, and the 3 year residency rules, were still in force.

4.8 In response to the arguments set out by Senator Kinnard the Committee representatives explained to the Board that the Complainant had been told on numerous occasions, including at the appeal hearing before the Sub-Committee, that he needed to have 5 years' residency in accordance with the revised rules before he qualified for a grant. The Committee accepted that some of the correspondence with the Complainant had been misleading but he had not, in the Committee's view, been left in any doubt concerning the reasons for the refusal. He had, whilst understanding the 5 year requirement, continued to pursue his application on the basis of the information on '(j)' category status that he had been told was no longer applicable. Despite the error in the published booklet on grants the Department had made every attempt to ensure that parents and others were aware of the 5 year requirement. This had been done through parents' evenings, at meetings with careers teachers, at higher education fairs and, in this case, through telephone conversations. It was not the case that the provisions of the Education (Discretionary Grants) (Jersey) Order 2001 had been applied retrospectively in this case - all applications for 2001 entry had been dealt with according to the revised rules on residency agreed by the Committee and the enactment of the Order had merely served to encapsulate in legislation the rules already in place. If Mr. Basak had applied for his son to enter university in 2000, and if he had fulfilled 3 years' residency prior to that date, he would have qualified. His application had been refused because the residency rules had changed and although this change had an adverse effect for the Complainant he had been treated in exactly the same way as everyone else.

4.9 The Committee also refuted the allegation that it had taken 5 months to respond to the letter of 21st March 2001 from the Complainant's legal adviser - a reply had been sent on 24th April 2001 but, contrary to normal policy the President of the Education Committee had agreed to a further review of the case once the Order had been made.

## 5. The Board's findings

5.1 The Board has taken very careful note of the extensive bundle of correspondence supplied by the parties. The Board was informed by the Committee representatives that the Complainant had been informed in 'numerous' telephone conversations that he was not eligible for an award but there was no evidence in the papers supplied to the Board of the content of such telephone conversations. The Board is not aware whether file notes of such conversations exist but, if they do, none were produced to it. The Board has therefore had to base its findings exclusively on the written materials supplied and on the oral submissions of the parties at the hearing.

5.2 The Board considers it is necessary to quote at some length from the correspondence in order to set out the full background to its findings. The Board believes that the letter to the Complainant dated 18th April 2000 from the Student Finance Manager is extremely significant in this case. In that letter it is stated that (our underlining) -

*"The current regulations state that a student admitted to a first degree is entitled to apply for an award if he or she:*

- *has ordinarily resided in the Channel Islands, Isle of Man or the United Kingdom for three years immediately before 1 September of the first year of the course.*



*Your son has only resided in Jersey since 1998 and does not meet the residency requirements”.*

Despite this clear reference to a 3 year residency requirement the letter goes on to state-

*“New regulations have been approved by the Education Committee which now require residency of at least five years, for people without residential qualifications.*

*These regulations were taken to the Education Committee in March 2000, and with effect from 1 March 2000 the residency requirements are:*

- *Applicants (and/or parents, guardians) must be residentially qualified (categories A-H, J & I (I) K*  
*or*
- *Applicants (and/or parents, guardians) must have been ordinarily resident in Jersey for five years immediately before 1st September of the first year of the course*  
*and*
- *they must be ordinarily resident in Jersey on the 30th June prior to the commencement of the course (or would have met these requirements had their parents not been temporarily employed outside Jersey)”.*

The Committee accepted at the hearing that the letter was confusing and inaccurate as the word “or” should have read “and” as the Committee claimed that it was the intention that applicants needed to be both residentially qualified and have five years residency.

5.3. The Board accepts that errors can, on occasions, occur and the letter of 18th April 2000 would perhaps not be of such importance if the Education Department had moved swiftly to correct the information given in it. However it is clear that, far from correcting any misleading impression that may have been given, the Committee continued to compound the error by continually referring to the Complainant’s ‘(j)’ category status in subsequent correspondence.

5.4 Mr. Basak responded to the letter of 18th April 2000 on 16th May 2000. Having, quite understandably, thought that his ‘(j)’ category status would be sufficient grounds for obtaining a grant he enclosed a letter from his employer confirming his residential status. A handwritten note made by the Student Finance Manager at the foot of the letter reads ‘no, must be letter from Housing not bank’. That message was formally given to Mr. Basak in a letter from the Education Department dated 19th May 2000.

5.5 The Housing Department wrote to the Education Department on 23rd May 2000 confirming the Complainant’s ‘(j)’ category status but pointing out that the ‘(j)’ category licence would expire in February 2001. As a result the Education Department informed the Complainant the following day that he was not eligible for a grant because the date of entry of Anirban to university was ‘after your contract expiry date’. The Board has noted that no mention at all was made of a 5 year residence requirement in any of the correspondence after 18th April 2000 and Mr. Basak must have been left with the very clear impression that, if his ‘(j)’ category was extended and he completed 3 years’ residency, he would be able to qualify. He appears to have decided to defer pursuing his application until he was in a position to meet those requirements.

5.6 As mentioned earlier Mr. Basak re-applied for an award in December 2000 at a time when, the Board assumes, other applicants for entry in 2001 were beginning to apply. The Board considers that, if any confusion existed in the early part of 2000 about residency requirements, the Education Committee would have had ample time to resolve the matter before the end of the year. This appears, however, not to have been the case.

5.7 The Complainant’s second application was acknowledged on 2nd January 2001. The letter from the Student Finance Manager refers back to the letter of 24th May 2000 and goes on to state -

*“If your ‘j’ category has been extended please request the Housing Department to confirm to me in writing the new end date of the ‘j’ category”.*

The Board notes that no mention is made of the 5 year residency requirement in the letter despite the clear statement by the applicant’s son on the application form that ‘My father is resident in Jersey since 1st March 1998 under work permit (‘J’ category)’.

The Complainant complied with the request contained in the letter on 3rd January 2001 by faxing to the Education Department confirmation that his '(j)' category had been extended to 30th September 2001.

- 5.8 The Board has found the reply from the Student Finance Manager dated 4th January 2001 to be quite remarkable. Although a simple statement about the 5 year residency requirement would perhaps have sufficed to bring the matter to a close, the Department appears to have introduced further confusion into the process by referring to the 'reasons' for the extension of Mr. Basak's '(j)' category. The letter states -

*"I have spoken to the Housing Department and I regret to inform you that the Education Committee will not grant aid Anirban for a student award to attend a higher education institute.*

*The Housing Department informed me that it was agreed to you being employed on a (j) category for three years commencing March 1998, subject to immigration controls. The reason your employment license has been extended is due to your employer requesting an extension in November as they had not had time to identify suitable replacements. Under normal circumstances you would not have been eligible for grant aid."*

The Board has struggled to understand what the last sentence quoted above is intended to refer to. Even under the 3 year residency rules which, it appears, the Complainant thought were still in place, no reference appears to even have been made to the 'reasons' for a period of residency. It is not at all clear what the words '*normal circumstances*' are supposed to mean. Once again no mention of the 5 year residency requirement is made.

- 5.9 The Board has noted that there were several letters in early January 2001 between the Complainant and the Department but these do not raise any new issues. The next letter of significance is one dated 22nd January 2001 to Mr. Basak from the Student Finance Manager which appears to have been an attempt to clarify the residency requirements. In this regard the letter appears to start with a clear statement in the following terms -

*"To clarify the residency position even local families with A-H housing qualifications need to have five years continuous residency prior to 1st September of the first year of the course to be eligible for consideration for a student award."*

Notwithstanding the statement above in the first paragraph, the letter then goes on to give the impression that those applicants with '(j)' category status are to be treated differently and, once again, returns to the issue of the 'reasons' for the extension of the Complainant's '(j)' category -

*"When discussing residency requirements for grant aid the Education Committee were mindful that they did not want to disadvantage dependants of J, or even possibly (though unlikely) K category residents.*

*As I have stated before the Housing Department informed me that it agreed to you being employed on a (j) category for three years commencing March 1998 subject to immigration controls. The reason your employment license has been extended is due to your employer requesting an extension in November 2000 as they had not had time to identify suitable replacements. Under normal circumstances you would not have been eligible for grant aid as your license would not have been extended"*.

The Board considers that, having received the above letter, Mr. Basak must again have been left with the very clear impression that '(j)' category applicants were to be treated differently from other residents.

- 5.10 The Board has noted that Mr. G.A. Pollano, Mr. Basak's legal adviser, came to an identical conclusion when he reviewed the papers given to him and wrote to the Committee on 21st March 2001 after the Sub-Committee had refused Mr. Basak's appeal.

- 5.11 The Board has concluded that, despite the submissions made by the Committee, the exact rules on residency cannot have been agreed when this letter was received from Mr. Pollano. Indeed the Board has noted that, despite the indications from the Committee that a certain degree of confusion existed in April 2000, the written submission of the Committee states that the rules on residency were not confirmed by the Education Committee until 29th April 2001, over a year later. If the rules had been clear, a brief letter apologising for earlier confusion and setting out the 5 year residency requirement would have been an adequate and appropriate response to Mr. Pollano. Instead the Committee President replied on 24th April 2001 (after being prompted for a response) indicating that the case would be reviewed once the necessary Order under Article 51 of the Education (Jersey) Law 1999 had been made. The Board concurs with the view expressed by Senator Kinnard that, whatever the Committee's intentions, the letter gave an impression that the Committee was in the process of creating new rules that would, once finalised, be applied 'retrospectively' in Mr. Basak's case. The Board cannot understand why, if the rules on residency were actually clear in March 2001, as the Committee claims, it took some 5 months to provide a substantive response to Mr. Pollano. Furthermore the Board has noted that in that substantive response, sent to Mr. Pollano by the Assistar

Director on 30th August 2001, it is stated that “*financial assistance in this instance has been refused on the basis of the letter sent to Mr. Basak by Mrs. Madeleine Davies, the Student Finance Manager on 22nd January 2001*” (quoted above) and no simple reference to the 5 year rules was made.

- 5.12 The Board is of the view that throughout this case the Education Department has constantly given confused and misleading messages to the Complainant. At no stage was he given a clear and unequivocal statement in writing that his ‘(j)’ category status was irrelevant under the new residency rules which the Committee claims were in place. On the contrary he was encouraged to produce letters confirming his housing status and subsequent extensions to the length of his contract. The Board finds it extraordinary that the Education Department saw fit to comment on the ‘reasons’ for the extension to his ‘(j)’ category and gave the impression that his application had been refused because these reasons were somehow unacceptable.
- 5.13 The Board considers that the papers submitted point inevitably to one of two conclusions; either the rules on residency were not clearly in place when the applications were dealt with or, if they were, Mr. Basak was never told in an appropriate manner. Although the Committee has claimed that he was informed of the requirements on the telephone, and orally at the appeal, this is not confirmed by the subsequent correspondence and does not explain why a simple, brief, reply could not have been sent to Mr. Pollano in March 2001.
- 5.14 The Board, in accordance with the provisions of Article 9(2)(b) of the Administrative Decisions (Review) (Jersey) Law 1982, as amended, finds that the Committee’s actions towards Mr. Basak have been unjust and it therefore **upholds the complaint**. The Board accepts that, according to the rules on residency that the Committee claims were in place at the relevant times, he may never have technically qualified for an award but the Board finds that the manner in which his case has been dealt with is unacceptable and unjust. He was constantly encouraged to believe that his ‘(j)’ category was of significance and had every reason to believe that, once he had completed 3 years’ residency, he would be eligible for a grant. The Board notes that Mrs. Davies stated at the hearing that the Committee and Department had found the matter of ‘(j)’ category applicants difficult and complicated to deal with when the rules on residency were being amended and it would appear that the dealings with Mr. Basak reflected that confusion. In the circumstances the Board requests the Committee to **reconsider its decision and to grant the application**. The Board has noted that Article 3(2) of the Education (Discretionary Grants) (Jersey) Order 2001 gives the Committee the discretion to treat persons as resident even when the normal criteria are not met and the Board believes that the Committee should exercise this discretion and treat the Complainant as resident at the material time for the purposes of the Order. It goes without saying that the award should be backdated to take effect as if the decision had been made before Anirban started his course and the Board appreciates that any grant will, of course, be subject to the usual means testing procedures. The Board requests the Committee to report back to it within **two months** with the results of its reconsideration.
- 5.15 The Board wishes to mention one other ancillary matters that arose during the course of this hearing. This Board, by chance, consisted of the same Chairman and members who had heard a separate complaint against a decision of the Education Committee on 17th April 2001. The Board was therefore pleased to note that revised appeal provisions have now been put in place in accordance with its recommendations in that case although it was curious to note that, in his letter of 26th September 2001 to Senator Kinnard, the President of the Committee refers to Mr. Basak’s appeal to the Grants Sub-Committee (which was dealt with 2 months before the Administrative Appeal hearing referred to above) having been established in accordance with that Board’s recommendations. The Board is not aware how decisions of the Grants Appeal Sub-Committee are communicated to appellants under the new arrangements but is hopeful that arrangements are now in place to ensure that the decision of the appeals Sub-Committee is not communicated by the officer who took the original decision as happened in Mr. Basak’s case.

Signed and dated by -

Mrs. C.E. Canavan., Chairman  
Mr. D.J. Watkins  
Mr. T.S. Perchard

30th January 2002



7th February 2001

Advocate Mrs. C.E. Canavan  
 Deputy Chairman - Administrative Appeals Panel  
 States Greffe  
 Morier House  
 St. Helier  
 JE1 1DD

Dear Advocate Canavan

**Board of Administrative Appeal - Complaint by Mr. Malay Basak**

Thank you for the report of the hearing constituted under the Administrative Decisions (Review)(Jersey) Law 1982, as amended, which met on 17th January 2002 to consider a complaint by Mr. Malay Basak presented by Senator Wendy Kinnard against a decision of the Education Committee. This report was considered by the Education Committee at its meeting of 6th February.

In response to the findings of the Board, the Committee:

- accepts that the correspondence with Mr. Basak, emanating from the Student Finance Office was confusing and open to misinterpretation;
- acknowledges that versions of guidelines contained outdated information regarding eligibility, remained in circulation following the Committee decisions of March 2001;
- confirms that during the extended period when Mr. Basak was in contact with the Department, Committee policy changed to reflect, inter alia, the termination of the 'reciprocal agreement' with the United Kingdom authorities and changes in the requirements for residency. The Committee recognises that this may have contributed to confusion for an applicant who was in contact with the Department during the period when these amendments were being considered;
- recognises that although at every stage in the process, Mr. Basak was advised that his son was not eligible for a student award, his hopes may have been raised when I agreed to review his application in the light of the Education (Discretionary Grants)(Jersey) Order 2001 once these had been made to ensure that this application had been dealt with in accordance with the provisions contained in the Order.

In response to these matters, the Department has reviewed its administrative procedures for student awards and initiated an audit process to ensure that all Education Department publications accurately reflect current policies and procedures.

The Committee is satisfied that all students receiving a first award in respect of the 2001-2002 academic year were subject to the provisions contained in the 2001 Order and that, under those Orders which were agreed in principle in March 2001, made in August 2001 and laid before the States in September 2001, Mr. Basak is not entitled to an award. The Committee also affirms that the arrangements for making an award are those which apply at the time a student is to commence his studies, not those which applied at an earlier date.

The Committee noted that the Board recognised (*cf.* 5.14 of report) that Mr. Basak may never have technically qualified for an award but found that the manner in which the case was dealt with was unacceptable and unjust. While recognising that the administrative arrangements for processing the application were inefficient and thereby unacceptable, the Committee does not accept that the decision was unjust and therefore, having reconsidered its decision, has determined not to grant the application.

Yours sincerely,

Senator Len Norman  
President