

STATES OF JERSEY



COMMITTEE OF INQUIRY INTO PROCEDURES FOR THE ALLOCATION OF RESIDENTIAL PROPERTY BY HOUSING TRUSTS: REPORT

Presented to the States on 13th May 2003

STATES GREFFE

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COMMITTEE OF INQUIRY INTO THE CURRENT PROCEDURES FOR THE ALLOCATION OF RESIDENTIAL PROPERTY BY HOUSING TRUSTS SUPPORTED BY THE HOUSING DEVELOPMENT FUND

Introduction

The Committee of Inquiry into the current procedures for the allocation of residential property by Housing Trusts supported by the Housing Development Fund was established on 8th October 2002, following the adoption by the States of Jersey of a report and proposition (P.139/2002) of Deputy S.M. Baudains.

At the outset and in consideration of the terms of reference adopted by the States, the Committee agreed that it would consider allocation as a generic matter and, whilst noting individual cases, did not consider its remit as one of resolving possible individual difficulties between tenants and Housing Trusts/Housing Department.

Acknowledgments

In the first instance, the Committee wishes to acknowledge the following for their assistance, without whom the work of the Committee would have been made considerably more difficult –

Mrs. K. Tremellen-Frost, Committee Clerk
Miss B. Le Claire for the taping of oral evidence
Miss P. Horton for transcribing tapes of oral evidence
Marten Walsch Cherer Limited for transcription of some of the tapes of oral evidence
Société Jersiaise for the availability of rooms
All persons who submitted written evidence
All witnesses who attended hearings to provide oral evidence

Terms of Reference

The terms of reference of the Committee of Inquiry were –

“to investigate fully the current procedures that are in place for the allocation of residential property by Housing Trusts that are supported by the Housing Development Fund, and to report back to the States with such recommendations as the Committee considers to be appropriate”.

Committee’s consideration of its terms of reference –

The Committee gave considerable initial thought to its terms of reference and reached the foregoing conclusions at the outset, which it revisited on numerous occasions throughout the deliberations of the inquiry –

It would investigate only those Housing Trusts supported by the Housing Development Fund, namely, the Jersey Homes Trust, Les Vaux Housing Trust, F.B. Cottages Housing Trust and CTJ Housing Trust. The latter was approved by the States on 17th July 2001 and the Committee of Inquiry, having noted that it currently owned just three dwellings, agreed to focus its attention on the longer standing Trusts. Where this report refers to a “Trust” or Housing Trust, it therefore applies only to these above-named Housing Trusts.

It would consider *only* those procedures relating to the allocation of residential properties by those Housing Trusts and not consider any other business of those Trusts unless it impacted on the allocation procedures.

Noting that the terms of reference referred to current allocation procedures only, it would investigate any background information which the Committee decided was pertinent to the establishment of the current criteria.

It would afford the opportunity to any interested parties to submit evidence in writing to the Committee.

It would call as witnesses only those people who the Committee believed might provide information beneficial to the inquiry within the terms of reference.

It would accept requests from any interested party who held relevant information to give evidence at a public hearing.

This Committee also recognises that some of the Housing Trusts deal mainly with relets of existing properties and have little involvement in the allocation of new-build social-rented accommodation, however, relets are a part of the allocation process and were, therefore, considered by the Committee.

The Committee also noted that there are the following formal agreements in place –

- Les Vaux Housing Trust with the Housing and Finance and Economics Committees, dated 1st August 2001;
- The Jersey Homes Trust with the Housing Committee dated 10th January 2000;
- CTJ Housing Trust with the Housing Committee dated 4th April 2001;
- The FB Cottages Housing Trust's agreement with the Housing Committee remains in draft and has not to date been signed.

The Housing Committee has an 80 per cent nomination right on newbuild developments to ensure that the majority of dwellings are used to house people who would otherwise have been housed directly by the States of Jersey, whilst giving the Trusts the independence and responsibility to help those in need in the private sector who, for whatever reason, are ineligible for help from the Committee, such as single people and childless couples below 55 years of age.

The Department may use its discretion, however, to reduce the nomination rights for re-lets from 80 per cent to 50 per cent. In the case of Les Vaux Housing Trust, the Committee has 80 per cent nomination rights only on properties acquired by the Trust since 31st August 2001, with 50 per cent nomination on relets of units owned prior to that date.

Background to Housing Trusts

Housing Trusts are incorporated as Associations under the 'Loi (1862) sur les teneures en fidéicommiss et l'incorporation d'associations' as amended.

In 1991, the Policy and Resources Committee of the day produced a Strategic Policy Report in which it stated that "every effort should be made to encourage the development of private rental accommodation through the fostering of housing associations."

Also in 1991, the Housing Committee, in its document entitled "Housing Strategy for the 90s" (P.142/91) expressed its interest in "the promotion of housing associations/trusts as a means of providing secure, low cost rental accommodation". It further stated in that document that it "would like to see housing associations providing a greater proportion of private rental units in the Island, including newly built dwellings and possibly the provision of shared ownership properties which housing associations are providing in the United Kingdom."

On 7th July 1999, the States approved the establishment of the Housing Development Fund (P.74/99) to provide sufficient dwellings, both directly and indirectly, through Housing Trusts, to meet the need for both social rented and first-time buyer housing identified in the Committee's report and proposition "Housing Strategy 1998-2003 (P.201/98) and subsequently updated in the report Planning for Homes (R.C.10/99), On the same date, the States

also approved a report and proposition (P.84/99) which authorised the Finance and Economics Committee of the day to enter into the necessary agreements with lending institutions to enable an appropriate level of finance to be secured to develop the housing units identified in the above *Rapport et Correspondence*.

On 22nd February 2000, in a response to a question in the States, the President of the Housing Committee stated the following –

“The Committee will be entering into further consultation with Housing Trusts and other parties, as well as obtaining advice from the Law Officers, before preparing instructions for the Law Draftsman to produce a new law to regulate Housing Trusts. These processes are likely to take several months but the Committee anticipates being ready to issue detailed instructions to the Law Draftsman before the end of 2000.

The Committee applied in 1999 for law drafting time in 2001 for the regulation of Housing Trusts and, under the decision conference process, time has provisionally been allocated in that year.

Assuming that the law drafting process is completed during the first part of 2001 and, subject to States’ approval, new legislation could be in place by the end of that year.”

The Committee of Inquiry has had the opportunity to consider the draft Housing Association (Jersey) Law 200-, which has recently been circulated to various relevant parties for consultation.

Social-rented accommodation

The Committee noted the definition of “social-rented” accommodation as stated in the Housing Strategy Report 1999-2003 as –

(p.14)”it is accepted that “need” housing is best described as social rented housing, embracing accommodation provided by the Housing Committee, Housing Trusts and Parish Authorities and can be defined as rental accommodation provided for persons in need of assistance to obtain satisfactory accommodation, at rental levels which do not exceed the highest rental charged for rental accommodation of equivalent size and standard let to such persons by the Housing Committee.”

This definition is re-iterated in similar language in R.C.10/99: Planning for Homes (p.17).

Furthermore, in its Strategic Policy Report 2002 (p.18) the Housing Committee states that it “will continue to give priority to housing those persons with incomes which are insufficient to obtain adequate housing without some form of direct or indirect assistance”. Also “generally, applicants for social rented housing who are already housed will have to demonstrate some housing need, other than financial, before they will be offered alternative accommodation”.

The Committee of Inquiry decided that the aforementioned enabled it to consider whether the current allocation procedures fostered the intention of the States that allocation to those in need was being met by Housing Trusts.

Findings and Recommendations

1. Policies

Finding 1.1 One Trust has draft Allocation Criteria, one has not felt a need for criteria and another sets out its allocation criteria briefly at the top of its application form.

Recommendation 1.1 There should be common, formal Allocation Criteria approved by the Housing Committee, to be used by all of the Housing Trusts which should be adhered to and should ensure that those in greatest social housing need are helped first.

Finding 1.2 Each Housing Trust has its own application forms to be completed by prospective tenants, which

require a variance of information.

Recommendation 1.2 A standardized application form should be devised by the Housing Trusts and the Housing Department jointly which should be approved by the Housing Committee.

2. First-time allocations and relets

Finding 2.1 There is no over-riding consistency of allocation between Housing Committee allocation procedures and Trust allocation procedures for first time allocations and relets.

Recommendation 2.1 Whilst recognising that each nomination should be considered in terms of the type of accommodation available, all Housing Trusts should use the same Points System as the Housing Department to provide a standardised approach to ensure consistency with the allocation of all social rented accommodation, be that Trust or States rental properties. The Housing Department uses a clear and concise points system for both the rental Waiting List (new applications) and the Transfer List (existing Committee tenants). This would readily assist in the identification of those in real housing need and better fulfill the objective in the Strategy Report 1999-2003. The section entitled “Allocation Procedures” of the Housing Committee’s States Rental Accommodation Policy (p.4), dated May 2002 should be applied by all Housing Trusts.

Finding 2.2 This Committee has determined that the Trusts set their own, independent maximum levels of income to decide if a person is eligible to be housed by the respective Trust. One Trust has a certain maximum level based on joint income another is “guided” by the Housing Department’s maximum level and another requires no evidence of income.

Recommendation 2.2 All Housing Trusts should use the Housing Committee’s maximum levels of income, as detailed in the section entitled “Eligibility” contained within the Housing Committee’s States Rental Accommodation Allocation Policy (p.1) to decide if a person is eligible for their waiting lists. Appropriate maximum levels of income for single people and childless couples under 55 years of age should be agreed with the Housing Committee.

This Committee concurs with the Housing Committee Strategic Policy Report 2002 – 2006 3.2.1(iii) which states “The Committee, in conjunction with Housing Trusts, will investigate the feasibility of establishing a common waiting list for social rented housing. The criteria for acceptance on this list would still include means and needs tests but will allow acceptance of a wider range of residents – for example single people and childless couples, who are currently ineligible for States rental accommodation”.

Finding 2.3 Some Housing Trusts do not invite the Housing Department to submit names of suitable prospective tenants for all relets, despite written agreement between the Trusts and Housing Committee to do so.

Recommendation 2.3 All the Housing Trusts must first invite the Housing Department to nominate suitable, prospective tenants for all relets to ensure that the minimum 50 per cent nomination right is adhered to in order to comply with the Trust’s obligations under the agreements.

Finding 2.4 In the Housing Committee’s Policy for Selecting Nominees for Housing Trusts dated January 2003, it states “the (Housing) Department would usually provide at least two nominees for each available property”. There was a general consensus from witnesses that it is not always possible to provide that number of nominees per vacancy, particularly on new developments. This raises the chance of properties being allocated to the Trust’s own applicants. Furthermore, there is also evidence that one of the Trusts’ Managing Agents only retains an “informal” list of applicants, which is kept up to date “fairly informally”.

Recommendation 2.4 That, in accordance with the Housing Committee’s Strategic Policy Report 2002 – 2006 [3.2.1(iii) (Recommendation 2.2 refers)], and to ensure consistency of approach in allocation, there should be a common waiting list for social rented housing.

Finding 2.5 Due to Data Protection legislation, the Housing Department has not been able to transfer full information about a current States tenant on the transfer list to the Trusts. For this purpose, the Trusts have chosen

to interview the individual nominees and take into account all the details they have gathered directly from the nominee. Tenants are now informed by the Housing Department that an interview will be likely if they wish to apply for a Trust property.

Recommendation 2.5 That the Housing Committee make the necessary arrangements under the Data Protection (Jersey) Law 1987 to empower the Department to forward to the Trusts, full details of prospective tenants from the Housing Department's transfer list, to avoid the further collation of details which could cause unnecessary stress to nominees and possible delays.

Finding 2.6 Concern was expressed to the Committee that the Housing Trusts are not complying with the Data Protection (Jersey) Law 1987. However, the Committee found no evidence that the Trusts are processing information electronically and are, therefore not required to register with the Data Protection Registrar. The Committee did establish that one of the Managing Agents is currently registered as both a data user and a data bureau.

Recommendation 2.6 All Housing Trusts should ensure that their Managing Agents comply with the Data Protection (Jersey) Law 1987, if they process information about applicants and tenants electronically.

3. Declinations and Appeals

Finding 3.1 It has become evident that in some cases, neither the Housing Department nor the applicants nominated by that Department are fully informed of reasons for declination by some of the Housing Trusts. In fact some nominees had been informed that there "was an oversubscription" to avoid involvement by the allocating Trust in giving individuals the genuine reasons.

Recommendation 3.1 When a prospective tenant nominated by the Housing Department, is declined by a Housing Trust, there should be a full explanation given in writing to both the applicant and the Housing Department as to the reason for declination. The letter of declination to the nominee should be signed by both the Allocation's Manager, Housing Department and the Trust's Managing Agent.

Finding 3.2 The Committee has noted that when an applicant nominated by the Housing Department is refused an allocation by a Housing Trust, there is no formal procedure in place to carry out a review within the Department.

Recommendation 3.2 If a Housing Committee nominee is refused an allocation, for example, because of a history of court judgements, the case should be reviewed by the Director of Estates, Housing Department and the Chairperson of the relevant Housing Trust.

Finding 3.3 Currently, neither a Housing Department nominee, nor an applicant to a Housing Trust who is unsuccessful, has right of appeal through a formal appeals process. However, an applicant on the States rental waiting list has a right of appeal through the officers of the Housing Department to the Housing Committee.

Recommendation 3.3 An independent appeals procedure should be established for a person refused an allocation by a Housing Trust. This would be available only for persons who had been declined accommodation due to discretionary reasons rather than due to over-subscription.

A person who is aggrieved about the decision of a Housing Trust refusing accommodation may request a review of the case by an Appeals Panel.

The appeals procedure should be well-advertised, accessible and easy to utilise. An Appeals Panel should be appointed by the Housing Committee in a similar manner to that which exists for the appointment of members to the Rent Control Tribunal. The Panel would have powers to investigate reasons for declination and to make recommendations for the complainant to be reinstated on the waiting list. This merits inclusion in the draft Housing Associations (Jersey) Law 200-. The Panel should be chaired by a member of the Regulatory Authority for Housing Associations.

4. Freedom of and access to information

Finding 4.1 The Committee has found that information regarding the criteria and procedure for the allocation of social rental accommodation by Housing Trusts is not readily available and when made available is confusing due to the nature of the many forms and information sheets.

Recommendation 4.1 The following information should be made readily available, in writing, in a concise format, from the Housing Department, individual Trusts, the States Bookshop, the Citizens Advice Bureau and on the States of Jersey website –

Standardized Allocation Criteria, approved by the Housing Committee (Recommendation 1.1 refers);

the standardized application form for occupancy of a Trust property (Recommendation 1.2 refers);

the appeals procedure (Recommendation 3.3 refers).

the new Policy Guidelines Booklet (Recommendation 5.1 refers);

Finding 4.2 The Housing Trusts do not currently subscribe to the Code of Practice on Public Access to Official Information which was adopted by the States on 29th July 1999.

Recommendation 4.2 Once the Human Rights (Jersey) Law 2000 comes into force, Housing Trusts are likely to become public authorities for the purposes of that Law. The Committee, therefore, recommends that the Housing Trusts should subscribe to the Code of Practice on Public Access to Official Information on a voluntary basis.

5. Communication and liaison

Finding 5.1 The Housing Committee's Policy Guidelines leaflet No. 4 "Housing Associations" does not fully explain the nomination procedure. The Housing Committee's leaflet is inadequate, outdated and much of the information is irrelevant to the general public and potential tenants.

Recommendation 5.1 The Housing Committee should publish a new policy guidelines booklet detailing the nomination procedure for Housing Trust Accommodation. The booklet should be available to any member of the public and automatically sent to tenants nominated for Trust accommodation by the Housing Department from their transfer and waiting lists.

Finding 5.2 There is evidence that some of the Trustees are not fully conversant with the procedures adopted by their Managing Agents regarding allocation. Likewise there is evidence that one of the Managing Agents was not adhering to the Trust's agreement with the Housing Committee concerning that Committee's right to nominate persons to be accommodated in up to 50 per cent of vacancies arising.

Recommendation 5.2 There needs to be greater cohesion and professional, working relationships between the Trustees and their respective Managing Agents. Written instructions on policy and procedures from Trustees to Managing Agents should be given including, inter alia, social need.

Finding 5.3 It is evident that there has been a certain degree of breakdown in communication between some of the Trusts' agents and members of the Housing Department staff regarding the nomination of prospective tenants who are on the Housing Committee waiting and transfer lists. This seems to have occurred over a period of time and conflicts with existing guidelines.

Recommendation 5.3 Any breakdown of communication must be overcome and the Committee recommends the following actions are taken to ensure that there is more cohesion between the Trusts, their Managing Agents and the Department –

The Housing Trusts should produce quarterly statistics to the Housing Committee, detailing new

allocations and relets, in order to ensure adherence to the nomination rights.

Quarterly meetings should be held between the Allocation Manager of the Housing Department, the Director of Estates of that Department and the Managing Agents of the Trusts to ensure co-operation. These meetings should be chaired by a member of the proposed Regulatory Authority for Housing Associations with minutes taken which should be circulated to all attendees, the Housing Committee and Trustees of the Housing Trusts.

A training programme should be encouraged for all new employees dealing with the allocation of social-rented housing, both within the Housing Department and the Managing Agents of the Housing Trusts.

6. Regulation of allocations procedures

Finding 6.1 The Committee has become aware that there is currently no regulatory body to monitor the allocation of properties by Housing Trusts. Although this is proposed within the context of the draft Housing Association (Jersey) Law 200-, it only *enables* Housing Trusts to register.

Recommendation 6.1 The draft Housing Association (Jersey) Law 200-, should be amended so that all existing Housing Trusts would be obliged to register upon that Law coming into force.

Finding 6.2 There is the intention that a Regulatory Body be established under the draft Housing Associations (Jersey) Law 200-. It is currently recommended that the members “shall be appointed by the States, on the recommendation of the Housing Committee”.

Recommendation 6.2 The Regulatory Authority established under that Law should comprise members independent from the States of Jersey and existing Housing Trusts and at no time should it appoint a Trustee of a Housing Trust or a Managing Agent.

Finding 6.3 The Regulatory Body proposed within the draft Housing Association (Jersey) Law 200- has powers to issue guidance notes under Article 23 regarding the “principles on which housing accommodation should be allocated among individuals”. It does not, however, have the powers to regulate nomination and selection of tenants of housing associations, the provision for which would be made by Regulations of the States.

Recommendation 6.3 The draft Housing Association (Jersey) Law 200- should include the powers for the Regulatory Body to monitor the process by which Housing Trusts select tenants including the 20 per cent allocation which the Trusts have in their own right.

7. Miscellaneous

Finding 7.1 There is diverse research into the financial standing of prospective tenants made by the different Trusts. One Trust requires information of Petty Debts and Royal Court judgements and requires prospective tenants to sign authorisation that a credit check may be made. There is evidence, in some cases, that this form could dissuade prospective tenants from applying for Trust accommodation. Another Trust requires confirmation of earnings from the Comptroller of Income Tax and another makes no checks whatsoever.

Recommendation 7.1 There should be a standardised process created in conjunction with the Housing Department/Committee to assess the financial standing of prospective tenants and it is, therefore, strongly recommended that the Trust using the form headed “Credit Status Form” should cease its use.

Finding 7.2 Options available to prospective tenants for the payment of rent do not consistently account for any difficulties which might arise in paying that rent, particularly for States tenants on the transfer list who have been used to paying a weekly abated rent.

Recommendation 7.2 Tenants should be offered the option of the Rent Rebate cheque being paid directly to the Housing Trust or their Managers by the Housing Department.

Finding 7.3 The Trusts have evolved with the use of Managing Agents to manage the allocations and properties. These agents are conversant with managing commercial/residential property in the private sector. There is the possibility that the same approach is used for managing these types of properties and social-rented properties.

Recommendation 7.3 It is felt that, as the Trusts reach an economic size, in order to establish a closer and more continuous working relationship between the tenant and Trust and the Trust and the Housing Department with regard to allocations, the Trusts should employ direct employees rather than use Managing Agents.

Finding 7.4 There appears to be some uncertainty relating to the possibility of a tenant housed by a Trust, having previously been a States tenant, returning onto the Housing Department's waiting list.

Recommendation 7.4 There should be a clear policy which permits such a transfer which is followed by all parties involved in the allocation of property.

Summary of main recommendations

The Committee wishes to highlight the main recommendations which are included in full within the body of the report –

- Points System. All Housing Trusts should use the same points system as the Housing Department to provide a standardized approach to ensure consistency with the allocation of *all* social-rented accommodation. (Recommendation 2.1)
- Maximum levels of Income. All Housing Trusts should use the Housing Committee's maximum level of income as detailed in the section entitled "Eligibility" contained within the Housing Committee's States Rental Accommodation Policy. (Recommendation 2.2)
- Common Waiting List. There should be a common waiting list for social rented housing in accordance with the Housing Committee's Strategic Policy Report 2002 – 2006, to ensure consistency of approach in allocation. (Recommendation 2.4)
- Appeals Procedure. An independent appeals procedure should be established for a person refused allocation by a Housing Trust for reasons other than over-subscription. (Recommendation 3.3)

Obiter dicta

During the course of the inquiry, other issues were brought to the attention of the Committee which, although relating to allocation of accommodation by Housing Trusts, were not, it was felt, totally within the Committee's terms of reference, but which gave cause for concern. The Committee wishes to draw attention to the following –

1. It has been stated to the Committee that Trusts believe that they pay great attention to social need when allocating properties. However, if some Trusts tend to give greater consideration to the ability of a tenant meeting the financial obligations of paying rent, then the Housing Committee's stock would only be occupied by those with the least ability to pay. Eventually, this could possibly give rise to a two-tier system.
2. Once Trusts become aware of the final list of successful applicants for new-build properties, it would be beneficial if the successful nominees were notified as early in the pre-allocation process as is possible, even if the specific units cannot be designated. This would enable prospective tenants to make necessary domestic arrangements, in particular if the move involves changes of school.
3. Anything which might deter an applicant applying for, or accepting a Trust property for example; having to find a deposit (which is not required by the Housing Committee) should be avoided as it might

discourage those in greatest social need.