



Housing Discrimination – States Rental Properties

Introduction

This guide gives a brief overview of the ways in which a member of the public who has been refused permission to rent a States property and feels that he/she has been discriminated against can seek to have that decision reviewed.

It is worth noting that the right to apply to rent a States property depends on having housing qualifications.

States Housing Allocation and Discrimination

The Housing Department has an Allocations Policy (Policy HD7), which may be found at:

<http://www.gov.je/NR/rdonlyres/B56F1B6E-0DA7-4586-B086-BD615F4CA210/0/HD7AllocationsPolicy.pdf>

The policy states that the Department operates according to principles, which include consistency, flexibility and openness. As far as eligibility is concerned, the Policy states that the Department does not discriminate against unmarried or same-sex couples in a long-term relationship.

The allocation procedure is based on a points system, which determines priority. For example, a homeless person would score 100 points and be designated of urgent priority, whereas someone living in tied accommodation and not likely to be evicted imminently would be of low priority and would score 15 points.

If, for example, a homeless applicant, who would usually be treated as being of high priority, were to be refused accommodation because of his/her race, this might constitute discriminatory treatment.

In cases where an applicant is unhappy with a decision refusing him/her States housing, e.g. because he/she feels it was not for a good reason but because of discrimination, there would be a number of routes to having the decision reviewed.

Appeal within the Housing Department

First, the applicant could appeal the decision within the Department of Housing as follows:

- First to the Director of Tenant Services;
- Then (if the applicant were still unhappy) to the Housing Assistant Minister; and
- Finally, the Minister for Housing.

Review by States of Jersey Complaints Board

Alternatively, it is possible to ask the States of Jersey Complaints Board to look into a decision by any Minister or department of the States, or by any person acting on their behalf.

The applicant could therefore apply to the Greffier to have the matter reviewed by the States of Jersey Complaints Board in accordance with the Administrative Decisions (Review) (Jersey) Law 1982. The Board would comprise three members of a panel known as the States of Jersey Complaints Panel, to which the States appoints suitably qualified people (by profession or experience) from time to time. Members of the Panel are all independent and give their time on a voluntary basis.

The application should be made within 12 months of the decision refusing the applicant States accommodation and would need to include:

- An explanation of the decision and why the applicant thinks it is wrong, e.g. because it was discriminatory;
- Any relevant papers;
- Information as to who will represent the applicant – such as a States member or a technical adviser. Applicants may represent themselves – it is not usual for a lawyer to attend the hearing on their behalf.

Before sending in a complaint in this way, the applicant should have tried to go through the Housing Department's internal appeal procedures to try and resolve the problem. The only exception is when the decision happened nearly 12 months ago and there is a risk that if no complaint is made now it will be too late because of the 12-month rule.

Upon receipt of the application, the Greffier presents a report to the Chairman of the Panel, who then decides whether the circumstances justify a review by the Board and/or whether it may be appropriate to attempt informal resolution of the matter first. The complaint will always be treated in a confidential fashion.

If the Chairman decides that the case should not go to the Board, he/she gives reasons in writing so that the applicant knows the basis of the decision. The applicant can appeal a refusal to refer the case to the Board. Such appeal should be made within one month of the decision and will be heard by other members of the Board.

If the case does go to the Board, it has the power to require documentation and/or information to be provided by the Minister or Department and it can hear any person in connection with the complaint. This enables the applicant to make his/her arguments as to why the decision is wrong before the Board. The Chairman may also ask the applicant to produce further papers.

The Board then reports on its findings to the applicant and the Minister or Department. If it finds, for example, that the decision was improperly discriminatory or could not have been made reasonably, it shall request that the Minister or

Department reconsider the matter. In other words, it cannot overturn the decision but it can request that the decision be made afresh by the Minister or Department.

If the applicant is unhappy with the final decision of the Board, it can request the Board to consider reconvening and the Board may do so if it thinks that this is justified.

Judicial Review

If the applicant is unsuccessful in his/her appeal within the Housing Department and to the Board, the avenue of judicial review is still open to him/her. Judicial review is a process whereby a decision of an administrative body, such as the Housing Minister or the Housing Department, can be reviewed by the Royal Court.

Judicial review allows the Court to examine whether the correct procedures have been followed by the Minister or Department in making the decision and if not, it can quash the decision and ask the Minister or Department to make the decision again.

Where a decision has been made irrationally or unreasonably by a Minister or a Department, the correct procedures will not have been followed and the Court may require the decision to be reconsidered afresh by the decision-maker.

If, for example, the homeless applicant whose application for States housing had been rejected, were able to show that the decision was made because of his race and not because of his housing needs, and that his priority status had been ignored, it would be open to the Court to say that the decision was irrational or unreasonable as it took into account irrelevant factors (such as the applicant's race) and ignored relevant factors (such as his priority status).

The Court could then quash the decision and the Housing Department would have to consider the homeless person's application for housing afresh, putting out of their minds all thoughts of irrelevant factors such as race and taking into account all relevant factors, such as his priority status.