



Children's Commissioner for Jersey
Promoting and Protecting Children's Rights

Housing Rights and Children in Jersey

**Policy Position Statement
December 2021**



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Introduction

United Nations Convention on the Rights of the Child (UNCRC) Article 27:

'I have the right to have a proper house, food and clothing.'

The full text of Article 27 states:

- States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
- The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
- States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

The Primary function of the Commissioner for Children and Young People in Jersey is to promote and protect the rights of children and young people. The Commissioner has found that access to safe, affordable housing an issue for children in Jersey; over a quarter of children in Jersey recently listed housing as one of the top five issues that would make Jersey better.

In total, since 2018, the Commissioner have received 42 enquiries, involving 84 children concerning the Housing and Work Law. Specifically, 18 enquiries were escalated at case level concerning residential status. Within the 42 enquiries, there were several recurring themes: domestic violence; children with complex needs; mental health; access to adequate support; adaptations for disability and overcrowding. Concerns around the cost of housing and housing qualification status were also common. At the crux of the matter, the problem is essentially bipartite – 'non-entitled' children or families facing structural problems with the system, and entitled children or families facing issues with availability or accessibility.

Many children without entitled ('entitled' to housing via qualification through either work, partnership or long-term residency) status, or children of families without entitled status are falling through the gaps of the current system. Consequently, the private rental market is oversaturated, leading to potentially exploitative situations. This structure is also



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problematic for victims of domestic abuse, who have no feasible access to independent living. In these instances, those who do not hold entitled status cannot gain access to either financial or housing support, therefore leaving families with no other viable option but to remain in an abusive household or leave the island.

Whilst temporary hardship funding and a claim for entitled status due to hardship grounds can be applied for at the discretion of the Assistant Chief Minister (ACM) this does not always prioritise the best interests of children in line with Article 3 of the UNCRC. The Economic Development Minister, Senator Farnham sits on the Housing and Work Advisory Group (HAWAG). However, he also rules on appeals under his remit as Deputy Chief Minister. Appeals are considered by all members of the Housing and Work Advisory Group, but the final decision is made by the Deputy Chief Minister. It is difficult to see how the DCM could remain impartial when considering the recommendations arising from third-party appeals. The role of HAWAG is to provide advice as requested to the Assistant Chief Minister in respect of his/her powers under the Control of Housing and Work (Jersey) Law 2012 (CHW) and possible changes to the law. HAWAG is a political panel and it could be perceived as allowing personal preferences to play a part in decision-making. Very few applications for entitled status on hardship grounds are approved.

Finally, in some instances, even where children or their families qualify as entitled and receive assisted housing, there are issues regarding disability accessibility and costs.

Of course, we accept that housing in Jersey is a finite resource and the solution to this issue is fraught with political and practical issues. We will consider the current framework, safeguards and a rights-based approach along with three case studies which will demonstrate the systemic problems with housing children in Jersey face.



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Framework Investigation

In Jersey, the Control of Housing and Work (Jersey) Law 2012 restricts the occupation of qualified housing for those not yet entitled. This status comes only when someone has lived in Jersey for 10 years or has employment which grants them 'licensed' status. Social rented housing is provided via the Affordable Housing Gateway which is only available for adults with entitled status.

Consequently, for those who are not 'licensed' or 'entitled', housing is in high demand - prices are often unattainable for many families, or specifically exclude children. The current framework has ultimately created a gap; there is limited provision for the children without entitled or licensed status, or their families. Interestingly, the 2020 *Legislative Gap Analysis* finds, at Section 71, that 'access to social security benefits and housing in Jersey is governed by legislative regimes which discriminate between children based on their status or that of their parent(s) or caregiver.'¹

The Control of Housing and Work Law fails to provide for housing, or access to housing to be determined by reference to need or vulnerability, including vulnerability by reason of age. Restrictions on the availability of qualified housing limits access to housing for some families with children, and some independent children. The Affordable Housing Gateway discriminates amongst those in housing need based on residence status, rather than by vulnerability.

Not only this, but the current situation is also leaving these families open to exploitation in the private rental market and fostering an environment in which leaving abusive family situations is very difficult. One child, when asked as part of the Life on the Rock Report, stated, '*we didn't have qualifications, so the houses then were really expensive, and my mum couldn't afford them ... We did find one that was unqualified, and it was within the price range and they would say 'no children'*'.²

Clearly, the system at present does not prioritise the well-being and best interests of the child under Article 3 of the UNCRC. As per *General Comment 14*, Article 3 'gives the child the right to have his or her best interests assessed and taken into account as a primary consideration in all actions or decisions that concern him or her, both in the public and private sphere'³. This concept is threefold - it requires assessment of the best interests of

¹ Hoffman, S. and Sellwood, S., 2020. The Legislative Gap Analysis., page 38, section 7

² Queens University Belfast, 2021. Life on the Rock. p.6.

³ 2021. [online] Available at: https://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf, p3, [Accessed June 2021].



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the child to be taken as a primary consideration among others, any legal provision to be interpreted as supporting a best interest model, and finally, procedural accountability and the justification of decisions concerning a child or children. At this stage, Jersey is not acting in the best interest of children and changes to the framework are required.

1. The Affordable Housing Gateway

It is worth considering in further detail the current provision the State provides concerning social housing. Andium Homes ("Andium") provides social rented housing for those who are qualified and entitled. Although Andium is not the only social housing provider, they are the only provider with a website that can be accessed directly - the others operate solely through the Affordable Housing Gateway.

Under the Affordable Housing Gateway, a waiting list for everyone who is registered for social housing in Jersey is managed. From here, a list is circulated between the social housing providers: Andium Homes; Jersey Homes Trust; Les Vaux Housing Trust; FB Cottages Housing Trust; Christians Together in Jersey Housing Trust.

The system is then prioritised based on bands. Interestingly, whilst an 'urgent medical issue' is listed as qualification for band one priority, domestic violence is not. This aside, the issue at the core of this situation is that unless you are 'entitled', 'entitled to work', or 'registered', or have a spouse/partner who is any of the above, you are not eligible for help with housing via the Affordable Housing Gateway and consequently, any of the social housing provisions offered. This is not clearly listed on the government website and only becomes apparent upon filling out an online form. No direction for help or advice is listed and no explanation is given. Notably, the absence of clear direction or advice has also been recognised by the Jersey Homelessness Strategic Board, who noted in the *Jersey Homelessness Strategy 2020* as part of their 'Vision and Strategy' the intention to, 'create a housing advice hub so that everyone knows where to go to get help.'⁴

Even for those who do qualify, the system is oversubscribed. According to the April 2019 *Review of Access to Social Housing in Jersey*, 'since 2012, there has been an increase in the number of applicants to the waiting list'⁵. This is demonstrated by the following graph:

⁴ 2021 [online] Available at: <https://homelessness.je/wp-content/uploads/2021/01/Homelessness.je-Strategy-Document.pdf>. p7 accessed June 2021

⁵ 2021 [online] Available at: <https://www.gov.je/pages/search.aspx?query=travel+and+transport+review+access+social+housing> pdf, p.15, accessed June 2021



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Figure 1⁶:



Of particular note is the growth in the number of applicants with medical or disability needs, which 'increased from an average of 10-15 in early 2012, to average around 30 from 2015 to 2017'⁷, which will be particularly relevant when considering the following case study.

Ultimately, the review demonstrates increasing demand on the Affordable Housing Gateway and social housing in Jersey - in April 2021 alone, applications 'for affordable rental accommodation... increased by 25'⁸. Interestingly, the Jersey Homelessness Strategy conducted research which found that of 121 homeless respondents to a survey, 'the majority of survey respondents had full entitled status to reside in Jersey [93.4%], with 66.1% of these stating that Jersey was their nationality'⁹. In this way, we see that whilst the question of entitlement is an issue, the supply of affordable housing is the real crisis. This sentiment is reinforced by reports from the Life on the Rock publication in which children frequently commented on the housing situation. That housing has entered the general field of consciousness for children as a concern is particularly worrying. Children interviewed stated the following:

⁶ Ibid

⁷ 2021 [online] Available at:

<https://www.gov.je/pages/search.aspx?query=travel+and+transport+review+access+social+housing> pdf, p.15, accessed June 2021

⁸ 2021 [online] Available at:

<https://www.gov.je/Government/JerseyInFigures/HousingLiving/pages/housingaffordability.aspx.pdf.p1> accessed June 2021

⁹ 2021 [online] Available at: <https://homelessness.je/wp-content/uploads/2021/01/Homelessness.je-Strategy-Document.pdf>, p20 accessed June 2021



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'I think houses and flats are really expensive in Jersey and sometimes mums and dads don't earn enough money to afford a nice house for them and their children' (survey respondent, female, 10)¹⁰

'The housing has been crazy' (Charlotte, 18)¹¹

*'The government ... find it very hard to intervene with private landlords and I think it's 'cause they make them a lot of money'*² (Sophie, 16)¹²

It is clear to see that the housing problem in Jersey is a children's rights issue, for which particular consideration to *General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant on Economic, Social and Cultural Rights* ("General Comment No. 4") as adopted by the UN Committee on Economic, Social and Cultural Rights, on 13 December 1991, paragraph six is pertinent; 'individuals, as well as families, are entitled to adequate housing regardless of age, economic status, group or other affiliation or status and other such factors'. A solution to this problem is beyond the remit of this position statement, however, the launch of an in-depth review into affordable housing supply by the Environment, Housing and Infrastructure Scrutiny Panel must seek to provide adequate housing for children in Jersey in line with UNCRC regulations. We will provide this Statement to the Review.

Finally, the Legislative Gap Analysis also made the following findings relating to the AHG:

- The AHG is discriminatory (in breach of UNCRC Article 2) as it excludes some potential applicants from accessing affordable housing. SoJ legislation does not provide for housing, or access to housing to be determined by reference to need or vulnerability, including vulnerability by reason of age.
- The AHG discriminates amongst those in housing need based on residence status, rather than by vulnerability.
- The AHG discriminates against children as only adults may apply.¹³

2. Entitled Status based on hardship

As noted above, there is a safeguard in place for those who may fall between the gaps of the current framework. This was commonly referred to as 'hardship housing consent' under Category G of the Housing Regulations administered by the Housing Department, and now falls under 2(1)(f), 2(1)(e) and 2(2) of the *Control of Housing and Work (Residential and*

¹⁰ *Queens University Belfast, 2021. Life on the Rock. p.4*

¹¹ *Ibid*

¹² *Ibid*

¹³ *Hoffman, S. and Sellwood, S., 2020. The Legislative Gap Analysis., page 38, section 7*

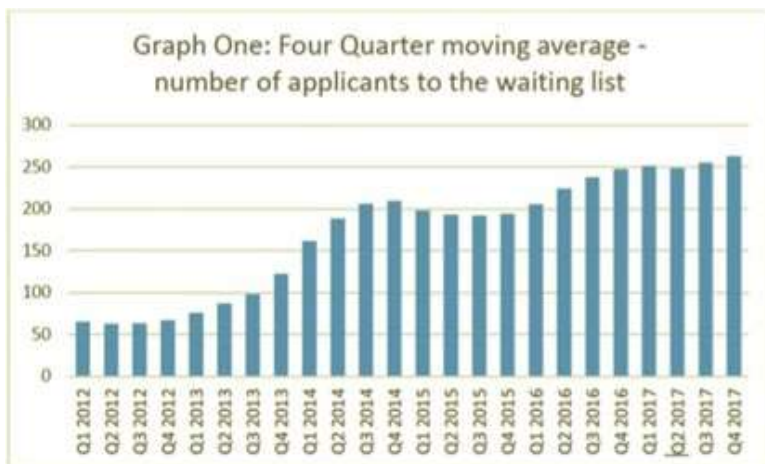


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Employment Status) (*Jersey*) *Regulations 2013*. In practice, 'relevant officers within Customer and Local Services will consider these applications under delegated powers from the Assistant Chief Minister'¹⁴, however, the 'Assistant Chief Minister has the ability to consider applications which do not fall within the guidance on a case-by-case basis, and to exercise discretion in respect of such application... he will seek the advice of his political colleagues on the Housing and Work Advisory Group as part of the decision making process'¹⁵. This provision essentially operates as a safeguard for those in need, with hardship grounds generally categorized as: relationship breakdown; death of a spouse; medical reasons; accommodation-related; extended absences or broken residence.

Whilst these applications are a welcome step toward a best-interest approach, particularly for children, few applications are ever approved in practice - in 2019, 18 applications were approved¹⁶. Unfortunately, we do not have figures for the total number of applications. It is useful to note here the following table which demonstrates the total number of approved applications from 2006-2019:

Figure 2¹⁷



This table demonstrates a downward trend in approved applications. It is not within the remit of this position statement to comment on whether this may be linked to the increasing

¹⁴ 2021 [Online] Available at: <https://www.gov.je/government/freedomofinformation/pages/foi.aspx?ReportID=3404>, accessed June 2021

¹⁵ Ibid

¹⁶ 2021 [Online] Available at: <https://www.gov.je/government/freedomofinformation/pages/foi.aspx?ReportID=3404>, accessed June 2021

¹⁷ 2021, [online] Available at: <https://www.gov.je/government/freedomofinformation/pages/foi.aspx?ReportID=509>, <https://www.gov.je/government/freedomofinformation/pages/foi.aspx?ReportID=3404> (note: data was not available for 2016-2017), accessed June 2021



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demand on the AHG and affordable social housing, but what is clear is that children are being put into untenable positions and that their housing needs must be prioritised. According to our research, there have been two cases involving children where status was granted on hardship grounds in 2021 thus far. To give some context to this, in December 2019, the rolling 12-month total for those accepted onto the AHG was 774¹⁸. The 18 applications that were approved on hardship grounds in 2019 (January-December inclusive) would have represented a 2.3% increase in the total number of applicants accepted onto the AHG for affordable rented accommodation from the private sector or affordable housing transfers.

The Office of the Children's Commissioner suggests that a best interest approach should be adopted in the cases where a child or children are involved. This would mean that 'hardship' cases specifically involving children or a family would be considered with an emphasis on the 'best interests' of the child first and foremost. This aligns with the approach suggested in 8(e) of *General Comment No. 4*¹⁹ which emphasises that, 'disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Thus, such disadvantaged groups as the elderly, children, the physically disabled... should be ensured some degree of priority consideration in the housing sphere.'²⁰ By adopting the 'best interests' model in line with Articles 3 and 11, with an emphasis on prioritisation of cases involving children, Jersey could create a system that incorporated UNCRC-compliant housing without threat of a 'floodgate' situation or jeopardising the position of entitled persons.

Case studies

1. Domestic violence

Whilst there are short-term solutions for families dealing with domestic violence via a Jersey NGO, this does not provide a long-term solution - parental separations can be lengthy and a stable home is integral to ensure children feel supported during an otherwise turbulent time. Additionally, court proceedings can mean that parents are not advised to leave the island - in this case, they can end up effectively stranded without access to affordable long-term accommodation, but unable to leave until the legal aspect is resolved.

¹⁸ 2021[online] Available at: <https://www.gov.je/Government/JerseyInFigures/HousingLiving/pages/housingaffordability.aspx.pdf.p1> accessed June 2021

¹⁹ 2021 [online] Available at: <https://www.refworld.org/pdfid/47a7079a1.pdf>, accessed June 2021

²⁰ 2021 [online] Available at: <https://www.refworld.org/pdfid/47a7079a1.pdf>, section 8 e accessed June 2021



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Whilst temporary hardship funding is available at the discretion of the Minister, as discussed above, this solution is infrequent and under the current framework is not a long-term solution to this structural problem.

In order to understand the potential disruption this can cause for children, the following case study is particularly illuminating. In this case, a mother fled her abusive partner along with her children. She applied for housing qualifications and was rejected, which led the Population Office to recommend that the family apply for repatriation. This would result in the children leaving Jersey; the place which they regard as home. It is clear to see that in this instance, a decision was not made with the best interests of the children as a priority and has left the family with the limited options: either returning to an abusive environment or being repatriated. All of these options also infringe upon the following Articles of the UNCRC:

- 19) The right to be protected from being hurt or badly treated;
- 26) My family should get the money they need to help bring me up;
- 27) The right to have a proper house, food and clothing and;
- 36) The right to be kept safe from things that could harm my development of the UNCRC

This example clearly demonstrates the gaps within the current framework and potential breach of UNCRC Articles.

2. Adaptations for complex needs

Another recurring theme within the casework function of the Office is the lack of suitable housing for children with complex needs and disabilities. These needs can range from a child with a diagnosis of Autism to children with a physical disability who require the use of a wheelchair. In these instances, a lack of space and reasonable adjustments to the property are both common problems.

The Office received one referral concerning the suitability of the Andium-provided accommodation for a family with a child who uses a wheelchair. The house was deemed unfit for the child's needs by the child's social worker and was not big enough for the required adaptations to be put in place. Upon application for a new, suitable home, the family were told that there was no disabled housing available. This ultimately left the family to provide the required care and adjustments for the child in a home which was not fit for purpose.



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This lack of suitable housing for children with complex needs does not uphold the rights as outlined within the UNCRC and can have an adverse impact upon their quality of life and the quality of life of their families.

The following UNCRC Articles are engaged in this case:

- 6) Every child has the right to life. Governments must do all they can to ensure that children survive and develop to their full potential;
- 23) A child with a disability has the right to live a full and decent life with dignity and, as far as possible, independence and to play an active part in the community. Governments must do all they can to support disabled children and their families and;
- 27) Every child has the right to a standard of living that is good enough to meet their physical and social needs and support their development. Governments must help families who cannot afford to provide this.

3. Familial separation

As noted above, the current housing situation in Jersey not only provides difficulties for families with residential status, the private rental market also leaves families exposed to potentially exploitative situations. In some cases, the Office has received referrals in cases where landlords have drastically increased rent or decided to sell the property. In these situations, families are forced to seek alternative accommodation, often with limited options even where qualified under the AHG.

Families are often advised to seek temporary accommodation in lodging houses, or for the families to separate in order to access support. Families have been advised that one parent should take the child or children to a local NGO (even where their situation may fall outside of the remit of care for that organisation), and the other should seek separate temporary accommodation alone. The Jersey Homelessness Strategy review supports the conclusion reached by analysis of casework, having identified 'gaps in homelessness provision in Jersey, particularly around emergency provision for families, vulnerable young people and women who have not suffered domestic abuse'²¹. This model is clearly not sustainable or in the best interests of the child or family as a whole.

In other cases, families have separated but one parent does not hold residential status, meaning they cannot access the AHG as noted above. In these instances, parents are

²¹ ²²2021 [online] Available at: <https://homelessness.je/wp-content/uploads/2021/01/Homelessness.je-Strategy-Document.pdf> p31 accessed June 2021



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forced to seek accommodation which is often prohibitively expensive or inappropriate for the child's needs. Should an application for registered status via hardship not be granted, families have little choice but to move away from the island. This can be detrimental to the growth and development of the children involved and infringes upon the child's rights, as listed below:

- 9) States parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine that such separation is in accordance with the law and in the child's best interests;
- 18) Both parents share responsibility for bringing up their child and should always consider what is best for the child. Governments must support parents by creating support services for children and giving parents the help, they need to raise their children;
- 27) Every child has the right to a standard of living that is good enough to meet their physical and social needs and support their development. Governments must help families who cannot afford to provide this.

4. Notice of eviction

Increasingly the Office is receiving requests for advice and support from families without entitled status, facing eviction due to properties being sold or re-registered, or where a property is registered for a limited number of tenants.

With limited properties available and increasing rents in the private sector, families are requesting early consideration for entitled status, not to access the Housing Gateway or to claim Income Support but to have access to a wider rental market across the private sector too.

One case outlines a family facing eviction with a very short notice as the property that they leased was being sold. They had a young child and were expecting a baby.

The family were advised to seek temporary accommodation in lodging houses or hotels, or separate and the woman seek accommodation at the Women's Refuge with her child.

The Women's Refuge is a place of immediate safety for women and children fleeing domestic abuse and violence, not a temporary shelter for families seeking suitable accommodation. Any child staying at the Women's Refuge or in a hotel is homeless and not in line with the Government of Jersey's commitment to "Putting Children First". A child that is homeless potentially presents a safeguarding concern and could necessitate that



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child being brought into the care of the Minister, not through parental abuse or neglect but due to barriers to affordable and appropriate housing.

Entitled status can be granted in cases of hardship but this process is inconsistent and discriminatory for whom it is agreed and not a solution for many families.

The family applied, and appealed, but they were not granted entitled status.

As outlined in section 4, hardship grounds fall into specific categories. The current legislation for the grounds are based solely upon the adult applicant and therefore discriminate against any child/ren within a family. No child should be separated from their family on the basis of economics or residential status.

The decision for this family was not made in the best interests of children, as per UNCRC Article 3.

Furthermore, it infringes upon these children's rights:

- **Article 27** - Every child has the right to a standard of living that is good enough to meet their physical and social needs and support their development. Governments must help families who cannot afford to provide this.
- **Article 2** - Non discrimination, whatever their ethnicity, gender, religion, language, abilities or any other status, whatever they think or say, whatever their family background.
- **Article 6** - Every child has the right to life. Governments must do all they can to ensure that children survive and develop to their full potential.
- **Article 9** - Children must not be separated from their parents against their will unless it is in their best interests

Recommendations

1. The Control of Housing and Work (Jersey) Law 2012 should be urgently reviewed so that the legislation complies with the United Nations Convention on the Rights of the Child.
2. The best interests of children must be paramount on the face of legislation and any policy or guidance.
3. The Housing and Work Advisory Group (HAWAG) should revise the criteria on which it determines applications to ensure that the best interests of children are paramount.



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4. The role of Deputy Chief Minister hearing appeals must be reviewed and any conflict of interest be dealt with.
5. There should be a review on the availability of qualified housing suitable for families with children, and some independent young people particularly those leaving care.
6. Housing Legislation should provide for housing, or access to housing to be determined by reference to need or vulnerability, including vulnerability by reason of age.
7. The Affordable housing Gateway must base need on vulnerability rather than on residential status.