

Jersey Landlords Association (“JLA”)**Response to Deputy Judy Martin’s public consultation entitled****“Prohibiting discrimination in respect of the renting or purchasing of premises”.**

1. The Social Security Minister’s consultation results from Deputy Tadier’s proposition (P31 of 2018) which was to propose legislation to prevent landlords from discriminating against children. Deputy Tadier’s two most significant observations were:
 - (a) Most landlords (in Jersey) do not have a problem with families.
 - (b) When a property is unsuitable for children, “this is perhaps the only reason, which might hold some credibility” for refusing to let a property to a family with children.
2. The JLA agrees with these sentiments. Most private landlords have no problem with renting to families, especially where the children are reasonably well-behaved and under the control of reasonably competent parents. Landlords who decline to accept children, almost invariably do so because they consider that either:
 - (a) their particular property is unsuitable in its configuration (e.g. too small or dangerous) for children in some way; or
 - (b) it is unlawful to house a child (or its parents) in the accommodation; or
 - (c) that the parent(s) cannot provide references, confirming their general reliability and suitability as a tenant, financially and/or socially; or
 - (d) that their other tenants (with no children) are not always keen to live in accommodation which is in close proximity to families with children; or
 - (e) that, whilst happy to take children, the building currently has a lot of children in it (in different flats) and to take more would create problems with prams, bikes, etc over flowing storage areas and creating fire or health and safety hazards in communal areas or excess noise for other flats amongst other factors.
3. In any event, all parties appear to agree that this debate is about a very small minority of private landlords, who decline to take children for no apparent good reason. We therefore have to ask why it is necessary to pass yet more legislation aimed at “controlling” this issue.

Yes, there is certainly a shortage of accommodation in Jersey suitable for housing children, especially children of families who have lived in the Island for less than 5 years.

Indeed there is a severe lack of housing in Jersey generally.

This general lack of housing is presently one of our government's most pressing problems and the Government, through the Bridging Island Plan and Andium Homes, is trying to tackle this issue.

The government needs assistance in this task from private landlords willing to invest in providing homes to rent, but the States Assembly keeps legislating in ways that discourage investment by private landlords.

History has consistently shown, in many countries, that increased legislation exacerbates housing problems as private landlords leave the residential rental market and reinvest their funds in less-controlled areas of the economy. This exiting from the industry is happening in Jersey now.

4. Jersey law already controls the number and type of residents in registered lodging houses and other multiple occupation properties in the following ways:
 - (a) It is unlawful, for example, to take children in a lodging house if the accommodation itself is not specifically registered for children. How is legislation, saying you must take children, going to fit with this existing legislation that prohibits children in certain flats? This does not seem to be carved out in the draft legislation.
 - (b) Fire safety rules understandably preclude obstructions (such as prams and bicycles) from being stored in corridors which are also emergency exit routes. This alone precludes the housing of children, where an individual dwelling unit is too small for the storage of such items. This must be tackled in the draft legislation.
 - (c) Some of the privately owned dwelling accommodation in Jersey may well be too small or insufficiently sound-proofed. But bigger dwelling units and better sound-proofing both mean more investment and thus higher rents.
5. The draft legislation as currently drafted does not “fit in” with the Public Health and Safety (Rented Dwelling) (Jersey) Law 2018 and its subordinate legislation. Minimum standards (which must be met under these laws) are assessed against criteria known as the Housing Health & Safety Rating System (HHSRS). This HHSRS does not set out minimum standards. It is concerned with avoiding or, at the very least, minimizing potential hazards. When Environmental Health officers inspect a dwelling they will look for any risk of harm to an actual or potential occupier of a dwelling, which results from any deficiency that can give rise to a hazard. The officer will make these judgments by reference to those who, MOSTLY BASED ON AGE, would be most vulnerable to the hazard. If the HHSRS requires all rented dwellings to be suitable for the most vulnerable (i.e. children and the elderly), the “defense” in the proposed substituted Article 41(4) of the Discrimination Law *“It is a defence to a complaint in respect of an act prohibited by Article 24 and*

falling within sub-paragraph (2) of this paragraph, for the person alleged to have done the act to show that not doing so would create a hazard within the meaning of the Public Health and Safety (Rented Dwellings) (Jersey) Law 2018”, is actually little defense at all.

6. However, our members tell us that Environmental Health officers will not allow certain properties to be let to families with children under 10 years because of the configuration of older properties or of certain elements within them. This appears to be a particular problem in properties where such internal elements are protected by a historic buildings listing.
7. Would the obligation to take children require private landlords to make their properties suitable (and safe) for children, which is likely to be required under the Health & Safety (Rented Dwellings) (Minimum Standards) laws?
 - If so, any such expenditure would materially increase the landlord’s investment in the housing, making its rent less “affordable”.
 - It is our submission, that protecting children from danger is surely primarily the job of parents.
 - It is not reasonable to expect Landlords to fund the cost of removing all possible dangers in a dwelling, however remote. Children are curious; they fall down stairs and out of windows; they run out onto busy streets without looking and they are attracted to ponds and swimming pools.
 - There will always be some dangers that cannot be removed e.g. houses with front doors directly on to roads; older houses with steep or round or historically protected uneven (tourelle) staircases, properties with a swimming pool, pond, reservoir on nearby curtilage.
 - Tenants invariably have the chance to inspect accommodation before renting it. Parents should obviously rule out any property in which it might be dangerous for their children to live.
 - It is not unheard of for parents, who have failed to protect their children from dangers, to blame their landlords and even sue for compensation.
8. The creation of enough homes in Jersey to house everyone adequately, is a commendable aim with which the JLA and pretty much everyone agrees. But achieving a reasonable balance is the key. One difference, here, is that those with a political leaning wish private dwelling accommodation to be seen as “a social commodity” instead of the owner’s personal asset (and in some cases livelihood), and that is a likely way to reduce private landlord investment in the rental housing sector., reducing supply and driving up rents.

9. It has been said that landlords should have no right to discriminate against tenants "... just because they have children."

- The JLA recognizes the general concept that there is likely to be a legitimate reason why a landlord considers his or her property unsuitable for children (see paragraph 2 above). We believe, however, that this decision must remain the prerogative of each property owner if our society is to avoid seriously harmful effects on the private rental market, as a whole.
- The relatively small minority of private landlords, who prefer not to accommodate children, for the reasons mentioned above, have their own human rights. They should not have their right to own property (and to use it for housing whomsoever they wish), effectively overridden by counter-productive local legislation.
- This would especially apply to private individuals, who are willing to take a tenant in part of a home in which they also live personally. He or she should always be free to accept or decline children, without having to give any reason whatever.

10. In our respectful submission the only outcomes of the passing of the anticipated legislation in its current form would be:

- (a) a degree of virtually unprovable dishonesty by landlords in respect of tenancy rejections;
- (b) time-wasting for both landlords and prospective tenants in making and receiving non-productive phone calls and/or inspection visits; and/or
- (c) the complete loss of that accommodation from the rental market.

11. The proposition effectively invites inappropriate complaints against landlords from every disenchanted prospective tenant (with a child) where they have made an unsuccessful application for accommodation.

- Their complaint would inevitably be made on the grounds that the landlord had no exceptional or justifiable reason to refuse their application.
- If, therefore, a landlord considers a childless applicant with good references and the financial ability to afford the required rental, to be a more reliable prospect than an applicant with children BUT ALSO no references and a relatively low level of income, would these be considered "exceptional and justifiable grounds" on which to prefer the tenant with no children?
- Similarly, would it be considered unacceptable discrimination against children if a landlord asks for a higher deposit from prospective tenants with children because there is a materially greater chance of damage to when children are in residence?

- Who will receive and adjudicate upon such allegations and how long would that process take? Would accommodation have to be left empty whilst a decision is reached?
12. Political interference with markets, whether financial or social, will generate excessive red-tape controls. They will be wholly counter-productive, resulting in fewer privately rented housing units available at, consequently, higher rents. This is currently being experienced in Jersey as a result of the raft of legislation that has been brought into play in recent years concerning private rental dwellings. More legislation is not the way forward.
 13. Finally - implementation administration and policing. What is the cost of implementing or subsequently monitoring, administering or policing this legislation?
 - (a) How will the administration of this law be conducted and at what cost?
 - (b) How will complaints received under this law be adjudicated and at what cost?
 - (c) How will the policing of this law be conducted without and at what cost and what will constitute proof of an offence under this law without adequate policing and investigation?
 - (d) Can there ever be a point in having a law without policing and with no teeth? And there would clearly be a material cost to doing this.
 14. In conclusion, the draft legislation does not adequately consider all of the various reasons why a landlord might, quite legitimately refuse to enter into a lease with a family with children and there is a real risk of action being taken under discrimination legislation where a landlord is caught between such legislation and other legal obligations. The JLA would be pleased to discuss this further as part of this consultation.