

# TYNWALD COMMISSIONER FOR ADMINISTRATION

## REPORT ON CASE TCA1806

### *Summary of complaint*

1 Mr K complained that the Department of Infrastructure was refusing to issue him with an Isle of Man driving licence on the ground that he did not have a postal address in the Island to which it could be sent. Mr K maintained however that that he was resident in the Isle of Man, owned property here, had his daughter at school here, and was entitled to the driving licence he had applied for.

### *Jurisdiction*

2 Section 12(3) of the Tynwald Commissioner for Administration Act requires that a complainant must, subject to exceptions which do not apply here, be resident in the Isle of Man at the time the complaint is made. Given that Mr K was adamant that he was so resident, it was necessary for me to put the matter to the Department by way of preliminary enquiry.

3 I saw further reason to do so since Mr K had told me that he pays taxes, national insurance and rates here, from which I inferred that he could be recognised by the Assessor as tax-resident in the Island, and that there was the possibility of the Department applying criteria inconsistent with those applied by the Treasury – for which there might, or might not, be an adequate reason.

4 Evidence provided by the Department and subsequently by Mr K himself, however, made it quite clear that he is not, and was not at the material time, resident in the Isle of Man. Mr K works abroad for some eleven and a half months each year, his property in the Island is let and he needs temporary accommodation when he is back for visits. There is therefore no jurisdiction to investigate the complaint.

### *Domicile*

5 I think the misunderstanding which has occurred, and which has prompted Mr K to claim that he is resident in the Island, is explained by the distinction between residence and domicile. Neither is a precisely defined concept in the present context, but it is quite arguable that Mr K is indeed domiciled in the Isle of Man – in other words, that it is his home, that he has very strong connections with the Island and that he intends to return to live when his work abroad comes to an end. Residence by contrast requires actual physical presence for at least the greater part of the period in question.

### *Underlying issue*

6 It would not be fair to leave the matter without recording that the Department of Infrastructure appears to have acted quite correctly.

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7 The legislation governing the issue of driving licences is to be found in the Road Traffic Act 1985, specifically in Schedule 3, paragraph 6(A), which provides:

(1A) Except in such cases as may be prescribed, a licence shall not be granted to a person unless he satisfies the Department that on the date the application for the licence is made — (a) he is normally resident in the Island, or (b) he has been attending a course of study in the Island during the period of 6 months ending on that date.

8 Given the legislation which the Department must operate under, it is difficult to see how an Isle of Man driving licence could have been issued to Mr K.

Malachy Cornwell-Kelly  
29 March 2018