

CASE SUMMARY

Complaint against the Hong Kong Housing Society for setting unreasonable eligibility criterion and making changes to complainant's application without his consent

The Complaint

The complainant applied to the Hong Kong Housing Society (hereinafter referred to as 'HKHS') in April 1997 for the purchase of a flat under the Sandwich Class Housing Scheme. Subsequently, the HKHS notified him of the balloted priority number and invited him for an interview. The complainant attended the interview as scheduled. In mid-July, his wife received from the HKHS a letter informing her that her application was unsuccessful. The complainant was greatly aggrieved that the HKHS required the applicant to be the major income earner of the family and that it had changed his applicant status to his wife. He therefore lodged a complaint with the Ombudsman against the HKHS for:

- (a) unreasonably requiring applicants of the Sandwich Class Housing Scheme to be the major income earner of the family; and
- (b) improperly changing his applicant status to his wife without his consent.

Findings and Conclusion

Complaint point (a)

2. Upon investigation, this Office notes that under the Sandwich Class Housing Scheme of the HKHS, a family consisting of the applicant plus spouse and/or child(ren) belongs to the family composition of the first priority while a family consisting of the applicant plus parent(s) only belongs to the second priority. A family consisting of the applicant and sibling(s) will belong to the third priority. The HKHS also requires the major income earner of a family to be the applicant. The purpose of setting this criterion is to prevent families from making use of a lower-income member to form an eligible family composition of higher priority, thus avoiding unfairness. The HKHS also considers that the major income earner of a family should be the purchaser of the flat.

3. This Office is of the view that given the HKHS has set priorities for different family compositions, the setting of further restrictive conditions is against the principle and aims of setting priorities on the basis of family compositions. Since the HKHS has made public the priority grouping, it is understandable that applicants would all aim at acquiring the highest priority possible. There is no question of any unfairness at all.

4. Furthermore, if an applicant wishes to make an application under the family composition of the applicant plus spouse and/or child(ren) with the applicant himself/herself as the purchaser of the flat, it would be unfair to him/her if he/she is eventually placed in the second priority category simply because his/her income is less than that of his/her child(ren).

5. As each family has its own financial commitment and plans, the HKHS should not determine for the family as who ought to be the purchaser of the flat. Insofar as assessment of family income is concerned, the HKHS should only consider the total family income, having regard to the stipulated limits.

6. Although the HKHS has the authority to set eligibility criteria, it is neither convincing nor reasonable for the HKHS to require the applicant to be the major income earner of the family, albeit for the stated purpose of preventing possible unfairness. Indeed, the imposition of this criterion would unduly affect the priorities and outcome of the individual families' applications. This complaint point is therefore substantiated.

Complaint point (b)

7. Our examination of the application form submitted by the complainant reveals that the complainant was the applicant and that his wife's monthly income was indeed higher than his. All along, the HKHS had addressed its letters to the complainant.

8. At the interview with the HKHS, the complainant had promptly objected to the HKHS's staff suggestion of rendering his wife as the applicant. Yet the HKHS sent a letter to his wife in mid-July informing her that her application was unsuccessful because she had not resided in Hong Kong for seven or more years as required. However, the HKHS had never contacted her directly before that.

9. This Office notes that the HKHS did not accept the complainant as the applicant because he was not the major income earner of the family and that the complainant had clearly indicated his objection to rendering his wife as the applicant. This Office is of the view that under the circumstances, the HKHS could send a letter to the complainant informing him directly that his application was unsuccessful. It was unnecessary for the HKHS to send a letter to his wife instead and render her the applicant without the complainant's consent. As far as this complaint point is concerned, it leaves much to be desired in terms of reasonableness and procedural propriety. In addition, as the HKHS knew perfectly well that the complainant's wife was ineligible, it should not render his wife the applicant and then inform her that her application was unsuccessful. This Office considers that this complaint point is substantiated and the complaint could have been avoided.

10. Overall, the Ombudsman concludes that this complaint is substantiated.

Recommendation

11. The Ombudsman notes that the Executive Director of the HKHS has already proposed to the Housing Bureau that the provision requiring the applicant to be the major income earner of the family should be deleted in due course. The Ombudsman recommends that the Executive Director of the HKHS should actively pursue the proposal. Once the Housing Bureau accepts its suggestion, the HKHS should notify the complainant of the result in writing.

Response from the Hong Kong Housing Society

12. The Executive Director of the HKHS has accepted the findings, conclusion and recommendation of the report.

Office of The Ombudsman

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