

## CASE SUMMARY

Complaint against the Housing Department for: (a) cancelling the complainant's application for special transfer without giving her prior written notice and clearly explaining to her the reasons for the cancellation; and (b) misleading her into believing that she would be given three offers of public rental flat allocation.

### The Complaint

The complainant is a public housing tenant. In February 1998, she lodged an application for special transfer with an estate office for the sake of her son's health and in the hope of moving to a larger and better-ventilated flat on the upper floor of a public rental housing block in an estate in the 'non-urban' district. In September of the same year, she received the first offer letter from the Housing Department (HD). As the flat allocated to her was on the lower floor and far away from the schools of her children, she refused to accept the offer. She alleged that the staff of the HD had told her that she would be given three offers. If she rejected all the offers, her application would be cancelled. Thus, she requested the staff of the estate office of the housing estate in which she was living to let her change her preference from a flat in a housing estate in the 'non-urban' area to one in the urban area to facilitate her children in their travel to school. In November of the same year, she received the second offer letter together with a notification (H.D.339) from the HD, which stated that if she declined the offer, she would have to wait for quite a long time before she would be given another offer. The complainant refused to accept the second offer on the ground that the flat was not located in the district of her choice and that it was not well-ventilated. In March 1999, she met a staff member of the estate office at the lobby of the public rental housing block in which she was living and learnt that her application had been cancelled. So she went to the estate office to seek an explanation. She felt aggrieved that the HD had

cancelled her application without giving her prior written notice and clearly explaining to her the reasons for the cancellation. She opined that the allocation policy of the HD was unreasonable and that the notification (H.D. 339) issued to her together with the second offer letter had misled her into thinking that she would still be given one more offer. Hence, she lodged a complaint with this Office.

### Information Provided by the Housing Department

2. Under the current policy of the HD, if a tenant can no longer live in his flat for health reasons or other livelihood problems, the HD may arrange a special transfer for him at its discretion. To ensure optimal use of public housing resources, the staff of the HD will consider the reasons furnished by tenants and the urgency of individual cases when they process applications for special transfer and make recommendations prudently. In order to prevent tenants from abusing the special transfer arrangement, the HD staff are duty bound to review their applications to see if there is a need to arrange special transfer for them when they refuse to accept the offer of flats in the districts of their choice without good reasons. The HD has no special guidelines to require its staff to inform applicants in writing of the results of their applications for special transfer when they process such applications.

3. The complainant said she made an application for transfer to a larger flat in February 1998 for the sake of her son's health. The HD did not consider this a valid reason. However, as the overall air quality in the housing estate where she was living was relatively poor and the staff of the estate office sympathised with her son who was suffering from chronic ailment, they said that they could recommend her to apply for transfer to a housing estate in the 'non-urban' area where the air quality is comparatively better. With her consent, the HD staff helped the complainant complete the application form and explained to her that her application was classified as application for special transfer, and it would be cancelled if she turned down the offer of the HD without a good reason. After the complainant rejected the first offer and requested to change her preference from a flat in a housing estate in the 'non-urban' district to one in the urban area, the estate office staff did verbally explain to her at the very beginning the grounds on which they recommended her to

move to a better-ventilated housing estate in the 'non-urban' district and told her that her request to be transferred to an estate in the urban area would be refused. Since the flat provided to her upon the first offer was on the lower floor and there were not enough windows in the living room, the estate office requested the Lettings Unit to allocate to her a better-ventilated flat on the upper floor in the district chosen by her previously. Upon receipt of a copy of the second offer letter, the estate office staff contacted the complainant and advised her to cherish the chance. She was also told about the consequence if she turned down the offer again without good reasons. Nevertheless, she declined the offer once again on the ground of poor transport facilities. Finally, the Lettings Unit decided to cancel her application after consulting the estate office. In February 1999, the estate office was formally notified of the decision.

4. The HD pointed out that, in this case, the Department had already approved the complainant's application for transfer to an estate in the 'non-urban' area. Moreover, vacant flats were not unavailable in the district of her choice. The HD accepted her application in the first place because the Department wished to help her solve the health problem of her son and she had stated in the application for special transfer that her choice was an estate in the 'non-urban' district. In the course of allocation, the HD staff had interviewed the complainant and explained to her that her reasons of refusal of the offer were inadequate and thus, her request would not be granted and no arrangement would be made for her to transfer to an estate in the urban area. The HD staff also advised her to take the second offer, or else, her application would be cancelled. Therefore, it was not true that no clear explanation had been given to her by the HD on the cancellation of her application as she had alleged.

5. The HD does not have a policy which strictly governs the number of offers given to successful applicants for special transfer. However, to ensure optimal use of public housing resources and prevent applicants from abusing the special transfer arrangements, the HD will send the applications back to the estate office concerned for review so as to ascertain the need to arrange special transfer for the applicants when they reject the offer of flats in the district of their choice without good reasons or when they request for particular flats, flats on particular floors or flats in particular

estates.

6. The complainant alleged that the estate office staff misled her into believing that the HD would give her three offers. In response, the Department said that normally, the estate office staff would not tell the applicant that three offers would be given to them when they were given the first offer. In order to shorten the vacancy period for public housing flats, the HD would allocate vacant flats under refurbishment before the refurbishing works are finished. Hence, the notification (H.D. 339) is issued for the purpose of reminding the applicants who have been allocated such flats to consider the offer carefully and advising them to accept it as far as possible. It does not serve to guarantee further offers. If they refuse to accept the offer, they may have to wait for a longer period of time for the next offer. Whether or not the applicant would get another offer depends on the result of the review conducted under the policy mentioned in paragraph 5 above. The HD had issued a reply to the complainant in May last year to explain this point. The Department admitted that some phrases and sentences in the notification had been revised to avoid misunderstanding by other applicants.

## Observations and Conclusions

### Complaint Point (a)

7. Having examined the information and files provided by the HD as well as the current policy and procedures of processing applications for special transfer, this office is satisfied that the HD had not notified the complainant in writing before cancelling her application for special transfer. However, the HD staff had, when they helped the complainant complete the application form, after she had rejected the first offer and when she received the notification of the second offer, verbally explained to her the grounds on which they recommend her to move to the 'non-urban' area and made it clear that the HD would neither accede to her request nor make arrangements for her to move to an estate in the urban area. In view of the inadequate reasons put forth by her in declining the first offer, the HD had asked her to cherish the second chance, or else her application would be

cancelled. Furthermore, as mentioned in paragraph 1 above, the complainant had requested the HD staff to let her change her preferred district. This indicated that to some extent, she was aware of the status of her application for special transfer. At present, the HD has no guidelines to require its staff to notify applicants in writing of the results of their applications for special transfer and reasons for their cancellation. Yet we are of the view that if HD can add a note in the application form for special transfer, stating that the application will be cancelled if the reasons for refusing an offer are not the same as the grounds on which the application was lodged and for which the HD has recommended special transfer, the applicant would have a better understanding of his rights and obligations. Moreover, if the Department could issue a written notice to the applicant upon cancellation of his application to give him a clear picture of the circumstances concerned, it would help to reduce the chance of misunderstanding and dispute. Having considered the above circumstances, this Office concludes that complaint point (a) is partially substantiated.

#### Complaint Point (b)

8. Having examined the information and files provided by the HD, this Office is of the view that there was no substantive evidence to support the complainant's allegation that the estate office staff had told her the HD would give her three offers when she declined the first one. However, it is stated in paragraph 4 of the notification (H.D. 339) attached to the second offer letter issued to the complainant that "Owing to problems arising from the supply and demand of vacant flats, you may have to wait for a rather long period of time before you will be given the next offer". As a matter of fact, the wording is ambiguous and it is likely that the complainant thus thought she would be given a third offer. Nevertheless, as the complainant was, to some extent, aware of the status of her special transfer application and the HD has revised the notification (H.D. 339) by deleting paragraph 4 therein which contains the abovementioned sentence to avoid misunderstanding and dispute by other applicants, this Office concludes that complaint point (b) is partially substantiated.

9. All points considered, The Ombudsman concludes that this complaint is partially substantiated.

## Recommendations

10. This office is pleased to note that the HD has revised the notification (H.D. 339) to avoid misunderstanding by applicants that they will be given another offer of allocation of public rental flats. The Ombudsman has also made the following two recommendations to the Director of Housing with a view to further improve the quality of service of the Department:

- (a) with regard to the processing of applications for special transfer, to consider adding a note in the application form for special transfer to state the circumstances under which applications would be cancelled; and
- (b) to consider stating in the departmental instructions that a written notice should be sent to the applicants to explain to them the reasons for cancelling their applications.

## Response from the Director of Housing

11. The Director of Housing has accepted our views in this report. The Department's response to the two recommendations in paragraph 10 above is as follows:

- (a) Regarding the processing of applications for special transfer, the Lettings Unit will revise Part IV of the application form for special transfer so as to remind applicants that their application may be cancelled and incorporate other departmental guidelines.
- (b) Though the Department has no special guidelines specifying that a letter explaining the reasons should be sent to the applicant on cancellation of his application, it is the Department's current and normal practice to reply to tenants in writing upon receipt of their

requests/applications. Hence, the Department will not issue specific guidelines for the processing of special transfer applications. However, the HD has reminded its staff to pay special attention to similar cases in future and notify applicants in writing of the reasons for cancelling their applications.

## Conclusion

12. The Ombudsman is pleased to note that the HD has responded positively to this complaint and taken appropriate measures to improve the quality of its service.

Office of the Ombudsman  
Case ref.: OMB 1999/1119  
February 2000