

**CASE SUSTAINED
RECOMMENDATION MADE**

CS/590

**COMPLAINT AGAINST THE HOUSING DEPARTMENT FOR
REFUSING TO INCLUDE THE COMPLAINANT'S GRANDSON IN HIS
HOUSING APPLICATION**

When the Complainant's grandson was six years old, his parents divorced. The father (the Complainant's son in law), walked out of the grandson's life, leaving the Complainant, the grandfather, as the father figure.

In late 2002, the Complainant and his wife together with their grandson who was now 17 years old returned to Gibraltar from the UK where they had been living for many years. The Complainant explained that even though the grandson's father was living in Gibraltar at the time, the grandson opted to live with him and not with his father with whom he barely had a relationship.

When the Complainant applied for government housing the Department refused to allow him to include the grandson in the household composition section of his housing application. They informed him that their policy was that grandchildren could not form part of their grandparent's tenancy (unless they had full custody and control of the grandchild) and that they adhered vehemently to this policy.

The Complainant appealed this decision, pointing out that his daughter had ceded him full parental care and control of the grandson and that to all intents and purposes he was the grandson's father, something that was confirmed by the grandson. The Complainant explained to the Department that all he wanted was to be allocated a two-bedroom flat, as opposed to a one-bedroom which was what he and his wife would be entitled to. The Complainant expressed to the Department that his only concern was that his grandson should be able to live with him whilst he and his wife were alive. After they both died the grandson would vacate the flat. As proof of his sincerity both the Complainant and the grandson both offered to sign a legal document stating that the grandson would have no tenancy rights in his grandfather's apartment and guaranteeing that he would vacate it after both his grandparents had passed away.

The Department refused to reconsider pointing out that nothing but a court order transferring parental rights to the Complainant would suffice. By letter dated 2 December 2004, the Department informed the Complainant that an offer of a one-bedroom apartment would be made at the time of allocation.

The Ombudsman explained that the policy that grandchildren are not allowed to form part of their grandparents' household composition was born out of necessity. For many years when home ownership was relatively unknown in Gibraltar, government housing was the main source of accommodation. The waiting lists were long and the only source of empty flats for the Department to allocate to applicants in the waiting lists were those that became vacant through

the death of the tenant. It was inevitable that people would try to 'jump' the queue by moving in with their elderly grandparents in the hope of 'inheriting' the tenancy once the grandparents passed away. It was to deal with this problem that the Department adopted the policy that is still in force today.

Today homeownership is much more common than it once was but other than that, the reasons for which the Department first adopted this policy were still as relevant as ever.

The Ombudsman pointed out that it was absolutely correct that the Department adhere to the policy of not recognising grandchildren as being part of the household composition of their grandparents however, since human problems can be as diverse and complex as human beings themselves no policy should be applied blanket fashion without considering the individual circumstances of the person involved. Furthermore, fear of opening the flood gates should never be a consideration for refusing any housing application. The Department should have the courage and conviction to say yes to one person, no to the other and to justify the reasons for its decisions. The Complainant was not a tenant who was asking the Department to include his grandson in the tenancy. This was a family who had returned to Gibraltar after many years and which consisted of a couple and their grandson who was only eighteen years old and who therefore was not eligible to apply for housing until he reached the age of twenty-one. What was the grandson supposed to do asked the Ombudsman. On the one hand the Department was refusing to accept that him as being part of the Complainant's family composition and on the other he could not apply for housing in his own right? Furthermore it was the wish of both the Complainant and the grandson to continue living together as a family unit with a guarantee that the family home would be vacated by the grandson when both the Complainant and his wife had passed away.

The Complainant had excellent reasons for asking the Department to accept his grandson as part of his household composition and he had also gone out of his way to safeguard the interests of the Department. He had put these to the Department but they had simply applied their longstanding policy without apparently considering the application on its individual merits.

The Ombudsman referred to the letter in which the Department regretted to inform the Complainant that his request to include his grandson in his application had been discussed by the Housing Allocation Committee but that they had not agreed to his request. No reasons were given for this decision.

The Ombudsman reminded the Department that they were dealing with human beings not with numbers on a list and he referred them to Article 18 of the European Ombudsman's Code of Good Administrative behaviour which states that every decision "*which may adversely affect the rights or interests of a private person shall state the grounds on which it is based by indicating clearly the relevant facts and the legal basis of the decision.*"

For the sake of accuracy the Ombudsman said that even though he had been referring to the Department in general terms, decisions relating to allocations are

taken by the Housing Allocation Committee which is composed of volunteers who do not have to face the applicant nor to justify their decision in any way.

The Ombudsman was of the opinion that the Housing (Special Powers) Ordinance and the Housing Allocation Scheme (Revised 1994) which regulate all matters connected to government housing should be revised. The Housing Manager should be given the authority to manage the housing stock and the decision to allocate or not to allocate should be his/hers alone, possibly taking the Housing Allocation Committee's views into account. In a case such as this one, it would be up to the Housing Manager to justify his/her decision to the applicant.

The Ombudsman sustained the complaint, pointing out that the grandson was technically homeless and the Department had refused the Complainant's request without considering the repercussions of the decision on the grandson's housing situation.

The Ombudsman recommended that the request be reconsidered by the Housing Allocation Committee in the light of the grandson's housing situation. A negative decision would have to be justified in writing referring specifically to the grandson's homelessness and to the willingness of the Complainant and the grandson to limit the latter's tenancy rights to the lifetime of the grandparents.