

## SPSO decision report

**Case:** 201204688, Fife Council  
**Sector:** local government  
**Subject:** applications, allocations, transfers & exchanges  
**Outcome:** some upheld, recommendations

### Summary

Mr C lives with his partner (Ms B), who has a disability. He complained about the council's handling of the couple's request for a mutual exchange of council properties. He said the council unreasonably refused permission for this on the basis that the property that Mr C and Ms B were hoping to move into could not be fully adapted to Ms B's potential future requirements. Mr C said the council told him that if he wished to go against their decision and proceed with the exchange he would have to sign a disclaimer saying that he accepted that the council would not be responsible for any future adaptations, and that he would have to fund these himself. Mr C said the council later changed their policy and agreed the exchange, but he also complained that they then failed to carry out a property condition check before the exchange took place.

Our investigation found that the council's written policy on mutual exchanges at the time did not say that properties had to be fully adaptable. When we asked them for information, they explained they had based their decision on an unwritten policy about this, which they said meant that the mutual exchange could not be granted. We upheld Mr C's complaint, as we found that it was not appropriate for the council to rely on an unapproved, unwritten policy when determining whether a mutual exchange could be granted. As there was nothing in their procedure on mutual exchanges to indicate that the exchange should not be approved, we considered that they unreasonably refused permission. It was also clear that the council's policy did not require tenants to sign disclaimers in situations such as this. Again, it appeared that the council were operating an unwritten policy on completion of disclaimers in respect of future adaptations. We did not uphold the complaint about the property check, as the council provided us with evidence that they inspected the property before the mutual exchange.

We noted that the council had apologised for some of their failings and had taken some remedial action, but we made recommendations as we considered that further remedial action was required.

### Recommendations

We recommended that the council:

- provide Mr C and Ms B with a written apology for unreasonably refusing permission for their mutual exchange;
- feed back to the staff involved our decision about their refusal of the mutual exchange;
- revise their mutual exchange policy to include information on the adaptability of properties; and
- provide the Ombudsman with documentary evidence of the feedback previously given to staff about this complaint and the refresher training they received.