

Scottish Parliament Region: South of Scotland

Case 200501924: Irvine Housing Association Ltd

Introduction

1. On 14 October 2005 the Ombudsman received a complaint from Mr C that Irvine Housing Association (the Housing Association) had failed in its responsibilities regarding the pruning of trees on the street outside his home. This he claimed led to overshadowing which affected his bedroom and patio and also caused problems with his television reception. Mr C was also concerned about the potential risks of large trees next to his home in high winds.

2. The complaints from Mr C which I have investigated concerned:

- (a) failure to correctly manage tree maintenance in the area;
- (b) failure to act on Mr C's request to prune the trees;
- (c) failure to consider the impact of the trees on residents' property and television signals;
- (d) failure to properly respond to complaints about these issues.

As the investigation progressed I identified two further issues which were causing Mr C concern:

- (e) failure to remove leaves from Mr C's garden and the pavement outside his home;
- (f) failure to remove black railings in the area.

3. Following the investigation of all aspects of this complaint I came to the following conclusion(s):

- (a) not upheld, see paragraphs 5 to 8;
- (b) not upheld, see paragraph 9;

- (c) not upheld, see paragraph 10;
- (d) not upheld, see paragraphs 11 to 13;
- (e) not upheld, see paragraph 14;
- (f) not upheld, see paragraph 15.

Investigation and findings of fact

4. The investigation of this complaint involved obtaining and reading all of the relevant documentation, complaint files and procedures in particular the Housing Association's 'Tree Inspection and Works' and complaints procedures. I made a written enquiry of the Housing Association and discussed the issues with them a number of times by telephone. I have set out, for each of the four heads of Mr C's complaint and the further two complaints I have identified, my findings of fact and conclusions. Mr C and the Housing Association have been given the opportunity to comment on a draft of this report.

(a) Failure to correctly manage tree maintenance in area

5. The Housing Association have responsibility for landscape maintenance in the area of Mr C's home. Mr C is an owner occupier living in a former Irvine Development Corporation property.

Regular inspection and works

6. The Housing Association operates a procedure for the regular inspection and works of trees in their area. The procedure details that trees will be inspected during regular general estate inspections. These inspections will be carried out by the Housing Association's Landscape Officer. The inspections seek to identify any disease or danger to public safety which the trees may present. In addition, the Housing Association operates a Cyclical Tree Works programme which seeks to address longer term issues. Inspections in this respect are carried out annually. Currently the Housing Association procedures state that works to trees will only be carried out on trees which are causing concern and they will not undertake work at the specific request of individual households.

7. On 30 June 2005 Mr C telephoned the Housing Association to complain about the trees at the front of his home. The Housing Association Landscape Officer visited the site on 1 July 2005 and concluded that the tree was a sufficient distance from the property not to cause unacceptable overshadowing.

8. I consider that the Housing Association acted appropriately and according to their 'Tree Inspection and Works' procedures by arranging a site visit on notification of the concerns of a resident in their area. The procedure itself is reasonable as is the fact that the Housing Association officers reached a professional judgement on whether the trees required works to be carried out. For these reasons I do not uphold this complaint.

(b) Failure to act on request to prune trees

9. As stated in the 'Tree Inspections and Works' procedures, the Housing Association will only address trees which are causing concern of a safety nature. On inspection, they did not consider this to be the case here. As it is clear that the Housing Association has followed their correct procedures, I do not uphold this complaint.

(c) Failure to consider impact of trees on residents' property and televisions signals

10. Mr C claimed that the trees were interfering with the signals providing his satellite and terrestrial television. He advised that his terrestrial channels were actually supplied by his satellite provider. The Housing Association advised him that if he was unable to receive a reception from his satellite television, he should raise the matter with his satellite television provider. I consider this entirely reasonable and as a result have decided not to uphold this aspect of the complaint.

(d) Failure to respond to complaints about these issues

11. Prior to 1 August 2005 Mr C and the Housing Association had been in correspondence in an attempt to resolve Mr C's outstanding concerns regarding the trees. On 1 August 2005 a formal complaint form was received from Mr C by the Housing Association. Receipt of this document was acknowledged on 1 August 2005 and a formal response issued on 12 August 2005. On 3 September 2005 Mr C sent an email to the Housing Association advising that he did not accept the conclusions given in the response of 12 August 2005. This was acknowledged on 5 September 2005 and a formal response from the Chief Executive was provided on 7 September 2005. On 9 September 2005 a further email was received by the Housing Association from Mr C stating that he was still not satisfied with the response and requesting an appeal to the Chairman. This was acknowledged on 20 September 2005 and on 23 September 2005 a full response from the Chairman was provided. On 28 September 2005 Mr C

requested by email that his complaint be considered by three Board members in line with the Housing Association complaints procedure. This email was replied to on 29 September 2005 when Mr C was advised that the appeal to the Board Members was at the discretion of the Chairman and that in this case, the Chairman had decided that this option was not appropriate.

Complaint Handling

12. The Housing Association has a formal procedure in place for handling complaints. This document is available on the Housing Association website and was also sent to Mr C on 22 September 2005. The document details the stages of the complaints procedure, first contact, review by Chief Executive, review by Chairman, discretionary appeal to Board Members and referral to the Scottish Public Services Ombudsman Office. I consider the complaints procedure to be appropriate. Full responses to the complaints were provided within the stated timescales at all times during their investigation of this complaint. The responses provided by the Housing Association were detailed, helpful and, where appropriate, apologies were given.

13. From my review of the complaints file and the correspondence sent by Mr C to the Housing Association it is clear that the Housing Association took appropriate and prompt action to investigate matters. In the course of the investigations the Landscape Officer, Chief Executive and Chairman all visited the location to investigate the issues. Whilst I consider that these inspections are likely to be more than adequate to establish the situation with regard to overshadowing, once the complaint was referred to the Ombudsman's Office I contacted the Housing Association to suggest that they may wish to inspect Mr C's home internally to ensure that they were fully aware of the extent of any problem. This they agreed to do and they contacted Mr C shortly after to suggest a visit. Mr C declined this offer advising that: 'I am busy and currently unable to give a date for a requested meeting due to work commitments ...'. Acknowledging this point, the Housing Association have advised him that they would be happy to review the situation if Mr C advised of a convenient time to visit. As Mr C stated that the trees had now lost their leaves, the Housing Association have offered to arrange a visit next year when the leaves have reappeared. I consider that the Housing Association have fully investigated the issues and have acted in a professional, courteous and practical way in an attempt to resolve the complaint. In this respect they are to be commended. I do not uphold the complaint.

(e) Failure to remove leaves from Mr C's garden and the pavement outside

his home

14. The Housing Association have pointed out to Mr C that the responsibility for removal of leaves from a public pavement rests with the local authority and the responsibility for removing leaves from a private garden lies with the owner of the garden. I agree with the Housing Association's opinion and do not uphold the complaint.

(f) Failure to remove black railings in the area

15. On 16 September 2005 Mr C raised a concern regarding the black railings outside his home and elsewhere in the area. He believed that these railings were a nuisance. He stated that local youths were prone to hitting them with metal such as golf clubs causing a noise disturbance. On 23 September 2005, as part of his formal response to the earlier complaints, the Chairman advised Mr C that he had inspected the railings and agreed that they did not provide any real value to the landscape and appreciated that they could cause a nuisance. He advised that as part of the forthcoming review of all landscape maintenance in the area they would consider their removal. Mr C again raised the issue of the railings in his email of 4 November 2005. The Housing Association repeated their intended action in a reply by email the same day. The Housing Association have agreed to consider the removal of the railings. It is entirely appropriate that they consider this issue at the next area review. I, therefore, do not uphold this complaint.

28 March 2006

Explanation of abbreviations used

Mr C

The complainant

the Housing Association

Irvine Housing Association Ltd