

Scottish Parliamentary Region: Lothian

Case 200501685: West Lothian Council

Introduction

1. On 29 September 2005 the Ombudsman received a complaint from a West Lothian resident (Mr C) who, after being advised by notice of 15 February 2005 of his liability for the financial year 2005/06, was aggrieved at receiving a council tax demand from West Lothian Council (the Council) on 7 July 2005, without explanation for the delay, claiming additional council tax for the current year retrospectively to 1 April 2005. He considered that action by the Council to constitute maladministration and claimed that it had imposed an increased and unfair financial burden on him.

2. After investigation I found that, while the Council were entitled to exercise their discretion to reduce the level of discount for second homes and long-term empty properties, to do so retrospectively was administratively incorrect and imposed an unfair and unforeseen burden. As a result, the complainant had suffered injustice. I, therefore, uphold the complaint.

3. The Ombudsman recommends that the Council repay the complainant the difference in discount backdated to 1 April 2005. Prior to the issue of the report, the Council considered that recommendation and, in addition, agreed to reimburse 227 other council tax payers who were also affected.

Background

4. In responding to the Report of Inquiry into Local Government Finance by the Local Government Committee of the Scottish Parliament, the Scottish Executive agreed to consult on the recommendation that in the interests of equity, the full council tax should be levied on second homes. Consultation on the issue, widened to include long-term empty properties, was issued by the Scottish Executive Finance and Central Services Department on 28 November 2002 with responses sought by 20 February 2003. The 82 responses included those from 22 of the 32 local authorities in Scotland and COSLA (of which the Council was on). On 5 August 2004, the then Minister for Finance and Public Services, announced that Scottish Ministers had decided to give local authorities discretion to reduce or

retain the council tax discount on second homes and long-term empty properties to between 10% and 50%. The enabling legislation, the Council Tax (Discount for Unoccupied Dwellings) (Scotland) Regulations 2005 SSI No 2005/51 was passed by the Scottish Parliament on 26 January 2005 with the provisions to take effect from 1 April 2005.

5. Guidance was issued to local authority Directors of Finance and other relevant parties by the Scottish Executive Finance and Central Services Department on 15 December 2004 with the draft regulations which had been laid before Parliament on 22 November 2004. Paragraph 20 of that letter refers to publicity and states:

'... Local authorities should consider how they will publicise their policy in relation to the discounts, prior to the financial year to which the policy relates. One way of doing this would be to announce the policy alongside the announcement regarding council tax levels, however this is left to the discretion of each local authority.'

Investigation and findings of fact

6. While I have not included every detail investigated in this report, I am satisfied that no matter of significance has been overlooked. Both Mr C and the Council have been given the opportunity to comment on a draft of this report.

7. The complainant, Mr C, is a single person and resides in Livingston. His father died and his house became empty on 7 October 2003. Mr C, who inherited the property, intended to renovate it for reletting. He successfully applied for empty property relief and enjoyed 100% relief from 7 October 2003 to 6 April 2004. Thereafter, for the remainder of the 2004/05 financial year to 31 March 2005, he received a 50% council tax discount.

8. Mr C received a council tax demand for 2005/06 for his late father's home dated 15 February 2005. In this first bill, the total liability including water and sewerage charges payable to Scottish Water for the Band A property was stated to be £947.84. The 'applicable reduction' of 50% for empty property discount resulted in a net charge for the year of £473.92. To Mr C's recollection, no mention was made in the demand notice or in any accompanying documents that the Council

were mindful to exercise their discretion from 1 April 2005 to implement the provisions of the enabling legislation to reduce levels of council tax discount from 50% to 10% for long-term empty properties and second homes.

9. The Council informed me that it first became aware of the Scottish Executive's willingness to review the position of council tax on second homes when they issued the consultation on 28 November 2002 (paragraph 4). The Council's response to the consultation was approved at its Policy Partnership and Resources Committee on 18 February 2003. The Council stated that there was then a lengthy delay of some 22 months before the draft regulations were circulated to councils on 13 December 2004.

10. The Council, in response to my enquiry, stated that it would not be appropriate to make a policy decision based upon draft regulations. The Scottish Executive informed the Council in an email of 1 February 2005 that the order had passed through the Parliament's process and would come into force on 1 April 2005 but that the Statutory Instrument would not be available for another week. The Council's Policy, Partnership and Resources Committee met on 8 February 2005 but this had afforded insufficient time for a report to be prepared.

11. Council tax demands for the council's area for 2005/06 were issued on 15 February 2005, six weeks prior to the start of the new financial year on 1 April 2005.

12. The Head of Finance prepared a report dated 5 March 2005, which was submitted to the 22 March 2005 meeting of the Council's Policy, Partnership and Resources Committee. The Head of Finance stated that the 2005 regulations were due to come into force on 1 April 2005 and the purpose of the report was for the Council to determine and publicise its policy relating to council tax discounts prior to the date that these regulations would come into force. The report outlined the changes to the existing regulations and provided information to help the committee determine the policy relating to the application of its discretion to reduce the council tax discount awarded to second homes and/or long-term empty properties.

13. The Head of Finance stated that if the Council decided to exercise its new discretion and reduce the council tax discount on second homes and long-term

empty properties an estimated total of £76,000 would be raised annually (£21,000 for second homes; £55,000 for long-term empty properties), which would be used to fund or support the development of projects owned and managed by registered social landlords which are consistent with the Council's Local Housing strategy.

14. The Council's Chief Executive stated that a policy decision was taken on 22 March 2005 to reduce discount from 50% to 10% for second homes and long-term properties. The Council anticipated that the additional tax burdens on owners of long-term empty properties would give them an incentive to complete necessary work to make such properties habitable and, therefore, increase the availability of housing.

15. When questioned about the delay in informing relevant parties including Mr C, the Chief Executive stated that delays following the Council decision of 22 March 2005 were caused by the system software needed to administer the new policy being delivered to the Council having been 'untested'. Initial testing found that the software did not allow discounts where a disabled person reduction was already awarded and that two reductions were being applied to accounts when only one was due. Documentation regarding the setting of software parameters to administer the exemption and follow on discounts for second homes and long-term empty properties was ambiguous and had to be clarified on several occasions. Final testing also identified errors with discount dates which were caused by incorrect advice having been given to staff by the Council's software supplier when setting up the parameters. The Chief Executive stated that these main issues which prevented the recalculation of affected accounts were resolved by the software supplier allowing the recalculation of accounts to take place on 30 June 2005. Revised council tax bills were then produced on 4 July 2005. A standard covering letter from the Revenues and Benefits Manager of 7 July 2005 accompanied the revised tax demand to Mr C for 2005/06 of £708.14. (Mr C had by then made the first three installment payments of £50.92, £47 and £47 for 2005/06 totaling £144.92.) The demand requested the outstanding liability be paid in six installments before 31 January 2006. The Revenues and Benefits Manager's letter of 7 July 2005 stated:

'I am writing to you regarding your council tax. The Council Tax (Discount for Unoccupied Dwellings) (Scotland) Regulations 2005 came in to force from

1 April 2005. These regulations allow the Council to change the amount of council tax discount it awards for properties that are classed as second homes or, as long-term empty properties.

West Lothian Council has decided to reduce the level of council tax discount for second homes and long-term empty properties (following the initial period of 12 months) from 50% to 10% from 1 April 2005. My records indicate that the amount of council tax you have to pay has been affected. Please find enclosed a revised council tax bill showing the changes to your account and detailing the amount you now have to pay.

A second home is a property that is not a person's sole or main residence and is furnished. If, however, the property is a purpose built holiday home, tied in with a contract of employment or held by a minister of religion the amount of discount may not be affected. If your property falls into one of these categories you must let me know and supply supporting evidence. A long-term empty property is one that is unoccupied and unfurnished for a period of more than 12 months. The property is exempt from council tax for the first 6 months followed by a further 6 month discount of 50% before the level of discount is reduced ...'.

16. Mr C wrote to the Revenues and Benefits Manager on 17 August 2005 explaining that he had been actively pursuing renovation to his late father's property to get it to a standard for letting out. He was aggrieved, after keeping his payments for the current year up-to-date, to receive a retrospective demand. He also pointed out that his late father had paid less council tax when living in the house; and that housing services had refused to take away an old coal box for recycling they had supplied when his father had been a tenant and he had had to hire a van at his own expense to do this. He indicated that it remained his intention to complete the work and to let the property out.

17. A reply to this letter was sent by the Council's Council Tax Team Leader on 26 August 2005. This detailed the exemption Mr C had enjoyed for the first year and the 50% discount from 7 October to 31 March 2005. The Tax Team Leader explained that the Council had reduced council tax discount for long-term empty properties to 10% from 1 April 2005. He confirmed that the issue of recycling the

coal box had been referred to the Council's Waste Strategy Officer.

18. Mr C, after telephoning the Council Tax Team Leader for clarification, wrote to the Chief Executive stating that he was unhappy with the earlier response. He raised four points. Firstly, he had paid the first three installments of council tax for 2005/06 as directed in the council tax notice of 15 February 2005. Secondly, he received on 7 July 2005 a revised demand backdated to 1 April 2005. Thirdly, he had not been sent a letter after the decision of 22 March 2005 to inform him. Finally, he considered it anomalous that as a single person in his own home using council services he was receiving a 25% discount whereas his late father's property, where no council services were being used, attracted only 10% discount.

19. The Chief Executive's reply repeated that the Council had adopted a policy on 22 March 2005 to exercise its discretion to reduce the discount on second homes and long-term empty properties to 10%, the minimum allowed under the regulations. The council tax leaflet was issued with all council tax bills in February 2005 and could not, therefore, have included the changed level of discount for second homes and long-term empty properties agreed by the Council on 22 March 2005. The Chief Executive stated that he regretted the delay in notification being issued to those taxpayers affected by the Regulations which was due to technical computer problems and he apologised for this. The Chief Executive noted Mr C's comments regarding the use of Council services but stated that council tax was a contribution to the overall provision of services and was not a direct charge based on service usage.

20. Mr C was not satisfied with this response and complained to the Ombudsman on 25 September 2005. In the interim, after discussing the matter with me, he decided to make payments as directed on the revised council tax notice of 4 July 2005. He also informed me on 4 October 2005 that he had been told by a Council officer that only long-term empty property owners had been informed of the changed policy and not second home owners. This point was made to the Council and, in his letter of 24 October 2005, the Council's Chief Executive confirmed that the decision of 22 March 2005 had been implemented in respect of both second homes and long-term empty properties.

Conclusions and recommendations

21. The legislative changes introduced by the Council Tax (Discount for Unoccupied Dwellings) (Scotland) Regulation 2005 were not mandatory. The Council could have exercised their discretion not to apply the reduction in discount. The Council, however, had been in support of change when first consulted in November 2002 and were mindful to take up the new powers. That is something they were clearly entitled to do. However, I consider that their administration of the change in policy was defective. Firstly, they could and should have indicated that the change would be made and notified those affected as soon as possible (if necessary by a separate letter) and certainly no later than 1 April 2005 in order that Mr C and others could take stock of their position from the start of the fiscal year. To do this retrospectively after some three months was in my view maladministration. This was compounded by a failure to explain in the covering letter why the decision of the Council had taken more than three months to be announced to those affected.

22. The Ombudsman had considered that an appropriate remedy in Mr C's case would be to restore his 50% discount for the period 1 April 2005 to 7 July 2005.

23. The Council responded to an earlier draft of this report by placing the matter before their Policy and Resources Committee on 21 March 2006. To their credit, the Committee agreed with the Head of Finance's recommendation that in the interests of fairness, the remedy of restoring the 50% discount for the period in question be applied to all 227 similarly affected council taxpayers.

25 April 2006

Explanation of abbreviations used

Mr C

the complainant

The Council

West Lothian Council