

Case 200502271: Renfrewshire Council

Introduction

1. On 17 November 2005 the Ombudsman received a complaint from a couple (referred to in this report as Mr and Mrs C) that Renfrewshire Council were unfairly seeking retrospective recovery from them of £831.20 in council tax for a property in Renfrew which they own.

2. Mr and Mrs C successfully applied for full exemption from council tax on the grounds that the property was unoccupied and unfurnished. The Council continued the full exemption beyond the statutory period of six months until Mr and Mrs C notified the Council in December 2004 that the property was occupied. The Council then sent retrospective demand notices on 4 February 2005 seeking £411.92 and £419.28 respectively for the financial years 2003/04 and 2004/05.

3. The complaints from Mr and Mrs C which I have investigated were that:

- (a) the Council gave them wrong and inappropriate information initially;
- (b) the Council failed over a 22 month period to advise them that they should be paying 50% of their council tax liability for the property; and
- (c) in the process of pursuing their case they had been put through an unnecessary and inappropriate process.

4. Following the investigation of all aspects of this complaint I came to the following conclusions:

- (a) Upheld, see paragraph 31;
- (b) Upheld, see paragraph 32;
- (c) Partially upheld, see paragraph 33.

5. In the light of these findings, the Ombudsman recommends that the Council pay Mr and Mrs C a sum of £850, in recognition of the time and trouble in pursuing their complaints. In commenting on the draft of the report, the Council stated that they would comply with the recommendation and would immediately implement administrative changes to prevent a recurrence of the problem.

Investigation and findings of fact

6. Mr and Mrs C live at 1A X Street Renfrew. They purchased the flat next door to them at 1B X Street in January 2003 with an intention to renovate the flat for letting.

7. Mr and Mrs C subsequently contacted the Council with a view to claiming empty property relief and said they were asked to bring photographs to prove that the flat was empty. They took the photographs in to the Council in March 2003. They said the person at the Council looked at the photographs and told Mr and Mrs C to inform them when the flat was occupied.

8. The Council's records noted that Mrs C handed in a form for claiming exemption at the public counter on 20 March 2003. They said she was advised that full exemption was for a maximum period of six months and that second home discount (50%) would apply thereafter if the property was not tenanted. The computer record states:

'Customers have bought...(flat next door to them) as well now - Exempt form handed in at counter, they plan to rent it out but not as a furnished flat, they will advise once a tenant is found. Advised that exemption is for a maximum of 6 months and that a 50% discount would replace this until a tenant is found if they don't find a tenant by July.'

9. The Council informed me that their council tax files for the period have been archived. Despite their efforts, they had been unable to locate Mr and Mrs C's form. A blank form in use at the time refers to a six month maximum period for exemption for new and existing unoccupied and unfurnished properties. The form does not specify what happens after that period.

10. The Council's computer record discloses that on 24 March 2003 their contact

centre was phoned by Mrs C to request that the claim for exemption be processed. The claim for exemption was processed on 4 April 2003.

11. No letter was issued to confirm that exemption had been awarded. The Council have informed me that, while they would orally confirm that exemption would be awarded, it was not common practice for them to issue letters confirming that the exemption had been awarded and would be replaced with a 50% discount if circumstances had not changed. Replacement tax notices would be issued where appropriate.

12. Mr and Mrs C said that the flat at 1B X Street was not occupied from 17 January 2003 to 7 December 2004 and they received council tax notices for 2003/04 dated 17 April 2003 and again for 2004/05 issued on 19 February 2004 stating that the respective amounts of council tax for those years (£1164.22 for 2003/04 and £1224.28 for 2004/05) were not due.

13. In December 2004, Mr and Mrs C notified the Council that the flat at 1B X Street had been occupied. On 30 January 2005 they said they received a telephone call from the Council asking if Mr and Mrs C had ever lived in 1B X Street. They stated that they had not.

14. In notices dated 1 February 2005, issued on 4 February 2005 and received on 10 February 2005, Mr and Mrs C were sent retrospective bills stating that £411.92 in council tax was owed on the property for 2003/04 and £419.28 for 2004/05. Mrs C indicated that, given the advice she had received in March 2003, she was unhappy to receive retrospective requests for payment. Mrs C telephoned the Council on 10 February 2005 and subsequently submitted a complaint on 17 February 2005. This was received by the Council on 21 February 2005. On 24 February 2005 the Revenues Section Leader (Officer 1) responded to Mrs C. Officer 1 confirmed that the application form for exemption had stated that the full exemption was only available for a maximum of six months, following which a 50% second homes discount would apply if the property remained unoccupied (sic). She assured Mrs C that no error had been made. She stated that it had been unfortunate that it had taken time to amend the account to show the correct amount but that as a gesture of goodwill she was prepared to agree an arrangement with Mrs C for her to pay back the outstanding balance of £831.20.

She apologised for the distress and inconvenience this had caused Mrs C.

15. Mrs C wrote on 1 March 2005 informing the Council that she was not happy with the response to her complaint. Her letter was acknowledged by the Director of Finance and a reply was sent to her by the Head of Operational Services (Officer 2) on 15 March 2005.

16. Officer 2 confirmed that, in accordance with the legislation, the maximum period an exemption can be awarded for an unoccupied and unfurnished house is six months, regardless of whether any water, sewerage or refuse collection facilities were used. Thereafter, if the house is still unoccupied, the exemption ends and a 50% second home discount is awarded. Officer 2 accepted that, in Mrs C's particular case, the length of time to cancel the exemption after the initial six month period (of full exemption) was unacceptable. He stated that he understood the frustration Mrs C felt in being unaware of her liability accruing due to the subsequent erroneous council tax notice issued to her. He stated that unfortunately there was no provision in the legislation governing the billing and collection of council tax that would permit him to write off the recovery of the outstanding balances on the grounds of the Council being responsible for an administrative delay in notifying Mrs C of her correct liability. He indicated that it would be unreasonable for the Council to expect the outstanding liability to be collected immediately and would be prepared to agree a mutually acceptable payment proposal that would not cause Mrs C any undue financial difficulties. He concluded his letter by apologising for the distress and inconvenience caused to Mrs C.

17. In a letter of 24 March 2005 Mrs C asked the then Director of Finance and Information Technology Services (Officer 3) to look into the matter. She pointed out that she had received council tax notices in both 2003/04 and 2004/05 stating that no payment was due.

18. Officer 3 responded to Mrs C's letter on 19 April 2005. He stated that he had reviewed the details of the case and that, while there had been a considerable delay, the council tax section were correct in amending her account to reflect the correct liability based on her circumstances. The subsequent council tax notices that had been issued as a result of the amendment superseded the previous

notices which stated that no payment was due. While Officer 3 expressed himself disappointed at the delay in amending Mrs C's account to reflect the correct council tax liability, he was satisfied that he had applied the legislation fairly and properly in Mrs C's case. He advised Mrs C of her right of appeal to the Renfrewshire Valuation Appeal Committee. He apologised for the distress and inconvenience caused. As a postscript, he referred to Mrs C's ability to take the problem to her elected member or to refer her complaint to this office.

19. Mrs C replied to Officer 3 on 22 April 2005 stating that she did intend to take the matter further and she could not see how the Valuation Appeals Committee would be independent. This letter was received on 26 April 2005. The case was referred to the Secretary to the Valuation Appeal Committee (the Secretary) by Officer 3 in a letter of 2 June 2005. That letter provided brief details of the background. Officer 3 accepted that there had been administrative delay in amending the account, however, the decision to cancel the exemption was correct in terms of the legislation and he stated that there was no legislative provision to allow the debt to be written off. In a further letter of 2 June 2005 Officer 3 apologised to Mrs C for the delay in replying. He informed her that the matter had been referred to the Valuation Appeal Committee and confirmed that no further action for the recovery of the sum would be taken until Mrs C's appeal had been considered.

20. Mrs C was informed by the Secretary by letter of 24 June 2005 that her council tax appeal had been listed to be heard on 5 October 2005 in Paisley and she had been cited to attend. In a letter of 28 June 2005 to Officer 3, she objected to being cited, rather than invited, and again raised doubts as to the independence of the Valuation Appeal Committee. She mentioned also that the Secretary might have a conflict of interest as the solicitor's firm for which she works did business for the Council.

21. The new Director of Finance and IT Services (Officer 4) responded on 7 July 2005 stating that she had passed a copy of her letter to the Secretary. She also provided Mrs C with the name of her local councillor.

22. In a letter to Mrs C of 13 July 2005 the Secretary clarified her role and connections, the composition of the Committee, and the choice of the venue for the

hearing of the Valuation Appeal Committee.

23. The Committee hearing was held on 5 October 2005. Mr and Mrs C attended and participated. The decision was conveyed to them by the Secretary in a letter of 12 October 2005. The decision stated:

'... The Committee found that there was no basis in law whereby the exemption period could be extended beyond the six month period already granted and therefore dismissed the appeal.

They found it regrettable that the appellants had been led to believe that no tax would be payable but noted that the Council had readily admitted their error and had offered to accept payment of the sum due on whatever terms suited the appellants.

The Committee suggested that a more appropriate forum for the appellants' complaints was possibly the Public Services Ombudsman.'

24. Subsequent to the decision Mrs C contacted her local councillor. He indicated in a letter to the Secretary that Mrs C was aggrieved that her case had been dismissed by the Valuation Appeal Committee without them having sight of the 'exemption letter' which had been pivotal to the Council's case. The Secretary responded to that letter saying that the Chairman had considered as a matter of completeness that the exemption form should have been produced but it had not been necessary for the Committee to have the document to complete their deliberation. The councillor was informed that Mr and Mrs C had a right of appeal to the Court of Session exercisable within 42 days of the decision of the Committee being sent.

25. Mr and Mrs C chose not to appeal to the Court of Session. They completed a form of complaint to the Scottish Public Services Ombudsman which was forwarded by the councillor with a covering letter of 16 November 2005.

The Council's response to the complaint

The complaint at paragraph 3 (a)

26. The Council said that their computer record (paragraph 8) noted that an

exemption form was received on 20 March 2003 and that Mrs C was advised orally that the exemption was for a maximum period of six months and that a 50% second home discount would replace the exemption until a tenant was found. The Council stated that while, at the time, it was office practice to discuss and advise the customer orally of their entitlement, it was not common practice to issue a letter confirming that exemption had been awarded and thereafter would be replaced with a 50% discount if the circumstances had not changed. The Council informed me that as a result of the issues arising from this case procedures had been reviewed. It is now the practice that, when an exemption is awarded, a letter is issued to the customer detailing their entitlement, in addition to oral confirmation of any entitlement to exemption or discount.

The complaint at paragraph 3 (b)

27. Officer 4 acknowledged that the Department's review procedures failed to alert staff to the overrun on the six month exemption awarded to Mr and Mrs C. She repeated the previous apologies for the failure of departmental procedures to pick up the expiry of the six month exemption period. The failure adequately to monitor the six month exemption period in this case had prompted a review of practices and procedures to prevent recurrence. Three main changes have been implemented. Firstly, a letter is now issued following the award of an unoccupied and unfurnished exemption detailing the dates of the award. Secondly, end dates are now entered into the computer system which will automatically cancel the exemption after six months have elapsed. Thirdly, reviews of exemptions and discounts are carried out routinely. Officer 4 considered that these changes in practice, together with the introduction of the letter informing the council tax payer of their entitlement at the time of the award, would improve the process and provide the customer with better and more accurate information.

The complaint at paragraph 3(c)

28. Officer 4 has reviewed her predecessor's letter of 19 April 2005. She considered that the information provided in that letter was sufficient to enable Mr and Mrs C to decide the appropriate course of action available to them. The recourse to the Renfrewshire Valuation Appeal Committee was in her view the correct one with regard to the legal right of the Council retrospectively to make changes to the council tax charges. She stated that this was considered to be the main issue with the case at the time. Had the Valuation Appeal Committee found

that the Council had no legal basis to withdraw the exemption retrospectively, the exemption would have been reinstated resulting in no charges due to Mr and Mrs C for the 2003/04 and 2004/05 council tax periods.

29. Officer 4 considered that, given the decision of the Renfrewshire Valuation Appeal Committee, the Council did not have discretion in the matter. However, she repeated the Council's willingness to make suitable repayment arrangements with Mr and Mrs C.

The complainants' view

30. Mr and Mrs C were given the opportunity to comment on the Council's response. They stated that they felt they had suffered a great injustice. This was not with the Council's entitlement to change charges retrospectively but with the failure in administrative procedures. They understood from an answer the Chairman to the Valuation Appeal Committee had given them that they dealt mainly with banding and valuation matters. They had found the procedure relating to the appeal worrying and stressful.

Conclusions and recommendation

(a) The Council gave them wrong and inappropriate information initially

31. There were clearly shortcomings on the Council's part and to their credit they have realised where their procedures require to be changed. In this case, however, the combination of a lack of reference on the exemption form to what happens after the six month period of exemption (paragraph 10) and the lack of a confirmatory letter meant that the Council had to rely on the computer record of a discussion to confirm their position. That is not fully satisfactory. The record kept was better than no record but cannot be taken to mean that Mr and Mrs C understood they should have paid 50% of the full council tax liability for 1B X Street after the expiry of the six month period. Further, the council tax notices issued by the Council in April 2003 and February 2004 stated that there was no tax liability for the periods in question (paragraph 12). I uphold this head of complaint.

(b) The Council failed over a 22 month period to advise them that they should be paying 50% of their council tax liability for the property

32. The Council clearly accept that there were deficiencies in the monitoring of the exemption they awarded. The complainants should have been sent a revised

demand at the expiration of the six month period and a correct initial demand for 2004/05. They did not receive the former and the correct demand for 2004/05 was issued nearly a year late, on 4 February 2005, only after Mrs C informed the Council that the flat at 1B X Street had been let. I also uphold this head of complaint.

(c) In the process of pursuing their case they had been put through an unnecessary and inappropriate process

33. I believe that Officer 3's letter of 19 April 2005 aimed to be helpful (paragraph 18). However, it would have been preferable for him to have outlined the issues the Valuation Appeal Committee might deal with as opposed to matters that the Ombudsman might investigate. That was the appropriate route for them to claim exemption beyond the six month period. Nevertheless, because of the Council's maladministration, Mr and Mrs C have had to go through this process and that of bringing their complaint to the Ombudsman. I partially uphold this aspect of the complaint.

34. The Council is entitled by law to seek retrospective payment. However, because of the circumstances of this case, I consider that Mr and Mrs C have suffered an injustice. The Council have made changes to procedures which will hopefully avoid recurrence. They have also apologised several times. I believe the remedy to the injustice requires more than that. The Ombudsman recommends that Mr and Mrs C receive a payment of £850, in recognition of the time and trouble involved.

35. In their response to my draft report, the Council stated that they were prepared to comply with the recommendation. They also advised that they were making further improvements to their procedures. They have changed the wording of their empty property exemption application form with immediate effect to provide a clear indication that the exemption was limited to six months and that any relief beyond the six month period would be limited to 50% of the charge due.

25 April 2006

Explanation of abbreviations used

Mr and Mrs C	The complainants
Officer 1	The Revenue Sections Leader who received the complaint on 21 February 2005
Officer 2	The Head of Operational Services who replied to the second letter of complaint on 15 March 2005
Officer 3	Previous Director of Finance and Information Technology Services
Officer 4	New Director of Finance and Information Technology Services
The Secretary	The Secretary of the Valuation Appeal Committee