

Case 200401943: East Ayrshire Council

Introduction

1. On 22 September 2005 the Ombudsman received a complaint from Ms C about East Ayrshire Council (the Council) regarding an offer of housing which was made to her in April 2004. She said that her subsequent complaints about the way the matter was dealt with led to her housing application being penalised.

2. Ms C said that, in advance of her viewing the offer of the two bedroomed property, the Assistant Area Manager told her that, while it was in a good area, it required a lot of work. She said she then viewed the house in the company of a Repairs Inspector and while she pointed out what she believed were a number of problems, including dampness, the Repairs Inspector took the view that there was nothing requiring work. Ms C said that because of this and because she could not afford to do the work herself she reluctantly refused it.

3. The complaints from Ms C which I have investigated concerned:

- (a) an allegation that a relative of a housing department employee was given preferential treatment, in that she was able to appeal the condition of the house and have the necessary repairs carried out;
- (b) an allegation that her application has been penalised, in that 15 points were removed from it after she complained about the allocation of the house;
- (c) failure to give Ms C the usual three days to decide on the offer.

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

- (a) not upheld, see paragraphs 7 - 14;
- (b) not upheld, see paragraphs 15 - 17;

(c) not upheld, see paragraphs 18 - 20.

Investigation and findings of fact

5. The investigation of this complaint involved obtaining and reading all the relevant documentation, including details of the way in which the property had been offered to others and their response to those offers; the Council's inspection report of the property; and details of the Council's housing allocations policy.

6. I have set out, for each of the three heads of Ms C's complaint, my findings of fact and conclusions and, while I have not included every detail investigated, I am satisfied that no matter of significance has been overlooked. Ms C and the Council have had an opportunity to comment on a draft of this report.

(a) A relative of a housing department employee was given preferential treatment, in that she was able to appeal the condition of the house and have the necessary repairs carried out

7. From the Council's records I am aware that the property concerned was offered to two others before Ms C. Ms C thought that they refused the property because of dampness, but the first person refused it on the grounds that the garden was too large and the second on the basis that he was not interested at the time. It was then offered to Ms C in April 2004 and on 3 June 2004 she viewed the property in the company of a Repairs Inspector. The Council have confirmed to me that this was not the usual inspector for the area and that this was his first time of viewing the property. The inspector confirmed that Ms C questioned whether there was dampness in the house, but he expressed his opinion that there was no evidence to suggest this and that the smell which existed was attributable to the house being shut up for a while. At that point he did not identify any repairs being required.

8. In her complaint Ms C said that she was asked the next day whether she intended to accept the offer but she said that, although she liked the area, she felt she had to turn it down because she believed work was required. She said she had no money to do the work herself.

9. The Council's records then indicate that the house was offered to the next applicant on the list, but was refused because she wanted a runway which could not be constructed at this location. The next again applicant, Ms S, was an employee of the Housing Department and also the daughter of a then

member of the Housing Department staff. As this was the case, the Allocations Officer presented the list of applicants to the Housing Services Manager to scrutinise as a member of staff was involved and on 7 June 2004, in accordance with departmental protocol, the instruction was given that the staff member, who was the mother of the applicant, was to have absolutely no involvement in the allocation process and the offer was confirmed.

10. Council records show that a viewing was arranged for Ms S on 8 June 2004 and she was accompanied by a different Repairs Inspector. At the viewing, Ms S intimated to the Repairs Inspector that there was a musty smell which she thought was an indication of dampness, but the Repairs Inspector took the view that there was no such evidence. Ms S expressed the opinion that a proper dampness inspection should be carried out to clarify the situation and that she would take it up with the Manager if needs be.

11. The Repairs Inspector then agreed to arrange a survey which ultimately identified penetrating dampness and remedial works were subsequently ordered (on 28 June 2004). In the meantime, however, on 8 June, the same day as she viewed it, Ms S accepted the offer of the property with an agreement that some work be done to the living room skirtings and the floor of the second bedroom.

12. Prior to her complaint to this office, Ms C had made representations to the Council about dampness repairs being done for Ms S and had been advised that the dampness problem had only become evident after the new tenant began to redecorate. The Council said that this was true in so far as when Ms S began to strip the walls she found that the previous tenant had lined the walls with a form of polystyrene which had concealed the problem. However, by this time the dampness inspection had already been ordered. The Council acknowledged that Ms C was unintentionally misled and that the first Repairs Inspector's failure to diagnose dampness was regrettable, but they take the view that there is no evidence to suggest that Ms S received preferential treatment.

13. The Council's records clearly show that Ms S was made the offer of the property concerned in accordance with their allocation policy and that Ms S' mother was to have no involvement in the matter. The records also show the reasons why other people refused the property and that their reasons did not stem from a concern about dampness. Ms S was insistent that dampness

probably existed and said that she would pursue the matter with the Housing Manager if needs be and the Repairs Inspector agreed to a dampness inspection being carried out. Nevertheless Ms S accepted the condition of the property more or less as it stood.

(a) A relative of a housing department employee was given preferential treatment, in that she was able to appeal the condition of the house and have the necessary repairs carried out: Conclusion

14. I am, therefore, of the opinion that Ms S was not given preferential treatment. It does appear, however, that her knowledge and assertiveness operated to her advantage in this case and, while I do not find maladministration, I am mindful that this could give the appearance of unfair discrimination. In this context, I am pleased to note that the Head of Housing accepted that circumstances have had a cumulative effect on Ms C and now proposes to exercise his discretion in terms of the allocations policy and award Ms C an additional 15 points for her preferred areas of choice, bringing her points total to 35. In effect, Ms C is returned to the position she was before her complaint arose and I commend the Council for their approach in this matter.

(b) Her housing application has been penalised, in that 15 points were removed from it after she complained about the allocation of the house

15. Council records show that Ms C applied for housing on 7 May 1991. She currently lives in a two bedroomed house and is requesting a move to another two bedroomed property. In October 2003, she added one bedroomed bungalows to her application and she was listed as having two bedrooms as her first choice and one bedroom as her second. In accordance with the allocation policy, this did not entitle her to any under occupation points but on 6 November 2003 Ms C's application was amended and she was incorrectly given an additional 15 points for under occupation.

16. Ms C believed these 15 points were subsequently removed from her application because she began to complain about the allocation of the house but in fact it can be seen that the amendment was made on 24 November 2004 when Ms C deleted one bedroom properties from her application. This correctly reduced Ms C's application to 20 points, representing two waiting points per year up to a maximum of 20.

(b) Her housing application has been penalised, in that 15 points were removed from it after she complained about the allocation of the house: Conclusion

17. In the light of this evidence, I do not uphold this aspect of the complaint. However, in this connection and in reviewing the complainant in its entirety, the Council is prepared to accept that actions taken by the Housing Department may have had a detrimental effect on Ms C's health and caused her undue stress and anxiety. Accordingly, the Council have apologised for this.

(c) Failure to give Ms C the usual three days to decide on the offer

18. Ms C viewed the house concerned on 3 June 2004. She said she was contacted the following day for her decision and at that point she verbally refused the offer. She sent a letter of confirmation a few days later. Ms C said she was very anxious about the entire situation. She liked the house and the area but was not herself in a position to attend to the repairs she thought were necessary. The Repairs Inspector who accompanied her on her visit took the view that there were no problems with the house that required attention. Nevertheless, Ms C felt she was put under undue pressure to make a decision and that she should have been given three days to consider the matter.

19. In their correspondence with me, the Council said that it is their common practice to encourage applicants, when viewing a property, to make a decision there and then but, in any case, within 24 hours. They said they have a strong focus on performance and dealing with vacant houses quickly and staff routinely chase applicants for decisions on the day following their viewing. They said the three day time scale refers to pre-acceptance, that is, the period when the keys to the property are not yet available but the applicant is advised of the availability of the property and is requested to provide an indication of their interest in it. They have three days to do so.

(c) Failure to give Ms C the usual three days to decide on the offer: Conclusion

20. In the circumstances, I do not uphold this aspect of the complaint but I can readily understand the pressure Ms C felt. She had waited for some time for a suitable offer to be made, but when it was, she said that there were problems with the house. She was torn between accepting a property she knew she could not afford to bring up to standard when the Council had told her they would not, and in refusing an offer not knowing when, if ever, another suitable one would be made. Nevertheless, I do not take the view that this quandary was a direct consequence of any administrative or service failure on the part of the Council. The Council acknowledge that the relevant Repairs Inspector

could have been more helpful, albeit that he was not of the view that there was any obvious evidence of dampness in the house.

30 May 2006

Explanation of abbreviations used

Ms C	The complainant
Ms S	The tenant accepting the property
The Council	East Ayrshire Council